

FTC#236: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Joint Stage 2 decisions

Application 2022-121 Whenuapai Development Project

Date submitted:	18 May 2023	MfE#: BRF-2897	DOC#: 23-B-0216
Security level	In-Confidence	MfE priority: Urgent	DOC priority: Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decisions on recommendations	To be advised
To Hon Willow-Jean Prime, Minister of Conservation	Decisions on recommendations	To be advised

Actions for Ministers' Office staff	Return the signed briefing to MfE and DOC (Environment only) Send attached notice of decisions letter (if signed).
Number of appendices: 7	<p>Appendices:</p> <ol style="list-style-type: none"> 1. Whenuapai Development application documents and further information received (Databox link) 2. Stage 1 Briefing Note and decisions (Databox link) 3. Statutory Framework for making decisions (Databox link) 4. Letter (notice of decision) to Cabra Developments Limited 5. Section 17 Report (Databox link) 6. Comments received from Ministers, Auckland Council, Auckland Transport, Watercare Services Limited and Waka Kotahi New Zealand Transport Agency (Databox link) 7. Further information received post-consultation (Databox link).

Contacts

Position	Name	Cell phone	1 st contact
Ministry for the Environment			
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Director	Steve Taylor	s 9(2)(a)	

FTC#235: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Joint Stage 2 decisions

Key messages

1. This briefing seeks your final joint decisions on the application received under section 20 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) from Cabra Developments Limited to refer the Whenuapai Development Project (project) to an expert consenting panel (panel). A copy of the application is in Appendix 1.
2. A copy of the application is in Appendix 1. This is the second briefing on this application. The first (Stage 1) briefing (BRF-2758 and 22-B-0039) with your initial decisions annotated is in Appendix 2.
3. The project is to subdivide four separate sites in Whenuapai, Auckland covering a total of approximately 13.7 hectares, and construct a residential development on three of the sites located at 15 Clarks Lane (Site A), 10 Sinton Road (Site B) and 16 Sinton Road (Site C), and a light industrial development on the fourth site at 90 Trig Road (Site D). The project includes:
 - a. subdivision to create approximately 227 residential lots and construction of approximately 227 residential units (comprising approximately 84 on Site A, approximately 62 on Site B and approximately 81 on Site C)
 - b. subdivision to create 9 light industrial lots and construction of 2 industrial warehouse buildings on Site D
 - c. creation of esplanade reserves to be vested in Auckland Council
 - d. construction of public roads, and pedestrian and vehicle accessways
 - e. upgrade and extension of Sinton Road
 - f. construction of infrastructure for three-waters services, including works within adjacent road reserves and new wastewater infrastructure extending onto adjacent properties at 12 and 14 Sinton Road.
4. The project will involve activities such as:
 - a. subdividing land
 - b. constructing residential units and industrial buildings
 - c. carrying out earthworks (including disturbing contaminated soils)
 - d. constructing roads, vehicle and pedestrian accessways and infrastructure for three-water services
 - e. discharging stormwater and contaminants onto land or into the coastal marine area (CMA)
 - f. diverting overland flow paths
 - g. trimming and removing vegetation
 - h. restoring and planting adjacent to and within a natural wetland
 - i. any other activities that are:
 - i. associated with the activities described in a to h
 - ii. within the scope of the project as described in paragraphs 3 and 4.

