

In Confidence

Office of the Minister for the Environment

Chair, Cabinet

COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order 2020

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order 2020 (the Amendment Order)
- 2 The Amendment Order amends the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020 to include Winton Property Limited's, Northbrook Wanaka Retirement Village as the second project referred to an expert consenting panel.
- 3 This paper also seeks agreement to delegate authority to the Ministers of Finance, State Services, Justice and Minister for the Environment to submit directly to the Executive Council, any further Orders in Council referring a project to an expert consenting panel under the COVID-19 Recovery (Fast-track Consenting) Act 2020 until 16 October 2020.

Executive Summary

- 4 Winton Property Limited has applied for the Northbrook Wanaka Retirement Village to be referred to an expert consenting panel (Panel) through an Order in Council under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (the FTCA).
- 5 I have considered whether this project helps to achieve the purpose of the FTCA, relevant Treaty of Waitangi considerations, and sought written comments from relevant Ministers and local authorities. I have also requested and considered further information from the applicant.
- 6 I have accepted this project for referral as it will:
 - 6.1 provide specialist and local employment opportunities in a region particularly impacted by the down-turn in tourism caused by COVID-19
 - 6.2 progress faster than would otherwise be the case under standard Resource Management Act 1991 (RMA) processes
 - 6.3 provide public benefit through additional housing supply and aged care facilities.
- 7 I now seek authorisation for submission to the Executive Council of the Amendment Order.

Background

8 The FTCA enables any person to apply to the Minister for the Environment (the Minister) to fast-track a consent or designation for their project. If the Minister accepts an application, it is referred to a Panel for consideration by way of an Order in Council.¹

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s 9(2)(g)(i)

Project for referral: *Winton Property Limited, Northbrook Wanaka Retirement Village*

10 Winton Property Limited has applied to use the fast-track consenting process for the Northbrook Wanaka Retirement Village. This application includes the construction and operation of a 100-unit retirement village and associated activities including a private hospital, park, walking and cycling facilities, cafes, gym, pool, and community centre. The retirement village is proposed to be located at Outlet Road, 5km from Wanaka township as shown in Appendix 1.

11 Under standard RMA processes this project would require land use and subdivision consents from the Queenstown Lakes District Council and may require discharge and land use consents from the Otago Regional Council. To better understand the environmental effects and job creation potential of this project, I sought further information from Winton Property Limited under section 22 of the FTCA.

Comments received

12 In accordance with section 21 of the FTCA, I sought written comments on this application from relevant Ministers and local authorities.

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

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

¹ Orders in Council under the FTCA are referred to as 'referral orders' within the relevant sections of the FTCA.

² As authorised by Cabinet, CAB-20-MIN-0445 refers.

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

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s 9(2)(f)(ii), s 9(2)(g)(i), s 9(2)(j)

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

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The Otago Regional Council did not oppose fast-tracking the project, but noted there have been compliance issues with a previous project Winton Property Limited was connected to.

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The Queenstown Lakes District Council noted that it would be more appropriate for this project to go through a plan change process.

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Two plan changes for this area have been considered by independent hearings commissioners in the past ten years.³ In response to amenity and landscape considerations, the plan changes provide for low to medium density residential development and smaller areas of commercial development. A retirement village was anticipated in the general area, but in a different location to the application site (but adjoining this site).

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The Queenstown Lakes District Council is concerned that this project in this location would be contrary to outcomes resolved through the Environment Court and public plan change process.

Decision

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In making my decision⁴ I considered the application and further information received, comments received from relevant Ministers and local authorities, and the eligibility criteria in section 18 of the FTCA. I also considered the report prepared under section 17 of the FTCA, which did not identify any Treaty of Waitangi considerations that would preclude this application being referred to a Panel.

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I have decided to accept Winton Property Limited's Northbrook Wanaka Retirement Village for referral to a Panel. I consider the project meets the eligibility criteria in section 18 of the FTCA and achieves the purpose of the Act by:

³ Plan changes 45 (2013) and 53 (2019).

⁴ In accordance with section 24, Decision to accept application for referral, of the FTCA.

