

## FTC#155 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

### Application 2022-097 East Coast Heights Stage 5–Silverdale Project

Date submitted:	15 September 2022	Tracking #: BRF-2085	
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	<p><b>Return</b> the signed briefing to MfE.</p> <p><b>Send</b> the attached notice of decisions letter (if signed).</p>
Number of appendices: 7	<p>Appendices:</p> <ol style="list-style-type: none"> <li>1. Application documents for East Coast Heights Stage 5–Silverdale Project (Databox link)</li> <li>2. Stage 1 Briefing Note and decisions (Databox link)</li> <li>3. Statutory framework for making decisions (Databox link)</li> <li>4. Draft Notice of Decisions letter to Build Rich Limited</li> <li>5. Section 17 Report (Databox link)</li> <li>6. Comments received from Ministers, Auckland Council, Auckland Transport and Watercare Services Limited (Databox link)</li> <li>7. Further information received post-consultation (Databox link).</li> </ol>

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
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Acting Director	Matthew Barbati-Ross	s 9(2)(a)	

## FTC#155: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions

### Key messages

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1. This briefing seeks your final decisions on the application received under section 20 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) from Build Rich Limited to refer the East Coast Heights Stage 5–Silverdale Project (project) to an expert consenting panel (panel). A copy of the application is in Appendix 1.
2. This is the second briefing on this application. The first (Stage 1) briefing (BRF-1922) with your initial decisions annotated is in Appendix 2.
3. The project is to subdivide a 1.55-hectare site located in Silverdale, Auckland and construct approximately 62 residential units and supporting infrastructure including a road, vehicle accessways and three-waters services. The project site is contained within Lot 2 of an approved subdivision consent at 2 Goldwater Drive, Silverdale, with new titles yet to be issued.
4. The project comprises the fifth stage of a residential and commercial development being undertaken by the applicant between East Coast Road and State Highway 1 at Silverdale. Stages one and two, immediately to the south of the project site, were consented under standard Resource Management Act 1991 (RMA) processes by Auckland Council and are currently under construction. Stages three and four, located further to the south, are the subject of a separate referral application (2022-088 East Coast Heights-Silverdale Project)<sup>1</sup>.
5. Stages one and two, immediately south of the project site, were consented under standard Resource Management Act 1991 (RMA) processes by Auckland Council and are currently under construction.
6. Stages three and four, located further to the south, is the subject of a separate referral application (2022-088 East Coast Heights - Silverdale Project).
7. This project located furthestmost north comprises stage five, and will involve activities such as:
  - a. subdividing land
  - b. carrying out earthworks
  - c. constructing residential units
  - d. constructing or installing structures and infrastructure including roads, accessways for vehicles and three-waters services
  - e. landscaping and planting
  - f. any other activities that are:
    - i. associated with the activities in a to e
    - ii. within the scope of the project as described above.
8. The project will require subdivision and land use consents under the Auckland Unitary Plan (AUP). The project site is in the Business – General Business Zone and in Sub-precincts A and C of the Silverdale 3 Precinct, under the AUP. The purpose of Sub-precinct A is to enable

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

a range of business activities and the purpose of Sub-precinct C is to enable residential opportunities within the business area that are secondary to business activity.

9. The project has overall non-complying activity status under the AUP due to locating dwellings in the Business - General Business zone. 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 RMA. The applicant considers that the project can pass both these 'gateway tests'.
10. We advised you in the Stage 1 briefing that public notification of the project would be mandatory under Rule H14.5 of the AUP under standard RMA consenting processes. This is the first referral application you have received where this requirement has been identified by an applicant. However, there is no jurisdiction under the FTCA for a panel to publicly notify a resource consent application and you cannot direct a panel to do so. The applicant has provided a legal opinion that any specific rule requiring notification of an application made under the RMA is not applicable to an application under the FTCA.
11. There is a risk that referring the project could be viewed negatively by the wider community who would expect an opportunity to be involved (as required by the AUP) under standard RMA consenting processes. Although this risk cannot be completely avoided, we consider the effects of the project can be appropriately considered by a panel as part of its merit-based assessment with the benefit of a full resource consent application, and we note a panel can invite comments from any parties it considers necessary as part of its assessment. We therefore recommend you accept the referral application under section 24(2)(a) 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**

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12. The statutory framework for your decision-making is set out in Appendix 3. You must apply this framework when you are deciding whether or not to accept the application and when deciding on any further requirements or directions associated with project referral.
13. Before accepting the application, you must consider the application and any further information provided by the applicant (in Appendix 1), the Section 17 Report (in Appendix 5) and comments from Ministers, Auckland Council, Auckland Transport and Watercare Services Limited (Watercare) (in Appendix 6). Following that, you may accept the application if you are satisfied that it meets the referral criteria in section 18 of the FTCA. We provide our advice on these matters below.
14. We have also considered if there are any reasons for declining the project, including the criteria in section 23(5) of the FTCA, and provide our advice on these matters to assist your decision-making.

### **Further information provided by applicant**

15. In response to a request under section 22 of the FTCA the applicant provided further information on the record of title interests, resource consents granted over the project site, timeframe for issue of the new title for the project site, timing of project delivery and any required overseas investment office approvals.
16. We have taken this information into account in our analysis and advice.

## Section 17 report

17. The Section 17 Report indicates that there are 11 iwi authorities, 5 Treaty settlements and 8 Treaty settlement entities relevant to the project area. The report also notes there are a further seven iwi authorities which may have an interest in the area. A number of groups seeking customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 in the Weiti River estuary, which lies downstream of the project area, are also identified.
18. The report draws attention to statements of association in Treaty settlements with Ngāti Manuhiri, Te Kawerau ā Maki, Ngāi Tai ki Tāmaki and Te Ākitai Waiohū and the Crown's formal acknowledgement of these statements of association in coastal statutory acknowledgements over specified areas, including the Weiti River estuary, in the Ngāti Manuhiri, Te Kawerau ā Maki, Ngāi Tai ki Tāmaki and Te Ākitai Waiohū settlements.
19. The relevant Treaty settlements do not create any new co-governance or co-management processes that would affect decision-making under the Resource Management Act 1991 (RMA) for the project.

## Comments received

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

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



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



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



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



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

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

26. Auckland Council opposed project referral primarily due to concerns about wastewater constraints in the local downstream network. The council raised concerns about reverse-sensitivity effects and the use of land for housing when it is intended for business, noting that the AUP does not enable residential units in the General Business Zone. Further to this, the council commented that the NPS-UD recognises that business is needed to enable a well-functioning urban environment and that there is a shortage of land in the Hibiscus Coast for industrial activity.
27. Auckland Council commented on the applicant's environmental regulatory compliance history, identifying that abatement notices have been issued to address erosion and sediment control issues for other residential sites. We address this further in paragraph 40.
28. Auckland Council also identified a number of reports and assessments which would normally be required for a project of this type. We consider these reports are generally covered by the requirements of clause 9 Schedule 6 of the FTCA but recommend you require the applicant to submit specific information, as detailed in Table A, to assist with consideration of the application by a panel.
29. Auckland Transport opposed project referral and considered the project should proceed through standard RMA consenting processes or be preceded by a plan change. Their reasons included that there is limited business land in the Hibiscus and Bays Local Board area and therefore the project will not contribute to a well-functioning urban environment as it would use business land for residential purposes. Auckland Transport also raised concern that the project may not be able to meet the section 104D gateway tests under the RMA. We consider their reasons and concern are outside of the remit of Auckland Transport and do not relate to the transport effects of the project and therefore should be disregarded. Auckland Transport requested that if the project is referred to a panel, the applicant be required to provide an integrated transport assessment with their resource consent application and a panel be required to invite comments from Auckland Transport.
30. Watercare neither supported nor opposed project referral. They noted there is sufficient network capacity for water supply, but there are potential constraints in the wastewater infrastructure requiring further capacity assessment to determine any required upgrades.

#### **Section 18 referral criteria**

31. 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)).
32. The project does not include any ineligible activities, as explained in Table A.
33. The matters that you may consider when deciding if a project will help achieve the purpose of the FTCA are in Section 19 of the FTCA. Our assessment of these matters is summarised in Table A. We consider the project will help achieve the purpose of the FTCA, and thus meet the requirements of section 18(2), as it has the potential to:
  - a. generate employment by providing approximately 125 direct full-time equivalent (FTE) jobs over a 5-year construction period
  - b. increase housing supply by constructing approximately 62 residential units



- c. have positive effects on social well-being by generating employment and providing additional housing in a range of typologies
  - d. progress faster than would otherwise be the case under standard RMA process, provided that the applicant lodges their applications for resource consent in a timely manner following project referral.
34. 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