5. You must make decisions on the referral application jointly, in accordance with section 16(1)(a) of the FTCA because part of the project – the discharge of stormwater for Sites A, B and C – will occur in the coastal marine area (CMA).
6. The project will require subdivision and land use consents, and water and discharge permits under the Auckland Unitary Plan (AUP), and resource consents under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) and Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS).
7. The project site is in the AUP's Future Urban Zone (FUZ) which applies to greenfield land identified as suitable for future urbanisation. The Auckland Regional Policy Statement promotes structure planning to inform rezoning as a precursor to urban development in the FUZ, and the Whenuapai Structure Plan (WSP) was developed with the benefit of public input in 2016 to guide development of land surrounding the Whenuapai airbase (RNZAF Base Auckland). The WSP provides for low and medium density residential development within Sites A, B and C and business development within Site D, and indicated the area including the project site could be 'development-ready' between 2018 and 2026.
8. A plan change process to implement the zoning changes indicated by the WSP over an area including project Sites A, B and C was progressed to an advanced stage but not successfully completed. Considering the project via a resource consenting process in advance of a plan change is generally not considered to be good planning practice because it may result in fragmented urban development or misalignment with provision of infrastructure. This point has been made by Auckland Council, Auckland Transport and Waka Kotahi.
9. We note that the FTCA does not preclude project referral on such grounds, and a panel has previously granted consents for a referred project in the AUP FUZ – The Botanic Riverhead – although this decision is now under appeal and likely will not be decided until after repeal of the FTCA.
10. The project has non-complying activity status under the AUP, meaning that under clause 32 of schedule 6 of the FTCA a panel is 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. Objective H18.2(4) of the AUP states that urbanisation is to be avoided until sites have been rezoned for urban purposes. Even if a panel were to decide the project fails to meet the gateway test in relation to alignment with this objective, it would still be able to consider the proposal provided that the project's adverse effects (subject to imposition of conditions) were no more than minor. The applicant considers that the project's adverse effects will be less than minor.
11. We consider that the project meets the purpose of the FTCA and that concerns raised by parties opposed to referral, including the effects of out-of-sequence development, adverse effects on the nearby RNZAF Base Auckland, and issues relating to the capacity of infrastructure networks to both service the development and cope with its effects can be appropriately considered and decided by a panel with the benefit of a full resource consent application and the supporting information required by the FTCA.
12. 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 joint decision on this recommendation and on recommendations for directions to a panel, and notification of your decisions.

Assessment against statutory framework

13. 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.
14. 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 authorities, 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.
15. 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

16. In response to your request under section 22 of the FTCA the applicant provided further information on an alternative design for Site C in the event approval from Auckland Transport is not obtained for the proposed Sinton Road extension and the number of potential ongoing full time equivalent jobs in the industrial sites. We have taken this information into account in our analysis and advice.

Section 17 Report

17. The Section 17 Report indicates that there are 10 iwi authorities, six Treaty settlements and eight Treaty settlement entities relevant to the project area. The report also identifies a further 10 parties and 10 applicant groups under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA) which may have an interest in the project area.
18. No specific cultural or commercial redress provided under the settlements would be affected by the project. 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 this project.

Comments received

19. Comments were received from s 9(2)(f)(ii), s 9(2)(g)(i), Auckland Council, Auckland Transport, Watercare Services Limited (Watercare) and Waka Kotahi New Zealand Transport Agency (Waka Kotahi). The key points of relevance to your decision are summarised in Table A.

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

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

22. s 9(2)(f)(ii), s 9(2)(g)(i)
23. s 9(2)(f)(ii), s 9(2)(g)(i)
24. s 9(2)(f)(ii), s 9(2)(g)(i)
25. Auckland Council considered project referral inappropriate because it potentially contributes to misalignment between provision of transport infrastructure and the urbanisation of greenfield areas. Auckland Council also considered the project is inconsistent with the AUP, Auckland Plan 2050, Auckland Plan Development Strategy and Future Urban Land Supply Strategy and noted there are issues associated with infrastructure needed to service the development and that it has no immediate funding solutions to mitigate adverse effects.
26. Auckland Transport opposed project referral on the basis that the Future Urban zoning of the site means it is more appropriate for the project to proceed through the private plan change process. If the project is referred, Auckland Transport requested that you require the applicants to provide an integrated transport assessment (ITA) and a stormwater management plan with their consent applications and that you direct a panel to invite comment from Auckland Transport.
27. Watercare neither supported nor opposed project referral and noted that in terms of water supply, the existing network has the capacity to provide the required demand to Sites A and D, while Sites B and C would require an upgrade to the rider main. In terms of wastewater, Watercare confirmed in principle that the servicing proposal meets their expectations but there may be a need to relocate a discharge location.
28. Waka Kotahi opposed project referral on the basis that it undermines both the structure plan and plan change process, and it is essential to have an integrated approach to the wider land use and transport network, with an implementation plan, prior to development.

