

## FTC #159: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act 2020 – Stage 1 decisions

### Application 2022-102 Pohutukawa Drive Subdivision Project

Date submitted:	15 September 2022	Tracking #: BRF-2175	
Security level:	In-Confidence	MfE priority:	Urgent

	<b>Action sought:</b>	<b>Response by:</b>
To Hon David Parker, Minister for the Environment	Decision on recommendations in Table A	To be advised

Actions for Minister's Office staff	<ol style="list-style-type: none"> <li><b>Return</b> the signed briefing to MfE.</li> <li><b>Send</b> attached letter (if signed) with accompanying template and links to application documents.</li> </ol>
Number of attachments: 3	<p>Attachments:</p> <ol style="list-style-type: none"> <li>Application documents for Pohutukawa Drive Subdivision Project (Databox link)</li> <li>Letter to Ministers – inviting comments on Pohutukawa Drive Subdivision Project referral</li> <li>Template for ministerial comment</li> </ol>

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal Author	Alison Grayston		
Manager	Stephanie Frame	s 9(2)(a)	✓
Acting Director	Matthew Barbati-Ross	s 9(2)(a)	

## **FTC#159: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act 2020 – Stage 1 decisions**

### **Key messages**

---

1. This briefing seeks your initial decisions on an application from Evans Family Trust to refer the Pohutukawa Drive Subdivision Project (project) to an expert consenting panel (panel) under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (the FTCA).
2. The project is to subdivide a 12-hectare site in three stages and construct a housing development at 996 State Highway 2, Eskdale, Hawke's Bay. The project will create 81 residential lots and 1 commercial lot and will provide 83 residential units (81 standalone homes and 2 apartments above the commercial floorspace). The application includes realigning the Whirinaki Drain, constructing a wastewater treatment plant, and a 2-hectare solar farm over the wastewater discharge fields. It is intended that the wastewater treatment plant is powered by the solar farm.
3. The project will require land use and subdivision consents under the partially operative Hastings District Plan; land use consents and discharge and water permits under the Regional Resource Management Plan for Hawke's Bay, and coastal permits under the Hawke's Bay Regional Coastal Environment Plan.
4. The proposed activities would have overall non-complying activity status due to exceedances of permitted standards, including subdivision within the Rural Zone to provide residential-size lots and the construction of buildings within a River Hazard Overlay.
5. Additional resource consent may be required under the National Environmental Standards for Freshwater 2020 (NES-F) as the project area contains a potential wetland which is within 100 metres of the 'proposed raingarden stormwater settlement area'. If the wetland is deemed to be 'natural', any discharge of stormwater within 100 metres of its limit is a non-complying activity. We recommend seeking further information from the applicant and the Hawke's Bay Regional Council (HBRC) on the nature of this wetland.
6. While the project site is not located immediately adjacent to the coast, it may be subject to coastal inundation and flood hazards. We provide further detail on this matter in Table A, and recommend that you seek further information on this matter from HBRC and HDC.
7. We have undertaken an initial (Stage 1) analysis of the referral application, and this is presented along with our recommendations in Table A.
8. The project meets all the eligibility criteria in section 18(3) of the FTCA, but more analysis is needed before we can advise you if they meet the purpose of the FTCA (thus satisfying section 18(2) of the FTCA) and advise you on matters in section 23(5) which may influence your referral decision.
9. We recommend you progress consideration of the application to the next stage of analysis (Stage 2) and invite comments from Hastings District Council (HDC), HBRC and specific Ministers listed in section 21(6) of the FTCA.
10. We recommend that you invite comments from Associate Minister for the Environment (urban policy) as an additional Minister under section 21(6)(n).
11. We also recommend you request further information from the applicant as detailed in Table A.

## Statutory framework summary

---

12. You are the sole decision maker for the referral application as the project will not occur in the coastal marine area.
13. You may decline the referral application before seeking comments from the relevant local authorities and any relevant Ministers:
  - a. if you are satisfied the project does not meet the referral criteria in section 18 of the FTCA, (which include helping to achieve the purpose of the FTCA) (see sections 18(2) and 23(1) of the FTCA)
  - b. for any other reason (see section 23(2) of the FTCA).
14. If you do not decline the referral application at this stage:
  - a. you must provide the application to, and invite comments from, the relevant local authorities and the relevant Ministers prescribed by section 21(6) of the FTCA
  - b. you may provide the application to and invite comments from any other person.
15. You are also able to request further information from the applicant or any relevant local authority at any time before you decide to decline or accept the referral application (see section 22 of the FTCA).

## Action sought

---

16. Please indicate your decisions on the recommendations in Table A.

## Signature

---

A handwritten signature in black ink, appearing to read 'S Frame', with a stylized, cursive script.

