

FTC#222 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2022-145 Holly Lea Village Buildings D and E Project

Date submitted:	26 April 2023	Tracking #: BRF-2991	
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: 7	Appendices: 1. Holly Lea Village Buildings D and E application (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 Holly Lea Village Limited 5. Section 17 Report (Databox link) 6. Comments received from Ministers and local authorities (Databox link) 7. Further information received post-consultation (Databox link).

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Max Gander-Cooper		
Acting Manager	Rebecca Perrett	s 9(2)(a)	✓
Acting Director	Lorena Stephen	s 9(2)(a)	

FTC#221: 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 Holly Lea Village Limited to refer the Holly Lea Village Buildings D and E 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-2891) with your initial decisions annotated is in Appendix 2.
3. The project is to construct two three-storey apartment buildings comprising a total of 32 units and supporting infrastructure, to form part of the existing retirement village known as Holly Lea Village on a 1.95 hectare site at 19, 19a and 21 Tui Street, 121 and 123 Fendalton Road and 2 and 8 Heathfield Avenue, Fendalton, Christchurch. The project will include:
 - a. Building D, a three-storey building approximately 13.5 metres high, containing 10 independent living units, and staff and administrative spaces
 - b. Building E, a three-storey building approximately 14.2 metres high, containing 22 independent living units
 - c. vehicle and pedestrian access, parking spaces, and connections to existing three-waters infrastructure
 - d. landscaping and planting.
4. The project will involve activities such as:
 - a. demolishing existing buildings and structures
 - b. carrying out earthworks (including within a natural watercourse)
 - c. installing structures within a natural watercourse
 - d. discharging stormwater which may contain contaminants to land and water
 - e. taking, diverting and discharging groundwater to land and water
 - f. constructing buildings
 - g. constructing and installing infrastructure including parking and accessways for vehicles
 - h. landscaping and planting
 - i. any other activities that are:
 - i. associated with the activities described in a to h; and
 - ii. within the scope of the project as described in paragraph 3.
5. The project forms the final part of a master planned redevelopment of the retirement village currently in progress. The project requires land use consents under the Christchurch District Plan (CDP) and water and discharge permits under the Canterbury Land and Water Regional Plan (CRP). The proposed activities have restricted discretionary activity status under the CDP due to exceeding various permitted activity standards, and discretionary activity status under the CRP due to discharging contaminants to, and undertaking earthworks in, the Waimairi Stream.

6. We consider the project helps to meet the purpose of the FTCA. 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

7. 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.
8. 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 local authorities and Ministers (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.
9. 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

10. In response to your request under section 22 of the FTCA the applicant provided further information on encumbrances on the records of title for the project site and whether resource consents are required under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020. We have taken this information into account in our analysis and advice.

Section 17 report

11. The Section 17 Report indicates that Te Runanga o Ngāi Tahu is the sole iwi authority and Treaty settlement entity under the one Treaty settlement relevant to the project area.
12. The Section 17 report outlines cultural/commercial redress provided by the Treaty settlement, including acknowledgements and apologies relating to recognition of rangatiratanga which have implications for engagement and participation of Ngāi Tahu in resource management decision-making in their rohe.
13. No specific cultural or commercial redress provided under the settlement would be affected by the project and there are no co-governance or co-management processes that would affect decision-making under the RMA for the project.

Comments received

14. Comments were received from ^{s 9(2)(f)(ii), s 9(2)(a)(i)} Christchurch City Council (CCC) and Environment Canterbury (ECan). The key points of relevance to your decision are summarised in Table A.
15. ^{s 9(2)(f)(ii), s 9(2)(g)(i)} [REDACTED]
16. ^{s 9(2)(f)(ii), s 9(2)(g)(i)} [REDACTED]

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

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

19. CCC considered the FTCA process is appropriate for building E and saw no reason why building D should be fast-tracked, but overall did not oppose project referral. CCC considered its key concerns would be associated with neighbours not being formally consulted and ensuring a complete and thorough evaluation is undertaken.
20. ECan supported project referral and noted the regional resource consents should be relatively straightforward to obtain.

Section 18 referral criteria

21. 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)).
22. The project does not include any ineligible activities, as explained in Table A.
23. 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 creating approximately 108 full-time equivalent (FTE) jobs per year over a 3-year construction period and 8 ongoing FTE jobs once the project is operational
 - b. increase housing supply by constructing approximately 32 residential units
 - c. contribute to a well-functioning urban environment by constructing residential units within a walkable catchment of rapid public transit services
 - d. progress faster than would otherwise be the case under standard RMA process.
24. 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

25. 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

26. 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.
27. We have considered whether it would be more appropriate to go through standard RMA consenting processes which might enable more public input than under the FTCA process, particularly in relation to the potential adverse effects of the proposed building heights on

adjoining residential property owners and occupiers and occupiers of the project site. CCC indicated that appropriate consultation with neighbours was one of their concerns.

28. If you decide to refer the project, a panel must invite comments from adjacent landowners and occupiers of the project site under clauses 17(6)(g) and 17(6)(h), Schedule 6 of the FTCA. A panel also can invite comments from any person it considers appropriate (clause 17(8), Schedule 6 of the FTCA), which could potentially include residents of the existing retirement village. This is a determination it can make with the benefit of a complete resource 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)).

Conclusions

29. 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.
30. If you decide to refer the project, we do not consider that you need to specify any additional information that the applicants must submit to a panel under s 24(2)(d) of the FTCA.
31. 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 Minister for Seniors and Mahaanui Kurataiao.

Next steps

32. 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 Mahaanui Kurataiao.
33. 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.
34. 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.
35. 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
36. 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.
37. 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

38. 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 Holly Lea Village Limited unless you are satisfied that the Holly Lea Village Buildings D and E 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 creating approximately 108 full-time equivalent (FTE) jobs per year over a 3-year construction period and 8 ongoing FTE jobs once the project is operational
 - ii. increase housing supply by constructing approximately 32 residential units
 - iii. contributing to a well-functioning urban environment by constructing residential units within a walkable catchment of rapid transit services
 - iv. progress faster than would otherwise be the case under standard RMA 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 Minister for Seniors and Mahaanui Kurataiao in addition to the parties listed in clause 17 of Schedule 6 of the FTCA.

Yes/No

- j. **Agree** to copy the application and notice of decisions Mahaanui Kurataiao in addition to those specified in section 25 of the FTCA.

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
Acting 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)?			
<p>Name</p> <p>Holly Lea Village Buildings D and E Project</p> <p>Applicant</p> <p>Holly Lea Village Limited</p> <p>c/- Greenwood Roche</p> <p>Location</p> <p>19, 19a and 21 Tui Street, 121 and 123 Fendalton Road and 2 and 8 Heathfield Avenue, Fendalton, Christchurch.</p>	<p>The project is to construct two three-storey apartment buildings comprising a total of 32 units and supporting infrastructure, to form part of the existing retirement village known as Holly Lea Village on a 1.95 hectare site in Fendalton, Christchurch. The project will include:</p> <p>a. Building D, a three-storey building approximately 13.5 metres high, containing 10 independent living units, and staff and administrative spaces</p> <p>b. Building E, a three-storey building approximately 14.2 metres high, containing 22 independent living units</p> <p>c. vehicle and pedestrian access, parking spaces, and connections to existing three-waters infrastructure</p> <p>d. landscaping and planting.</p> <p>The project will involve activities such as:</p> <p>a. demolishing existing buildings and structures</p>	<p>The project is eligible for referral under section 18(3)(a)–(d) as:</p> <ul style="list-style-type: none"> 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. 	<p>Economic benefits for people or industries affected by COVID-19 (19(a))</p> <p>Based on the information provided by the applicant we consider the project may result in the following economic benefits:</p> <ul style="list-style-type: none"> generating employment by creating 108 full-time equivalent (FTE) jobs per year over a 3-year period and 8 ongoing FTE jobs once construction is complete cs 9(2)(f)(ii), s 9(2)(g)(i) <p>Economic costs for people or industries affected by COVID-19 (19(a))</p> <ul style="list-style-type: none"> N/A <p>Effect on the social and cultural well-being of current and future generations (19(b))</p> <p>The applicant considers the project may have positive effects on social wellbeing on current and future generations by:</p> <ul style="list-style-type: none"> contributing to job creation and flow-on economic benefits contributing to housing supply. <p>Potential effects on cultural wellbeing are unknown. The applicant acknowledges that if the project is referred, any consent application must be accompanied by a cultural impact assessment from relevant iwi authorities.</p> <p>Is the project likely to progress faster by using this Act? (19(c))</p> <p>the applicant considers the project is likely to progress approximately one year faster under the FTCA process than would be the case if the project were considered under</p>	<p>Ministers</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>Local authorities</p> <p>CCC considered the FTCA process is appropriate for building E and saw no reason why building D should be fast-tracked, but overall did not oppose the use of the FTCA process for the entire project. CCC considered the key issue for the project is the ability for neighbours to be meaningfully consulted. CCC did not identify a history of environmental regulatory compliance for the applicant but noted it is currently investigating a complaint about traffic related to the development of the rest of the village.</p>	<p>Section 23(5) matters:</p> <p>Insufficient information (23(5)(a))</p> <p>The applicant has provided sufficient information for you to determine whether the project meets the criteria in section 18 of the FTCA.</p> <p>More appropriate to go through standard RMA process (23(5)(b))</p> <p>A key issue for the project is whether it would be more appropriate to go through standard RMA consenting processes which might enable more public input than under the FTCA process, particularly in relation to the adverse effects of the proposed building height.</p> <p>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 proposed height of the development and its potential effects. 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 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)).</p> <p>Inconsistency with a national policy statement (23(5)(c))</p> <p>We do not consider the project is inconsistent with any relevant national policy statements.</p> <p>Inconsistent with a Treaty settlement (23(5)(d))</p>	<p>In response to key comments:</p> <ul style="list-style-type: none"> s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) <p>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. We recommend that you accept the application under section 24 of the FTCA and refer all of the project to a panel.</p> <p>We recommend you provide a copy of the application and the notice of decision to, and require a panel to invite comments from, the following parties in addition to those specified in section 25 of the FTCA:</p> <ul style="list-style-type: none"> the Minister for Seniors Mahaanui Kurataiao

