

Your Comment on the Milldale application

Please include all the contact details listed below with your comments and indicate whether you can receive further communications from us by email at substantive@fastrack.govt.nz

1. Contact Details			
Please ensure that you have authority to comment on the application on behalf of those named on this form.			
Organisation name (if relevant)	Department of Conservation		
First name	Leah		
Last name	McEnhill		
Postal address	PO Box 10420, Wellington 6140		
Mobile phone		Work phone	
Email	fast-track@doc.govt.nz		

2. We will email you draft conditions of consent for your comment			
X	I can receive emails and my email address is correct	<input type="checkbox"/>	I cannot receive emails and my postal address is correct

3. Please provide your comments on this application
Please find comments attached

Note: All comments will be made available to the public and the applicant when the Ministry for the Environment proactively releases advice provided to the Minister for the Environment.

Jenni Fitzgerald
Fast-Track Applications Manager
Acting pursuant to delegated authority on behalf of the Director-General of Conservation.
Date: 29/07/2025

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's off ice at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011

Comments on a fast-track consenting application

Fast-track Approvals Act 2024 section 53

To: The Expert Panel

From: Director-General of Conservation

Regarding fast-track project: Milldale – Stages 4C and 10 - 13

Fast track Reference: FTA–2503-1038

Background

1. Fulton Hogan Land Development Ltd (the Applicant) is seeking approval to undertake earthworks and site works for approximately 1,100 residential allotments at Wainui Road, Argent Lane, Lysnar Road, and Cemetery Road, Wainui, Auckland.
2. There is no Public Conservation Land within or adjacent to the proposal site.
3. The Department of Conservation (“the Department”) was not approached for pre-application consultation prior to the Applicant lodging their substantive application.
4. In accordance with section 53(2)(m)(i) of the Act, the Director-General of Conservation (D-G) has been invited to comment on the substantive application. Statutory delegations are in place for the Department to provide commentary on behalf of the D-G.

Department of Conservation advice

5. Overall, the Department has some concerns about the requirements for proposed management plans and the need for other statutory approvals which have not been sought.
6. The Applicant has not applied for a wildlife approval or a complex freshwater fisheries approval as part of their Fast-track application. The Department considers both approvals may be required for the project. A wildlife approval to capture, handle and relocate lizards; and a complex freshwater fisheries approval associated with work to permanently dam and divert streams on site will need to be applied for outside of the Fast-track process.
7. The Department’s remaining concerns can be resolved through new conditions to ensure there are clear outcomes and objectives required to be achieved through reliance on management plans.

Assessment

Freshwater effects

8. The Department has limited concerns regarding effects of the proposal on freshwater values given the freshwater values present at and downstream of the site, and due to the mitigation and offsetting measures proposed by the Applicant which will ensure adverse effects are minimised.

Wildlife Act Approval

9. The Applicant has not applied for a wildlife approval under the Act. However, the Ecological Impact Assessments (EIA) for both Milldale Stages 10-13 and the Wastewater Treatment Plant state that the ecological values of herpetofauna habitat were conservatively assessed to be moderate due to the potential for 'At-Risk' species (copper skinks and ornate skinks) to be present within the sites. The EIA further states that as works in lizard habitat cannot be avoided during construction, it is recommended a lizard management plan (LMP) is prepared outlining how lizards will be managed during works, including measures to capture native lizards from any suitable habitat within the site, and locations where they will be released.
10. The AEE for Milldale Stages 10-13 has assessed effects on lizards to be moderate and temporary and able to be mitigated to low through the use of a LMP. It is not clear whether the management of lizards will involve their handling, capture, or relocation.
11. Copper and ornate skinks are protected under the Wildlife Act 1953. It is an offence under the Wildlife Act 1953 to handle, capture, relocate, injure, or kill protected species without lawful authority. The Applicant will therefore need to apply for an authority outside of the Fast-track process to undertake any of these activities.
12. The Wildlife Act authority will need to be supported by a LMP prepared by a suitably qualified ecologist and will need to identify an appropriate site for relocation of salvaged lizards. Any surveys, salvage and translocation of lizards will need to occur between October and April. Accordingly, if the Applicant intends to start work on the ground later this year, they will need to apply for a Wildlife Act authority as soon as possible.

Complex Freshwater Fisheries approvals

13. The Applicant has not applied for a complex freshwater fisheries approval and has not assessed whether one is required.
14. A complex freshwater fisheries activity is defined under the Act to be:

complex freshwater fisheries activity means an activity that includes construction of any of the following:

- a. a culvert or ford that permanently blocks fish passage:
- b. a permanent dam or diversion structure:

- c. works—
 - i. *that require disturbance to a water body, including diversions, in-stream operations, and removal of gravel, that persists for more than 3 months; or*
 - ii. *that are within 500 m of the coast and occur during the whitebaiting season; or*
 - iii. *that are in an area known to be used for trout, salmon, or native fish spawning and occur during the spawning season; or*
 - iv. *that require repeated disturbance to a water body and are temporary works for which there is a period of 6 months or less between each period of work.*

- 15. The AEE for Milldale Stages 10 – 13 states that the Applicant seeks to divert the upper reaches of all intermittent streams across the site to a new course and reclaim 1,028.5m of stream.
- 16. The Department's assessment is that any permanent diversion of streams would be considered a complex freshwater fisheries activity if the diversion of the stream requires the construction of a dam or diversion structure (clause (b) of the definition) to stop the stream flowing in its current course.
- 17. The Applicant also seeks to remove several existing farm culverts and to potentially construct culverts 'in the dry' meaning stream flow will be temporarily stopped or temporarily diverted. Any temporary diversion of streams associated with the construction or removal of culverts would also be considered a complex freshwater fisheries activity if the diversion or in-stream operations persisted for more than 3 months (clause (c)(i) of the definition).

Comments on conditions

- 18. The Department has provided preliminary comments on the Applicant's proposed resource consent conditions that, if addressed, may help ensure that the adverse effects on the environment are avoided, remedied, minimised, offset, or compensated.
- 19. There are several management plans proposed in the volunteered conditions with different levels of scrutiny and detail required, with a disjunct between the EIAs and what the Applicant has volunteered as proposed resource consent conditions.
- 20. It is proposed that some management plans must be certified by the council before the Applicant can commence works while others only need to be submitted to council prior to works commencing. Independent, regulatory checks of the management plans are necessary to ensure they will achieve the intended outcomes and accord with the objectives of the consent and conditions before work commences. It is recommended that a council certification process is included for the Fauna Management Plan, Native Fish Capture and Relocation Plan, and Stream and Wetland Management Plan.
- 21. It is also recommended that consent conditions include sufficient detail as to the purpose of the management plans and the information to be included in them. This can then inform council certification as discussed further below.
- 22. The EIAs for Stages 10-13 and for the Wastewater Treatment Plant make a number of recommendations to manage effects of the proposal on birds, bats, and lizards. They also include

draft Fauna Management Plans (FMP), which include specific measures for managing effects on birds, bats, and lizards. However, the conditions proposed by the applicant only propose that an FMP be prepared by a suitably qualified and experienced ecologist and submitted to council prior to commencement of vegetation removal and stream riparian restoration works, and that the plan include details on bird, lizard, and bat management.

23. Without reference to minimum information requirements for management plans in consent conditions, there is no assurance that management plans will address the relevant matters and, accordingly, no assurance that adverse effects of the Project will be appropriately addressed.
24. To ensure that adverse effects on the environment are properly managed, there should be conditions that specify the outcomes or objectives required to be achieved through management plans, conditions that specify the matters that must be addressed in each plan, and conditions that require preparation and certification of the plans. Conditions requiring management plans should:
 - a. contain clear and effects-based objectives and performance standards, to ensure that environmental outcomes are understood from the outset, and that the management plans will lead to actions 'on the ground' to achieve those outcomes;
 - b. have ongoing effect, and require ongoing implementation during the life of the consent;
 - c. set intervention thresholds to allow review and intervention if objectives or performance standards are not being met;
 - d. require ongoing monitoring and reporting;
 - e. provide for adaptive management where appropriate; and
 - f. be enforceable.
25. The Department welcomes the opportunity to comment further on draft conditions as set out in section 70 of the Act.

Conclusion

26. The Department notes that the gap between the conditions and the recommendations in the EIAs will need to be bridged. This could be achieved by the introduction of the certification process for the management plans, along with specific conditions outlining the information required to be included in proposed management plans and the objectives that need to be achieved.
27. The Department welcomes further discussions with the applicant around the need and process for any Wildlife Act approvals and freshwater fisheries approvals outside of the Fast-Track process.
28. Thank you for the opportunity to comment.