



FTC#214 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act 2020 – Stage 1 decisions

Application 2023-157 Maitahi Village Project

Date submitted:	12 April 2023	Tracking #: BRF-3061	
Security level:	In-Confidence	MfE priority:	Urgent

	Action sought:	Response by:
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"> Return the signed briefing to MfE. Send attached letter (if signed).
Number of attachments: 2	<p>Attachments:</p> <ol style="list-style-type: none"> Application document for Maitahi Village Project and supporting information (Databox link) Letter (notice of decision) to CCKV Maitai Dev Co LP

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

Key messages

1. This briefing seeks your decisions on an application received under section 20 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) from CCKV Maitai Dev Co LP to refer the Maitahi Village Project (project) to an expert consenting panel (panel).
2. The project is to subdivide approximately 53.8 hectares of land and construct a residential development comprising approximately 170 residential allotments and a lifestyle village containing approximately 200 residential units, a care facility with approximately 60 beds, and supporting facilities, at 7 Ralphine Way, Maitai, Nelson.
3. We have undertaken an initial (Stage 1) analysis of the application. The project is located in an area of approximately 287 hectares which is subject to a private plan change (PPC28) to the Nelson Resource Management Plan (NRMP) currently under appeal in the Environment Court. Respondents' evidence is not due to be filed until May 2023, and it is unlikely that the appeal will be resolved in the remaining time available to make a referral decision and for an Order in Council to be gazetted before the FTCA is repealed. If you were to refer the project with the appeal unresolved, there is also no certainty that the appeal would be resolved before the applicant lodged resource consent applications with a panel.
4. Either of these situations could result in less than favourable outcomes for the certainty of project delivery and/or the integrity of the local authority planning framework. We therefore recommend you decline to refer the project under Section 23(5) of the FTCA before inviting comments from the relevant local authorities and relevant Ministers, because it would be more appropriate for the project to be considered under the standard Resource Management Act 1991 (RMA) consenting process.
5. A summary of our analysis and our full recommendations on the application are in Table A.

Assessment against statutory framework

6. You are the sole decision maker for projects that do not occur in the coastal marine area.
7. You may decline a referral application before obtaining a report under section 17 of the FTCA and before seeking comments from the relevant local authorities and any relevant Ministers:
 - a. if you are satisfied the project to which it relates does not meet 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).
8. If you do not decline a 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
 - c. the Ministry for the Environment will prepare a report under section 17 of the FTCA for your consideration.

Section 18 referral criteria

9. A project must meet the requirements of sections 18(2) and 18(3) of the FTCA before it is eligible for referral.
10. The project does not include ineligible activities, and therefore satisfies the requirements of section 18(3) of the FTCA, as explained in Table A.
11. The matters that you may consider when deciding if a project will help achieve the purpose of the FTCA (and thus meet the requirements of section 18(2) of the FTCA) are in section 19 of the FTCA. Our assessment of these matters is summarised in Table A. We consider that the project will help to achieve the purpose of the FTCA, and thus satisfy the requirements of section 18(2) as it has the potential to:
 - a. generate employment by creating approximately 1223 direct full-time equivalent (FTE) jobs over an 8-year design and construction period, and 55 ongoing FTE jobs
 - b. increase housing supply by constructing 260 residential units and enabling construction of a further 170 residential units
 - c. progress faster by using the processes available under the FTCA than would be the case under the RMA.

Other reasons to decline

12. Even if a project meets the section 18 referral criteria, you may still decline to refer it for any other reason (section 23(2) of the FTCA).

Section 23 FTCA matters

13. Section 23(5) of the FTCA provides further guidance on reasons to decline an application, and a summary of our analysis of these matters is in Table A.
14. The project site is located on land which is currently zoned Rural and Rural–Higher Density Small Holdings Area under the NRMP. It is part of a wider area (approximately 287 hectares) proposed to be rezoned for residential use under PPC28, which was requested by CCKV Maitai Dev Co LP and Bayview Nelson Limited.
15. PPC28 was approved by Nelson City Council (NCC) in September 2022 and subsequently appealed to the Environment Court by Save the Maitai Incorporated. The appellants' evidence has been filed with the Court, and the respondents' evidence is due with the Court by 5 May 2023. The appellants' evidence relates to loss of amenity values, effects on water quality, and erosion and sediment control.
16. Section 23(5)(b) allows you to decline a referral application on the grounds that it would be more appropriate for the project, or part of the project, to go through standard RMA consenting process. Progressing a project under FTCA that is affected by an unresolved plan change creates a risk that the project may become misaligned with the relevant planning framework if the outcome of the appeal process is unfavourable for the project. This in turn may affect the ability of the applicant to lodge their consent applications for the project in a timely manner (if project redesign is necessary) or may increase the risk that a panel may decline to grant consents for the project. Either way, this lessens the certainty of project delivery. Additionally, if a panel were to grant consents for the project while a relevant plan change appeal was unresolved, there is a risk that this could create inconsistencies or precedent that has on-going ramifications for NCC. We therefore consider that it would be more appropriate for the project to progress through standard RMA processes.
17. We note you declined the Northbrook Arrowtown Retirement Village referral application in part because at the time you made your decision a rezoning proposal for the project site was before the Environment Court, and you did not consider it appropriate to refer the project while the rezoning was a live matter before the Court.