- 22.1 offering economic benefits by providing specialist and local employment opportunities (up to 700 jobs over the 4 year construction period, 30% of which are unskilled workers) in a region particularly impacted by the down-turn in tourism caused by COVID-19
- 22.2 enabling progress faster than would otherwise be the case under standard RMA processes
- 22.3 providing public benefit through additional housing supply and aged care facilities.
- 23 To address matters raised by the Queenstown Lakes District Council s 9(2)(f)(ii), s 9(2)(g), under section 24(2)(e) I have decided to direct the Panel to invite written comments from the following additional persons:
- 23.1 persons who made submissions to Plan Change 53 of the Queenstown Lakes District Plan, and any new owners who subsequently purchased properties within the area affected by the plan change
- 23.2 Mr Michael Beresford, one of the SILNA successors entitled to the neighbouring Hāwea-Wanaka substitute land under the Ngāi Tahu settlement, and appellant in Environment Court proceedings in relation to that land.

24 s 9(2)(j)

25 Under the FTCA, the Panel is required to invite comments on consent applications from the relevant local authorities and owners and occupiers of adjacent land.⁵ Inviting these comments provides the opportunity for the Queenstown Lakes District Council to raise its concerns directly with the Panel. It also provides the opportunity for potential shading and other issues associated with the proposed increase in development density to be considered by the Panel.

26 Directing the Panel to consider whether this project presents an opportunity to advance access issues to the nearby landlocked Hāwea-Wanaka substitute land is outside the scope of what can be included in an Order in Council under the FTCA. However, access issues may be a matter Mr Beresford raises with the Panel as a person invited to comment.

27 s 9(2)(f)(ii), s 9(2)(g)(i), I consider it appropriate for the Panel to assess any adverse effects arising from the application, and whether conditions could provide sufficient mitigation of these effects. Ministers will have the opportunity to also provide comments directly to the Panel.

⁵ Clause 17(6)(a),(g) and (h) of Schedule 6, FTCA.

- 28 With regard to the demand for retirement homes and workforce availability, I consider these are commercial issues which the applicant has considered in preparing its application to be referred to a Panel.
- 29 I consider there are no other reasons under section 24(2) of the FTCA to:
- 29.1 limit the scope of the project by referring it only in part
 - 29.2 refer the application in stages
 - 29.3 place any restrictions on the project
 - 29.4 require the applicant to provide any specific information to the Panel
 - 29.5 impose specific timeframes for panel consideration.
- 30 I now seek authorisation for submission to the Executive Council of the Amendment Order. The Amendment Order enables Winton Property Limited to apply via the Environmental Protection Authority to a Panel for the relevant resource consents.

Delegation of authority to submit Amendment Orders to the Executive Council

- 31 I seek Cabinet approval to delegate authority to the Ministers of Finance, State Services, Justice and Minister for the Environment to submit any further Orders in Council referring a project to a Panel under the FTCA, direct to the Executive Council without requiring prior authorisation from Cabinet Committee or Cabinet. This would be for the period to 16 October 2020 to enable referred projects to progress to a Panel without delay in the absence of scheduled Cabinet meetings prior to the 2020 General Election.
- 32 Relevant Ministers will still have the opportunity to comment on projects by submitting comments to the Minister for the Environment on applications for referral. The Minister for the Environment is required to invite comments from other relevant Ministers on whether to proceed to an Order in Council.⁶

Timing and 28-day rule

- 33 Cabinet has agreed to waive the 28-day rule for Orders in Council relating to projects to be referred to a Panel.⁷ Therefore, the Amendment Order will come into force as soon as it is notified in the New Zealand Gazette. This will enable Winton Property Limited to lodge any application for resource consent for the Northbrook Wanaka Retirement Village with the Environmental Protection Authority, for consideration by a Panel, once the Order has been gazetted.

Compliance

- 34 The proposed Amendment Order complies with:
- 34.1 the principles of the Treaty of Waitangi
 - 34.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993

⁶ Section 21(2)(b), FTCA.

⁷ ENV-20-MIN-0033 and CAB-20-MIN-0353 refer.

- 34.3 the principles and guidelines set out in the Privacy Act 1993
- 34.4 relevant international standards and obligations
- 34.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 35 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

- 36 The Amendment Order has been certified by the Parliamentary Counsel Office (PCO) as being in order for submission.

