

FTC#185 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2022-102 Pohutukawa Drive Subdivision Project

Date submitted:	22 February 2022	Tracking #: BRF-2666	
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: 7	Appendices: 1. Pohutukawa Drive Subdivision Project application 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 Evans Family Trust 5. Section 17 Report (Databox link) 6. Comments received from Ministers and local authorities (Databox link).

Ministry for the Environment contacts

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FTC#185: 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 the trustees of Evans Family Trust to refer the Pohutukawa Drive Subdivision 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-2175) with your initial decisions annotated is in Appendix 2.
3. The project is to subdivide a 12-hectare site located at 996 State Highway 2, Eskdale, Hawke's Bay, to create approximately 81 lots for residential use, 1 lot for commercial use, and construct approximately 83 residential units (81 standalone homes and 2 second-storey apartments above the commercial floorspace). Construction of the residential units will be undertaken by third parties.
4. The project includes construction of supporting infrastructure, including roads, accessways, parking areas and three waters services (including construction of a private wastewater treatment plant) and a 2-hectare solar farm (located over the wastewater discharge fields). It is intended that the wastewater treatment plant is powered by the solar farm. The project also includes realigning and restoration planting the Whirinaki Drain and the creation of public open space areas.
5. The project will involve activities such as:
 - a. subdividing land
 - b. carrying out earthworks (including earthworks that disturb potentially contaminated soils)
 - c. removing vegetation
 - d. discharging stormwater (which may contain contaminants) onto land within 100 metres of a wetland
 - e. developing land for the purposes of public open space, including by landscaping and planting; and
 - f. installing infrastructure or structures associated with the subdivision and the development, including –
 - i. roads intended to be vested in Hastings District Council (HDC)
 - ii. public accessways
 - iii. driveways and parking areas
 - iv. infrastructure for private and public three waters services
 - g. installing underground electricity cables
 - h. installing infrastructure ancillary to the solar farm, including underground electricity cables
 - i. constructing and installing residential and commercial units
 - j. constructing, installing and operating a solar farm
 - k. constructing and operating a wastewater treatment plant
 - l. any other activities that are –
 - i. associated with the activities described in a to k

ii. within the project scope as described in paragraphs 3 and 4

6. The project will require land use and subdivision consents under the Partially Operative Hastings District Plan (HDP); land use consents and discharge and water permits under the Regional Resource Management Plan for Hawkes Bay (RRMP), coastal permits under the Hawkes Bay Regional Coastal Environment Plan and resource consents under the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soils to Protect Human Health) Regulations 2011 (NES-CS).
7. The proposed activities have overall non-complying activity status under the HDP, due to exceedances of permitted standards, including subdivision within the Rural Zone to provide residential-size lots and the construction of buildings within a River Hazard Overlay. Accordingly, a panel would be required to consider whether any resource consent application for the project meets at least one of the 'gateway tests' in section 104D of the Resource Management Act 1991 (RMA). The applicant considers the project can pass both 'gateway tests'.
8. Additional resource consents may be required under the National Environmental Standards for Freshwater 2020 (NES-F) as the project area contains a potential wetland which is within 100 metres of the 'proposed raingarden stormwater settlement area'. If the wetland is considered to be a 'natural wetland' (yet to be confirmed by the applicant), any discharge of stormwater within 100 metres of its limit is a non-complying activity.
9. The Heretaunga Plains Urban Development Strategy (HPUDS) was developed by Hawke's Bay Regional Council (HBRC), HDC and Napier City Council (NCC) in 2010 and reviewed in 2017. The HPUDS provides for the growth needs of Hastings and Napier from 2015 to 2045. The project site has not been identified in the HPUDS or Hawkes Bay Regional Policy Statement (HBRPS) as appropriate for future residential growth. HDC considered the project to be contrary to the HPUDS as it utilises productive land.
10. The National Policy Statement for Highly Productive Land 2022 (NPS-HPL) came into force on 17 October 2022. Comments received from s 9(2)(f)(ii), s 9(2)(g)(i), HBRC and HDC raised concern about the project's inconsistency with NPS-HPL. HBRC advised that the project is located on land partly classed as land use capability class (LUC) 2 which is classified in the NPS-HPL as highly productive land. The NPS-HPL instructs that the subdivision of highly productive land is avoided, except as provided in the NPS. At this stage we cannot provide definitive advice on whether the project is inconsistent with the NPS-HPL, as that would require further detailed analysis of the project.
11. We recommend you decline the referral application under section 23(1), 23(2) and 23(5)(b) of the FTCA. We seek your decision on this recommendation.

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.
13. You must decline the referral application if you are satisfied the project does not meet the section 18 referral criteria. You may also decline the application for any other reason, including those listed in section 23(5), whether or not the project meets the referral criteria.
14. However, before you make that decision 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 and local authorities (in Appendix 6). We discuss these matters and provide our advice below.

Further information provided by applicant

15. The applicant did not provide a response to your request under section 22 of the FTCA for further information about the nature of the potential wetland within the project area.

Section 17 report

16. The Section 17 Report indicates that there are three iwi authorities, three Treaty settlements and three Treaty settlement entities relevant to the project area.
17. The report outlines Treaty settlement redress relevant to the project area, including acknowledgements and apologies relating to recognition of rangatiratanga which have implications for engagement and participation of iwi in resource management decision-making in their rohe and the specific cultural/commercial redress that would be affected by the project. This is addressed by identifying these parties as relevant iwi authorities.
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) HDC, and HBRC. The key points of relevance to your decision are summarised in Table A. The Ministers that were consulted on this application may or may not be the current Ministers for those portfolios since the Cabinet reshuffle of 1 February 2023. Comments reflected here are of the Ministers in the portfolio at the time of inviting comment on 28 September 2022.

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. HDC opposed project referral and considered it is inappropriate residential development in the Rural Zone and is contrary to the NPS-HPL, National Policy Statement on Urban Development 2020 (NPS-UD) and HBRPS.
24. HBRC considered there is no reason the project could not be processed under standard RMA processes, and has identified several areas of concern, including natural hazards, stormwater management, misalignment with the NPS-HPL, misalignment with strategic planning for housing needs in wider Hastings/Napier area and reverse sensitivity.

Section 18 referral criteria

25. Although the project does not include activities listed in section 18(3) that would make it ineligible for referral, it is not clear that the project will help to achieve the purpose of the FTCA.
26. We consider the project can help to achieve the employment and investment certainty objectives of the FTCA's purpose and meets section 18(2) in this regard. This is because the project has the potential to generate approximately 147 direct full-time equivalent (FTE) jobs over a 4-year development period and increase housing supply by enabling 83 residential

units.

27. However, the FTCA purpose requires that these objectives are achieved while promoting sustainable management of natural and physical resources¹. Section 19 provides a range of matters that you may have regard to when considering, for the purpose of section 18(2) whether a project will help to achieve the purpose of the FTCA, including by considering any other matter that you consider relevant (section 19(f)).
28. We consider the project may not promote sustainable management of natural and physical resources as it involves the use and development of land in a way and at a rate that may not enable people and communities to provide for their social, economic, and cultural well-being, while sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, as explained in Table A. The project does not align with existing district plan policy, or infrastructure and strategic planning for future urban development within the Hastings district. Specifically, the project will not consolidate growth in the sub-region (Heretaunga Plains) in the manner envisaged by the HPUDS, as this project is for urban development to occur outside planned areas of growth. The project site is subject to natural hazard risks (risks from flooding, inundation, sea level rise and tsunami), contains land which is likely to meet the definition of highly productive land, and has no additional public infrastructure planned for three-waters, transport, or community facilities.
29. There is potential for significant pressure on three waters infrastructure, including in relation to hydrological matters and impacts on existing infrastructure, and it would be more difficult to resolve these potential effects within the fast-track process, compared to an RMA consenting process. HDC noted the project is located outside an identified growth area, there are substantial constraints on infrastructure, and no consideration or planning has been undertaken for servicing urban development on the project site. The applicant provided an engineering report that concluded the project can be serviced via existing water and wastewater networks, and on-site stormwater retention, with upgrades required to the wider network, but did not identify who would fund or deliver these wider network upgrades.
30. We do not consider that you can be satisfied that the project will promote sustainable management of natural and physical resources and thereby help to achieve the FTCA purpose under section 18(2).
31. If you agree, you must decline the referral application under section 23(1) of the FTCA.

Other reasons to decline

32. Even if you are satisfied 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

33. Section 23(5) of the FTCA provides further guidance on potential reasons to decline an application, and our analysis of these matters is summarised in Table A.
34. We have considered whether it would be more appropriate for the project to be considered under standard RMA consenting process, particularly given the wider community may expect the project to be preceded by a plan change, which would allow wider public participation. The site is located outside of an urban zone identified in the HDP and the HPUDS, and the

¹ Sustainable management means 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 well-being and for their health and safety while— (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment

project site has not been identified as a location for future urban growth under the HPUDS. Therefore, urban development on the site is unlikely to be readily anticipated by the public.

35. Comments received from s 9(2)(f)(ii), s 9(2)(g)(i) [redacted] HBRC and HDC recommended the project proceed through other strategic, policy or consenting pathways.
36. HBRC and HDC considered the project will have considerably different outcomes than anticipated under the HPUDS. The HPUDS was reviewed in 2017 and at that time the applicant sought to have the project site included as a future or reserve residential growth area. The councils involved in the HPUDS review decided that the project site was not suitable to be identified as either a future or reserve residential growth area. The project would result in a significant change in density of development enabled on the project site and we consider that you should decline the application because it would be more appropriate for the project to be considered under the RMA to allow for wider public participation.
37. The project has non-complying activity status under the HDP, meaning that (under clause 32 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 applicant considers the project can pass both gateway tests. We consider this can be appropriately determined by a panel and therefore we do not consider that you should decline the referral application on this basis. We note that the FTCA does not preclude projects with non-complying activity status from being referred.
38. The NPS-HPL came into force on 17 October 2022. The project site is zoned for the purpose of rural production and is on land partly identified as LUC 2. HBRC and HDC identify that the project site is likely to meet the definition of 'highly productive land²' under the NPS-HPL. Highly productive land under the NPS-HPL is required to be protected from inappropriate use and development, and subdivision is to be avoided, except as provided for in the NPS-HPL. The project site does not appear to meet any of the exclusion criteria outlined in the NPS-HPL. However, at this stage we cannot provide definitive advice on whether the project is inconsistent with the NPS-HPL, as that would require further detailed analysis of the project. Therefore, we do not consider that you should decline the referral application under section 23(5)(c) of the FTCA (inconsistency with a relevant national policy statement).

Other matters

39. A key issue is whether the project would be more appropriately considered as part of a broader strategic planning process that assesses appropriate locations for future urban development, followed by a site-specific RMA consenting process.
40. Proceeding via a resource consent process in advance of strategic planning and re-zoning is generally not regarded as good planning practice because it raises risks of fragmented or poorly integrated development. We have provided advice on several referral applications confirming that the FTCA does not preclude referral of the project for this reason. However, for this project we consider the misalignment with existing district plan policy, infrastructure

² Until a regional policy statement contains maps of highly productive land, each territorial authority and consent authority must apply the NPS-HPL as if references to 'highly productive land' were references to land that, at the commencement date: (a) is (i) zoned general rural or rural production; and (ii) LUC 1, 2, or 3 land; but (b) is not: (i) identified for future urban development; or (ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

Under the NPS-HPL, 'identified for future urban development' means: (a) identified in a published Future Urban Development Strategy as land suitable for commencing urban development over the next 10 years; or (b) identified: (i) in a strategic planning document as an area suitable for commencing urban development in the next 10 years; and (ii) at a level of detail that makes the boundaries of the area identifiable in practice.

planning, strategic planning for future urban development, and potential inconsistency with NPS-HPL, require cumulative consideration alongside the potential for public interest in the project. Therefore, we consider that referral of the project should be declined as the project would be more appropriately considered following a broader strategic planning process under the RMA (section 23(2)).

41. An out of zone development of this scale in this location that is unlikely to be supported with the appropriate servicing infrastructure to enable the development to proceed quickly. This casts doubt as to whether the project meets the FTCA's purpose and particularly whether the project will contribute to well-functioning urban environments. Therefore, we consider it more appropriate for the project to go through standard planning and consenting processes under the RMA due to the misalignment with existing and proposed infrastructure planning.

Conclusions

42. The project meets the criteria in section 18, except for helping to achieve the purpose of the FTCA. The overarching purpose of the FTCA (under section 4) is to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources. Although the project will help to generate employment and enable construction of housing, it is not clear whether you can be satisfied the project will promote sustainable management of natural and physical resources. On balance, we do not consider the project will help to achieve the purpose of the FTCA. If you agree, you must decline the referral application under section 23(1) of the FTCA.
43. Further, we consider that it is more appropriate for the project to go through standard processes under the RMA due to the misalignment with existing and proposed district plan policy, infrastructure planning and strategic planning for future urban development.
44. The project may be inconsistent with the NPS-HPL, however we cannot provide definitive advice on this issue at this stage. If the project site is considered highly productive land under the NPS-HPL, it would mean that the land is required to be protected from inappropriate use and development, and that the subdivision of highly productive land is avoided.
45. We consider that on balance, due to the issues and risks associated with the project summarised above, it is also appropriate to decline to refer the application under sections 23(1) 23(2), and 23(5)(b)) of the FTCA.

Next steps

46. 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.
47. 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.
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 Environment's website. We will undertake this task on your behalf in accordance with your direction.
49. Our recommendations for your decisions follow.

Recommendations

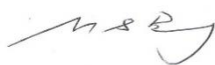
50. We recommend that you:

- a. **Note** section 23(1) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) requires you to decline the referral application from Evans Family Trust unless you are satisfied that the Pohutukawa Drive Project (project) meets all the referral criteria in section 18 of the FTCA, including that it would help to achieve the FTCA's purpose.
 - b. **Note** that section 23(2) of the FTCA also allows you to decline an application for any other reason, whether or not the project meets the referral criteria.
 - c. **Note** before deciding to decline the application for project referral under section 23 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. **Decline** to refer the project to a panel under section 23(2) of the FTCA because:
 - i. the project may not promote sustainable management of natural and physical resources as it does not align with existing district plan policy, infrastructure planning and strategic planning for future urban development within the Hastings district. On balance, the project does not help to achieve the purpose of the FTCA.
 - ii. it is more appropriate for the project to go through standard consenting processes under the Resource Management Act 1991.
- Yes/No
- e. **Sign** the notice of decisions letter to the applicant (attached in Appendix 4).
- Yes/No
- f. **Note** that should you disagree with our recommendations to decline the referral application, we will need to give further consideration to directions to a panel and/or the applicants that would be advisable under section 24 of the FTCA.

- g. **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 Pohutukawa Drive Subdivision Project Applicants The trustees of Evans Family Trust Location 996 State Highway 2, Eskdale, Hawke's Bay	The project is to subdivide a 12-hectare site located at 996 State Highway 2, Eskdale, Hawke's Bay, to create approximately 81 lots for residential use, 1 lot for commercial use, and construct approximately 83 residential units (81 standalone homes and 2 second-storey apartments above the commercial floorspace). Construction of the residential units will be undertaken by third parties. The project includes construction of supporting infrastructure, including roads, accessways, parking areas and three waters services (including construction of a private wastewater treatment plant) and a 2-hectare solar farm (located over the wastewater discharge fields). It is intended that the wastewater treatment plant is powered by the solar farm. The project also includes realigning and restoration planting the Whirinaki Drain and the creation of public open space areas. The project will involve activities such as:	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 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)) Based on the information provided by the applicant we consider that the project may result in the following economic benefits: <ul style="list-style-type: none"> creating approximately 147 direct full-time equivalent (FTE) jobs over a 4-year period contributing approximately \$19.5 million to construction sector 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 social wellbeing of current and future generations as it will: <ul style="list-style-type: none"> generate employment by providing 147 direct full-time equivalent (FTE) jobs over a 4-year period (37 jobs per year) increase housing supply by enabling 83 residential units. Is the project likely to progress faster by using this Act? (19(c)) The applicant estimates that under standard Resource Management Act 1991(RMA) process it may take up to 2.5 years longer to gain consent for the project due to the likelihood of notification and possible appeals. Will the project result in a public benefit? (19(d)) Based on the information provided by the application we consider that	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)	Section 23(5) matters: Insufficient information (23(5)(a)) The applicants have 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, particularly given the wider community may expect the project to be preceded by a plan change, which would allow wider public participation. The site is located outside of an urban zone identified in the HDP and the HPUDS, and the project site has not been identified as a location for future urban growth under the HPUDS. Therefore, urban development on the site is unlikely to be readily anticipated by the public. Comments received from s 9(2)(f)(ii), s 9(2)(g)(i) HBRC and HDC recommended the project proceed through other strategic, policy or consenting pathways. HBRC and HDC considered the project will have considerably different outcomes than anticipated under the HPUDS. The HPUDS was reviewed in 2016 and at that time the applicants sought to have the project site included as a future or reserve residential growth area. The councils involved in the HPUDS review decided that the project site was not suitable to be identified as either a future or reserve residential growth area. The project would result in a significant change in density of development enabled on the project site and we consider it would be more appropriate for the project to be	In response to key comments: <ul style="list-style-type: none"> s 9(2)(f)(ii), s 9(2)(g)(i) HBRC and HDC that the project should not be referred through the fast-track process and should go through standard RMA processes that allow for notification s 9(2)(f)(ii), s 9(2)(g)(i) we recommend that if you decide to accept the project for referral you require the applicant to provide a historic heritage assessment. We consider the project can help to achieve the employment and investment certainty objectives of the FTCA's purpose and meets section 18(2) in this regard. This is because the project has the potential to generate approximately 147 direct full-time equivalent (FTE) jobs over a 4-year development period and increase housing supply by enabling 83 residential units. However, the FTCA purpose requires that these objectives are achieved while promoting sustainable management of natural and physical resources requires that these objectives are achieved while promoting natural and physical resources. We consider the project may not promote sustainable management of natural and physical resources as it involves the use and development of land in a way and rate that may not

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)?			
	<p>a. subdividing land</p> <p>b. carrying out earthworks (including earthworks that disturb potentially contaminated soils)</p> <p>c. removing vegetation</p> <p>d. discharging stormwater (which may contain contaminants) onto land within 100 metres of a wetland</p> <p>e. developing land for the purposes of public open space, including by landscaping and planting; and</p> <p>f. installing infrastructure or structures associated with the subdivision and the development, including –</p> <p>i. roads intended to be vested in Hastings District Council (HDC)</p> <p>ii. public accessways</p> <p>iii. driveways and parking areas</p> <p>iv. infrastructure for private and public three waters services</p> <p>g. installing underground electricity cables</p>		<p>the project may result in the following public benefits:</p> <ul style="list-style-type: none"> • generating employment. • increasing housing supply. <p>Potential to have significant adverse environmental effects, including greenhouse-gas emissions (19(e))</p> <p>The project has the potential for adverse environmental effects arising from:</p> <ul style="list-style-type: none"> • earthworks • construction activities • increased loading on water supply infrastructure • traffic • loss of potentially productive rural land • impact on the character and amenity of the surrounding area <p>The applicant has stated that the project will not have significant adverse effects.</p> <p>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.</p> <p>The project site is located close (but not immediately adjacent) to the coast and may be subject to coastal inundation. To mitigate this risk, the applicant proposes to raise the ground level prior to undertaking construction, and to realign the Whirinaki Drain.</p> <p>Other relevant matters (19(f))</p> <p>The proposed activities have overall non-complying activity status due to including subdivision within the Rural Zone to provide residential size lots and the</p>	<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>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>Local authorities</p> <p>Hastings District Council (HDC) did not support project referral as it considered the project inappropriate in the area, and stated that if the project were to proceed, it is best managed through a plan change or standard resource consent process. HDC acknowledged that while the project would contribute to employment and housing supply within the Hastings District, the project is directly contrary to the National Policy Statement on Highly Productive Land 2022 (NPS-HPL) and inconsistent with key aspects of the NPS-UD. HDC considers the project would be more appropriately considered following the mapping of highly productive land required by the NPS-HPL and through the Future Development Strategy process required by the NPS-UD.</p> <p>HDC also considers the project to be contrary to the Heretaunga Plains Urban Development Strategy</p>	<p>considered under the RMA to allow for wider public participation.</p> <p>Inconsistency with a national policy statement (23(5)(c))</p> <p>We consider the project may be inconsistent with the National Policy Statement on Urban Development 2020 (NPS-UD) and National Policy Statement for Highly Productive Land 2022 (NPS-HPL).</p> <p>The NPS-UD seeks to ensure future development near to employment opportunities, in areas that are well served by existing or planned public transport and seeks that urban environments support reductions in greenhouse gas emissions and are resilient to the effects of climate change. The development has limited nearby employment opportunities, is not serviced by public transport and may be affected by climate change.</p> <p>NPS-HPL came into force on 17 October 2022. The project site is zoned for the purpose of rural production and is partly identified as LUC 2. HBRC and HDC identify that the project site is likely to meet the definition of 'highly productive land' under the NPS-HPL. As highly productive land under the NPS-HPL, the project site is required to be protected from inappropriate use and development, and subdivision is to be avoided, except as provided for in the NPS-HPL. The project site does not appear to meet any of the exclusion criteria outlined in the NPS-HPL.</p> <p>At this stage we cannot provide definitive advice on whether the project is inconsistent with the NPS-UD and NPS-HPL, as that would require further detailed analysis of the project. Therefore, we do not consider that you should decline the referral application under section 23(5)(c) of the FTCA (inconsistency with a relevant national policy statement).</p> <p>Inconsistent with a Treaty settlement (23(5)(d))</p>	<p>enable people and communities to provide for their social, economic, and cultural well-being, while sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations. The project does not align with existing district plan policy, infrastructure planning and strategic planning for future urban development within the Hastings district. Specifically, the project will not consolidate growth in the manner envisaged by the HPUDS nor co-ordinate growth with planned three-waters, transport, social and community infrastructure. This may result in an inefficient use of the land.</p> <p>The project site has also been identified as highly productive land, which may make the project inconsistent with a national policy statement.</p> <p>We consider that you should decline the referral application on the basis that the project may not promote sustainable management of natural and physical resources as it does not align with existing district plan policy, infrastructure planning and strategic planning for future urban development within the Hastings district, and on balance the project does not help to achieve the purpose of the FTCA, and that it is more appropriate for the project to proceed through a standard consenting process under the RMA.</p>

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	h. installing infrastructure ancillary to the solar farm, including underground electricity cables i. constructing and installing residential and commercial units j. constructing, installing and operating a solar farm k. constructing and operating a wastewater treatment plant l. any other activities that are – i. associated with the activities described in a to k ii. within the project scope as described above.		<p>construction of new homes within a River Hazard Overlay.</p> <p>The project area contains a potential wetland, and the discharge of stormwater from the 'proposed raingarden stormwater settlement area' is within 100 metres of the wetland area. The applicant states that the wetland is not natural and therefore not subject to the non-complying activity status under Regulation 54 (c) of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F). The applicants have suggested they would commission an investigation by a wetland ecologist to assess the potential wetland area for inclusion with an application to a panel if the project is referred. Resource consent under the NES-F may be required if the wetland is deemed to be 'natural'.</p> <p>The project site is subject to consent notice conditions to provide a compliant vehicle crossing which must be supported by geotechnical investigation. These consent notices will need to be cancelled if the project is referred as they will be superseded by the subdivision project. The applicant is aware that the consent notice conditions cannot be cancelled as part of the FTCA process and has stated that the this will not impact project delivery timeframes. The applicant will apply to HDC to have the consent notice cancelled.</p>	<p>(HPUDS) 2017 as the project is an ad hoc residential development of rural zoned, productive land. HDC stated that the project site was specifically considered and deemed inappropriate as part of the original HPUDS in 2010. During the HPUDS review process, the Evans Family Trust requested that the subject land be included in the strategy as a growth or reserve growth area. At the review, it was considered that there was sufficient land in the various growth areas under the strategy to cater for residential demand, and that there was no evidence to warrant the inclusion of the Evans Family Trust land in Whirinaki. However, a proviso was included in HPUDS 2017 on the basis that Whirinaki was not necessarily an inappropriate location for growth, however was not considered appropriate for development in 2017. Issues at the time included infrastructure, reverse sensitivity issues and natural hazard risks. HDC consider that these issues remain relevant.</p> <p>HDC also consider the project to run directly counter to the clear direction of the HDP by enabling urban scale residential development in an area zoned for primary production. HDC stated that if approved, the integrity of the HDP, and the efforts made by the Hastings community to participate in and develop an internally consistent and comprehensive plan will be undermined.</p> <p>HDC commented that in terms of natural hazards, the HDP promotes avoidance of risk as the best approach for any development within the area and considers that given the potential scale of works required to mitigate hazard risks, the subject site is not the most appropriate site for future urban growth. HDC considered that a more extensive assessment is needed to ensure that investment and infrastructure is assessed through a climate change lens given its location and potential natural hazard effects and risks; and that providing for new development without appropriate information risks direct conflict with the National Adaptation Plan's direction to avoid development that may be exposed to climate hazards.</p> <p>HDC also commented on reverse sensitivity and land use compatibility effects which have the potential to be significantly adverse. HDC consider that further assessment is needed as to whether increased residential development density is appropriate for the area given the location of the Whirinaki Power Station, and the Pan Pac Forest Product pulp mill.</p> <p>HDC stated that as the project is located outside an area identified as a potential future growth area under HPUDS, no infrastructure is anticipated or funded for this area.</p>	<p>The project does not directly affect any Treaty settlement redress.</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>HDC have confirmed that it does not have any records of enforcement action being taken against the applicants.</p> <p>HRBC have confirmed that according to its records, no enforcement action has been taken against the Evans Family Trust.</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> <p>A key issue is whether the project would be more appropriately considered as part of a broader strategic planning process that assesses appropriate locations for future urban development, followed by a site-specific RMA consenting process.</p> <p>Proceeding via a resource consent process in advance of strategic planning and re-zoning is generally not regarded as good planning practice because it raises risks of fragmented or poorly integrated development. We have provided advice on several referral applications confirming that the FTCA does not preclude referral of the project for this reason. However, for this project we consider the misalignment with existing district plan policy, infrastructure planning, strategic planning for future urban development, and potential inconsistency with NPS-HPL, require cumulative consideration alongside the potential for public interest in the project. Therefore, we are of the</p>	

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				<p>and that it also has existing infrastructure constraints, although some infrastructure can be managed through onsite systems. In relation to wastewater, HDC commented that the applicant proposes to vest the wastewater treatment plant in HDC and that they are reluctant to take ownership as there is the potential to inherit a liability that HDC will need to operate and maintain in perpetuity. HDC also raised concerns that given the project location, there is a risk of overloading the discharge field during flooding events.</p> <p>In relation to stormwater, HDC commented that previous development in the vicinity encountered issues with the existing stormwater network and it will not be able to be used as a servicing solution for this development. HDC also commented that it is unclear if the applicant has fully interrogated the risks of the site being low lying and subject to flooding, as well as the influences of the Esk River mouth impacting Whirinaki Drain during flooding events.</p> <p>In relation to potable water, HDC commented that there are known capacity issues and they do not support any additional development as this would negatively impact an already constrained network. HDC also stated that there are times when network drawdown is significantly higher with large scale industrial pressure placed on the network sporadically from time to time.</p> <p>In relation to the road network, HDC commented that it is aware that the State Highway 2 bridge over the Esk River is aging and may not be capable of sustaining increased traffic demands and that Waka Kotahi has recently imposed a temporary speed limit of 30km/h until the bridge is strengthened. HDC also noted concerns on how the long term feasibility and structural integrity of bridge would affect community resilience in the future as in an adverse event, it is more than likely that the community will need to rely on this road link to access emergency, health and community services.</p> <p>HDC stated that should the project proceed, it does not object to the cancellation of the existing consent notices and that it anticipates matters relating to vehicle access, geotechnical assessment and archaeological and cultural effects to be comprehensively assessed by the expert panel and similar conditions being imposed through the new consent.</p> <p>HDC commented that there has been a lack of upfront consultation with mana whenua in a recognised culturally significant area, and lack of information as to potential cultural effects, is of particular concern. HDC stated that</p>	<p>view that referral of the project should be declined as it would be more appropriately considered under RMA strategic planning processes.</p> <p>An out of zone development of this scale in this location that is unlikely to be supported with the appropriate servicing infrastructure to enable the development to proceed quickly, casts doubt as to whether the project meets the FTCA's purpose and particularly whether the project will contribute to well-functioning urban environments. Therefore, we consider it more appropriate for the project to go through standard processes under the RMA due to the misalignment with existing and proposed infrastructure planning.</p>	

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				<p>the project site is located within a culturally sensitive area, with an urupā and Nukurangi Pā located adjacent, and that other aspects of the proposal, including realignment of the Whirinaki Drain, land discharge of wastewater and changes to the coastal landscape will likely be of interest or concern to iwi authorities.</p> <p>Regarding the realignment of the Whirinaki Drain, HDC stated that they do not have in-house expertise in ecology and hydrology to assess the potential implications associated with the realignment, however have noted some concerns. These concerns include whether or not the drain is natural or modified/man-made; general environmental impacts on the drain due to a new realignment; potential for increased scour/erosion due to increased velocity via straightening the drain; potential for increased sediment deposits (and any associated impacts for the impacts for the downstream receiving environments); potential impacts on the aquatic flora and fauna that reside in and around the drain; drain behaviour during a wet weather event and the impacts of climate change on the frequency and severity of such weather events; and drain behaviour and the impacts of sea level rise and coastal inundation. HDC stated that if the project was submitted through the standard consenting process, they would refer the information to Hawke's Bay Regional Council (HBRC) as the drain is a Regional Council asset, and would potentially commission a peer review on the information provided.</p> <p>HBRC considers that the project has a number of merits, including proposing infrastructure servicing that is integrated and networked, housing opportunities for nearby workers (although there is no description of how the housing might be earmarked or reserved for any such workers), and that while not essential to residential development, the proposed renewable electricity generation is a potential benefit of the project. However, HBRC also stated that there do not appear to be any unique or peculiar features of the project that cannot be assessed and addressed through a standard or streamlined RMA consenting process, and that bundling and joint hearing processes are possible under the RMA. HBRC stated that it does not consider a fast-track process is appropriate for this project and has identified several areas of concern, including natural hazards, stormwater management, misalignment with the NPS-HPL, strategic planning for housing needs in wider Hastings/Napier area and reverse sensitivity.</p> <p>HBRC note that it does not have the technical in-house expertise to assess the validity and veracity of the</p>		

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				<p>applicants' geotechnical report on seismic and liquefaction risks to the project, and also stated that new data from the National Seismic Hazard Model (NSHM) indicates that seismic risk has increased 50-200% and that this may undermine some of the conclusions of the geotechnical report. HBRC notes that the application includes mitigating actions to address other hazards identified, however the council has not undertaken an analysis of appropriateness of those actions. HBRC also commented on recent research findings released in July 2022 regarding vertical land movement around NZ's coastline and which noted that in "Hawke's Bay... rates of subsidence are between 2-6mm per year, which is up [to] two times the rate of global sea-level rise. In these regions the impacts of local sea-level rise will be felt much sooner, and adaptation measures are required today." HBRC also noted that GNS Science completed work in September 2022 on tsunami modelling for part of the Hawke's Bay coastline and that this data and associated maps for land-use planning do not yet feature in the Hawke's Bay Hazards Information Portal.</p> <p>HBRC stated that the applicants have not demonstrated ability of the proposal to comply with the permitted activity standards and that there are several items related to stormwater which are of concern. These concerns relate to potential effects of the increased discharge on the water level in the Whirinaki Drain when conditions exist that the peaks coincide due to rain events which are not uniform; the inappropriateness of using flood assessment results from a study written for a different purpose when considering on-site flooding; use of an incorrect vertical elevation factor where it is critical that the correct figure is used as flood levels are dependent on these elevations; and the risk that by raising the project site, there is the potential for overland flow to raise flood levels in an already flood prone area (North Shore Road).</p> <p>HBRC considered that the project appears to be inconsistent with the NPS-HPL which poses very high thresholds for developments such as this one on highly productive land. HBRC identified that the project site is partly LUC2 and the eastern edge is LUC7 and has not been identified for future urban development as an area suitable for commencing urban development over the next ten years. HBRC consider that the applicants have significantly downplayed the impact of the loss of the productive capacity of the project site and how much the development appears at odds with the NPS-HPL.</p> <p>HBRC stated that the HPUDS is the result of a collaborative approach by HDC, Napier City Council and</p>		

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				<p>HBRC towards managing urban growth on the Plains from 2015 to 2045. HBRC stated that during the review work undertaken in 2016, the Evans Family Trust made a submission which requested the current project site be identified as a future residential growth area, or at least as a Reserve Growth area in the Revised HPUDS document, as an alternative or additional housing choice to those sites identified in HPUDS. In short, after hearing submissions, the councils declined that request.</p> <p>HBRC stated that ultimately, whilst the 2016 HPUDS review concludes that Whirinaki warranted removal from the 'inappropriate' list, the area does not warrant all or parts of the Whirinaki settlement to be identified as an appropriate residential greenfield growth area (or reserve area) as part of the HPUDS Settlement Pattern. The HPUDS Review process concluded that neither 'Greenfield Growth Area' or 'Reserve Growth Area' status is appropriate for project site at Whirinaki at this time. It should be noted however, that if future reviews identify rapid and significant change in growth demand that is unable to be catered for under the current HPUDS Settlement Pattern, the Whirinaki area is now able to be considered in the mix, along with other areas that are not otherwise listed as 'inappropriate areas for development.'</p> <p>HBRC noted that their records indicate there is no proven urgent need for housing that cannot be provided for or met in other locations. HBRC stated that it is aware of several other 50+ residential lot development proposals which are more advanced and are being progressed with associated infrastructure. HBRC also stated that its Regional Policy Statement signals a clear preference for urban development proposals in the Heretaunga Plains sub-region to follow planning sequences, rather than proposals that are ad-hoc, unplanned and out of sequence with the growth management strategy for wider Napier-Hastings area.</p> <p>HBRC also stated that in 2021, it, along with HDC and Napier City Council, completed the Housing Capacity Assessment as required by the NPS-UD. Whilst Whirinaki was not a settlement 'in scope' of the Napier-Hastings urban area, the Housing Capacity Assessment work nonetheless revealed that Napier City and the urban parts of Hastings have sufficient capacity for housing developments in the short and medium terms. Therefore, HBRC considers that the Pohutukawa Drive project is not urgently needed to meet shortfalls in residential development capacity.</p> <p>HBRC stated that land to the south and west of the property is used for a variety of primary production</p>		

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				<p>activities and that housing in close proximity to primary production activities is well known to lead to reverse sensitivity impacts on those primary production activities. HBRC noted that the applicants provided a report which offers as some justification for converting production land into a housing development that “other reverse sensitivity effects have been experienced by the landowners, in relation to production practices and spraying in particular”. HBRC considers that these effects, caused by fragmentation of development, occurred when the 30m buffer between the land and the existing development on Pohutukawa Drive was developed into an additional row of residential property. HBRC stated that the report fails to acknowledge that the recent housing developments along Pohutukawa Drive were instigated by the Evans Family Trust.</p> <p>HBRC considers that the potential wetland identified in proximity to the area of proposed land development has not been ‘ground-truthed’ and it supports the applicants’ suggestion of commissioning a wetland ecologist to assess the potential wetland and provide comment whether the area identified fits the definition of ‘natural wetland’ in the NPS-FM. HBRC stated that it holds information about the potential wetland which describes it as an estuarine hydrological system (based on broad hydrological and landform setting, salinity and water temperature) and is classed as a saltmarsh (based on substrate, water regime, nutrients, pH and vegetation types to an extent).</p> <p>We note HBRC’s comments were received four working days late. Under section 21(5) of the FTCA you are not required to consider comments received after the 10 working-day period but may do so at your discretion as you have not already made a decision on the application.</p> <p>All responses received by parties invited to comment are attached in Appendix 6.</p>		