

FTC#220: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2022- 131 Quarterdeck Project

Date submitted:	21 April 2023	Tracking #: BRF-2899	
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. Quarterdeck application documents (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 Box Property investments Limited 5. Section 17 Report (Databox link) 6. Comments received from Ministers, local Auckland Council, Auckland Transport and Watercare Services Limited (Databox link) 7. Further information received post-consultation (Databox link).

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Max Gander-Cooper		
Acting Manager	Rebecca Perrett	s 9(2)(a)	✓
Acting Director	Lorena Stephen	s 9(2)(a)	

FTC#220: 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 Box Property Investments Limited to refer the Quarterdeck 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-2686) with your initial decisions annotated is in Appendix 2.
3. The project is to subdivide 0.54 hectares of land and construct approximately 70 residential units within 12 two-storey terraced houses (up to 6.5 metres high) and three four-storey apartment buildings (up to 13.8 metres high) at 30 and 40 Sandspit Road, 2 and 4 Reydon Place, and adjacent road reserves, in Cockle Bay, Howick, Auckland. The project will include approximately 96 basement car parks for the apartments, communal parking for the terraced houses and communal outdoor areas.
4. The project will include activities such as site clearance including demolishing buildings or structures, earthworks, discharging stormwater and contaminants to land, taking, diverting and discharging groundwater, constructing residential buildings and supporting infrastructure including basement car parks, vehicle and pedestrian accessways and three-waters services, landscaping and planting, and works in road reserves including berm upgrades.
5. The project site is in the Residential - Single House Zone (SHZ) in the Auckland Unitary Plan (AUP) and the project will require land use and subdivision consents and discharge and water permits under the AUP. It may also require resource consents under the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soils to Protect Human Health) Regulations 2011. The proposed activities have overall non-complying activity status due to including more than one dwelling on a site in the SHZ.
6. In August 2022 Auckland Council notified Plan Change 78 to the AUP (PC78) to give effect to the National Policy Statement on Urban Development 2020 (NPS-UD) and to incorporate the Medium Density Residential Standards (MDRS). PC78 proposes to rezone an area including the project site to Mixed Housing – Urban (MHU) which would allow for more intensive residential development, including increasing permitted building height from 8 metres to 11 metres. As final decisions on PC78 are not expected until March 2024, consents for the project will likely be assessed against the provisions of both the current and proposed zones. Under the MHU provisions the project would have overall discretionary activity status.
7. Lack of capacity in the local water and wastewater infrastructure networks is a significant issue. Upgrades to the network and/or changes to project design may be needed to resolve concerns raised by Watercare Services Limited (Watercare). We therefore recommend you require a panel to invite comment from Watercare on a resource consent application for the project.
8. The applicant previously made applications for resource consent for this project under the Resource Management Act 1991(RMA). The applicant first applied to Auckland Council for resource consent for an integrated residential development (IRD), and Auckland Council declined the application, in part on the basis that the project did not meet the definition of an IRD under the AUP. The applicant redesigned the project and applied to directly refer the application to the Environment Court (BUN60356953). Subsequently, Auckland Council notified PC78 which will incorporate the MDRS into the AUP (among other things). The

applicant withdrew the consent application before the Environment Court could determine it, so that the project could be redesigned to better align with the new MDRS.

9. 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

10. 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.
11. 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 local authority, Ministers and other invited parties (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.
12. 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

13. In response to your request under section 22 of the FTCA the applicant provided further information on a number of matters including local three-waters infrastructure capacity. We have taken this information into account in our analysis and advice.

Section 17 report

14. The Section 17 Report indicates that there are 16 iwi authorities, 6 Treaty settlements and 12 Treaty settlement entities relevant to the project area.
15. The report outlines Treaty settlement redress 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.
16. No specific cultural or commercial redress provided under the settlements would be affected by the project.

Comments received

17. Comments were received from s 9(2)(f)(ii), s 9(2)(g)(i), Auckland Council, Auckland Transport and Watercare Services Limited (Watercare). The key points of relevance to your decision are summarised in Table A.
18. s 9(2)(f)(ii), s 9(2)(g)(i) [REDACTED]
19. s 9(2)(f)(ii), s 9(2)(g)(i) [REDACTED]

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

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

22. Auckland Council supported project referral and requested that if the project is referred you require a panel to seek comments from various parties who were involved in previous resource consent applications relating to the project site.
23. Auckland Transport did not oppose project referral and requested that if the project is referred you direct the applicant to provide a transport impact assessment with their resource consent applications to a panel.
24. Watercare opposed project referral on the basis that there are capacity constraints in the local water supply and wastewater infrastructure networks and the applicant has not provided sufficient information to determine how the project will address these constraints. Watercare is open to working with the applicant to develop a solution to ensure adverse effects on water and wastewater networks can be appropriately managed (including reducing the number of units within the development, entering into agreements to upgrade the constrained infrastructure, sequencing/staging of the development, or other on-site mitigations) but considers this project would best be addressed through a standard RMA consenting process.

Section 18 referral criteria

25. You may accept the application for project referral if you are satisfied that the project does not include ineligible activities (section 18(3)) and will help to achieve the purpose of the FTCA (section 18(2)).
26. 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 177 full-time equivalent (FTE) jobs over a two-year design and construction period
 - b. increase housing supply by constructing approximately 70 residential units
 - c. contribute to a well-functioning urban environment by increasing the variety in homes available to meet differing needs
 - d. progress faster than would otherwise be the case under standard Resource Management Act 1991 process.
27. 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

28. 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

29. 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.
30. Section 23(5)(b) of the FTCA provides that a project can be declined on the basis that it would be more appropriate for the project to go through the standard consenting process under the RMA.
31. Watercare considered that the project would most appropriately be considered through standard RMA consenting processes, likely because there are capacity constraints in the local water and wastewater infrastructure networks which may need to be upgraded in order to service the project, and Watercare considers RMA process would allow more time to work through and resolve these issues.
32. The applicant considers that the capacity constraints can be addressed in further detailed design, and that appropriate reports will be provided to a panel. Watercare did not disagree that the issues could be resolved through detailed design. It also commented that it is open to working with the applicant to develop a solution to ensure adverse effects on water and wastewater networks can be appropriately managed.
33. We consider this issue can be resolved if the applicant works with Watercare to develop an appropriate solution before making any consent applications for the project. A panel can consider any adverse effects on water and the wastewater networks with the benefit of a full resource consent application, appropriate design information and further comment from Watercare.
34. We do not consider this is a matter which suggests it is more appropriate for the project to go through standard consenting processes under the RMA.

Other matters

35. We have identified two further issues in our Table A analysis.
36. Any resource consent application lodged under RMA standard consenting processes for a referred project must be withdrawn before a consent application under FTCA process is lodged for the same, or substantially the same, activity (clause 28(3) of Schedule 6 of the FTCA). The applicant previously applied to Auckland Council for a resource consent for an integrated residential development (IRD) on the project site, which was declined by Auckland Council in part because Auckland Council did not consider that the project met the definition of IRD under the AUP. The applicant then redesigned the proposal and applied for direct referral to the Environment Court in 2020. Subsequently, Auckland Council notified PC78 which will incorporate the MDRS into the AUP (among other things). The applicant withdrew the consent application before the Environment Court could determine it, so they could better align the project design with the new MDRS. We consider that the withdrawal of the direct referral of this previous application means that there are no issues arising under clause 28(3) of Schedule 6 of the FTCA. s 9(2)(f)(ii), s 9(2)(g)(i)
37. The project has non-complying activity status under the SHZ of the AUP, 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 before it could be granted. The applicant considers the project can pass both the gateway tests. Auckland Council did not comment on this matter. We note that any adverse effects resulting from the project and an assessment of the project against the tests in section 104D of the RMA are matters that can be considered by a panel in a merit-based assessment under the FTCA process.

Conclusions

38. We do not consider that you should decline to refer the project on the basis of the risks and issues identified above. You could accept the application under section 24 of the FTCA and refer all of the project to a panel.
39. If you decide to refer the project, we do not consider that you need to specify any additional information that the applicants must submit to a panel under s 24(2)(d) of the FTCA.
40. 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
 - c. the submitters who were party to Environment Court proceedings on BUN60356953
 - d. Hauraki Māori Trust Board
 - e. Te Ahiwaru Trust (formerly Makaurau Marae Māori Trust)
 - f. Te Ara Rangatu o Te Iwi o Ngāti Te Ata Waiohū
 - g. Ngāti Te Ata Claims Support Whānau Trust.

Next steps

41. 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 the parties in paragraph 41.
42. 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.
43. 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.
44. 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.¹
45. 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.
46. Our recommendations for your decisions follow.

¹ Following the first OIC, the Minister for the Environment (and Minister of Conservation for projects in the Coastal Marine Area) can issue drafting instructions directly to the Parliamentary Counsel Office. Cabinet has also agreed that a Regulatory Impact Assessment is not required for an OIC relating to projects to be referred to a panel [ENV-20-MIN-0033 and CAB-20-MIN-0353 refer].

Recommendations

1. We recommend that you:

- a. **Note** section 23(1) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) requires you to decline the referral application from Box Property Investments Limited unless you are satisfied that the Quarterdeck 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 177 full-time equivalent (FTE) jobs over a two-year design and construction period
 - ii. increase housing supply by constructing approximately 70 residential units
 - iii. contributing to a well-functioning urban environment by increasing the variety of homes that are available to meet differing needs
 - iv. progress faster than would otherwise be the case under standard Resource Management Act 1991 process.

Yes/No

- 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. the submitters who were party to Environment Court proceedings on BUN60356953
- iv. Hauraki Māori Trust Board
- v. Te Ahiwaru Trust (formerly Makaurau Marae Māori Trust)
- vi. Te Ara Rangatū o Te Iwi o Ngāti Te Ata Waiohū
- vii. Ngāti Te Ata Claims Support Whānau Trust.

Yes/No

- j. **Agree** to copy the application and notice of decisions to the parties in paragraph i 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



Rebecca Perrett
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 <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)?			
Name Quarterdeck Project Applicant Box Property Investment Limited c/- Civix Location 30 & 40 Sandspit Road, 2 & 4 Reyburn Place, and adjacent road reserves in Cockle Bay, Howick, Auckland	The project is to subdivide land and construct approximately 70 residential units within 12 two-storey terraced houses (up to 6.5 metres high) and three four-storey apartment buildings (up to 13.8 metres high) at 30 and 40 Sandspit Road, 2 and 4 Reydon Place, and adjacent road reserves, in Cockle Bay, Howick, Auckland. The project will include approximately 96 basement car parks for the apartments, communal parking for the terraced houses and communal outdoor areas. The project will include involve activities such as site clearance including demolishing buildings or structures, earthworks, discharging stormwater and contaminants to land, taking, diverting and discharging groundwater, constructing residential buildings and supporting infrastructure including basement car parks, vehicle and pedestrian accessways and three-waters services, landscaping and planting, and works in road reserves	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 the project may result in the following economic benefits: <ul style="list-style-type: none"> generating employment by creating approximately 177 full-time equivalent (FTE) jobs over a two-year design and construction period s 9(2)(b)(ii) Economic costs for people or industries affected by COVID-19 (19(a)) N/A Effect on the social and cultural well-being of current and future generations (19(b)) The applicant considers the project may have positive effects on the social wellbeing of current and future generations by: <ul style="list-style-type: none"> contributing to job creation and flow-on economic benefits increasing housing supply by enabling approximately 70 residential units. Potential effects on cultural wellbeing are unknown. The applicant acknowledges that if the project is referred, any consent application must be accompanied by a cultural impact assessment from relevant iwi authorities. Is the project likely to progress faster by using this Act? (19(c)) The applicant considers the project is likely to progress approximately one year faster	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) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) Local authority	Section 23(5) matters: Insufficient information (23(5)(a)) 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)) Watercare considered it would be more appropriate for the project to go through standard consenting processes under the RMA in order to best resolve water and wastewater capacity constraints. No other parties opposed project referral. We consider a panel can consider any adverse effects on water and the wastewater networks with the benefit of a full resource consent application, appropriate design information and further comment from Watercare. We do not consider this is a matter which suggests it is more appropriate for this project to go through standard consenting processes under the RMA and we do not consider you should decline to refer the project under section 23(5)(b). Inconsistency with a national policy statement (23(5)(c)) We do not consider the project is inconsistent with any relevant national policy statements. Inconsistent with a Treaty settlement (23(5)(d)) The project does not directly affect any Treaty settlement redress. Involves land needed for Treaty settlements (23(5)(e)) The project site does not include any land needed for Treaty Settlement purposes.	In response to key comments: • s 9(2)(f)(ii), s 9(2)(g)(i) • s 9(2)(f)(ii), s 9(2)(g)(i) • we consider that you should agree to Auckland Council's request that you direct a panel to seek comment from the submitters who were party to the Environment Court process for BUN60356953 rather than the parties who were served notice for the application, as they are the parties with a demonstrated interest in the project • we note a transport impact assessment would be required as part of a resource consent application under the AUP and FTCA, and therefore consider it unnecessary for you to act on Auckland Transport's request that you direct the applicant to provide this information • we note Watercare's concerns about capacity constraints in the three waters infrastructure, and agree this is a key issue for project referral. The applicant will need to fully address water supply in their resource consent

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>including berm upgrades.</p> <p>The project site is in the Residential - Single House Zone (SHZ) in the Auckland Unitary Plan (AUP) and the project will require land use and subdivision consents and discharge and water permits under the AUP. It may also require resource consents under the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soils to Protect Human Health) Regulations 2011. The proposed activities have overall non-complying activity status due to including more than one dwelling on a site in the SHZ.</p>		<p>under the FTCA process than would be the case if the project were considered under a standard Resource Management Act 1991 (RMA) resource consent or plan change process, due to the likelihood of notification and appeals under standard process and/or the time required for Plan Change 78 to be decided.</p> <p>Will the project result in a public benefit? (19(d))</p> <p>Based on the information provided by the applicant we consider the project is likely to result in the follow public benefits:</p> <ul style="list-style-type: none"> • generating employment • increasing housing supply • contributing to a well-functioning urban environment by enabling a greater variety of homes that meet the needs of different households. <p>Potential to have significant adverse environmental effects, including greenhouse-gas emissions (19(e))</p> <p>The project has the potential to result in some adverse environmental effects, including from construction activities and from proposed building height. While the applicant considers the most significant adverse effects are likely to be from building height and scale, they do not consider these to be significant. We note that Auckland Council has not raised any concerns about building height.</p> <p>Watercare did raise concerns about potential for significant adverse effects on their networks, but we consider this can be addressed by detailed design and agreements over any required</p>	<p>Auckland Council supported project referral and noted:</p> <ul style="list-style-type: none"> • the subject site is zoned Residential – Single House Zone (SHZ) but is subject to PC78 which would see the site rezoned to Residential – Mixed Housing Urban zone (MHUZ), which envisions significantly greater levels of density for the site compared to the SHZ. It is unlikely that PC78 will have been fully adopted by the time that a panel considered a fast-track application for this proposal, and therefore the proposal would need to be considered against the objectives and policies of both the SHZ and MHUZ • there is a well-known significant flooding issue downstream of the application site. Auckland Council Healthy Waters recommended that consent applications for the project include provisions for stormwater storage devices within the site to add more detention volume and to control a slower release of stormwater flows during 10% AEP and 1% AEP events • Watercare has identified there is insufficient wastewater capacity to cater for the proposed development due to downstream capacity constraints. Any local network upgrades and extensions required as a result of the proposed development must be fully funded by the developer • it supports Auckland Transport's recommendation that the applicant undertake a full traffic assessment to determine whether there are any safety or operational effects on pedestrians or the network • if accepted for fast-tracking, the EPA should ensure the 93 submitters who were party to Environment Court proceedings for resource consent application BUN60356953 (pursuant to RMA s274) are provided an invitation to comment on the fast-track application and all persons who were directly served with a notification letter on application BUN60356953 be invited to comment on any fast track application. <p>Other parties</p> <p>Auckland Transport did not oppose project referral but requested that if the project is referred you require the applicant to provide a full transport impact assessment with their resource consent application to a panel.</p> <p>Watercare Services Limited (Watercare) opposed project referral and noted:</p> <ul style="list-style-type: none"> • uncontrolled overflows are currently occurring on the Cockle Bay Branch sewer which the project proposes connection to]. A development of the scale proposed (70 new units) could result in an increase in the 	<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>The FTCA will be repealed on 8 July 2023, meaning that a referral order must be in force for the project by this date if the project's resource consent applications are to be considered by a panel under FTCA process. The timeframe for completing the referral application is dependent on certain statutory obligations and the capacity and resourcing of officials. The ability for an Order in Council to be prepared, even if you make a decision to refer the project, is becoming increasingly time-pressured as the 8 July deadline approaches. However we do not consider that a reason to decline the project.</p> <p>Other issues and risks:</p> <p>Any resource consent application lodged under RMA standard process for a referred project must be withdrawn before a consent application under FTCA process is lodged for the same, or substantially the same, activity (clause 28(3) of Schedule 6 of the FTCA). The applicant previously applied to Auckland Council for a resource consent for an integrated residential development (IRD) on the project site, which was declined by Auckland Council in part because Auckland Council did not consider the project met the definition of IRD under the AUP. The applicant then redesigned the proposal and applied for was direct referral to the Environment Court in 2020. Subsequently, Auckland Council notified PC78 which will incorporate the Medium Density Residential Standards (MDRS) into the AUP (among other things). The applicant withdrew the consent application before the Environment Court could</p>	<p>application, and you can ensure Watercare will have the opportunity to comment on a resource consent application to a panel (as recommended below). We therefore do not consider that you need to require the applicant to provide the information specified by Watercare.</p> <p>We consider there are no significant reasons to decline to refer the project. We recommend that you accept the application under section 24 of the FTCA and refer all of the project to a panel.</p> <p>We recommend you provide your notice of decisions and a copy of the application to, and require a panel to invite comments on a resource consent application from:</p> <ul style="list-style-type: none"> • Auckland Transport • Watercare Services Limited • the submitters who were party to Environment Court proceedings on BUN60356953 • Hauraki Māori Trust Board • Te Ahiwaru Trust (formerly Makaurau Marae Māori Trust) • Te Ara Rangatu o Te Iwi o Ngāti Te Ata Waiohua • Ngāti Te Ata Claims Support Whānau Trust.

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>upgrades which could be paid for by the applicant.</p> <p>Other relevant matters (19(f))</p> <p>N/A</p>	<p>frequency and volume of future uncontrolled overflows to the environment</p> <ul style="list-style-type: none"> a significant resilience risk/constraint has been identified on the existing Howick Loop transmission watermain, which services this site and surrounding area. If an additional 70 units are developed on the subject site and the existing watermain is compromised, those additional dwellings will be subject to water supply servicing constraints until such time as the issue with the existing watermain can be rectified. While there is a low probability of this effect occurring, it will have a significant impact on future residents of the subject site if it does occur Watercare is open to working with the developer to ensure development of the site will not result in significant adverse effects to its water and wastewater networks. These matters are more appropriately able to be considered through standard RMA consenting process, rather than the FTCA process. <p>All responses received by parties invited to comment are attached in Appendix 6.</p>	<p>determine it, so they could better align the project design with the new MDRS.</p> <p>The project has non-complying activity status under the SHZ of the AUP, 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 before it could be granted. The applicant considers the project can pass both the gateway tests. Auckland Council did not comment on this matter.</p>	