Section 18 referral criteria

29. You may accept the application for project referral if you are satisfied that the project does not include ineligible activities (section 18(3)) and will help to achieve the purpose of the FTCA (section 18(2)).
30. The project does not include any ineligible activities, as explained in Table A.
31. The matters that you may consider when deciding if a project will help achieve the purpose of the FTCA are in Section 19 of the FTCA. Our assessment of these matters is summarised in Table A. We consider the project will help to achieve the purpose of the FTCA, and thus meet the requirements of section 18(2), as it has the potential to:
- provide approximately 154 full-time equivalent (FTE) jobs over a 4-year design and construction period and enable approximately 126 ongoing FTEs jobs through ongoing operation of industrial activities
 - increase housing supply through construction of approximately 227 residential units

- c. have positive effects on social well-being by contributing to public amenity and opportunities for recreation
 - d. 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.
32. We consider any adverse effects arising from the project, together with any proposed mitigation, offsetting or compensation, could be appropriately tested by a panel against Part 2 of the RMA and the purpose of the FTCA.

Issues and risks

33. Even if the project meets the referral criteria in section 18 of the FTCA, section 23(2) of the FTCA permits you to decline to refer the project for any other reason.

Out of sequence development


34. The project site is in the AUP's FUZ, meaning that it has been identified as suitable for future urbanisation once it has been rezoned for such purposes. The standard approach under the RMA involves undertaking structure planning prior to rezoning through a plan change process, to identify constraints and opportunities for development and to align land use provisions with three-waters and transport infrastructure planning so that a well-functioning urban environment is created.
35. s 9(2)(f)(ii), s 9(2)(g)(i) [REDACTED], Auckland Council, Auckland Transport and Waka Kotahi are concerned that progressing resource consents for a project that is out of sequence with usual planning processes may result in misalignment with the timing of projected delivery of transport infrastructure in the wider area. Both Auckland Transport and Waka Kotahi also put emphasis on the importance of an integrated approach to the wider land use and transport network.
36. Urbanisation of the area surrounding the Whenuapai airbase (RNZAF Base Auckland) was signalled through structure planning with development of the WSP in 2016. The WSP also identified the area including the project site as likely to be 'development-ready' between 2018 and 2026, while the Future Urban Land Supply Strategy for Auckland (FULSS) released in 2017 included the site in the Whenuapai Stage 1 area scheduled to be live-zoned between 2018 and 2022. Proposed Plan Change 5 (PPC5), to implement part of the WSP, was notified in 2017 and provided for a mixture of low and medium residential zoning in Sites A, B and C. PPC5 progressed through a public consultation including hearings but was withdrawn in full in June 2022.
37. Auckland Council's reasons for withdrawing PPC5 included lack of budgeted funding for transport network upgrades to address traffic effects arising from development of land in PPC5 and lack of integration of infrastructure provision and rezoning of land.
38. The residential component (Sites A, B & C) and industrial component (Site D) of the project are generally consistent with the urbanisation signalled by WSP, although we note that neither the WSP (nor former PPC5) provisions have legal weight.
39. The applicant has committed to upgrade public roads, including road extensions, and infrastructure, including installation of pump stations designed to cater for the wider catchment and not just the development sites. Thus, they consider they can address the key concerns around infrastructure provision.
40. We consider these matters associated with out-of-sequence development can be tested with the benefit of a full resource consent application can be appropriately considered and determined by a panel and we therefore do not consider that you should decline the referral application on this basis. However, if you decide to refer the project it will be important that

Auckland Transport, Waka Kotahi and Watercare have an opportunity to provide comments to assist the panel with consideration of infrastructure matters.

Section 23(5) FTCA matters

41. 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.
42. We have considered whether the project would be more appropriately considered under standard RMA processes as provided for by section 23(5)(b) of the FTCA, in particular to potentially allow for wider public involvement.
43. Although consideration of the project under FTCA process could be viewed negatively by the wider community, who may expect greater public involvement in the consenting process under the standard RMA processes, we note that the public had an opportunity to have input to urban development proposals for the area including the project site since 2016. This has been through involvement in development of the WSP and through the PPC5 process, and the project largely conforms with these proposals. As noted above, PPC5 does not have legal weight, and there has been no further indication from Auckland Council about next steps to progress development in this area despite the indications given by the WSP and FULSS.
44. If you decide to refer the project, a panel must invite comments from adjacent landowners and occupiers. A panel also can invite comments from any person they consider appropriate, and so can consult as widely as it considers necessary and appropriate.
45. Therefore, we do not consider that you should decline the referral application on the basis that it would be more appropriate for the project to go through standard RMA consenting processes.
46. At this stage we consider there is sufficient time before 8 July 2023 for you to progress an Order in Council through Cabinet and for it to be authorised by the Executive Council, should you decide to refer the project. Therefore, we consider you should not decline to refer the project on the basis that there is insufficient time for the project to be referred and considered before the FTCA is repealed (section 23(5)(g)).

Other matters

47. The project has non-complying activity status under the AUP and as such it must pass at least one of the two limbs of the 'gateway test' in section 104D of the Resource Management Act 1991 (RMA) if it is to be determined under FTCA process. This means that either it must not be contrary to the objectives and policies of the AUP, or it must result in adverse environmental effects that are no more than minor. We note Objective H18.2(4) of the AUP states that urbanisation is to be avoided until sites have been rezoned for urban purposes. Even if a panel were to decide the project fails to meet the gateway test in relation to alignment with this objective, it would still be able to consider the proposal provided that the project's adverse effects (subject to imposition of conditions) were no more than minor. The applicant considers that the project will result in less than minor adverse environmental effects.
48. s 9(2)(f)(ii), s 9(2)(g)(i)

49. A panel can consider any adverse effects arising from the project, including reverse sensitivity matters, in a merit-based assessment under the FTCA process and the panel can

impose consent conditions to address these effects. Therefore, we do not consider that you should decline the referral application on the basis that it may result in reverse sensitivity effects on operations at the Whenuapai air base.

50. On 21 April 2023, Auckland Council lodged an appeal on a panel's decision to grant consents for the Botanic Riverhead referred project. The reasons for the appeal include that the panel made an error in law relating to interpretation and application of Future Urban Zone provisions. The Botanic Riverhead site is also zoned Future Urban but unlike the current project site has not been subject to a structure planning process that has identified it as suitable for urbanisation.
51. The existence of this appeal or the risk of any future appeals on other nearby referred projects in the FUZ (Whenuapai Green and Whenuapai Business Park) which are yet to be decided by a panel, does not preclude you from deciding to refer the project, but the outcome of such appeals may constrain a panel's granting determination of consents for the project. This is a risk that the applicants would need to assess before choosing to lodge their consent applications with the Environmental Protection Authority.

Conclusions

52. We do not consider there are any significant reasons for you to decline to refer the project in whole. You could accept the application under section 24 of the FTCA and refer all of the project to a panel.
53. 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 the following parties:
 - a. Auckland Transport
 - b. Watercare Services Limited
 - c. Waka Kotahi New Zealand Transport Agency
 - d. New Zealand Defence Force
 - e. Ngāti Koheriki Claims Committee
 - f. Whenua Haumi Roroa o Tāmaki Makaurau Limited Partnership
 - g. Tūpuna Taonga o Tāmaki Makaurau Trust
 - h. Marutūāhu Rōpū General Partner Limited
 - i. Hako Tūpuna Trust
 - j. Ngāti Pāoa Iwi Trust
 - k. Ngāti Pāoa Trust Board
 - l. Ngaati Whanaunga Incorporated Society
 - m. Ngaati Whanaunga Ruunanga Trust
 - n. Ngāti Manuhiri Settlement Trust.

