

FTC#188 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2022-101 Beachside—Mission Bay Project

Date submitted:	2 March 2023	Tracking #: BRF-2390	
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. Beachside—Mission Bay Project application (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 Drive Holdings Limited 5. Section 17 Report (Databox link) 6. Comments received from Ministers, Auckland Council, Auckland Transport and Watercare Services Limited (Databox link) 7. Further information received post-consultation (Databox link).

Ministry for the Environment contacts

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FTC#188: 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 Drive Holdings Limited to refer the Beachside—Mission Bay 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-2176) with your initial decisions annotated is in Appendix 2.
3. The project is to redevelop an approximately 6500 square metre site at 75-79, 81-87 and 89-97 Tamaki Drive, 6, 8-10, 12 and 14 Patteson Avenue, and 26, 28 and 30 Marau Crescent, Mission Bay, Auckland, and construct a mixed-use development comprising up to 7 buildings up to 5 storeys and 18 metres high, with 2 basement carparking levels. The buildings will include:
 - a. approximately 140-170 residential units
 - b. ground floor commercial and retail tenancy space
 - c. private communal open space
 - d. parking areas for cars, motorbikes, and bicycles.
4. The project will involve activities such as:
 - a. demolishing buildings, infrastructure and structures
 - b. carrying out earthworks (including disturbing potentially contaminated soils)
 - c. removing trees located within the street
 - d. taking and diverting groundwater and discharging it onto land
 - e. discharging stormwater (which may contain contaminants) onto land
 - f. constructing and operating the mixed-use development described in paragraph 3
 - g. placing structures in a flood plain
 - h. constructing or installing structures and infrastructure that are associated with the mixed-use development, including—
 - i. accessways for vehicles
 - ii. loading and parking areas
 - iii. infrastructure for three-waters services
 - i. developing land for the purpose of private open space including by landscaping and planting
 - j. any other activities that are –
 - i. associated with the activities described in a to i
 - ii. within the scope of the project as described in paragraph 3
5. The activities in paragraph 4 may not comply with standards relating to noise and vibration set out in Rule E25.6 of the Auckland Unitary Plan (AUP).

6. The project will require land use consent and water and discharge permits under the AUP and land use consent under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS). The project has restricted discretionary activity status under the AUP rules requiring consent, and controlled activity status under the NES-CS.
7. The site is located within the Business - Local Centre Zone under the AUP. The project generally aligns with the zone purpose to enable commercial activity which primarily services local convenience needs including retail, commercial services, office, food and beverage and small scale supermarkets, and provides residential living opportunities.
8. The applicant previously sought resource consent from Auckland Council through the Resource Management Act 1991 (RMA) consenting process for a mixed-use development on this project site in 2018. The development comprised over-height buildings (to a maximum height of 28 metres) included a cinema, and had overall discretionary activity status. The application was publicly notified, declined consent by Independent Planning Commissioners and subsequently appealed to and declined by the Environment Court. The applicant appealed to the High Court as they considered the Environment Court decision did not specify coherent reasons to decline. The High Court hearing was held in June 2022 and the Court released its decision on 23 December 2022. The Court found that there were no errors in the Environment Court's decision and its conclusion that the height, bulk and scale of the proposals were inconsistent with the AUP's policy framework was a decision that was available to it on the evidence.
9. This project has been revised to comply with the height standard (to a maximum height of 18 metres) under the AUP, no longer includes a cinema, and has an overall restricted discretionary activity status under the AUP. We consider that this project is sufficiently different to the previous application (particularly in relation to the reasons that the previous application was declined) that it is appropriate for you to consider this referral application. Submitters on the previous application may be concerned that referring this project will allow the applicant to 'have yet another go' and also that the fast-tracked process will prevent their concerns regarding development on the site from being adequately heard. The FTCA process is available to any applicant provided you are satisfied the project will help to achieve the FTCA's purpose. Residents and others who expressed concerns with the proposal as it went through the Council, Environment Court and High Court processes can be allowed the opportunity to provide comments to a panel as part of the FTCA process.
10. Auckland Council s 9(2)(f)(ii), s 9(2)(g)(i) oppose project referral due to the high level of public interest in the previous application, and consider that it would be more appropriate for the project to be considered under the RMA.
11. 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 applicant and a panel, and notification of your decisions.

Assessment against statutory framework

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

14. 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 applicant

15. In response to your request under section 22 of the FTCA the applicant provided further information on project scope, funding and job creation. We have taken this information into account in our analysis and advice.

Section 17 report

16. The Section 17 Report indicates that there are 15 iwi authorities, 8 Treaty settlements and 11 Treaty settlement entities relevant to the project area.
17. The Section 17 report outlines Treaty settlement cultural/commercial redress provided under each of the settlements relevant to the project area including acknowledgements and apologies relating to recognition of rangatiratanga which have implications for engagement and participation of the relevant iwi in resource management decision-making in their rohe.
18. No specific cultural or commercial redress provided under the settlements would be affected by the project.
19. 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

20. Comments were received from s 9(2)(f)(ii), s 9(2)(a)(i) Auckland Council, Auckland Transport and Watercare. The key points of relevance to your decision are summarised in Table A.

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

25. Auckland Council opposed project referral because it considered there is significant public interest in the site and its development, there is a previous resource consent application for a similar development awaiting a High Court determination, and the processes available under the FTCA may result in a rushed assessment. However, Council considered the project is generally consistent with the relevant zone objectives and policies of the AUP.
26. Auckland Council noted the applicant's hazard assessment appears to be based on historical assumptions and further information would need to be provided to address potential flooding risk, and an application for the project should include information on how it aligns with Plan Changes 78 to the AUP (to implement the Medium Density Residential Standards) and 80 (covering qualifying matters and resilience to the effects of climate change). 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 of Schedule of the FTCA but recommend you require the applicant to submit to a panel certain specific information, as detailed in Table A, to assist with consideration of the application by a panel.
27. Auckland Transport neither supported nor opposed project referral and noted that the applicant's traffic assessment is outdated and will need to be updated to reflect the current traffic environment and proposed changes and upgrading in the vicinity of the project site. Auckland Transport requested that if the project is referred, you direct the applicant to provide an integrated transport assessment with their resource consent application to a panel, and require a panel to invite comments from Auckland Transport.
28. Watercare neither supported nor opposed project referral but noted that there is sufficient capacity in the water and wastewater networks to service the development. Watercare commented that there are likely to be some local network upgrades required upstream of the Atkins Pumping Station which will need to be undertaken at the applicant's expense.

Section 18 referral criteria

29. You may accept the application for project referral if you are satisfied 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 creating approximately 4500 full-time equivalent (FTE) jobs over an 8-year design and construction period
 - b. increase housing supply through the construction of approximately 140-170 residential units
 - c. contribute to a well-functioning urban environment by providing a variety of apartment sizes in a location with good access to jobs, public transport and natural and open spaces
 - d. progress faster than would otherwise be the case under standard RMA process.

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.

Section 23 FTCA matters

34. 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.
35. We have considered whether it would be more appropriate for the project to be considered under standard RMA consenting process given the consenting history of the project site and the high level of public and media interest.
36. The applicant previously sought resource consent from Auckland Council through the standard RMA process for a mixed-use development on this project site. The development was considered as a discretionary activity and comprised over-height buildings (up to 28 metres high) and included a cinema. The application was publicly notified in 2018, declined consent by Independent Planning Commissioners in 2019 and was subsequently appealed to and declined by the Environment Court in 2021 (with 35 parties joining the appeal including 3 local community groups). The primary reason provided by the Environment Court for declining the development was the exceedance of the occupiable height limit standards in the AUP.
37. The applicant appealed to the High Court as they considered the Environment Court decision did not specify coherent reasons to decline. The High Court hearing was held in June 2022 and a decision was released on 23 December 2022. The High Court found there had been no errors of law and the Environment Court's findings were available to it on the basis of the evidence it considered.
38. The applicant has advised that the matters of contention in the original application related to the cinema activity and the overall building height of 28 metres, which was also the principal matter in contention in the Environment Court decision. The project that you are now considering for referral under the FTCA is a different design to the previous resource consent application to council. The buildings proposed under this project will have an occupiable height of 16 metres and a maximum height of 18 metres, thereby complying with the height standards in the AUP. The buildings also do not include a cinema.
39. There is a risk that referring the project could be viewed negatively by the wider community and this risk cannot be completely avoided. We note there were 699 submitters on the original resource consent application, including 626 in opposition, 3 neutral and 70 in support. If you decide to refer the project, a panel must invite comment 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.
40. Given the level of anticipated public interest, and the consenting history of the site, we recommend you require a panel to invite comments from the parties who joined the Environment Court appeal. We consider that with the benefit of comments from these parties, and the information we recommend the applicant provides (in Table A), a panel can undertake a full assessment of the application. Subject to these recommendations, we consider you should not decline the referral application under section 23(5)(b) of the FTCA (it would be more appropriate for the project to go through the standard consenting process

under the RMA).

Conclusions

41. We do not consider the matters noted above provide sufficient reason for declining to refer the project in whole or in part. You could accept the application under section 24 of the FTCA and refer the project to a panel with the specifications outlined below.
42. 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 applicant to provide any additional information on any application lodged with the EPA under the FTCA.
43. 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. Auckland Transport
 - b. Watercare Services Limited
 - c. Ngāti Koheriki Claims Committee
 - d. the parties who joined the appeal to the Environment Court¹
 - e. Ngā Maunga Whakahii o Kaipara Development Trust
 - f. Makaurau Marae Māori Trust
 - g. Hauraki Māori Trust Board.

Next steps

44. 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 applicant, anyone invited to comment under section 21, and the persons, entities and groups listed in section 25(2) of the FTCA. We consider you should also give the notice of decisions together with a copy of the application to Ngāti Koheriki Claims Committee and the parties who joined the appeal to the Environment Court.
45. If you decide to decline project referral, you must give the notice of your decisions, and the reasons for them, to the applicant and anyone invited to comment under section 21.
46. We have attached a notice of decisions letter to the applicant based on our recommendations (refer Appendix 4). Once you have signed the letter we will assist your office to copy it to all relevant parties.
47. 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.²
48. 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

¹ ENV-2019-AKL-283

² 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].

Environment's website. We will undertake this task on your behalf in accordance with your direction.

49. Our recommendations for your decisions follow.

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 Drive Holdings Limited unless you are satisfied that the Beachside—Mission Bay 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 creating approximately 4500 full-time equivalent (FTE) jobs over an 8-year design and construction period
 - ii. increase housing supply through the construction of approximately 140-170 residential units
 - iii. contribute to a well-functioning urban environment by providing a variety of apartment sizes in a location with good access to jobs, public transport and natural and open spaces

- iv. progress faster than would otherwise be the case under standard Resource Management Act 1991 process
- h. **Agree** to **refer** all of the project to a panel.

Yes/No
- i. **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. Auckland Transport
 - ii. Watercare Services Limited
 - iii. Ngāti Koheriki Claims Committee
 - iv. the parties who joined the appeal to the Environment Court
 - v. Ngā Maunga Whakahii o Kaipara Development Trust
 - vi. Makaurau Marae Māori Trust
 - vii. Hauraki Māori Trust Board.

Yes/No
- j. **Agree** to copy the application and notice of decisions to Ngāti Koheriki Claims Committee, the parties who joined the appeal to the Environment Court, Ngā Maunga Whakahii o Kaipara Development Trust, Makaurau Marae Māori Trust, Hauraki Māori Trust Board and applicants for protected customary rights or customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011, in addition to those specified in section 25 of the FTCA.

Yes/No
- k. **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
- l. **Sign** the notice of decisions letter to the applicant (attached in Appendix 4).

Yes/No

- m. **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



Madeleine Berry
Acting 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 Beachside—Mission Bay Project Applicant Drive Holdings Limited c/- Barker and Associates Location 75-79, 81-87 and 89-97 Tamaki Drive, 6, 8-10, 12 and 14 Patteson Avenue, and 26, 28 and 30 Marau Crescent, Mission Bay, Auckland	The project is to redevelop an approximately 6500 square metre site at 75-79, 81-87 and 89-97 Tamaki Drive, 6, 8-10, 12 and 14 Patteson Avenue, and 26, 28 and 30 Marau Crescent, Mission Bay, Auckland, and construct a mixed-use development comprising up to 7 buildings up to 5 storeys and 18 metres high, with 2 basement carparking levels. The buildings will include: a. approximately 140-170 residential units b. ground floor commercial and retail tenancy space c. private communal open space d. parking areas for cars, motorbikes, and bicycles. The project will involve activities such as: a. demolishing buildings, infrastructure and structures b. carrying out earthworks (including disturbing potentially contaminated soils)	The project is eligible for referral under section 18(3)(a)–(d) as: <ul style="list-style-type: none"> 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 under the Marine and Coastal Area (Takutai Moana) Act 2011 	Economic benefits for people or industries affected by COVID-19 (19(a)) Based on the information provided by the applicant we consider the project may result in the following economic benefits: <ul style="list-style-type: none"> provide approximately 4500 full time equivalent (FTE) jobs over an 8-year design and construction period contribute approximately \$344 million to regional GDP. Economic costs for people or industries affected by COVID-19 (19(a)) <ul style="list-style-type: none"> 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 wellbeing of current and future generations as it will: <ul style="list-style-type: none"> generate employment by providing approximately 4500 FTE jobs over an 8-year period increase housing supply through the construction of approximately 140-170 residential units in a location with good access to jobs, public transport and natural and open spaces, and where there is a high housing demand. Is the project likely to progress faster by using this Act? (19(c)) The applicant considers that the fast-track process will allow the project to progress approximately 22 months faster than under standard Resource Management Act 1991 (RMA) processes, due to the possibility of potential public	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) • 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)) We have considered whether it would be more appropriate for the project to be considered under standard RMA consenting process given the consenting history of the project site and the appeal currently before the High Court means the project is likely to generate public interest. The applicant previously sought resource consent from Auckland Council through the standard RMA process for a mixed-use development on this project site. The development was considered as a discretionary activity and comprised over-height buildings (up to 28 metres high) and included a cinema. The application was publicly notified in 2018, declined consent by Independent Planning Commissioners in 2019 and was subsequently appealed to and declined by the Environment Court in 2021 (with 35 parties joining the appeal including 3 local community groups). The primary reason provided by the Environment Court for declining the development was the exceedance of the occupiable height limit standards in the AUP. The applicant appealed to the High Court as they considered the Environment Court decision did not specify coherent reasons to decline. The High Court hearing was held in June 2022 and a decision is expected by the end of 2022. The applicant has advised that the matters of contention in the original application related to the cinema activity and the overall building height of 28 metres, which was also the principal matter in contention in the Environment Court decision. The project that you are now considering for referral under the FTCA is a different design to the previous resource consent application to council.	In response to key comments: <ul style="list-style-type: none"> s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) we note Auckland Council's concerns that the project is likely to attract significant public interest but consider that this can be appropriately addressed by requiring a panel to invite comments on a consent application from the relevant parties we note comments from s 9(2)(f)(ii), s 9(2)(g)(i) Auckland Council, Auckland Transport and Watercare requesting you direct the applicant to provide various reports with their application to a panel. We consider these reports are generally covered by the requirements of clause 9 of Schedule 6 of the FTCA, and note that a panel can seek any additional information at their discretion. Although our assessment has noted the project is likely to be subject to significant public interest, you could accept the application under section 24 of the FTCA and refer all of the project to a panel for the following reasons: <ul style="list-style-type: none"> the project has the potential to generate employment by creating approximately 4500 full-time

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)?			
	c. removing trees located within the street d. taking and diverting groundwater and discharging it onto land e. discharging stormwater (which may contain contaminants) onto land f. constructing and operating the mixed-use development described in paragraph 3 g. placing structures in a flood plain h. constructing or installing structures and infrastructure that are associated with the mixed-use development, including– i. accessways for vehicles ii. loading and parking areas iii. infrastructure for three-waters services i. developing land for the purpose of private open space including by landscaping and planting j. any other activities that are – i. associated with the activities		<p>notification with an associated hearing and the potential for appeal.</p> <p>Will the project result in a public benefit? (19(d))</p> <p>Based on the information provided by the applicant we consider that the project may result in the following public benefits:</p> <ul style="list-style-type: none"> • generating employment over an 8-year design and construction period • increasing housing supply in a region experiencing high housing demand • contributing to a well-functioning urban environment <p>Potential to have significant adverse environmental effects, including greenhouse-gas emissions (19(e))</p> <p>The applicant has advised that the project has the potential for adverse environmental effects arising from:</p> <ul style="list-style-type: none"> • construction activities (including traffic, noise, vibration, sediment control, geotechnical/ retaining basement walls) • ground contamination (from historic activities – vehicle servicing, fill material including potential asbestos) • transport (interfaces and intersections) • natural hazards and flooding (coastal inundation and sea level rise) • stormwater runoff (receiving coastal environment) <p>and may include adverse effects on:</p> <ul style="list-style-type: none"> • streetscape character and visual amenity (interface with surrounding environment), urban design and local neighbourhood character 	<p>• s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>Local authorities</p> <p>Auckland Council opposed project referral as it considered it would be more appropriate for the project to be considered under existing RMA processes as there is significant public interest in the project site, there is a previous resource consent application for the site which is under challenge in the High Court, and the FTCA process may result in a rushed assessment. Despite this, the Council considered the project to be generally consistent with the objectives and policies of the relevant AUP zones. The Council noted that the project should include information on how it aligns with Plan Change 78 to the AUP (a plan change to implement the Medium Density Residential Standards) and Plan Change 80 to the AUP (a plan change covering qualifying matters and resilience to the effects of climate change).</p> <p>The Council also identified various reports that it would expect to be provided to address effects on traffic, stormwater, landscape and urban design, infrastructure, acoustics and hazards.</p> <p>Other parties</p> <p>Auckland Transport neither supported nor opposed project referral and requested that if the project is referred you direct the applicant to provide an integrated transport assessment with a resource consent application to a panel and require a panel to invite comment from Auckland Transport. Auckland Transport also noted that the applicant's traffic assessment was prepared in 2018 and is therefore likely to be out of date, and an application to the EPA should include an up-to-date assessment.</p> <p>Watercare Services Limited (Watercare) neither supported nor opposed project referral but noted that there appears to be capacity in the water and wastewater networks to service the project, but the Atkins Pump</p>	<p>The buildings proposed under this project will have an occupiable height of 16 metres and a maximum height of 18 metres, thereby complying with the height standards in the AUP. The buildings also do not include a cinema. We also note the applicant intends to give effect to this project if it is referred, regardless of the outcome of the High Court appeal.</p> <p>There is a risk that referring the project could be viewed negatively by the wider community and this risk cannot be completely avoided. We note there were 699 submitters on the original resource consent application, including 626 in opposition, 3 neutral and 70 in support. If you decide to refer the project, a panel must invite comment 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.</p> <p>Given the level of anticipated public interest, and the consenting history of the site, we recommend you require a panel to invite comments from the parties who submitted on the Environment Court appeal. We consider that with the benefit of comments from these parties, and the information we recommend the applicant provides, a panel can undertake a full assessment of the application. Subject to these recommendations, we consider you should not decline the referral application under section 23(5)(b) of the FTCA (it would be more appropriate for the project to go through the standard consenting process under the RMA).</p> <p>Inconsistency with a national policy statement (23(5)(c))</p> <p>The applicant s 9(2)(f)(ii), s 9(2)(g)(i) consider the project is well aligned with the objectives and policies of the NPS-UD.</p> <p>We have not identified that the project is likely to be inconsistent with any other national policy statement and nor have any of the comments received.</p>	<p>equivalent (FTE) jobs over an 8-year design and construction period</p> <ul style="list-style-type: none"> • the project has the potential to increase housing supply through construction of approximately 140-170 residential units • the project has the potential to contribute to a well-functioning urban environment by providing a variety of housing sizes with accessibility to jobs, public transport and open spaces • the project has the potential to progress faster than would otherwise be the case under standard Resource Management Act 1991 process <p>and require a panel to invite comment from:</p> <ul style="list-style-type: none"> • Auckland Transport • Watercare Services Limited • Ngāti Koheriki Claims Committee • The parties who joined the Environment Court appeal • Ngā Maunga Whakahii o Kaipara Development Trust • Makaurau Marae Māori Trust • Hauraki Māori Trust Board <p>We recommend you provide a copy of the application and the notice of decision to the following parties in addition to those specified in section 25 of the FTCA:</p> <ul style="list-style-type: none"> • Ngāti Koheriki Claims Committee • the parties who joined the Environment Court appeal • Ngā Maunga Whakahii o Kaipara Development Trust • Makaurau Marae Māori Trust • Hauraki Māori Trust Board • applicants for protected customary rights or customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011.

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)?			
	<p>described in a to i</p> <p>ii. within the scope of the project as described in paragraph 3</p> <p>The activities in paragraph 4 may not comply with standards relating to noise and vibration set out in Rule E25.6 of the Auckland Unitary Plan (AUP).</p> <p>The project will require land use consent and water and discharge permits under the AUP and land use consent under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS). The project has restricted discretionary activity status under the AUP rules requiring consent, and controlled activity status under the NES-CS.</p>		<ul style="list-style-type: none"> existing and proposed infrastructure, including within the wider network and upgrades. <p>The applicant has provided some preliminary technical assessments in support of their view that the project will not have any significant adverse effects.</p> <p>We note that you do not require a full Assessment of Environmental Effects and supporting evidence to make a referral decision, and a panel consider this and any appropriate mitigation, offsetting or compensation to manage adverse effects, should the project be referred.</p> <p>Other relevant matters (19(f))</p> <p>The project site (multiple titles) is subject to several easement and right of way instruments, encumbrances and land interests. The application details that legal interests present on the Records of Title are internal to the site – such as those relating to party walls, drainage rights, and right of way. There are a number of encumbrances with Auckland Council. None of the legal interests will preclude the redevelopment of the site.</p>	<p>Station may need to be upgraded at the applicant's expense.</p> <p>All responses received by parties invited to comment are attached in Appendix 6.</p>	<p>Inconsistent with a Treaty settlement (23(5)(d))</p> <p>We have not identified any apparent inconsistencies with the relevant Treaty settlement.</p> <p>Involves land needed for Treaty settlements (23(5)(e))</p> <p>The project site does not include any land needed for Treaty Settlement purposes.</p> <p>Applicant has poor regulatory compliance (23(5)(f))</p> <p>Auckland Council has not identified any environmental regulatory compliance history for the applicant.</p> <p>Insufficient time for the project to be referred and considered before FTCA repealed (23(5)(g))</p> <p>There is sufficient time for the application to be referred and considered before the FTCA is repealed.</p> <p>Other issues and risks:</p> <ul style="list-style-type: none"> N/A 	