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		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)?			
	<p>b. carrying out earthworks (including within a natural watercourse)</p> <p>c. installing structures within a natural watercourse</p> <p>d. discharging stormwater which may contain contaminants to land and water</p> <p>e. taking, diverting and discharging groundwater to land and water</p> <p>f. constructing buildings</p> <p>g. constructing and installing infrastructure including parking and accessways for vehicles</p> <p>h. landscaping and planting</p> <p>i. any other activities that are:</p> <p> i. associated with the activities described in a to h; and</p> <p> ii. within the scope of the project as described above.</p> <p>The project forms the final part of a master planned redevelopment of the retirement village currently in progress. The project requires land use consents under the Christchurch District Plan (CDP)</p>		<p>a standard Resource Management Act 1991 (RMA) process due to the likelihood of notification and appeals.</p> <p>Will the project result in a public benefit? (19(d))</p> <p>Based on the information provided by the applicant we consider the project is likely to result in the following public benefits:</p> <ul style="list-style-type: none"> • generating employment • contributing to increasing housing supply • contributing to a well-functioning urban environment. <p>Potential to have significant adverse environmental effects, including greenhouse-gas emissions (19(e))</p> <p>While the project has the potential to result in some adverse environmental effects, including relating to construction effects and building height, the applicant does not expect these effects to be significant. Neither Christchurch City Council (CCC) or Environment Canterbury (ECan) raised any concerns about adverse effects.</p> <p>Other relevant matters (19(f))</p> <ul style="list-style-type: none"> • N/A 	<p>ECan supported project referral and considered the resource consents for the project would be relatively straightforward, with appropriate consent conditions to manage effects on the Waimariri and Fendalton Streams.</p> <p>All responses received by parties invited to comment are attached in Appendix 6.</p>	<p>The project does not directly affect any Treaty settlement redress.</p> <p>Involves land needed for Treaty settlements (23(5)(e))</p> <p>The project site does not include any land needed for Treaty Settlement purposes.</p> <p>Applicant has poor regulatory compliance (23(5)(f))</p> <p>Neither CCC nor ECan identified a history of enforcement action taken in relation to environmental regulatory non-compliance for the applicant. However, CCC commented it is currently investigating a complaint about traffic as noted in the summary of CCC's comments.</p> <p>Insufficient time for the project to be referred and considered before FTCA repealed (23(5)(g))</p> <p>The FTCA will be repealed on 8 July 2023, meaning that a referral order must be in force 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 our consideration and advice on the referral application is dependent on certain statutory obligations and the capacity and resourcing of officials. The ability for an Order in Council to be prepared, even if you make a decision to refer the project, is becoming increasingly time-pressured as the 8 July deadline approaches. However, we do not consider this is a reason to decline the project.</p> <p>Other issues and risks:</p> <ul style="list-style-type: none"> • N/A 	

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		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)?			
	and water and discharge permits under the Canterbury Land and Water Regional Plan (CRP). The proposed activities have restricted discretionary activity status under the CDP due to exceeding various permitted activity standards, and discretionary activity status under the CRP due to discharging contaminants to, and undertaking earthworks in, the Waimairi Stream.					