Impact Analysis

Regulatory Impact Assessment

- 37 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 an Expert Consenting Panel.⁸

Climate Implications of Policy Assessment

- 38 The Climate Implications of Policy Assessment (CIPA) team at the Ministry for the Environment has been consulted and confirms that the CIPA requirements do not apply to this proposal as the decision to refer the Northbrook Wanaka Retirement Village project to a Panel will not have a direct emissions impact. Likely emissions implications of the project have been considered at a high-level during the formal application process, and are also expected to be considered by the Panel in their assessment of any adverse effects arising from the application.

Publicity

- 39 The Amendment Order will be available on the New Zealand Legislation website following its notification in the New Zealand Gazette.
- 40 As required under section 25 of the FTCA, my decision to refer Winton Property Limited application for referral to a Panel for consideration, the reasons for this decision, and the Treaty of Waitangi report obtained under section 17 have been made available to the public on the Ministry for the Environment's website.

Proactive Release

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

Consultation

⁸ ENV-20-MIN-0033 and CAB-20-MIN-0353 refer.

42 I have considered the matters raised by the relevant Ministers and local authorities and am satisfied that the project meets the purpose of the FTCA. Any specific issues raised can be addressed by the Panel in its substantive decision making role.

43 The Ministry for the Environment sought comment on this paper from the Department of Conservation, Ministry for Housing and Urban Development, Ministry for Culture and Heritage, Te Puni Kōkiri, Ministry of Education, Corrections, Land Information New Zealand, Treasury, Ministry of Transport, Ministry of Business, Innovation and Employment, Ministry for Primary industries, Department of Prime Minister and Cabinet, Ministry of Health, New Zealand Defence Force, Department of Internal Affairs and Te Arawhiti.

44  s 9(2)(f)(ii), s 9(2)(g)(i)

45 No consultation was undertaken on the proposal seeking approval to delegate authority to the Ministers of Finance, State Services, Justice and Minister for the Environment to submit further Orders in Council directly to the Executive Council.

Recommendations

I recommend that Cabinet:

1 **note** that the Minister for the Environment has decided under section 24 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 to accept Winton Property Limited's Northbrook Wanaka Retirement Village for referral to an expert consenting panel

2 **note** that Winton Property Limited's Northbrook Wanaka Retirement Village meets the eligibility criteria in section 18 of the COVID-19 Recovery (Fast-track Consenting) Act 2020, and is considered to help achieve the purpose of the Act by:

2.1 offering economic benefits in a region particularly impacted by the down-turn in tourism caused by COVID-19

2.2 enabling progress faster than would otherwise be the case under standard RMA processes

2.3 providing public benefit through additional housing supply and aged care facilities

3 **authorise** the submission to the Executive Council of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order 2020

4 **note** that the COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order 2020 directs the expert consenting panel appointed to consider resource consents for Winton Property Limited's, Northbrook Wanaka Retirement Village to:

4.1 invite written comments from persons who made submissions to Plan Change 53 of the Queenstown Lakes District Plan, and any new owners who subsequently purchased properties within the area affected by the plan change

4.2 invite written comments from Mr Michael Beresford, one of the South Island Landless Natives Act 1906 successors entitled to the neighbouring Hāwea-

Wanaka substitute land under the Ngāi Tahu settlement and appellant in Environment Court proceedings in relation to that land

- 5 **note** that on 27 July 2020, Cabinet agreed [CAB-20-MIN-0353 refers] to waive the 28-day rule so that Orders in Council made under the COVID-19 Recovery (Fast-track Consenting) Act 2020 can come into force as soon as they are notified in the New Zealand Gazette
- 6 **agree** to delegate authority to the Ministers of Finance, State Services, Justice and the Minister for the Environment to submit any further Orders in Council referring a project to an expert consenting panel under the COVID-19 Recovery (Fast-track Consenting) Act 2020, direct to the Executive Council without prior Cabinet Committee or Cabinet authorisation until 16 October 2020
- 7 **note** that the COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order 2020 will come into force when notified in the New Zealand Gazette.

Authorised for lodgement

Hon David Parker

Minister for the Environment

Released under the provisions of the Official Information Act 1982