18. Section 23(5)(g) provides grounds to decline an application on the basis that there is insufficient time for the application to be referred and considered before the FTCA is repealed.
19. 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 processing a referral application is dependent on certain statutory obligations and the capacity and resourcing of officials.
20. Although there is a risk that there is not sufficient time for us to complete our consideration of and advice on the referral application to allow you to consider and decide on project referral before the 8 July deadline, we do not consider this is sufficient grounds to decline project referral at this stage.

Other matters

21. We note that if you decline the referral application prior to inviting comments under section 21 of the FTCA, other parties will not be given the opportunity to raise matters that could be relevant to your decision. However, we consider it unlikely that invited comments would introduce any additional matters relevant to the appropriateness of referring an application that is reliant on a plan change currently before the Environment Court.
22. If you decline the referral application prior to inviting comments under section 21 of the FTCA we will not provide you with a report under section 17 of the FTCA on the relevant Treaty of Waitangi settlements and other matters. The requirement to consider a section 17 report is only obligatory before you make a decision to refer a project under section 24 of the FTCA.
23. If you refer a project, you can specify restrictions that apply to the project under section 24(2)(c) of the FTCA. The applicant has suggested that you could refer the project with a specification that no resource consent application for the project can be lodged unless and until the Environment Court appeal on PPC28 is resolved.
24. We consider that this type of restriction may be outside the scope of section 24(2)(c). However, even if it were not, we consider that referring the project subject to such restriction may not achieve the purpose of the FTCA to urgently promote employment and support certainty of investment. If the project is dependent on PPC28 being resolved, there is no certainty as to when that would happen (including if it would happen before the cut-off date for lodging resource consent applications with the EPA).

Conclusions

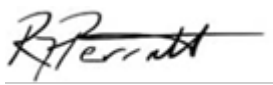
25. Although the project meets the referral criteria in section 18, we consider that the matters outlined above provide sufficient reason for you to decline the referral application under section 23(2) of the FTCA because it would be more appropriate for the project to go through the standard consenting process under the RMA.
26. If you agree to decline the application, you must give notice of your decision and the reason for it, to the applicant. We have attached a letter to the applicant based on this requirement and our recommendations.
27. Additionally, if you decline the application at this stage section 25(3) of the FTCA requires you to ensure that your decision and reasons are published on the Ministry for the Environment's website. We will undertake this task on your behalf in accordance with your direction.
28. If you do not agree to decline the application at this stage, section 21 of the FTCA:
 - a. requires you to provide the application to, and invite comments from, the relevant local authorities and the relevant Ministers
 - b. permits you to provide the application to, and invite comments from, any other

person.

Action sought

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

Signature

A handwritten signature in black ink, appearing to read 'R Perrett', enclosed in a thin black rectangular border.

Rebecca Perrett
Acting 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 decline

