

5 June 2019

NOTICE OF DECISION

Resource Management Act 1991 (RMA)

Application Number: LU -2018 -1574-00
Applicant: Novo Group Limited
Address for Service: PO Box 365
CHRISTCHURCH 8140
Consent Sought: Land Use Consent – Restricted Discretionary

Non-Compliances

12.8.2(a)	Minimum Parking Requirements
20.6.2	Noise
20.6.5	Height of the building

Address of Activity: 114, The Esplanade, Kaikoura
Legal Descriptions **LOT 2 DP 8813**
Valuation Number: 21080 296 00

Reasons for Decision:

- The proposal is consistent with the relevant objectives and policies of the Kaikoura District Plan.
- It is considered that the proposal is consistent with and does not contravene the purpose of the Resource Management Act 1991 (section 5). It is also considered that the application is consistent with the Principles of the Resource Management Act 1991 (sections 6, 7 and 8). The activity is therefore assessed as being consistent with, and not contravening Part II of the Act.
- It is considered that any adverse effects which may arise from the activity will be less than minor.
- The application has been dealt with on a non-notified basis according to section 95A-95E and it is considered that no person is adversely affected by the application
- To mitigate potential adverse effects of non-compliances of the proposed activity- if any, following conditions are also recommended.

Decision: Granted

Consent is granted pursuant to sections 104, 104C and 108 of the Resource Management Act 1991, for a Restricted Discretionary Activity to construct and operate a 120 room Hotel with Car & Bus parking, conference hall, a Gym area, a pool and outdoor landscaping area at 114, The Esplanade, Kaikōura being LOT 2 DP 8813 as set out in the application LU-2018-1574 -00 subject to the conditions in the appendix 1.

Signed: 

Date: /05/06/2019

Nirosha Seelaratne, Planning Officer

Acting under delegated authority by the Kaikoura District Council

Kaikoura – A Sustainable Community

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For the avoidance of doubt all conditions listed in the appendix 1 shall be considered as the conditions for proposed hotel development. Thus, all conditions in the previously approved resource consent LU-2018-1522-00 will also be included in appendix 1 below.

Appendix 1

GENERAL

1) The proposal shall proceed in accordance with applications LU -2018-1522-00 and LU-2019-1574-00 and the accompanying site plans and reports of both applications as follows:

LU -2018-1522-00 attachments

- Attachment 01: Marshall Day Acoustics Report dated 19 March 2018
- Attachment 02: Marshall Day Acoustics Design Advice dated 23 March 2018
- Attachment 03: Integrated Transport Assessment by TDG for Pillar Property Investments Limited dated 10 May 2018
- Attachment 04: Outline Travel Plan by TDG for Pillar Property Investments Limited dated 10 May 2018

LU-2019-1574-00 Attachments

- Attachment 05: Resource consent Plans by Kirk Roberts Consulting, dated 25 March 2019
- Attachment 06: Marshall Day Noise/ Acoustic Report dated 28 Jan 2019
- Attachment 07: Traffic & Transport Review by Stantec, dated 7 Jan 2019

NOISE

2) All construction noise shall comply with the requirements of *NZS 6803: 1999 "Acoustic - Construction Noise"*, or any subsequent replacement or amendment to those provisions.

3) The construction noise shall comply with the NZS 6803:1999 Acoustics as follows:¹

Time period	Duration of work		
	Typical duration	Short term duration	Long term duration
	Leq (dBA)	Leq (dBA)	Leq (dBA)
0730-1800	75	80	70
1800-0730	80	85	75

4) Noise from the site shall not exceed following limits when measured at the closest point at 51A Torquay Street.

¹ source: NZS 6803:1999, New Zealand Standard, Acoustics-Construction noise: superseding NZS 6803P:1984
www.Standards.co.nz

Day/time	Noise level.
Monday to Saturday from 7am to 11pm	55dBA L_{eq}
At all other times	40dBA L_{eq}
On any day between 11pm and 7am the following day	70dBA L_{max}

- 5) Noise from the site shall not exceed following limits when measured from adjacent sites excluding the 51A Torquay Street property.

Day/time	Noise level.
Monday to Saturday from 7am to 11pm	65dBA L_{eq} 85dBA L_{max}
At all other times	55dBA L_{eq} 75dBA L_{max}

- 6) Post construction, but prior to operation of the hotel to establish a baseline the consent holder shall provide a noise measurement report to the council prepared by a suitably qualified acoustic professional/engineer in accordance with NZS6801:2008 "Measurement of Environmental Sound" and the report shall include the following minimum requirements.

Noise generating activity	Noise measurement point	Time	Recorded Noise level
Parking at the South western corner	51A Torquay Street	<ul style="list-style-type: none"> Monday to Saturday from 7am to 11pm At all other times On any day between 11pm and 7am the following day 	
Parking (all other parking areas of the site)	i. 51A Torquay street ii. At the Esplanade side footpath iii. At Yarmouth Street Footpath iv.120 The Esplanade v.124 Esplanade 9 & 18 Yarmouth Street vi.49 Torquay Street	<ul style="list-style-type: none"> Monday to Saturday from 7am to 11pm At all other times On any day between 11pm and 7am the following day 	
Bar & restaurant	i. 51A Torquay street ii. At the Esplanade side footpath iii. At Yarmouth Street Footpath iv.120 The Esplanade v.124 Esplanade 9 & 18 Yarmouth Street vi.49 Torquay Street	<ul style="list-style-type: none"> Monday to Saturday from 7am to 11pm At all other times On any day between 11pm and 7am the following day 	

- 7) Prior to the operation of the hotel a solid 1.8m boundary fence along the southern and western boarder of the site shall be provided in accordance with the Marshal Day Acoustics report dated 28 January 2019 and Marshall Day Noise/ Acoustic Memo dated 28 Jan 2019.
- 8) Within two month of the opening of the hotel, condition 6 shall be reassessed with the hotel in full operation including setting out noise level measurements associated with the operation of equipment on site (Equipment includes lifts, air conditioning, external extractors, pumps and motors, but does not include the operation of vehicles on site) and shall submit a report to the council.
- 9) If the report required by condition 8 does not certify compliance with the applicable noise standards in conditions, 4, 5 and 6, then the consent holder shall undertake remedial work so that compliance is achieved within a further 20 working day period. At this time a further report shall be provided to the Council in accordance with condition 8, if compliance cannot be achieved operation of those activities creating the noise shall cease.
- 10) Music within the conference/function room shall have a sound level no greater than 80dBA L_{eq} (15min) at any time.
- 11) Bar and Restaurant area shall be located according the plans submitted to the council.
- 12) In the event that Council receives a complaint regarding construction the consent holder shall provide a construction noise report to the council prepared by a suitably qualified acoustic professional/engineer the report should specifically address the effects on all adjacent properties.

PARKING & TRANSPORT

- 13) Prior to operation of the hotel, all access, all on-site and off-site parking and manoeuvring areas shall be formed, sealed, marked out, sign posted and drained in accordance with the standards in section 12 of Kaikōura District plan and traffic & parking plans presented to the council by the applicant.
- 14) Both on- site and off-site parking areas shall either meet all planning requirements of the District plan or obtain a resource consent prior to the operation of the hotel commencing.
- 15) The consent holder shall provide 27 onsite car parking and one bus parking (28 in total) and 44 off-site parking and one bus parking (45 in total) prior to the operation of the hotel commencing.
- 16) Prior to the operation of the hotel the consent holder shall provide the council with the location, design and purchase/leasing agreement if any – of the proposed offsite car park for at least 44 cars and one bus.

- 17) The off-site parking shall only be managed using valet parking as recommended by Stantec Traffic & Transport review dated 7 Jan 2019.
- 18) If for any reason the consent holder is unable to provide the required offsite parking for a period of three months, the activities authorised by this consent shall cease. ².
- 19) Access to the site with a width of 4.8m shall be via one way on Yarmouth Street and exit only access with a minimum width of 4.8 m shall be to the Esplanade.
- 20) A separate loading area shall be clearly marked and the plans shall be submitted to the council with the operative travel management plan required under condition 22.
- 21) Green paint marking shall be installed across the cycle lanes in front of the car park driveway and across the Yarmouth Street intersection to highlight the potential conflict areas.
- 22) Prior to the construction of the hotel the consent holder shall provide the council with a detailed operative travel management plan including employee parking management, visitor parking management, establishing travel demand management principals to meet the council's parking requirements³.

HEIGHT OF THE BUILDING

- 23) The maximum height of any building above existing ground level shall be 13.5m excluding any exceptions provided for in the Kaikōura District Plan.
- 24) Prior to the operation of the hotel a registered surveyor/engineer shall provide written certification to the council that the building works have been undertaken in accordance with the consent and comply with the consent plans presented to the council by the applicant.

LANDSCAPING & AMENITY

- 25) The colour of the proposed building shall comply with the Appendix F- Landscape, Amenity and energy efficiency guidelines of the District Plan. ⁴
- 26) Landscaping shall be provided along the boundaries of the site in accordance with the landscape planting plan.
- 27) All landscaping shall be locally sourced native species.

² This is a consent condition is agreed to by the consent holder

³ Any specified parking on Council road reserve for buses including pick up or drop off require separate approval under the traffic control bylaw. For avoidance of doubt this resource consent does not provide this approval.

⁴ See attached Appendix F of the District Plan.

- 28) The landscaping & amenity requirement conditions 25, 26 and 27 shall be provided by the completion of the building and shall maintain as long as the existence of the proposed building. Any dead, diseased or damaged plants shall be replaced as necessary.
- 29) Prior to the construction of the hotel a landscape planting and management plan shall be prepared and submitted to the Council prior to the commencement of the construction work.

WASTE MANAGEMENT

- 30) All waste which is stored outside shall be screened from public view and shall be screened from adjacent residential property at 51A Torquay Street
- 31) The proposed activity shall comply with the Waste Management Protocol in appendix G of the Kaikoura District Plan.⁵
- 32) Within two month of the opening of the hotel, written evidence shall be provided to the council to demonstrate how conditions 30 &31 above are being complied with.

LIGHTING

- 33) Exterior lights shall be shielded or directed away from the adjacent sites and from both Yarmouth Street and the Esplanade.
- 34) Exterior lights shall not result in lux spill 3 lux maximum (horizontal and vertical) to the 51 A Torquay street property
- 35) Exterior lights shall not result in lux spill 10 lux maximum onto all other adjoining sites at Yarmouth Street and the Esplanade
- 36) Prior to the construction the consent holder shall prepare a lighting plan which shall address condition 33, 34 and 35 above and potential impact on the Hutton's Shearwater birds and bird colonies. This plan shall be submitted to the council for approval prior to the commencement of the construction work.
- 37) Within two month of the opening of the hotel, evidence shall be provided to the council to demonstrate how conditions 33 to 36 have been complied with.

CULTURAL & ARCHAEOLOGICAL SIGNIFICANCE

- 38) Prior to the construction the consent holder shall engage a Te Rūnanga o Kaikoura member to undertake cultural monitoring and an archaeologist to monitor all earthworks.
- 39) If any archaeological material is discovered as a result of the development, then the consent holder will support that the archaeological material be returned to Te Rūnanga o Kaikoura.

⁵ See attached appendix G of the District Plan, Kaikoura is striving to be a zero waste community

- 40) Prior to any earthworks being undertaken, written confirmation shall be supplied to the Kaikoura District Council that an archaeological authority has been obtained or is not required from Heritage New Zealand Pouhere Taonga.
- 41) Where during excavation or land disturbance, any archaeological artefact or human remains are accidentally discovered, work shall cease immediately and the consent holder must consult with a representative of the Rūnanga o Kaikoura and the Heritage New Zealand (and the police in the case of human remains), to determine appropriate further actions.

Note: For the avoidance of doubt cultural and archaeological significance conditions are agreed to by the consent holder.

SIGNAGE

- 42) All signage on site shall comply with the Kaikoura District Signs Bylaw 2009

DEVELOPMENT CONTRIBUTIONS

- 43) Development contributions shall be paid to the Council prior to physical connection to council's infrastructure according to the calculations in Appendix II.

PRIOR TO THE CONSTRUCTION OF THE HOTEL

- 44) Prior to the construction of the hotel the written information reports shall be provided to the council that conditions 22, 29, 36, 38, 40 have been met.

PRIOR TO THE OPERATION OF THE HOTEL

- 45) Prior to the operation of the hotel the written information/ reports shall be provided to the council that conditions 6, 7, 13,16,24, have been met

WITHIN 2 MONTHS OF OPERATION OF THE HOTEL

- 46) Within 2 months of operation of the hotel written report shall be submitted to the council in accordance with condition 8, 32,37

MONITORING

- 47) In accordance with section 35 of the Resource Management Act, monitoring of compliance with the consent will be undertaken by a council officer within six months of the date that the consent is given effect to.

REVIEW CONDITIONS

- 48) That pursuant to section 127(1)(a) of the Resource Management Act 1991, the consent holder may apply to the consent authority for a change or cancellation of any conditions of the consent within two years from the date of issue. This condition does not limit the

consent holder from applying for a section 127(1)(b) under the Resource Management Act 1991.

- 49) In accordance with section 128 of the Resource Management Act 1991, the Kaikoura District Council may review any or all of the conditions of this consent by giving notice of review during June in any year after the granting consent for the purpose of ensuring that the conditions are adequate to deal with any adverse effects on the environment arising from the exercise of this consent, which were not foreseen at the time of the application or where it was not appropriate to deal with at that time.

COSTS

- 50) The cost for design and construction of any works within road reserve including landscaping shall be met by the consent holder.
- 51) The consent holder shall meet all actual and reasonable costs incurred by this Council in monitoring, enforcement and administration of this consent.

Footnotes

- | | |
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| F1 | Pursuant to section 357 of the Resource Management Act 1991, you have the right of objection to the consent authority in respect to the above decision, within fifteen working days of receipt of this decision. |
| F2 | Pursuant to section 125 of the Resource Management Act 1991 this land use consent will lapse on the expiry of 5 years after date of commencement of the consent, or such other date as provided for in the consent, unless:
1. The consent is given effect to;
2. Application for an extension of time is made within 3 months after expiry of that period. |
| F3 | This consent is not a building consent. A separate application for building consent is required. Any additional requirements relating to the design and construction of buildings etc. will be assessed during the processing of the building consent. |
| F4 | Working affecting archaeological sites is subject to a consent process under the Historic Places Act 1993. An archaeological authority (consent) from the NZ Historic Places Trust must be applied for and all conditions of the authority must be complied with. |

Footnotes relating to Water as required by Kaikoura District Council Water Bylaw

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| F5 | The consent holder shall make an application to the Council for a metered water connection. |
| F6 | The consent holder shall provide full engineering drawings of the proposed water supply connection to Council for approval, prior to construction. |
| F7 | The consent holder shall provide as-built drawings of the water supply on completion of works, including location of the new and existing water mains and connections. |

F8 It is the developer's responsibility to provide adequate water pressure within the site and to provide adequate firefighting water flows and pressures as required under the code (SNZPSA 4509:2008). All costs associated with any required configuration of the water supply both external and internal shall be at the sole expense of the consent holder.

Footnotes relating to Sewer as required by Kaikoura District Council Waste Water Bylaw

F9 The consent holder shall provide full engineering drawings of the proposed sewer system to Council for approval prior to construction.

F10 The consent holder shall provide as-built drawings of the sewer system on completion of works, including location of the mains and connections.

F11 The developer shall be responsible for ensuring that the internal sewer system is adequate for the activity proposed.

F12 All costs associated with any required configuration of the sewer system both external and internal shall be at the sole expense of the consent holder.

Other Service Related Footnotes:

F14 A discharge consent may be required for the discharge of storm water if it does not meet Kaikoura District Council's Global consent any such required discharge consents will need to be obtained from the Canterbury Regional Council.

F15 Development contributions have been assessed and levied through the Local Government Act 2002 and the Council's Development Contribution Policy.

Please be aware that it is your responsibly to ensure that all contractors are provided with a copy of this resource consent and are aware of the accidental discovery protocol before any work commences.

**APPENDIX II
DEVELOPMENT CONTRIBUTIONS**

This development contributions assessment has been calculated based on your consent application to develop a 120 room hotel, with restaurant, bar and other facilities (gym, etc).

Kaikoura District Council's development contributions policy is heavily weighted to entering into separate development agreements, with an interim assessment provided (below) as an indication of what would be payable if an agreement were not entered into.

The advantage of the development agreement is that it enables both parties to negotiate for projects that benefit the area. Examples might be a sewer pump station upgrade or a new walkway or better footpaths in the area. You will be invited to enter into a development agreement.

Contribution Type	Contribution Per Person	Number of People	Amount Net of GST	Including GST
Roading	222.75	240	53,460.00	61,479.00

Water	358.88	240	86,130.00	99,049.50
Sewer	390.89	240	93,812.00	107,884.26
Storm water	150.15	240	36,036.00	41,441.40
	1,122.66		269,438.40	309,854.16
Plus parks & reserves	Land area 4,092m2	Land value \$1,570,000	LV x 2.5%	39,250.00
				394,101.16

Interim Assessment

Please be aware that this is an interim assessment only, development contributions are adjusted annually, these are valid until 30 June 2019; also any changes to your proposal may affect this assessment.

Final calculation, invoicing, and payment of a development contribution shall occur prior to the earlier of:

- The issue of a section 224 certificate under the Resource Management Act 1991;
- The issue of code compliance certificates under the Building Act 2004;
- An authorization for a service connection.

Request for reconsideration

You may apply in writing to the council to reconsider your assessment where you have grounds to believe that;

- (a) the development contribution was incorrectly calculated or assessed; or
- (b) the development contribution policy has been incorrectly applied; or
- (c) the information used to assess the development was incomplete or contained errors.

Objection to assessed amount

An objection to your assessment for any reason other than those listed above can only be considered by an approved independent commissioner. Please contact the Council officer who prepared this assessment directly for more information on how to make an objection. You may prefer to consider entering into a developer agreement (a legally binding agreement reached by negotiation) rather than make a formal objection.

Non-Payment of Development Contributions

If the development contribution is not paid, -

- (a) the Council may, under section 208(a) of the Local Government Act 2002,
 - i. withhold a certificate under section 224(c) of the Resource Management Act 1991;
 - ii. prevent the commencement of a resource consent under the Resource Management Act 1991
- (b) the Council may, under section 208(b) of the Local Government Act 2002, withhold the code compliance certificate that would be issued under section 95 of the Building Act 2004:
- (c) the building consent authority, under section 94(4) of the Building Act 2004, must refuse to issue a code compliance certificate for the building work until it has received -

- i. evidence that the development contribution has been paid or made by the owner to the Council; or
 - ii. a copy of a written agreement between the owner and the Council that the code compliance certificate may be issued:
- (d) the Council may, under section 208(c) of the Local Government Act 2002, withhold a service connection to the development;
- (e) the Council may, under section 208(d) of the Local Government Act 2002, register the development contribution under the Statutory Land Charges Registration Act 1928 as a charge on the title of the land in respect of which the development contribution was required.

You will be invited to enter into a Development Agreement. The above terms and conditions will still apply unless explicitly excluded by that Agreement.

APPENDIX III

RELEVANT SECTIONS OF THE RESOURCE MANAGEMENT ACT 1991

Applications for resource consents are considered under sections 104, 106 and 108 of the RMA.

Section 104(1) sets out the matters to which the Council shall have regard when considering an application for resource consent. Subject to Part II of the Act, which contains the Act's purpose and principles, the following matters are relevant:

any actual and potential effects on the environment of allowing the activity;
 any relevant provision of;
 a national policy statement;
 a New Zealand coastal policy statement;
 a regional policy statement or proposed regional policy statement;
 a plan or proposed plan; and
 any other matters that the consent authority considers relevant and reasonably necessary to determine the application.

In accordance with section 104(2) a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.

Under section 104(3) a consent authority must not-
 have regard to trade competition when considering an application:
 when considering an application, have regard to any effect on a person who has given written approval to the application:
 grant a resource consent contrary to provision of section 107 (Coastal Permits) or section 217(Water Conservation Order) or any Order in Council in force under section 152 (Coastal Permits), or under any regulations:
 grant a resource consent if the application should have been publicly notified and was not.

Under section 104(A),(B),(C),(D)(determination and restrictions on applications), council must grant consent for controlled activities. May grant or refuse applications for (restricted) discretionary and non-complying activities.

If the activity is non-complying under section 104(D) then it may only be granted if council is satisfied that either-

The adverse effects of the activity on the environment (other than any effect to which section 104(3)(b) applies) will be minor; or

The application is for an activity that will not be contrary to the objectives and policies of the relevant plans (operative or proposed).

Part II of the Resource Management Act

Any decision of the Council is subject to the provisions contained in Part Two of the Resource Management Act 1991. In considering the application, the consent authority must give pre-eminence to Part II of the Act.

Section 5 of the Act contains the purpose of the Act, which is to promote the sustainable management of natural and physical resources. Sustainable management is defined in the Act as:

“managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while-

Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

Sections 6, 7, and 8 of the Resource Management Act (1991) outline the principles of the Act. All persons exercising functions and powers under the Act shall consider:

Matters of National Importance (s.6);

Other Matters (s.7); and

The Treaty of Waitangi (s.8).

APPENDIX IV

ACCIDENTAL DISCOVERY PROTOCOL: ARCHAEOLOGICAL SITES, ARCHAEOLOGICAL AREAS, HISTORIC AREAS OR WAAHI TAPU

This rule does not apply to the Kaikoura Peninsula Tourism Zone and the Ocean Ridge Comprehensive Living Zone

Where, during earthworks on any site, any archaeological feature, artefact or human remains are accidentally discovered or are suspected to have been discovered, the following protocol shall apply:

- i. Immediately that it becomes apparent that a suspected archaeological site, burial site, waahi tapu or waahi taonga site has been uncovered, all excavation shall cease.

In cases other than suspected human remains

- ii.** The contractor must shut down all machinery immediately, secure the area and advise the consent holder or proponent and Kaikoura District Council of the occurrence.
- iii.** The consent holder or proponent must notify the Heritage NZ Trust so that the appropriate consent procedure can be initiated.
- iv.** The consent holder or proponent must consult with a representative of the Te Rūnanga o Kaikoura to determine what further actions are appropriate to safeguard the site of its contents.

Where human remains are suspected

- v.** The contractor must take steps immediately to secure the area in a way which ensures human remains are not further disturbed. The contractor shall advise the consent holder or proponent of the steps taken.
- vi.** The contractor shall notify the Police of the suspected human remains as soon as practicably possible after the remains have been disturbed. The consent holder or proponent shall notify Te Rūnanga o Kaikoura and Heritage NZ within 12 hours of the suspected human remains being disturbed, or otherwise as soon as practically possible.
- vii.** Excavation of the site shall not resume until the Police, Heritage NZ and the relevant Kaumatua have each given the necessary approvals for excavation to proceed.

Note: If any land use activity (such as earthworks, fencing or landscaping) is likely to modify, damage or destroy any archaeological site (whether recorded or unrecorded, an “authority” consent from Heritage NZ must also be obtained for the work to lawfully proceed.