35. 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*

36. Section 23(5) of the FTCA provides further guidance on reasons to decline an application, and our analysis of these matters is summarised in Table A. Note that you may accept an application even if one or more of those reasons apply.
37. We have considered whether it would be more appropriate for the project to be considered under standard RMA consenting process given the mandatory public notification that would apply under standard process. This is the first referral application you have received where this requirement has been identified by an applicant. However, there is no jurisdiction under the FTCA for a panel to publicly notify a resource consent application and you cannot direct a panel to do so.
38. There is a risk that referring the project could be viewed negatively by the wider community who would expect an opportunity to be involved (as required by the AUP) under standard RMA consenting processes. Although this risk cannot be completely avoided, we note a panel must invite comments from adjacent landowners and occupiers under clauses 17(6)(g) and 17(6)(h), Schedule 6 of the FTCA. A panel also can invite comments from any person they consider appropriate (clause 17(8), Schedule 6 of the FTCA), so may consult as widely as they consider appropriate.
39. We consider the project will have no significant adverse effects on the supply of business land despite locating residential units in the Business – General Business Zone. We note the NPS-UD 2020 (May 2022) definition of business land has been widened to mean: “land that is zoned, *or identified in an FDS<sup>2</sup> or similar strategy or plan*, for business uses in urban environments...”. Further to this, the council adopted the Silverdale West Dairy Flat Industrial Area Structure Plan in April 2020 identifying that approximately 350 hectares will be subject to plan changes to introduce live zonings in the short to medium term. Stage 1 of the structure plan is located in the area, on the opposite side of the State Highway. We note while residential activity is not provided for in the zone, there are no specific objectives and policies that prevent residential activities. Similarly with the project site location within Silverdale 3 Precinct, Sub-precinct A enables a range of business activities that do not affect the vitality of the Silverdale Town Centre and Sub-precinct C enables residential opportunities that are secondary to business activity. We consider the project is not contrary to any of the objectives and policies framework of the Silverdale 3 Precinct. We consider a panel is able to consider and address these matters (with the benefit of specific information provided by the applicant), and that this does not preclude project referral.

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<sup>2</sup> FDS means the Future Development Strategy required by subpart 4 of Part 3 – National Policy Statement on Urban Development 2020 (updated May 2022).

40. The project has non-complying activity status under the AUP, meaning that under clause 32 of Schedule 6 of the FTCA a panel would be required to consider whether any resource consent application for the project meets at least one of the two 'gateway tests' in section 104D of the RMA. The applicant considers the project can pass both gateway tests. We consider these matters can be appropriately determined by a panel and therefore we do not consider that you should decline the referral application on this basis.
41. You may decline to refer a project if you consider it is inconsistent with a relevant national policy statement (section 23(5)(c) of the FTCA). Auckland Council and Auckland Transport commented that the project may not contribute to a well-functioning urban environment. The applicant considers the project aligns with the NPS-UD s 9(2)(f)(ii), s 9(2)(g)(i) [REDACTED] considers the project seeks to achieve the objectives of the NPS-UD. At this stage we cannot provide definitive advice on whether the project is consistent with the NPS-UD as that would require further detailed analysis, particularly whether there is sufficient business-zoned land to meet demand in the area. We consider these matters can be appropriately determined by a panel and therefore we do not consider that you should decline the referral application on this basis.
42. Auckland Council also identified a number of environmental regulatory compliance issues for the applicant, including abatement notices, all relating to sediment and erosion control issues on small-lot residential sites. The council has previously advised that since its introduction of a proactive compliance team in May 2019, the compliance threshold is set at a high level to drive behaviour change with a focus on small lot residential sites and that abatement notices are widely used as part of the compliance tool kit. Auckland Council has issued and resolved several abatement notices issued to the applicant, and the council has not taken any further enforcement action since February 2021. Although not ideal, we consider that this poor regulatory compliance is not significant enough for you to decline the referral application on the basis of section 23(5)(f) of the FTCA.

#### *Other matters*

43. We have identified issues further to the matters identified above, relating to whether any overseas investment office approvals, interests noted on the record of title and subdivision certification would affect project delivery and our analysis of these is in Table A.
44. Finally, Auckland Council and Watercare noted there are potential constraints in the wastewater infrastructure which may need to be upgraded to service the project. We consider a panel is able to consider and address this issue (with the benefit of specific information provided by the applicant), and that this does not preclude project referral.

## **Conclusions**

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45. We do not consider there are any significant reasons you should decline the referral application in whole or in part, on the basis of the issues and risks identified, provided the applicant provides appropriate information (including the information we recommend you specify) to a panel. We consider you could accept the application under section 24 of the FTCA and that the project could be referred to a panel with the specifications outlined below. We note there is a heightened risk to the applicant that a panel may not approve the consent applications given the potential issues regarding the construction of residential units within the Business – General Business Zone noted above. We consider the matter can be appropriately determined by a panel and therefore we do not consider that you should decline the referral application on this basis.
46. If you decide to refer the project, we consider you should specify under section 24(2)(d) of the FTCA (as requested in comments) that the applicant must submit the following information to a panel with their consent applications in addition to the requirements of clause

9 of Schedule 6 of the FTCA, and as more fully described in Table A:

- a. a three-waters infrastructure assessment
- b. a transport infrastructure assessment
- c. an integrated transport assessment
- d. a landscape and urban design assessment
- e. a draft construction management plan
- f. a greenhouse gas emissions assessment
- g. information on the supply and demand for business land within the Hibiscus and Bays Local Board area.

47. The above information will inform a panel's assessment of the project's effects and whether to invite comments from any additional persons or groups. This does not preclude a panel from requiring the applicant to provide any additional information on any application lodged with the EPA under the FTCA.

48. 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. Associate Minister for the Environment (urban policy)
- b. Waka Kotahi NZ Transport Agency
- c. Auckland Transport
- d. Watercare Services Limited
- e. Te Patukirikiri Iwi Trust
- f. Ngā Maunga Whakahii o Kaipara Development Trust
- g. Ngāti Tamaoho Trust
- h. Ngātiwai Trust
- i. Ngāti Whātua Ōrākei Trust Board
- j. Te Kupenga o Ngāti Hako
- k. Hauraki Māori Trust Board.

## Next steps

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49. 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.

50. We consider you should also give the notice of decisions together with a copy of the application to the parties listed in paragraph 48(e) to (k) and the groups seeking customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011, listed in Attachment 7 of the Section 17 Report.

51. 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.

52. 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.



53. 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.<sup>3</sup>
54. 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.
55. Our recommendations for your decisions follow.

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<sup>3</sup> 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

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1. We recommend that you:

- a. **Note** section 23(1) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) requires you to decline the referral application from Build Rich Limited unless you are satisfied that the East Coast Heights Stage 5–Silverdale Project (project) meets the referral criteria in section 18 of the FTCA including that it would help to achieve the FTCA’s purpose.
  - b. **Note** when assessing whether the project would achieve the FTCA’s purpose, you may consider a number of matters under section 19, including the project’s economic benefits and costs, and effects on social or cultural well-being; whether it may result in a public benefit (such as generating employment or increasing housing supply); and whether it could have significant adverse effects.
  - c. **Note** before deciding to accept the application for project referral under section 24(1) of the FTCA you must consider:
    - i. the application
    - ii. the report obtained under section 17 of the FTCA
    - iii. any comments and further information sought and provided within the required timeframe.
  - d. **Note** if you are satisfied that all or part of the project meets the referral criteria in section 18 of the FTCA you may:
    - i. refer all or part of the project to an expert consenting panel (panel)
    - ii. refer the initial stages of the project to a panel while deferring decisions about the project’s remaining stages
    - iii. still decline the referral application for any reason under section 23(2) of the FTCA.
  - e. **Note** if you do refer all or part of the project you may:
    - i. specify restrictions that apply to the project
    - ii. specify the information that must be submitted to a panel
    - iii. specify the persons or groups from whom a panel must invite comments
    - iv. set specific timeframes for a panel to complete their process.
  - f. **Agree** the project meets the referral criteria in section 18(3) of the FTCA.
- Yes/No
- g. **Agree** the project will help achieve the purpose of the FTCA (and therefore meets the referral criteria in section 18(2) of the FTCA) as it has the potential to:
    - i. generate employment by providing approximately 125 direct full-time equivalent (FTE) jobs over a 5-year construction period
    - ii. increase housing supply by constructing approximately 62 residential units
    - iii. have positive effects on social well-being by generating employment and providing additional housing in a range of typologies

- iv. progress faster than would otherwise be the case under standard Resource Management Act 1991 process, provided that the applicant lodges their applications for resource consent in a timely manner following project referral.

Yes/No

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

Yes/No

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

- i. an assessment of the relevant infrastructure for three waters services that:

- a. identifies the existing condition and capacity of that infrastructure
    - b. identifies any upgrades to that infrastructure that are required in connection with the project
    - c. identifies any funding required to carry out those upgrades (including who will provide that funding)
    - d. contains information on discussions held, and agreements made, between the applicant and Auckland Council or Watercare Services Limited (or both)

- ii. a transport infrastructure assessment, that:

- a. identifies the existing capacity of the local road network to service traffic associated with both the project while it is carried out and the resulting development
    - b. identifies any upgrades to the local road network that are required to service that traffic
    - c. identifies any funding required to carry out those upgrades (including who will provide that funding)
    - d. contains information on discussions held, and agreements made, between the applicant and Auckland Transport

- iii. an integrated transport assessment including:

- a. an assessment of the effects of the project on the surrounding transport network
    - b. an assessment of how the project will support people to use public transport and active modes of transport (such as walking and cycling)
    - c. information on discussions held, and agreements made, between the applicant and Auckland Transport

- iv. a landscape and urban design assessment of the effects of the project

- v. a draft construction management plan including details of proposed measures to control dust, erosion and sedimentation

- vi. an assessment of the potential greenhouse gas emissions, including:

- a. transport-related emissions arising from the project
    - b. a comparison with the greenhouse-gas emissions that would likely result if the project site were developed for business use

- vii. information on the supply and demand for business land within the Hibiscus and Bays Local Board area, including an assessment of the effects of the project on that supply.

Yes/No

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

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

Yes/No

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

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

Yes/No

- l. **Agree** to the Ministry for the Environment issuing drafting instructions to the Parliamentary Counsel Office for an Order in Council to refer the project to a panel in accordance with your decisions recorded herein.

Yes/No

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

Yes/No

- n. **Require** the Ministry for the Environment to publish your decisions, reasons and the Section 17 report on the Ministry for the Environment's website.

Yes/No

## Signatures

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Stephanie Frame  
**Manager – Fast-track Consenting**

Hon David Parker  
**Minister for the Environment**

**Date:**



**Table A: Stage 2 - Project summary and section 24 FTCA assessment for projects where the Minister for the Environment is the sole decision maker**

Project details	Project description	Does all or part of the project meet the referral criteria in section 18?		Summary of comments received (Note: for analysis and/or recommended responses to these comments refer to column 7)	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3)(a)–(d))	Section 18(2) - does the project help achieve the purpose of the FTCA (as per section 19)?			
<b>Project</b> East Coast Heights Stage 5–Silverdale Project <b>Applicant</b> Build Rich Limited c/- Forme Planning <b>Location</b> 2 Goldwater Drive, Silverdale, Auckland	<p>The project is to subdivide a 1.55-hectare site located in Silverdale, Auckland and construct approximately 62 residential units and supporting infrastructure including a road, vehicle accessways and three-waters services. The project site is contained within Lot 2 of an approved subdivision consent at 2 Goldwater Drive, Silverdale, with new titles yet to be issued.</p> <p>The project comprises the fifth stage of a residential and commercial development being undertaken by the applicant between East Coast Road and State Highway 1 at Silverdale. Stages one and two, immediately to the south of the project site were consented under standard Resource Management Act 1991 (RMA) processes by Auckland Council and are currently under construction. Stages three and four located further to the south are the subject of a separate referral application.</p> <p>The project will involve activities such as:</p> <ol style="list-style-type: none"> <li>subdividing land</li> <li>carrying out earthworks</li> </ol>	<p>The project is eligible for referral under section 18(3)(a)–(d) as:</p> <ul style="list-style-type: none"> <li>it does not include any prohibited activities</li> <li>it does not include activities on land returned under a Treaty settlement</li> <li>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.</li> </ul>	<p><b>Economic benefits for people or industries affected by COVID-19 (19(a))</b></p> <p>Based on the information provided by the applicant we consider the project may result in the following economic benefits:</p> <ul style="list-style-type: none"> <li>provide approximately 125 direct full time equivalent (FTE) jobs over a 5-year design and construction period</li> <li>contribute approximately \$24.4 million to the regional GDP.</li> </ul> <p><b>Economic costs for people or industries affected by COVID-19 (19(a))</b></p> <ul style="list-style-type: none"> <li>N/A</li> </ul> <p><b>Effect on the social and cultural well-being of current and future generations (19(b))</b></p> <p>The project has the potential for positive effects on the social wellbeing of current and future generations as it will:</p> <ul style="list-style-type: none"> <li>generate employment by providing approximately 125 direct FTE jobs over a 5-year period</li> <li>increase housing supply through the construction of approximately 62 residential units in a range of typologies.</li> </ul> <p><b>Is the project likely to progress faster by using this Act? (19(c))</b></p> <p>The applicant considers that the fast-track process will allow the project to progress approximately 12–18 months faster than under standard Resource Management Act 1991 (RMA) processes, by avoiding the delays associated with Auckland Council's consenting processes, including a hearing and appeals.</p> <p><b>Will the project result in a public benefit? (19(d))</b></p>	<p><b>Ministers</b></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>s 9(2)(f)(ii), s 9(2)(g)(i)</p>	<p><b>Section 23(5) matters:</b></p> <p><b>Insufficient information (23(5)(a))</b></p> <p>We consider the applicant has provided sufficient information for you to determine whether the project meets the criteria in section 18 of the FTCA.</p> <p><b>More appropriate to go through standard RMA process (23(5)(b))</b></p> <p>We have considered whether it would be more appropriate for the project to be considered under standard RMA consenting process given the mandatory public notification that would apply under standard process. This is the first referral application you have received where this requirement has been identified by an applicant. However, there is no jurisdiction under the FTCA for a panel to publicly notify a resource consent application and you cannot direct a panel to do so.</p> <p>There is a risk that referring the project could be viewed negatively by the wider community who would expect an opportunity to be involved (as required by the AUP) under standard RMA consenting processes. Although this risk cannot be completely avoided, we note a panel must invite comments from adjacent landowners and occupiers under clauses 17(6)(g) and 17(6)(h), Schedule 6 of the FTCA. A panel also can invite comments from any person they consider appropriate (clause 17(8), Schedule 6 of the FTCA), so may consult as widely as they consider appropriate.</p> <p>We consider the project will have no significant adverse effects on the supply of business land despite locating residential units in the Business – General Business Zone, under the AUP. We note the NPS-UD 2020 (May 2022) definition of business land has been widened to mean: “land that is zoned, or identified in an FDS<sup>4</sup> or similar strategy or plan, for business uses in urban environments...”. Further to this, the council adopted the Silverdale West Dairy Flat Industrial Area Structure Plan in April 2020 identifying</p>	<p><b>In response to key comments:</b></p> <ul style="list-style-type: none"> <li>s 9(2)(f)(ii), s 9(2)(g)(i)</li> <li>s 9(2)(f)(ii), s 9(2)(g)(i)</li> <li>s 9(2)(f)(ii), s 9(2)(g)(i)</li> <li>We consider that you should agree to the request from Auckland Transport that you require the applicant to provide an integrated transport assessment with a resource consent application to a panel, and that a panel invite comments from Auckland Transport.</li> <li>In response to Auckland Council's and Watercare's comments that further information is required to assess wastewater capacity in the</li> </ul>

<sup>4</sup> FDS means the Future Development Strategy required by subpart 4 of Part 3 – National Policy Statement on Urban Development 2020 (updated May 2022).



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>c. constructing residential units</p> <p>d. constructing or installing structures and infrastructure including roads, accessways for vehicles and three-waters services</p> <p>e. landscaping and planting</p> <p>f. any other activities that are:</p> <p>i. associated with the activities in a to e</p> <p>ii. within the scope of the project as described above.</p>		<p>Based on the information provided by the applicant we consider that the project may result in the following public benefits:</p> <ul style="list-style-type: none"> <li>generating employment</li> <li>increasing housing supply.</li> </ul> <p><b>Potential to have significant adverse environmental effects, including greenhouse-gas emissions (19(e))</b></p> <p>The applicant has advised that the project has the potential for adverse environmental effects arising from:</p> <ul style="list-style-type: none"> <li>construction activities (including traffic, noise, vibration, sediment control)</li> <li>transport (interfaces and intersections)</li> <li>reverse sensitivity (residential activities within the General Business Zone)</li> <li>stormwater runoff</li> </ul> <p>and may include adverse effects on:</p> <ul style="list-style-type: none"> <li>visual amenity (interface with business activities), urban design and neighbourhood character</li> <li>existing infrastructure, including the road network.</li> </ul> <p>The applicants have provided some preliminary technical assessments in support of their view that the project will not have any significant adverse effects on the environment.</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><b>Other relevant matters (19(f))</b></p> <ul style="list-style-type: none"> <li>N/A</li> </ul>	<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><b>Local authorities</b></p> <p>Auckland Council opposed project referral primarily due to concerns about wastewater constraints in the local downstream network. The council raised concerns about reverse sensitivity effects and the use of land for housing when it is intended for business, noting that the AUP does not enable residential units in the General Business Zone. Further to this, the council commented that the NPS-UD recognises that business is needed to enable a well-functioning urban environment and that there is a shortage of land in the Hibiscus Coast for industrial activity.</p> <p>Auckland Council commented on the applicant's environmental regulatory compliance history, identifying that abatement notices have been issued to address erosion and sediment control issues for other residential sites. We address this further in paragraph 40.</p> <p>Auckland Council also identified a number of reports and assessments which would normally be required for a project of this type. We consider these reports are generally covered by the requirements of clause 9 Schedule 6 of the FTCA but recommend you require the applicant to submit specific information, to assist with consideration of the application by a panel.</p> <p>Auckland Transport opposed project referral and considered the project should proceed through standard RMA consenting processes or be preceded by a plan</p>	<p>that approximately 350 hectares will be subject to plan changes to introduce live zonings in the short to medium term. Stage 1 of the structure plan is located in the area, on the opposite side of the State Highway. We note while residential activity is not provided for in the zone, there are no specific objectives and policies that prevent residential activities. Similarly with the project site location within Silverdale 3 Precinct, Sub-precinct A enables a range of business activities that do not affect the vitality of the Silverdale Town Centre and Sub-precinct C enables residential opportunities that are secondary to business activity. We consider the project is not contrary to any of the objectives and policies framework of the Silverdale 3 Precinct. We consider a panel is able to consider and address these matters (with the benefit of specific information provided by the applicant), and that this does not preclude project referral.</p> <p>The project has non-complying activity status under the AUP, meaning that under clause 32 of Schedule 6 of the FTCA a panel would be required to consider whether any resource consent application for the project meets at least one of the two 'gateway tests' in section 104D of the RMA. The applicant considers the project can pass both gateway tests. We consider these matters can be appropriately determined by a panel and therefore we do not consider that you should decline the referral application on this basis.</p> <p><b>Inconsistency with a national policy statement (23(5)(c))</b></p> <p>You may decline to refer a project if you consider it is inconsistent with a relevant national policy statement (section 23(5)(c) of the FTCA). Auckland Council commented that the project may not contribute to a well-functioning urban environment. The applicant considers the project aligns with the NPS-UD s 9(2)(f)(ii), s 9(2)(g)(i) considers the project seeks to achieve the objectives of the NPS-UD. At this stage we cannot provide definitive advice on whether the project is consistent with the NPS-UD as that would require further detailed analysis, particularly whether there is sufficient business-zoned land to meet demand in</p>	<p>local network downstream of the project site, we consider that you should require the applicant to provide this information with a resource consent application to a panel.</p> <p>We do not consider the issues and risks identified provide sufficient reason to decline the referral application. 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 require the applicant to provide the following information with their resource consent applications to a panel:</p> <p>a. an assessment of the relevant infrastructure for three-waters services that:</p> <ol style="list-style-type: none"> <li>identifies the existing condition and capacity of that infrastructure</li> <li>identifies any upgrades to that infrastructure that are required in connection with the project</li> <li>identifies any funding required to carry out those upgrades (including who will provide that funding)</li> <li>contains information on discussions held, and agreements made, between the applicant and Auckland Council or Watercare Services Limited (or both)</li> </ol> <p>b. a transport infrastructure assessment, that:</p> <ol style="list-style-type: none"> <li>identifies the existing capacity of the local road network to service traffic associated with both the project while it is carried out and the resulting development</li> <li>identifies any upgrades to the local road network that are required to service that traffic</li> <li>identifies any funding required to carry out those upgrades (including who will provide that funding)</li> <li>contains information on discussions held, and agreements made, between the</li> </ol>

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				<p>change. Their reasons included that there is limited land for residential purposes. Auckland Transport also raised concern that the project may not be able to meet the section 104D gateway tests under the RMA. We consider their reasons and concern are outside of the remit of Auckland Transport and do not relate to the transport effects of the project and therefore should be disregarded. Auckland Transport requested that if the project is referred the applicant be required to provide an integrated transport assessment with their resource consent application and a panel be required to invite comments from Auckland Transport.</p> <p>Watercare neither supported nor opposed project referral. They noted there is sufficient network capacity for water supply, but there are potential constraints in the wastewater infrastructure requiring further capacity assessment to determine any required upgrades.</p> <p>All responses received by parties invited to comment are attached in <b>Appendix 6</b>.</p>	<p>the area. We consider these matters can be appropriately determined by a panel and therefore we do not consider that you should decline the referral application on this basis.</p> <p><b>Inconsistent with a Treaty settlement (23(5)(d))</b></p> <p>We have not identified any apparent inconsistencies with the relevant Treaty settlements.</p> <p><b>Involves land needed for Treaty settlements (23(5)(e))</b></p> <p>The project site does not include any land needed for Treaty settlement purposes.</p> <p><b>Applicant has poor regulatory compliance (23(5)(f))</b></p> <p>Auckland Council identified a number of environmental regulatory compliance issues for the applicant, including abatement notices, all relating to sediment and erosion control issues on small-lot residential sites. The council has previously advised that since its introduction of a proactive compliance team in May 2019, the compliance threshold is set at a high level to drive behaviour change with a focus on small lot residential sites and that abatement notices are widely used as part of the compliance tool kit. Auckland Council has issued and resolved several abatement notices issued to the applicant, and the council has not taken any further enforcement action since February 2021. Although not ideal, we consider that this poor regulatory compliance is not significant enough for you to decline the referral application on the basis of section 23(5)(f) of the FTCA.</p> <p>Further to this, we note erosion and sediment control measures can be imposed as conditions of consent by a panel and we recommend you require the applicant to provide a draft construction management plan including proposed measures to control dust, erosion and sediment, with their resource consent applications to a panel. We consider that the application for referral should not be declined on the basis of section 23(5)(f) of the FTCA.</p>	<p>applicant and Auckland Transport</p> <p>c. an integrated transport assessment including:</p> <ol style="list-style-type: none"> <li>an assessment of the effects of the project on the surrounding transport network</li> <li>an assessment of how the project will support people to use public transport and active modes of transport (such as walking and cycling)</li> <li>information on discussions held, and agreements made, between the applicant and Auckland Transport</li> </ol> <p>d. a landscape and urban design assessment of the effects of the project</p> <p>e. a draft construction management plan including details of proposed measures to control dust, erosion and sedimentation</p> <p>f. an assessment of the potential greenhouse gas emissions, including:</p> <ol style="list-style-type: none"> <li>transport related emissions arising from the project</li> <li>a comparison with the greenhouse gas emissions that would likely result if the project site was developed for business use</li> <li>information on the supply and demand for business land within the Hibiscus and Bays Local Board area, including an assessment of the effects of the project on that supply.</li> </ol> <p>We recommend you direct a panel to invite comments on any resource consent applications for the project from:</p> <ul style="list-style-type: none"> <li>Associate Minister for the Environment (urban policy).</li> <li>Waka Kotahi NZ Transport Agency.</li> <li>Auckland Transport</li> <li>Watercare Services Limited</li> <li>Te Patukirikiri Iwi Trust</li> <li>Ngā Maunga Whakahii o Kaipara Development Trust</li> <li>Ngāti Tamaoho Trust</li> </ul>



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					<p><b>Insufficient time for the project to be referred and considered before FTCA repealed (23(5)(g))</b></p> <p>There is sufficient time for the application to be referred and considered before the FTCA is repealed.</p> <p><b>Other issues and risks:</b></p> <p>The ultimate holding company for Build Rich Limited is registered overseas. The applicant has confirmed that no Overseas Investment Office approval was required at the time the land was purchased and no other approvals are required in relation to the project.</p> <p>The applicant provided information advising that none of the interests and instruments noted on the record of title (consent notice requirements for retaining walls, right of way easement in favour of Auckland Council enabling access to the stormwater reserve to be vested, right to convey electricity easement in favour of Vector Limited) will prevent, limit or delay project delivery.</p> <p>The applicant provided a status update of the underlying subdivision and land use consent, and provided a current aerial photo of the completed site works and a copy of the land transfer plan to confirm progress. The applicant noted that section 224 certification (and subsequent records of title) for Lot 2 (the project site) have not been sought as yet, as this would require vesting of the road with Auckland Council and subsequent additional approvals for construction access to the project site. The applicant confirmed the issue of records of title is intended to occur in conjunction with the construction works on Lot 2, which are anticipated to be completed by May 2023. We do not anticipate this matter will prevent, limit or delay project delivery.</p>	<ul style="list-style-type: none"> <li>• Ngātiwai Trust</li> <li>• Ngāti Whātua Ōrākei Trust Board</li> <li>• Te Kupenga o Ngāti Hako</li> <li>• Hauraki Māori Trust Board.</li> </ul> <p>We also recommend that you agree to copy the application and notice of decisions to:</p> <ul style="list-style-type: none"> <li>• Te Patukirikiri Iwi Trust</li> <li>• Ngā Maunga Whakahii o Kaipara Development Trust</li> <li>• Ngāti Tamaoho Trust</li> <li>• Ngātiwai Trust</li> <li>• Ngāti Whātua Ōrākei Trust Board</li> <li>• Te Kupenga o Ngāti Hako</li> <li>• Hauraki Māori Trust Board</li> <li>• the groups seeking customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011, listed in Attachment 7 of the Section 17 Report.</li> </ul>