Project details	Project description	Project funding	Is project eligible for referral? [sections 18(3) and 18(2)]	Will project help to achieve the purpose of the FTCA? [section 19 assessment criteria]						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>Name Maitahi Village Project</p> <p>Applicant CCKV Maitai Dev Co LP</p> <p>c/- Landmark Lile Limited</p> <p>Location 7 Ralphine Way, Maitai, Nelson</p>	<p>The project is to subdivide approximately 53.8 hectares of land and construct a residential development comprising approximately 170 residential allotments and a lifestyle village containing approximately 200 residential units, a care facility with approximately 60 beds, and supporting facilities, at 7 Ralphine Way, Maitai, Nelson.</p> <p>The project involves activities such as subdividing land, vegetation removal, earthworks (including disturbing contaminated land), discharging stormwater and contaminants to land and water, construction of residential, community and commercial buildings, constructing and installing infrastructure including roads, diverting and reclaiming streams, and landscaping and</p>	<p>The applicant states the retirement village component of the project will be funded by Arvida, who proposes to operate the retirement village once it is complete.</p> <p>The applicant has not provided any information about funding for the remainder of the project. If you decide to refer the project, we recommend you seek comment from the applicant on how the project will be funded.</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"> it does not include any prohibited activities (see additional note below) it does not include land returned under a Treaty settlement 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. 	<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"> creating approximately 1223 direct full-time equivalent (FTE) jobs over an 8-year period and 55 ongoing FTE jobs once construction is complete contributing approximately \$272 million to national GDP. 	<p>The project has the potential for positive effects on social wellbeing of current future generations as it will:</p> <ul style="list-style-type: none"> contribute to job creation and flow-on economic benefits increasing housing supply. <p>The applicant considers that project will contribute to cultural wellbeing of current and future generations through the provision of a cultural community centre which enables local iwi to implement their aspirations.</p>	<p>The applicant considers that the project will progress faster using the processes available under the FTCA than would be the case under the RMA. The applicant has not quantified the time saved, but instead noted Nelson City Council (NCC) has an average processing time for a notified resource consent application of 276 days, which is significantly longer than the 45 working days typically taken by a panel.</p> <p>If you decide to refer the project, we recommend you seek comment from the applicant on the time saved by using the FTCA process, and from NCC on the appropriateness of the FTCA process for this project.</p>	<p>Based on the information provided by the applicant we consider the project may result in the following public benefits:</p> <ul style="list-style-type: none"> generating employment increasing housing supply. 	<p>The project has the potential to result in some adverse environmental effects, including arising from construction and proposed development density. The applicant does not consider these effects will be significant.</p> <p>We note that you do not require a full Assessment of Environment Effects and supporting evidence to make a referral decision, and that a panel will consider the significance of effects and appropriate mitigation should the project be referred.</p>	<p>The project site is zoned Rural and Rural-Higher Density Small Holdings Area under the Nelson Resource Management Plan (NRMP). It is part of a wider area (approximately 287 hectares) proposed to be rezoned for residential use under Private Plan Change 28 (PPC28) to the NRMP, which was requested by CCKV Maitai Dev Co LP and Bayview Nelson Limited.</p> <p>PPC28 was approved by NCC in September 2022 following a hearing process and the decision has been appealed to the Environment Court by Save the Maitai. The appellants' evidence has been filed with the Court, and the respondents' evidence is due with the Court by 5 May 2023.</p> <p>Owing to the PPC28 appeal being live before the Environment Court we consider that it would be more appropriate for the project to progress through zoning changes and standard RMA consenting processes that allow for a hearing process and the testing of evidence.</p> <p>You declined the Northbrook Arrowtown Retirement Village referral application in October 2020, in part because a rezoning proposal pertaining to the project site was live before the Environment Court.</p> <p>Section 23(5)(g) provides grounds to decline an application on the basis that there is insufficient time for the application to be referred and considered before the FTCA is repealed. 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 processing a referral application is dependent on certain statutory obligations and the capacity and resourcing of officials.</p> <p>We note there is a risk that there is not sufficient time for us to complete our consideration of and advice on the referral application to allow you to consider and decide on project referral before the 8 July deadline.</p> <p>We note that if you decline the referral application prior to inviting comments under section 21 of the FTCA, other parties will not be</p>	<p>a. Note that you must decline the referral application under section 23(1) of the FTCA if you are not satisfied the project meets the referral criteria in section 18 of the FTCA.</p> <p>b. Note that section 23(2) of the FTCA permits you to decline the application for any reason, whether or not the project meets the referral criteria in section 18 of the FTCA.</p> <p>c. Note that section 23(3) of the FTCA permits you to decline an application for referral before obtaining a report under section 17 and without inviting comments on an application from the relevant local authorities and any relevant Ministers.</p> <p>d. Note that the Ministry has not yet provided you with a report for the purposes of section 17 of the FTCA.</p> <p>e. Note that the application has not been provided to, nor have any comments been sought 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>f. Note that section 21(3) of the FTCA permits you to copy an application to, and invite written comments from, any other person.</p> <p>g. Note that section 22 of the FTCA permits you to request further information from the applicant or the relevant local authorities at any time before</p>	

Project details	Project description	Project funding	Is project eligible for referral? [sections 18(3) and 18(2)]	Will project help to achieve the purpose of the FTCA? [section 19 assessment criteria]						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)]		
	planting.								<p>given the opportunity to raise matters that could be relevant to your decision and could be weighed in considering whether the project should be referred or declined. However, we do not consider that invited comments are likely to raise additional matters which will have a bearing on a decision to decline the application on the basis that it would be inappropriate to refer an application that is reliant on a plan change which is before the Environment Court.</p> <p>You will also not be provided with a report under section 17 of the FTCA on the relevant Treaty of Waitangi settlements and other matters. The requirement to consider a section 17 report is only obligatory before you make a decision to refer a project under section 24 of the FTCA. If you refer a project, you can specify restrictions that apply to the project under section 24(2)(c) of the FTCA. The applicant has suggested that you could refer the project with a specification that no resource consent application for the project can be lodged unless and until the Environment Court appeal on PPC28 is resolved.</p> <p>We do not consider the applicant's proposed restriction resolves the issue of referring the project while the appeal on PPC28 is before the Environment Court because referring the project subject to the proposed restriction may not achieve the purpose of the FTCA to urgently promote employment and support certainty of investment (section 4). If the project is dependent on PPC28 being resolved, there is no certainty as to when that would happen (and if it would happen before the cut-off date for lodging resource consent applications with the EPA).</p>	<p>you decide whether to accept or decline an application.</p> <p>h. Decline to refer the Maitahi Village Project to an expert consenting panel under section 23(2) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 for the following reason:</p> <ul style="list-style-type: none"> it would be more appropriate for the project to go through the standard consenting process under the RMA as the site is part of an area subject to a rezoning proposal currently before the Environment Court. <p>i. Sign the attached notice of decision to CCKV Maitai Dev Co LP.</p> <p>j. Require the Ministry for the Environment to publish your decision and the reasons on the Ministry's website if you agree to decline project referral.</p>	<p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p>

Signed:

Hon David Parker
Minister for the Environment

Date: