

FTC#31: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decision on:

Application 2020-25 – Winery, restaurant, education and event complex

Date Submitted:	10 December 2020	Tracking #: 2020-B-07284
Security Level	In-Confidence	MfE Priority: Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decision	14 December 2020

Actions for Minister's Office Staff	Return the signed briefing to MfE.
Number of appendices and attachments	Titles of appendices and attachments (ie, separate attached documents): 1. Application for a project to be referred to an expert consenting panel (and further information received on 27 November 2020) 2. Stage 1 Briefing Note and Decision 3. Statutory Framework for making decisions 4. Draft Notice of Decision Letter to JCarter Planning on behalf of Otago Viticulture and Oenology (Trading as Brennan Wines) 5. Section 17 Treaty of Waitangi Report 6. Comments received from Ministers and Local Authorities

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Rebecca Perrett		
Responsible Manager	Sara Clarke	s 9(2)(a)	✓
Director	Keita Kohere	s 9(2)(a)	

FTC#25: 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 Otago Viticulture and Oenology Limited (Trading as Brennan Wines) for a winery, restaurant, education and event complex.
2. This application is for a project that involves the construction of a winery complex that will expand current facilities at the site providing for onsite wine making including bottling and storage, restaurant and cellar door, training, and event facilities (the Project). A copy of the Project application is included in Appendix 1.
3. The Project is located at 110 Gibbston Back Road, Otago, an established vineyard, located within the Gibbston Valley.
4. This briefing seeks your decision on whether the Project should be referred to an expert consenting panel. This is the second briefing relating to this application. A copy of the first briefing (2020-B-07243) regarding this application is included in Appendix 2.
5. Officials recommend you accept the application for referral under section 24 of the FTCA and refer it to an expert consenting panel for fast-tracking.

Statutory Framework Summary

6. The statutory framework for making your decision is set out in Appendix 3. You must apply this framework when you are assessing the application. You may accept all or any part of a project for referral to an expert consenting panel if you are satisfied that the Project meets the referral criteria in section 18, including that it will help to achieve the purpose of the FTCA.
7. Even if a project meets the referral criteria in section 18 of the Act, section 23(2) of the FTCA permits you to decline to refer a project for any other reason.

Analysis

Our Advice

8. A summary of our analysis for this application is provided in Table A. Before making your decision, in addition to considering our analysis in Table A, you must consider the application and any further information provided in time by Otago Viticulture and Oenology Limited (Trading as Brennan Wines) (in Appendix 1), the Treaty of Waitangi report (in Appendix 5), local authority and Ministers' comments (in Appendix 6).
9. As our analysis in Table A demonstrates, we consider the project meets the referral criteria in section 18 and will help achieve the purpose of the FTCA.
10. We recommend you accept the application under section 24 of the FTCA and that the Project be referred to an expert consenting panel.
11. We consider that directions should also be made to specify Waka Kotahi NZ Transport Agency as an organisation from whom a Panel must invite comments on a consent application under section 24(2)(e) of the FTCA as the scale of the development and activities may generate potential adverse effects on State Highway 6.

Next Steps

12. Once you make your decision on an 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.
13. To refer a project, you must recommend that a referral order be made by way of an Order in Council (OIC).
14. Cabinet has agreed that you can issue drafting instructions to PCO without the need for a policy decision to be taken by Cabinet in the first instance¹. Final decisions on an OIC will still be taken to the Cabinet Legislation Committee, followed by Cabinet confirmation.

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 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 (FTCA) requires you to decline an application for referral unless you are satisfied that the project meets the referral criteria in section 18 of the FTCA.
- b. **Note** that if you are satisfied that all or part of a project meets the referral criteria in section 18 of the FTCA you may:
 - i. decline an application for any reason under section 23(2) of the FTCA;
 - ii. refer all or part of a project to an expert consenting panel; or
 - iii. refer the initial stages of a project to the panel while deferring decisions about the project's remaining stages.
- c. **Note** that if you do refer all or part of a project you may:
 - i. specify restrictions that apply to the project;
 - ii. specify the information that must be submitted to the panel;
 - iii. specify the persons or groups from whom the panel must invite comments; and/or
 - iv. set specific timeframes for the panel to complete their process.
- d. **Note** that before deciding to accept an application for referral under section 24(1) of the FTCA you must consider:
 - i. the application; and
 - ii. the Treaty of Waitangi report obtained under section 17; and
 - iii. any comments received; and
 - iv. any further information requested and provided within the required timeframe.
- e. **Agree** that the winery, restaurant, education and event complex meets the referral criteria in section 18 of the FTCA.

Yes/No
- f. **Agree** the winery, restaurant, education and event complex will help achieve the purpose of the FTCA as it has the potential to:
 - i. provide specialist and local employment opportunities for construction jobs and ongoing additional permanent jobs in the Otago wine-making region and other regions
 - ii. enable construction to start sooner than if approvals were sought through standard Resource Management Act (RMA) processes
 - iii. provide economic benefits for the winemaking industry, being an industry affected by COVID-19.

Yes/No
- g. **Agree** to refer all of the winery, restaurant, education and event complex project to an expert consenting panel.

Yes/No

- h. **Agree** that an expert consenting panel be required to invite comments from Waka Kotahi NZ Transport Agency under section 24(2)(e) of the FTCA.

Yes/No

- i. **Agree** to the Ministry for the Environment issuing drafting instructions to the Parliamentary Counsel Office for an Order in Council to refer the winery, restaurant, education and event complex project to an expert consenting panel in accordance with your decisions recorded herein.

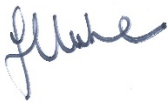
Yes/No

- j. **Sign the attached (Appendix 4)** notice of decision to Otago Viticulture and Oenology Limited (Trading as Brennan Wines).

Yes/No

- k. **Note** that the Ministry for the Environment is required to publish the decision, the reasons, and the section 17 Treaty of Waitangi 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: 10 December 2020

Hon David Parker
Minister for the Environment

Date:

Table A: Stage 2 - Project Summary Analysis

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 Act (sections 18(2) and 19)?	Section 24 Assessment
		Is the Project ineligible for referral? (section 18(3a - d))	Treaty of Waitangi report (section 17) – summary of key findings			
Project name Winery, restaurant, education and event complex Applicant Otago Viticulture and Oenology Limited (Trading as Brennan Wines) Location 110 Gibbston Back Road, Otago, Gibbston Valley.	This application is for a project that involves the construction of a winery complex that will expand current facilities at the site providing for: - onsite wine making including bottling and storage - restaurant and cellar door - training and event facilities.	The project is not ineligible under section 18(3)(a-d) as based on available information: - it does not include any prohibited activities - it does not include land returned under a Treaty settlement - the works do not occur in a customary marine title area or protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011.	The section 17 report identifies the matters in section 17(3) including the relevant iwi authorities. Full report attached at Appendix 5.	Ministers s 9(2)(f)(ii), s 9(2)(g)(i) Local authorities Queenstown Lakes District Council (QLDC) considers that the proposal is likely to be fast track appropriate given the public benefit and the general alignment with the Council's District Plans. The comments raise relevant matters requiring assessment, including landscape values, wastewater disposal and the transport network. The comments also raised concern regarding potential adverse effects from the scale of the development and activities on State Highway 6 and suggest that it may be appropriate for a Panel to seek comment from Waka Kotahi NZ Transport Agency. Otago Regional Council (ORC) do not support the fast-track consenting process for this project. ORC advise that there is no reason why this application could not go through the standard RMA consent process. The comments note the applicant's intent to separately seek Regional discharge consent. ORC also comment that a new water permit is also likely to be required. All responses received by parties invited to comment are attached in Appendix 6.	We consider the Project will help to achieve the purpose of the FTCA by: - provide specialist and local employment opportunities for construction jobs and ongoing additional permanent jobs in the Otago wine-making region and other regions - enable construction to start sooner than if approvals were sought through standard Resource Management Act (RMA) processes - provide economic benefits for the winemaking industry, being an industry affected by COVID-19. Any potential adverse effects arising from the application 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.	With response to the considerations under section 24(2) of the FTCA, no reasons have been identified in the consultation/assessment process to: - limit the scope of the Project by referring it only in part - refer the application in stages - place any restrictions on the Project - specify information that must be submitted to a panel. While QLDC s 9(2)(f)(ii), s 9(2)(g)(i) raised relevant matters requiring assessment, including servicing, landscape, acoustic, traffic, freshwater and indigenous biodiversity, it is not considered necessary to direct that this information is provided through the referral order as the applicant is already required to provide it under the information requirements in clauses 9 and 10 of Schedule 6. In any event, we note the applicant has acknowledged that an assessment of environmental effects has been prepared, which relies on expert reports on these matters - impose specific timeframes for a Panel consideration. We recommend that under section 24(2)(e) comments are invited from Waka Kotahi NZ Transport Agency in addition to those listed in clause 17, Schedule 6. This is in response to QLDC's concerns that the scale of the development and activities may generate potential adverse effects on State Highway 6.

Schedule of Appendices and Attachments

Appendix 1 – Winery, restaurant, education and event complex – Application form and Additional Information Received

Appendix 2 – 2020-B-07243 FTC#24 – Application for referred project under the COVID-Recovery Act - Stage 1 decision on Winery, restaurant, education and event complex Application

Appendix 3 – Statutory Framework for making decisions

Appendix 4 – Draft Notice of Decision letter to JCarter Planning

Appendix 5 – Section 17 Treaty of Waitangi Report

Appendix 6 – Comments received from Ministers and Local Authorities

Released under the provision of
the Official Information Act 1982