Stephanie Frame  
**Manager – Fast-track Consenting**

**Table A: Stage 1 initial assessment of project eligibility – projects where the Minister for the Environment is the only decision maker**

**Project to progress**

Project details	Project description	Project funding	Is project eligible for referral? [section 18(3)]	Will project help to achieve the purpose of the FTCA? [section 18(2)]						Recommendations	Minister's decisions
				Economic benefits and costs for people or industries affected by COVID-19 [section 19(a)]	Effect on social and cultural wellbeing of current and future generations [section 19(b)]	Likelihood project will progress faster under the FTCA than would otherwise be the case [section 19(c)]	Public benefit [section 19(d)]	Potential for significant adverse environmental effects, including greenhouse gas emissions [section 19(e)]	Any other relevant matters [section 19(f)]		
<b>Name</b> Pohutukawa Drive Subdivision Project <b>Applicant</b> Evans Family Trust c/- Jason Kaye, Development Nous Limited <b>Location</b> 996 State Highway 2, Eskdale, Hawke's Bay	<p>The project is to subdivide a 12-hectare site in three stages and construct a housing development at 996 State Highway 2, Eskdale, Hawke's Bay. The project will create 81 residential lots and 1 commercial lot and will provide 83 residential units (81 standalone homes and 2 apartments above the commercial floorspace).</p> <p>The application includes realigning the Whirinaki Drain, constructing a wastewater treatment plant, and a 2-hectare solar farm over the wastewater discharge fields. It is intended that the wastewater treatment plant is powered by the solar farm.</p> <p>The project will require land use and subdivision consents under the partially operative Hastings District Plan; land use consents and discharge and water permits under the Regional Resource Management Plan for Hawke's Bay, and coastal permits under the Hawke's Bay Regional</p>	<p>The applicant has advised that it owns the land and that provisional arrangements between the applicant and their bank are in place for commercial lending to finance Stages 1 and 2, with the profit from these stages financing Stage 3.</p> <p>The applicant has previously completed two subdivisions (forming the existing Pohutukawa Drive) and are aware of finance and wider development requirements.</p> <p>Based on the information provided, we do not have any concerns over funding or project delivery at this time.</p>	<p>Based on available information at this stage, we consider the project is eligible for referral because:</p> <ul style="list-style-type: none"> <li>it does not include any prohibited activities (see additional note below)</li> <li>it does not include land returned under a Treaty settlement</li> <li>it does not occur in a customary marine title area or protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011.</li> </ul> <p>Note: While not a prohibited activity, resource consent under the NES-F may be required if the wetland, which is within 100 metres of the 'raingarden stormwater settlement area', is determined to be 'natural'.</p>	<p>Based on the information provided by the applicant we consider that the project may result in the following economic benefits:</p> <ul style="list-style-type: none"> <li>creating approximately 147 direct full-time equivalent (FTE) jobs over a 4-year period (37 jobs per year)</li> <li>contributing approximately \$19.5 million to construction sector GDP.</li> </ul>	<p>The project has the potential for positive effects on social wellbeing of current and future generations as it will:</p> <ul style="list-style-type: none"> <li>generate employment by providing 147 direct full-time equivalent (FTE) jobs over a 4-year period (37 jobs per year)</li> <li>increase housing supply by enabling 83 residential units.</li> </ul>	<p>The applicant estimates that under standard Resource Management Act 1991(RMA) process it may take up to 2.5 years longer to gain consent for the project due to the likelihood of notification and possible appeals.</p> <p>The applicant has also stated that the preferred approach of Hastings District Council (HDC) is for large subdivision schemes to go through a plan change process. The applicant estimates that this process may take up to 3.5 years longer than the FTCA process.</p> <p>We recommend seeking comment from HDC and Hawke's Bay Regional Council (HBRC) on the appropriateness of using the</p>	<p>Based on the information provided by the application we consider that the project may result in the following public benefits:</p> <ul style="list-style-type: none"> <li>generating employment.</li> <li>increasing housing supply.</li> <li>contributing to a well-functioning urban environment.</li> </ul>	<p>The project has the potential for adverse environmental effects arising from:</p> <ul style="list-style-type: none"> <li>earthworks</li> <li>construction activities</li> <li>increased loading on water supply infrastructure</li> <li>traffic</li> <li>loss of potentially productive rural land</li> <li>impact on the character and amenity of the surrounding area</li> </ul> <p>The applicant has stated that the project will not have significant adverse effects.</p> <p>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.</p> <p>The project site is located close (but not immediately adjacent) to the coast and may be subject to coastal inundation. To mitigate this the applicant proposes to raise the ground level prior to undertaking construction, and to realign the Whirinaki Drain. We recommend that you seek comment</p>	<p>The proposed activities have overall non-complying activity status due to including subdivision within the Rural Zone to provide residential size lots and the construction of new homes within a River Hazard Overlay.</p> <p>The project area contains a potential wetland, and the discharge of stormwater from the 'proposed raingarden stormwater settlement area' is within 100 metres of the wetland area. The applicant states that the wetland is not natural and therefore not subject to the non-complying activity status under Regulation 54 (c) of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F). The applicant has suggested commissioning an investigation by a wetland ecologist to assess the potential wetland area. Resource consent under the NES-F may be required if the wetland is deemed to be 'natural'.</p> <p>We recommend that you seek additional information from the</p>	<p>a. <b>Note</b> that section 23(3) of the FTCA permits you to decline the referral application without inviting comments from the relevant local authorities and any relevant Ministers.</p> <p>b. <b>Note</b> that you have not yet provided the application to, nor sought any comments on it from, relevant local authorities or relevant Ministers but that you are required to do so if you do not decline the application under section 23(3) of the FTCA.</p> <p>c. <b>Note</b> that section 21(3) of the FTCA permits you to forward an application to, and invite written comments from, any other person.</p> <p>d. <b>Note</b> that section 22 of the FTCA permits you to request further information from the applicant or relevant local authorities at any time before you decide whether to accept or decline an application.</p> <p>e. <b>Agree</b> to progress the Pohutukawa Drive Subdivision Project to our Stage 2 analysis. The project warrants further analysis because it has potential to achieve the purpose of the FTCA but we need to consider some matters further before providing you with our final advice on the referral application.</p> <p>f. <b>Agree</b> to provide the application to, and invite comments from:</p> <ol style="list-style-type: none"> <li>the Ministers listed in section 21(6)(a)–(m) of the FTCA</li> <li>the Associate Minister for the Environment (urban policy) as an additional relevant Minister under section 21(6)(n) of the FTCA</li> <li>the relevant local authorities – Hastings District Council and Hawke's Bay Regional Council</li> </ol> <p>g. <b>Agree</b> to seek further information from the applicant and HBRC on the nature of the wetland; from HDC on effects on existing</p>	<p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p>

Project details	Project description	Project funding	Is project eligible for referral? [section 18(3)]	Will project help to achieve the purpose of the FTCA? [section 18(2)]						Recommendations	Minister's decisions
				Economic benefits and costs for people or industries affected by COVID-19 [section 19(a)]	Effect on social and cultural wellbeing of current and future generations [section 19(b)]	Likelihood project will progress faster under the FTCA than would otherwise be the case [section 19(c)]	Public benefit [section 19(d)]	Potential for significant adverse environmental effects, including greenhouse gas emissions [section 19(e)]	Any other relevant matters [section 19(f)]		
	<p>Coastal Environment Plan.</p> <p>The proposed activities will have overall non-complying activity status due to exceedances of permitted standards, including subdivision within the Rural Zone to provide residential-size lots and the construction of buildings within a River Hazard Overlay.</p> <p>Additional resource consent may be required under the National Environmental Standards for Freshwater 2020 (NES-F) as the project area contains a potential wetland which is within 100 metres of a proposed raingarden stormwater settlement area.</p>					FTCA process.		<p>from HBRC and HDC on the appropriateness of these measures, and any additional concerns they may regarding flooding and coastal inundation.</p> <p>We recommend seeking further comment at this stage from HDC on the potential for adverse effects on existing infrastructure.</p>	<p>applicant and HBRC on the nature of the wetland.</p> <p>The project site is subject to consent notice conditions to provide a compliant vehicle crossing which must be supported by geotechnical investigation. These consent notices will need to be cancelled if the project is referred as they will be superseded by the subdivision project. The applicant is aware that the consent notice conditions cannot be cancelled as part of the FTCA process and has stated that the this will not impact project delivery timeframes. The applicant will liaise with HDC to have the conditions cancelled.</p> <p>We recommend that you seek information about the consent notices from HDC.</p>	<p>infrastructure and on the consent notices that apply to the project area; and from HDC and HBRC on natural hazard risk, the appropriateness of any mitigations and the overall project in this location.</p> <p>h. <b>Sign</b> the attached letters to Ministers.</p> <p>i. <b>Note</b> that while awaiting comments from invited parties and further information, the Ministry for the Environment will, in consultation with the Office of Māori Crown Relations – Te Arawhiti, prepare a report for the purpose of section 17 of the FTCA.</p>	

Signed:

Hon David Parker  
Minister for the Environment

Date: