

FTC#156 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2022-88 East Coast Heights – Silverdale Project

Date submitted:	15 September 2022	Tracking #: BRF-1904	
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: 6	Appendices: 1. East Coast Heights – Silverdale application documents and further information received (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 Build Rich Limited and Nation Shine Holdings Limited 5. Section 17 Report (Databox link) 6. Comments received from Ministers, local authorities and Auckland Transport (Databox link)

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Samantha Maxwell		
Manager	Stephanie Frame	s 9(2)(a)	✓
Acting Director	Matthew Barbati-Ross	s 9(2)(a)	

FTC#154: 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 Build Rich Limited and Nation Shine Holdings Limited to refer the East Coast Heights – Silverdale 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-1823) with your initial decisions annotated is in Appendix 2.
3. The project is to subdivide a 10.6-hectare site located at 1 Silverwater Drive and 2150 East Coast Road, Silverdale, Auckland and construct approximately 303 residential units and supporting infrastructure including roads, vehicle accessways and three-waters services. The project includes the restoration and planting of a natural wetland on the site. The project will involve some earthworks extending onto small areas of the adjacent properties at 17, 39 and 53 Small Road, Silverdale.
4. Stages one and two, adjacent to the project site, were consented under standard Resource Management Act 1991 (RMA) processes by Auckland Council and are currently under construction.
5. This project comprises stage three and four of a residential development being undertaken by the applicants between East Coast Road and State Highway 1 at Silverdale. Stage five, located further to the north, is the subject of a separate referral application (2022-097 East Coast Heights Stage 5–Silverdale Project)¹.
6. This project will involve activities such as:
 - a. subdividing land
 - b. removing vegetation
 - c. carrying out earthworks
 - d. taking, diverting and discharging groundwater to land
 - e. diverting and discharging stormwater
 - f. diverting overland flow paths
 - g. placing structures in an overland flow path and in a flood plain
 - h. constructing residential units
 - i. constructing or installing structures and infrastructure including roads, accessways for vehicles and three-waters services
 - j. restoration and planting of a natural wetland on the site
 - k. any other activities that are –
 - i. associated with the activities described in a to i
 - ii. within the project scope as described in paragraph 3

¹ We have provided you with the second (Stage 2) briefing on referral application 2022-097 East Coast Heights Stage 5 – Silverdale Project on 15 September 2022.

7. The project will require subdivision and land use consents, and water and discharge permits under the Auckland Unitary Plan (AUP), and resource consents under the Resource Management (National Environmental Standard for Freshwater) Regulations 2020 (NES-F).
8. The land to be subdivided is in the Residential - Mixed Housing Urban Zone and Sub-precinct B of the Silverdale 3 Precinct under the AUP. The purpose of Sub-precinct B of the Silverdale 3 Precinct is to enable a range of residential opportunities within a high-quality urban environment with a visually strong vegetated framework. The neighbouring properties subject to earthworks are in the Business – General Business Zone and Silverdale 2 Precinct
9. The proposed activities have overall non-complying activity status due to the vegetation clearance and earthworks within 10 metres of a natural wetland, and diversion of water within 100 metres of a natural wetland. The applicants consider that the project can pass both 'gateway tests' in section 104D of the Resource Management Act 1991 (RMA).
10. 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 the applicants and a panel, and notification of your decisions.

Assessment against statutory framework

11. 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.
12. Before accepting the application, you must consider the application and any further information provided by the applicants (in Appendix 1), the Section 17 Report (in Appendix 5) and comments from Ministers, Auckland Council (including Watercare Services Limited) and Auckland Transport (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.
13. 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 applicants

14. In response to your request under section 22 of the FTCA the applicants provided further information on the Infrastructure Funding Agreement with the neighbouring property at 17 Small Road, the encumbrances and easements on the record of titles, a masterplan which identifies the project footprint including within the neighbouring property, confirmation whether approvals will be required under the Overseas Investment Act, and an explanation of how the project meets the non-complying 'gateway tests' in section 104D of the RMA.
15. We have taken this information into account in our analysis and advice.

Section 17 report

16. The Section 17 Report indicates that there are 11 iwi authorities, 5 Treaty settlements and 8 Treaty settlement entities relevant to the project area. It also identifies a further seven iwi authorities which may have an interest in the project area. A number of groups seeking customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 in the Weiti River estuary, which lies downstream of the project area, are also identified.

17. The report draws attention to the Crown's formal acknowledgement of statements of association, via coastal statutory acknowledgements over specified areas including the Weiti River estuary, in the Treaty settlements with Ngāti Manuhiri, Te Kawerau ā Maki, Ngāi Tai ki Tāmaki and Te Ākitai Waiohū.
18. The relevant Treaty settlements do not create any new co-governance or co-management processes that would affect decision-making under the RMA for the project.

Comments received

19. Comments were received from ^{s 9(2)(f)(ii), s 9(2)(g)(i)}, Auckland Council and Auckland Transport. The key points of relevance to your decision are summarised in Table A.
20. ^{s 9(2)(f)(ii), s 9(2)(g)(i)}
21. ^{s 9(2)(f)(ii), s 9(2)(g)(i)}
22. ^{s 9(2)(f)(ii), s 9(2)(g)(i)}
23. ^{s 9(2)(f)(ii), s 9(2)(g)(i)}
24. Auckland Council opposed project referral due to concerns about wastewater infrastructure not being in place to service the development and that the project might trigger prohibited activities under the NES-F in relation to the wetlands. The Council raised concerns that the site layout has steep land contours which will require significant earthworks and retaining walls. The Council also raised concerns in relation to the proposed road layout and design, the lack of pedestrian connectivity, building intensity, the requirement for a neighbourhood park, and water and stormwater infrastructure servicing. The Council's comments are summarised in more detail in Table A.
25. Auckland Council commented on the applicants' environmental regulatory compliance history, identifying that abatement notices have been issued to one of the applicants to

² Waka Kotahi NZ Transport Agency were identified with the first (Stage 1) briefing as a party from whom to invite comment. Waka Kotahi were invited to comment on the 14th of July 2022 and provided no response.

address erosion and sediment control issues for other residential sites. We address this further in paragraph 38.

26. Auckland Council also identified a number of reports and assessments which would normally be required for a project of this type. We consider these reports are generally covered by the requirements of clause 9 Schedule 6 of the FTCA but recommend you require the applicant to submit specific information, as detailed in Table A, to assist with consideration of the application by a panel.
27. Auckland Transport did not oppose project referral and commented the project zoning under the AUP anticipates this form of residential subdivision, development and intensification. Auckland Transport advised that Auckland Council is currently processing an application for the subject site which would appear to be identical to the project but noted without the full application material it is unclear whether this is the case. Auckland Transport has provided specialist advice to Auckland Council on the potentially identical application and notes there are several information request matters outstanding which would be relevant to Auckland Transport being able to assess any potentially significant adverse transport effects.
28. We note that the FTCA does not preclude applicants from lodging a consent application with a consent authority under the RMA and a simultaneous application for referral under the FTCA for the same (or substantially the same) project. However, if the project is referred to a panel, the applicant is required to withdraw the RMA consent application before lodging a consent application with the Environmental Protection Authority (EPA) (under FTCA schedule 6, clause 28). Auckland Transport requested that if the project is referred to a panel, the applicants be required to provide an integrated transport assessment with their resource consent application, and a panel be required to invite comments from Auckland Transport.

Section 18 referral criteria

29. 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)).
30. The project does not include any ineligible activities, as explained in Table A.
31. 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 providing approximately 740 direct full time equivalent (FTE) jobs over a 5-year design and construction period
 - b. increase housing supply by constructing approximately 303 residential units
 - c. have positive effects on social well-being by generating employment and providing additional housing in a range of typologies
 - d. progress faster than would otherwise be the case under standard RMA process, provided that the applicants lodge their applications for resource consent in a timely manner following project referral.
32. 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

33. 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.

Whether the project includes prohibited activities

34. Auckland Council's initial comments suggest that reclamation of natural wetlands on the site would be a prohibited activity under the NES-F and stream works would require additional assessment. On request, the applicants provided further information including an approved earthworks consent over the relevant part of the project site, and an ecological assessment clarifying that the wetlands are not located within the parts of the site proposed for this stage of the development. Auckland Council have subsequently agreed that development of this part of the site would not be a prohibited activity.
35. We consider that additional information provided by the applicants and by Auckland Council is sufficient to clarify that the project does not include any prohibited activities and the eligibility criteria of section 18(3)(a) of the FTCA are met.

Section 23 FTCA matters

36. 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.
37. The project has non-complying activity status under the AUP and NES-F, due to the vegetation clearance and earthworks within 10 metres of a natural wetland, and diversion of water within 100 metres of a natural wetland. We have considered whether it would be more appropriate for the project to be considered under standard RMA consenting process given that, subject to an RMA section 95 determination, the project could be publicly notified under standard process.
38. There is a risk that referring the project could be viewed negatively by the wider community who could expect an opportunity to be involved under standard RMA consenting processes. Although this risk cannot be completely avoided, we note 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), so may consult as widely as they consider appropriate.
39. The non-complying activity status under the AUP, would mean that under clause 32 of Schedule 6 of the FTCA a panel would be required to consider whether any resource consent application for the project meets at least one of the two 'gateway tests' in section 104D of the RMA. The applicants consider the project can pass both gateway tests. We consider these matters can be appropriately determined by a panel and therefore we do not consider that you should decline the referral application on this basis.
40. Auckland Council did not identify any environmental regulatory compliance issues for Nation Shine Holdings Limited. Auckland Council identified a number of environmental regulatory compliance issues for Build Rich Limited, including abatement notices, relating to sediment and erosion control issues on small-lot residential sites. The Council has previously advised that since its introduction of a proactive compliance team in May 2019, the compliance threshold is set at a high level to drive behaviour change with a focus on small lot residential sites and that abatement notices are widely used as part of the compliance tool kit. Auckland Council has issued and resolved several abatement notices issued to Build Rich Limited, and the Council has not taken any further enforcement action since February 2021. We consider that this poor regulatory compliance is relevant but not significant enough for you to decline the referral application on the basis of section 23(5)(f) of the FTCA. We have recommended that the applicants provide to the panel a draft construction management plan including details of proposed measures to control dust, erosion, and sedimentation.

Other matters

41. We have identified issues further to the matters identified above, including relating to whether any overseas investment office approvals and interests noted on the record of title would affect project delivery and our analysis of these is in Table A.
42. Finally, Auckland Council noted their existing wastewater network does not have sufficient capacity and additional wastewater infrastructure will need to be installed to service the proposed development. The applicants provided further information that outlines a stormwater and wastewater strategy for the project, including engagement with the adjoining owner/developer (The Botanic Limited Partnership) of 17 Small Road, and Watercare Services Limited to propose a solution. We consider a panel is able to consider and address this issue (with the benefit of specific information provided by the applicants), and that this does not preclude project referral.

Conclusions

43. We do not consider there are any significant reasons for you to decline to refer to the project in whole or in part on the basis of the issues and risks identified, provided the applicants provide appropriate information (including the information we recommend you specify) to a panel. We consider you could accept the application under section 24 of the FTCA and that the project could be referred to a panel with the specifications outlined below. We note there is a risk to the applicants that a panel may not approve the consent applications given the potential issues regarding the works within the vicinity of a natural wetland noted above. We consider the matter can be appropriately determined by a panel and therefore we do not consider that you should decline the referral application on this basis.
44. If you decide to refer the project, we consider you should specify under section 24(2)(d) of the FTCA (as requested in comments) that the applicants must submit the following information to a panel with their consent applications in addition to the requirements of clause 9 of Schedule 6 of the FTCA, and as more fully described in Table A:
 - a. a three-waters infrastructure assessment
 - b. a transport infrastructure assessment
 - c. an integrated transport assessment
 - d. a landscape and urban design assessment
 - e. a draft construction management plan
 - f. an ecological assessment.
45. The above information will inform a panel's assessment of the project's effects and whether to invite comments from any additional persons or groups. This does not preclude a panel from requiring the applicants to provide any additional information on any application lodged with the EPA under the FTCA.
46. 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 following parties:
 - a. Waka Kotahi NZ Transport Agency
 - b. Auckland Transport
 - c. Watercare Services Limited
 - d. Te Patukirikiri Iwi Trust
 - e. Ngā Maunga Whakahii o Kaipara Development Trust

- f. Ngāti Tamaoho Trust
- g. Ngātiwai Trust
- h. Ngāti Whātua Ōrākei Trust Board
- i. Te Kupenga o Ngāti Hako
- j. Hauraki Māori Trust Board.

Next steps

- 47. 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 applicants, anyone invited to comment under section 21, and the persons, entities and groups listed in section 25(2) of the FTCA.
- 48. We consider you should also give the notice of decisions together with a copy of the application to the parties listed in paragraph 46 (e) to (j) and the groups seeking customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011, listed in Attachment 7 of the Section 17 Report.
- 49. If you decide to decline project referral, you must give the notice of your decisions, and the reasons for them, to the applicants and anyone invited to comment under section 21.
- 50. We have attached a notice of decisions letter to the applicants based on our recommendations (refer Appendix 4). We will provide you with an amended letter if required. Once you have signed the letter, we will assist your office to copy it to all relevant parties.
- 51. 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.³
- 52. 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.
- 53. Our recommendations for your decisions follow.

³ 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

1. 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 Build Rich Limited and Nation Shine Holdings Limited unless you are satisfied that the East Coast Heights – Silverdale 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 providing approximately 740 direct full time equivalent (FTE) jobs over a 5-year design and construction period
 - ii. increase housing supply through the provision of approximately 303 residential units
 - iii. have positive effects on social well-being by generating employment and providing additional housing in a range of typologies
 - iv. progress faster than would otherwise be the case under standard RMA process,

provided that the applicants lodge their applications for resource consent in a timely manner following project referral.

Yes/No

- h. **Agree to refer** all of the project to a panel.

Yes/No

- i. **Agree** to specify under section 24(2)(d) of the FTCA the following additional information that the applicants must submit with any resource consent application lodged with the Environmental Protection Authority:

- i. an assessment of the relevant infrastructure for three waters services that:
 1. identifies the existing condition and capacity of that infrastructure
 2. identifies any upgrades to that infrastructure that are required in connection with the project
 3. identifies any funding required to carry out those upgrades (including who will provide that funding)
 4. contains information on discussions held, and agreements made, between the applicants and Auckland Council or Watercare Services Limited (or both)
- ii. a transport infrastructure assessment, that:
 1. identifies the existing capacity of the local road network to service traffic associated with both the project while it is carried out and the resulting development
 2. identifies any upgrades to the local road network that are required to service that traffic
 3. identifies any funding required to carry out those upgrades (including who will provide that funding)
 4. contains information on discussions held, and agreements made, between the applicants and Auckland Transport
- iii. an integrated transport assessment including:
 1. an assessment of the effects of the project on the surrounding transport network
 2. an assessment of how the project will support people to use public transport and active modes of transport (such as walking and cycling)
 3. information on discussions held, and agreements made, between the applicants and Auckland Transport
- iv. a landscape and urban design assessment of the effects of the project including an assessment of how the project aligns with the Auckland Council Open Space Provision Policy (2016)
- v. a draft construction management plan including details of proposed measures to control dust, erosion, and sedimentation
- v. an ecological assessment of the effects of the project on freshwater and natural wetlands

Yes/No

j. **Agree** to specify under section 24(2)(e) of the FTCA that a panel must invite comments from the following persons or groups in addition to those specified in clause 17 of Schedule 6 of the FTCA:

- i. Waka Kotahi NZ Transport Agency
- ii. Auckland Transport
- iii. Watercare Services Limited
- iv. Te Patukirikiri Iwi Trust
- v. Ngā Maunga Whakahii o Kaipara Development Trust
- vi. Ngāti Tamaoho Trust
- vii. Ngātiwai Trust
- viii. Ngāti Whātua Ōrākei Trust Board
- ix. Te Kupenga o Ngāti Hako
- x. Hauraki Māori Trust Board.

Yes/No

k. **Agree** to copy the application and notice of decisions to the following parties additional to those specified in section 25 of the FTCA:

- i. Te Patukirikiri Iwi Trust
- ii. Ngā Maunga Whakahii o Kaipara Development Trust
- iii. Ngāti Tamaoho Trust
- iv. Ngātiwai Trust
- v. Ngāti Whātua Ōrākei Trust Board
- vi. Te Kupenga o Ngāti Hako
- vii. Hauraki Māori Trust Board
- viii. the groups seeking customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011, listed in Attachment 7 of the Section 17 Report.

Yes/No

l. **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

m. **Sign** the notice of decisions letter to the applicants (attached in Appendix 4).

Yes/No

- n. **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

A handwritten signature in blue ink, appearing to read 'S. Frame', is positioned above the printed name.

Stephanie Frame
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 (Note: for analysis and/or recommended responses to these comments refer to column 7)	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)?			
Name East Coast Heights – Silverdale Applicants Build Rich Limited and Nation Shine Holdings Limited c/- Campbell Brown Planning Limited Location 1 Silverwater Drive, 2150 East Coast Road, and 17, 39 and 53 Small Road, Silverdale, Auckland	The project is to subdivide a 10.6-hectare site located at 1 Silverwater Drive and 2150 East Coast Road, Silverdale, Auckland and construct approximately 303 residential units and supporting infrastructure including roads, vehicle accessways and three-waters services. The project includes the restoration and planting of a natural wetland on the site. The project will involve some earthworks extending onto small areas of the adjacent properties at 17, 39 and 53 Small Road, Silverdale. The project is stages three and four of a residential development being undertaken by the applicants between East Coast Road and State Highway 1 at Silverdale. Stages one and two adjacent to the project site, were consented under standard Resource Management Act 1991 (RMA) processes by Auckland Council and are currently under construction. Stage five, located further to the north south, is the subject of a separate referral application	The project is eligible for referral under section 18(3)(a)–(d) as: - 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	Economic benefits for people or industries affected by COVID-19 (19(a)) The applicants estimates that the project will provide: - approximately 740 direct full time equivalent (FTE) jobs over a 5-year design and construction period - contribute approximately \$172 million to regional GDP, and \$232 million to national GDP Economic costs for people or industries affected by COVID-19 (19(a)) - N/A Effect on the social and cultural well-being of current and future generations (19(b)) The project has the potential for positive effects on the social and cultural wellbeing of current and future generations as it will: - increase housing supply through the provision of approximately 303 residential units - provide a range of housing typologies that may assist with affordability - provide employment opportunities during construction Is the project likely to progress faster by using this Act? (19(c)) The applicants consider that the fast-track process will allow the project to progress approximately 12-18 months faster than under standard RMA processes, by avoiding the delays associated with Auckland Council's consenting processes.	Ministers s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i)	Section 23(5) matters: Insufficient information (23(5)(a)) We consider the applicant has provided sufficient information for you to determine whether the project meets the criteria in section 18 of the FTCA. More appropriate to go through standard RMA process (23(5)(b)) The project has non-complying activity status under the AUP, meaning that a panel would be required to consider whether any resource consent application for the project meets at least one of the two 'gateway tests' in section 104D of the RMA. The applicant considers the project can pass both gateway tests. We note that any adverse effects resulting from the project and alignment with the local and national policy framework are matters that can be considered by a panel in a merit-based assessment under the FTCA process. Therefore, we do not consider it necessary for the project to go through the standard RMA consenting process. Inconsistency with a national policy statement (23(5)(c)) We note you may decline to refer a project if you consider it is inconsistent with a relevant national policy statement. The applicant considers the project aligns with the NPS-UD s 9(2)(f)(ii), s 9(2)(g)(i). The project seeks to achieve the objectives of the NPS-UD. At this stage we cannot provide definitive advice on whether the project is consistent with the NPS-UD as that would require further detailed analysis of the project. We consider these matters can be appropriately determined by a panel and we do not consider that you should decline the referral application on the basis of section 23(5)(c) of the FTCA, as consistency with the NPS-UD is yet to be confirmed.	In response to key comments: - s 9(2)(f)(ii), s 9(2)(g)(i) - s 9(2)(f)(ii), s 9(2)(g)(i) In response to Auckland Council's and Watercare's comments that further information is required to assess wastewater capacity in the network for the proposed development, we consider that you should require the applicants to provide this information with a resource consent application to a panel. - We consider that you should agree to the request from Auckland Transport that you require the applicants to provide an integrated transport assessment with a resource consent application to a panel, and that a panel invite comments from Auckland Transport. - In response to Auckland Council's concern regarding the requirement for a neighbourhood park we request that

Project details	Project description	Does all or part of the project meet the referral criteria in section 18?		Summary of comments received (Note: for analysis and/or recommended responses to these comments refer to column 7)	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)?			
	(2022-097 East Coast Heights Stage 5– Silverdale Project). The project will involve activities such as: - subdividing land - removing vegetation - carrying out earthworks - taking, diverting and discharging groundwater to land - diverting and discharging stormwater - diverting overland flow paths - placing structures in an overland flow path and in a flood plain - constructing residential units - constructing or installing structures and infrastructure including roads, accessways for vehicles and three-waters services - restoration and planting of a natural wetland on the site - any other activities that are – - associated with the activities described in a to i - within the project scope as described in paragraph 3		Will the project result in a public benefit? (19(d)) Based on the information provided by the applicant we consider that the project may result in the following public benefits: - generating employment - increasing housing supply - restoring a natural wetland. Potential to have significant adverse environmental effects, including greenhouse-gas emissions (19(e)) The applicants have advised that the project has the potential for adverse environmental effects arising from: - earthworks - stormwater disposal - construction activities (including traffic, noise and vibration) - works affecting vegetation and a natural wetland (ecological effects) and may include adverse effects on: - visual, amenity, urban design and neighbourhood character - existing infrastructure, including the road network. The applicants have provided a number of preliminary technical assessments in support of their view that the project will not have any significant adverse effects. We note that you do not require a full Assessment of Environment Effects and supporting evidence to make a referral decision and a panel can consider this and any appropriate mitigation, offsetting or compensation to manage adverse effects of the development. Other relevant matters (19(f))	s 9(2)(f)(ii), s 9(2)(g)(i) Local authorities Auckland Council opposed project referral due to concerns about wastewater infrastructure not being in place to service the development and the consent triggers around the wetlands. The Council raised concerns that the site layout and design has steep land contours which will require significant earthworks and retaining walls. The Council also raised concerns in relation the proposed road layout and design, the lack of pedestrian connectivity, building intensity, the requirement for a neighbourhood park, and water and stormwater infrastructure servicing. They identify the provision of additional housing and typologies as a benefit to the Auckland region. They listed a number of general comments about significant issues. They raised concerns with the site layout, as it appears to follow a similar layout to Stage 1 and 2 of the project, which may not be suitable for the project site (Stage 3 and 4), given the steeper land contours. They are also concerned about the proposed retaining walls and green walls, which they have previously identified as an issue. Auckland Council's Parks Asset Manager provided comments which raise concerns about the potential for Auckland Council to inherit parks or street landscaping assets where they have not had the opportunity to assess and comment on prior to receiving them. They also note that there is a provision requirement in the Auckland Council Open Space Provision Policy (2016) for a neighbourhood park of 3000 – 4000m² within the subject site. The proposal does not include provision for such an open space; however this is a matter that can be considered by a panel in a merit-based assessment under the FTCA process. Auckland Council provided comments from Watercare Services Limited (Watercare) raising concerns about the proposed stormwater management approach, as well as the wastewater and water infrastructure. Watercare notes that the existing wastewater network does not have sufficient capacity to service the proposed development, and that the applicants would need to divert a pump station flow entirely at their own cost and would be subject to the provision to the Silverdale West network by Watercare. They identify that the proposed stages of the development trigger the need for a water supply booster which involves separation of gravity water mains and boosted water mains and included in the design at no cost to Watercare. Auckland Council also provided	Inconsistent with a Treaty settlement (23(5)(d)) We have not identified any apparent inconsistencies with the relevant Treaty settlements. Involves land needed for Treaty settlements (23(5)(e)) The project site does not include any land needed for Treaty Settlement purposes. Applicant has poor regulatory compliance (23(5)(f)) Auckland Council did not identify any environmental regulatory compliance issues for Nation Shine Holdings Limited. Auckland Council did identify a number of environmental regulatory compliance issues for Build Rich Limited, including abatement notices, relating to sediment and erosion control issues on small-lot residential sites. The Council has previously advised that since its introduction of a proactive compliance team in May 2019, the compliance threshold is set at a high level to drive behaviour change with a focus on small lot residential sites and that abatement notices are widely used as part of the compliance tool kit. Auckland Council has issued and resolved several abatement notices issued to Build Rich Limited, and the Council has not taken any further enforcement action since February 2021. We consider that this poor regulatory compliance is relevant but is not significant enough for you to decline the referral application on the basis of section 23(5)(f) of the FTCA. Insufficient time for the project to be referred and considered before FTCA repealed (23(5)(g)) There is sufficient time for the application to be referred and considered before the FTCA is repealed. Other issues and risks: The ultimate holding company for Build Rich Limited is registered overseas. The	you require the applicants to provide a landscape and urban design assessment of the effects of the project including an assessment of how the project aligns with the Auckland Council Open Space Provision Policy (2016) with a resource consent application to a panel. There are no significant reasons to decline to refer the project. We recommend that you accept the application under section 24 of the FTCA and refer all of the project to a panel. We recommend you require the applicants to provide the following information with their resource consent applications to a panel: - an assessment of the relevant infrastructure for three waters services that: - identifies the existing condition and capacity of that infrastructure - identifies any upgrades to that infrastructure that are required in connection with the project - identifies any funding required to carry out those upgrades (including who will provide that funding) - contains information on discussions held, and agreements made, between the applicants and Auckland Council or Watercare Services Limited (or both) - a transport infrastructure assessment, that: - identifies the existing capacity of the local road network to service traffic associated with both the project while it is carried out and the resulting development

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)?			
	The project will require subdivision and land use consents, and water and discharge permits under the Auckland Unitary Plan (AUP), and resource consents under the Resource Management (National Environmental Standard for Freshwater) Regulations 2020 (NES-F).		N/A	comments from its Healthy Waters department. They identify additional supporting information that would normally be required to address stormwater management. This includes retention methods for public road and private impervious area runoff, stormwater management measures required under the stormwater network discharge consent, overland flow path protection/diversion and protection of the lots from flood hazard, and future ownership and management of the new wetland (that cannot provide a retention function). We consider a panel is able to consider and address this issue (with the benefit of specific information provided by the applicants), and that this does not preclude project referral. Council identified a number of reports and assessments which would normally be required for a project of this type. We consider these reports are generally covered by the requirements of clause 9 Schedule 6 of the FTCA but recommend you require the applicants to submit specific information, as detailed in Table A, to assist with consideration of the application by a panel. Auckland Transport did not oppose project referral and commented the project location in the AUP anticipates this form of residential subdivision, development and intensification. They noted the proposal has the potential to be contrary to the provisions of Silverdale 3 sub-precinct B, in particular Policy I537.3(8), as well as Policy E27.3(2) – Transportation in the AUP. Auckland Transport commented Auckland Council is currently processing an application for the subject site which would appear to be identical to the project but noted without the full application material submitted to MfE it is unclear whether this is the case. Auckland Transport has provided specialist advice to Council to assist in the processing of this application and notes there are several information request matters outstanding with the Council application which would be relevant to Auckland Transport being able to assess any potentially significant adverse transport effects. We note that the applicants are not precluded from lodging a consent application with a consent authority under the RMA and an application for referral under the FTCA for the same or substantially the same activity. However if the project is referred to a panel, the applicants will be required to withdraw the consent application under the RMA before lodging a consent application under the FTCA (schedule 6, clause 28). Auckland Transport requested that if the project is referred to a panel, the applicants be required to provide an integrated transport assessment with their resource	applicant has confirmed that no Overseas Investment Office approval was required at the time the land was purchased and no other approvals are required in relation to the project. The applicant provided information advising that none of the interests and instruments noted on the record of title will prevent, limit or delay project delivery. The applicant has noted that the works are common urban activities (subject to any resource consents) and will better integrate the site and the adjoining land uses). The project will involve some earthworks extending onto small areas of the adjacent properties at 17, 39 and 53 Small Road, Silverdale. The applicants have entered agreements with the owners of these adjacent properties which enable the applicants to undertake the project.	ii. identifies any upgrades to the local road network that are required to service that traffic iii. identifies any funding required to carry out those upgrades (including who will provide that funding) iv. contains information on discussions held, and agreements made, between the applicants and Auckland Transport c. an integrated transport assessment including: i. an assessment of the effects of the project on the surrounding transport network ii. an assessment of how the project will support people to use public transport and active modes of transport (such as walking and cycling) iii. information on discussions held, and agreements made, between the applicants and Auckland Transport d. a landscape and urban design assessment of the effects of the project including an assessment of how the project aligns with the Auckland Council Open Space Provision Policy (2016) e. a draft construction management plan including details of proposed measures to control dust, erosion, and sedimentation f. an ecological assessment of the effects of the project on freshwater and natural wetlands We recommend you direct a panel to invite comments on any resource consent applications for the project from: - Waka Kotahi NZ Transport Agency - Auckland Transport - Watercare Services Limited

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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)?			
				consent application and a panel be required to invite comments from Auckland Transport. All responses received by parties invited to comment are attached in Appendix 6.		• Te Patukirikiri Iwi Trust • Ngā Maunga Whakahii o Kaipara Development Trust • Ngāti Tamaoho Trust • Ngātiwai Trust • Ngāti Whātua Ōrākei Trust Board • Te Kupenga o Ngāti Hako • Hauraki Māori Trust Board. We also recommend that you agree to copy the application and notice of decisions to: • Te Patukirikiri Iwi Trust • Ngā Maunga Whakahii o Kaipara Development Trust • Ngāti Tamaoho Trust • Ngātiwai Trust • Ngāti Whātua Ōrākei Trust Board • Te Kupenga o Ngāti Hako • Hauraki Māori Trust Board • the groups seeking customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011, listed in Attachment 7 of the Section 17 Report.