Next steps

54. 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 listed in paragraph 55(e)–(n) together with the 10 MACAA applicants identified in Attachment 4 of the section 17 report.

55. 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.
56. 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 offices to copy it to all relevant parties.
57. 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 PCO without the need for a policy decision to be taken by Cabinet in the first instance.¹
58. As required by section 25(3) of the FTCA, you must ensure that your joint decisions on the referral application, the reasons and the Section 17 report are published on the Ministry for the Environment's website. The Ministry for the Environment will undertake this task on your behalf in accordance with your direction.
59. 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 OIC relating to projects to be referred to a panel [ENV-20-MIN-0033 and CAB-20-MIN-0353 refer].

Recommendations

60. We recommend that you:

- a. **Note** that section 23(1) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) requires you to decline the referral application from Cabra Developments Limited unless you are satisfied that the Whenuapai Development Project (project) meets the referral criteria in section 18 of the including that it would help to achieve the FTCA's purpose.
- b. **Note** that 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 improving environmental outcomes) and whether it could have significant adverse effects.
- c. **Note** that 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** that 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 (a panel)
 - ii. refer the initial stages of the project to the 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** that 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.
- 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. provide approximately 154 full-time equivalent (FTE) jobs over a 4-year design and construction period and enable approximately 126 ongoing FTEs jobs through ongoing operation of industrial activities
 - ii. increase housing supply through construction of approximately 227 residential units
 - iii. have positive effects on social well-being by contributing to public amenity and

Yes/No

opportunities for recreation

- 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 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. Waka Kotahi New Zealand Transport Agency
- iv. New Zealand Defence Force
- v. Ngāti Koheriki Claims Committee
- vi. Whenua Haumi Roroa o Tāmaki Makaurau Limited Partnership (commercial)
- vii. Tūpuna Taonga o Tāmaki Makaurau Trust (cultural)
- viii. Marutūāhu Rōpū General Partner Limited
- ix. Hako Tūpuna Trust
- x. Ngāti Pāoa Iwi Trust
- xi. Ngāti Pāoa Trust Board
- xii. Ngaati Whanaunga Incorporated Society
- xiii. Ngaati Whanaunga Ruunanga Trust
- xiv. Ngāti Manuhiri Settlement Trust.

Yes/No

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

- i. Ngāti Koheriki Claims Committee
- ii. Whenua Haumi Roroa o Tāmaki Makaurau Limited Partnership (commercial)
- iii. Tūpuna Taonga o Tāmaki Makaurau Trust (cultural)
- iv. Marutūāhu Rōpū General Partner Limited
- v. Hako Tūpuna Trust
- vi. Ngāti Pāoa Iwi Trust
- vii. Ngāti Pāoa Trust Board
- viii. Ngaati Whanaunga Incorporated Society
- ix. Ngaati Whanaunga Ruunanga Trust
- x. Ngāti Manuhiri Settlement Trust
- xi. Takutai Moana applicants (applicants seeking customary marine title or

protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011, listed in Attachment 4 of the Section 17 Report).

Yes/No

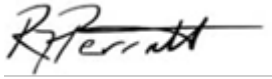
- k. **Agree** to the Ministry for the Environment issuing drafting instructions to the Parliamentary Counsel Office for an Order in Council to refer the project to a panel in accordance with your decisions recorded herein.

Yes/No

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

Yes/No

Signatures



Rebecca Perrett
Acting Manager – Fast-track Consenting
Ministry for the Environment



Trevor Ellis
RM Regulatory Delivery Manager
Department of Conservation

Hon David Parker
Minister for the Environment

Date:

Hon Willow-Jean Prime
Minister of Conservation

Date:

Table A: Stage 2 - Project summary and section 24 assessment for projects where the Minister for the Environment and Minister of Conservation are joint decision makers

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 Whenuapai Development Project Applicant Cabra Developments Limited c/- Duncan Unsworth Location 15 Clarks Lane, 10 Sinton Road, 12 Sinton Road, 14 Sinton Road, 16 Sinton Road and 90 Trig Road, Whenuapai, Auckland Clarks Lane, Sinton Road, Spedding Road and Trig Road reserves	<p>The project is to subdivide four separate sites in Whenuapai, Auckland covering a total of approximately 13.7 hectares, and construct a residential development on three of the sites located at 15 Clarks Lane (Site A), 10 Sinton Road (Site B) and 16 Sinton Road (Site C), and a light industrial development on the fourth site at 90 Trig Road (Site D). The project includes:</p> <p>The project includes:</p> <ol style="list-style-type: none"> subdivision to create 227 residential lots and construction of approximately 227 residential units (84 on Site A, 62 on Site B and 81 on Site C) subdivision to create 9 light industrial lots and construction of 2 industrial warehouse buildings on Site D creation of esplanade reserves to be vested in Auckland Council construction of public roads, and pedestrian and vehicle accessways upgrading and extension of Sinton Road construction of infrastructure for 	<p>The project is eligible for referral under section 18(3)(a)–(d) as:</p> <ul style="list-style-type: none"> it does not include any prohibited activities it does not include activities on land returned under a Treaty settlement it does not include activities in a customary marine title area under the Marine and Coastal Area (Takutai Moana) Act 2011. 	<p>Economic benefits for people or industries affected by COVID-19 (19(a))</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"> provide approximately 154 full-time equivalent (FTE) jobs over a 4-year design and construction period and enable approximately 126 ongoing FTEs jobs through ongoing operation of industrial activities s 9(2)(b)(ii) <p>Economic costs for people or industries affected by COVID-19 (19(a))</p> <ul style="list-style-type: none"> N/A <p>Effect on the social and cultural well-being of current and future generations (19(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"> contribute to job creation and flow-on economic benefits increase housing supply through construction of approximately 227 residential units have positive effects on social well-being by contributing to public amenity and opportunities for recreation. <p>The applicant has initiated consultation with iwi, however no details on potential effects on cultural wellbeing have been provided.</p> <p>Is the project likely to progress faster by using this Act? (19(c))</p> <p>The applicant considers that the fast-track process will allow the project to progress at least 12 months faster than under standard Resource Management Act 1991 (RMA) process due to the likelihood of notification.</p>	<p>Ministers</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>s 9(2)(f)(ii), s 9(2)(g)(i)</p>	<p>Section 23(5) matters:</p> <p>Insufficient information (23(5)(a))</p> <p>The applicants have provided sufficient information for you to determine whether the project meets the criteria in section 18 of the FTCA.</p> <p>More appropriate to go through standard RMA process (23(5)(b))</p> <p>We sought comment from Auckland Council on the appropriateness of using the FTCA process. They oppose the project being assessed and considered under the FTCA.</p> <p>We consider a panel can appropriately assess and decide consents for the project under FTCA process and therefore do not consider you should decline the referral application on the basis that it is more appropriate to go through the standard RMA process.</p> <p>Inconsistency with a national policy statement (23(5)(c))</p> <p>We do not consider the project is inconsistent with any relevant national policy statements.</p> <p>Inconsistent with a Treaty settlement (23(5)(d))</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>Auckland Council noted that there are no significant outstanding compliance concerns in respect of 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 exist for the project by this date if the project's resource consent applications are to be considered by a panel under</p>	<p>In response to key comments:</p> <ul style="list-style-type: none"> s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) we consider Auckland Council's, Auckland Transport's and Waka Kotahi's concerns about potential misalignment between the timing of transport infrastructure and the urbanisation of greenfield areas can be appropriately considered and tested by a panel in a merits-based assessment under the FTCA process and requirements of the applicants are adequately covered by clause 9-11 of schedule 6 of the FTCA we consider Auckland Council's other concerns relating to the standard of vested assets and to stormwater effects can also be addressed by a panel, assisted by the provision of appropriate information on the

	<p>three-waters services, including works within adjacent road reserves and new wastewater infrastructure extending onto adjacent properties at 12 and 14 Sinton Road.</p> <p>The project will involve activities such as:</p> <ol style="list-style-type: none"> subdividing land constructing residential units and industrial buildings carrying out earthworks (including disturbing contaminated soils) constructing roads, vehicle and pedestrian accessways and infrastructure for three-water services discharging stormwater and contaminants onto land or into the coastal marine area (CMA) diverting overland flow paths trimming and removing vegetation restoring and planting adjacent to and within a natural wetland any other activities that are: <ol style="list-style-type: none"> associated with the activities described in a to h within the scope of the project as described in above paragraphs. 		<p>Will the project result in a public benefit? (19(d))</p> <p>Based on the information provided, 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 applicant considers the project has the potential for adverse environmental effects, including earthworks and construction effects, freshwater effects, including streams, wetlands and its ecology, traffic and transport effects, reverse sensitivity effects related to noise, soil contamination effects and stormwater effects. The applicants consider that any adverse effects can be avoided, remedied or mitigated by employing mitigation measures, covenants or appropriate conditions of resource consent.</p> <p>Other relevant matters (19(f))</p> <ul style="list-style-type: none"> The project site is subject to an airspace restriction designation, but the project sites are not located within the approach path area where it requires the approval in writing of the NZDF prior to any buildings, change in use of land or buildings or subdivision of land, however, the applicant had initiated consultation with NZDF. There are proposed works in the road reserves that require approval from Auckland Transport, however we do not expect this to significantly impact on the project delivery timeframe. The project will involve new wastewater infrastructure extending onto the adjacent properties at 12 and 14 Sinton Road, Whenuapai. The applicants have provided preliminary approvals from the owners of these adjacent properties which enable the applicants to undertake the project. On this basis, we do not expect the ability to gain access to adjacent properties to present a significant risk to project delivery. 	<p>Auckland Council</p> <p>Auckland Council opposed project referral and advised that it was more appropriate for it to proceed through the existing RMA consenting process because it can potentially contribute to misalignment between the timing of transport infrastructure and the urbanisation of greenfield areas, and the risk of the vested assets Council may inherit are not consistent with the Council's standards or the community needs. The Council also considered the project is inconsistent with the AUP, Auckland Plan 2050, Auckland Plan Development Strategy and Future Urban Land Supply Strategy.</p> <p>Auckland Council also noted the potential benefits of the project as the following: will provide additional housing supply and choice, public road extension and upgrades, esplanade reserves, and light industrial activities/lots.</p> <p>The proposal includes discharging stormwater to a Significant Ecological Area – Marine. Auckland Council does not consider that appropriate thought has been applied by the applicants on the potential impacts of the development on this environment.</p> <p>Auckland Council advised that there are issues associated with the infrastructure needed to service this development which have not been resolved and would be ahead of the integrated provision of appropriate infrastructure. There is no immediate funding solution to respond to the cumulative effects from the unplanned urbanisation.</p> <p>Other parties</p> <p>Auckland Transport considered it more appropriate for the project to proceed through a private plan change due to the Future Urban zoning of the site. Auckland Transport noted that the residential use for Sites A, B and C and the industrial use for Site D are consistent with the Whenuapai Structure Plan. If the project is referred, Auckland Transport requested an integrated transport assessment (ITA) and a stormwater management plan to be submitted with consent applications for the project. For Site D, further information is sought about the private stormwater pond proposed and whether it provides stormwater management for the new road included in the Project as the design for the Auckland Transport's proposed Trig Road and Spedding Road upgrade projects has sized stormwater ponds to treat and attenuate for those road corridors only.</p> <p>Watercare Services Limited (Watercare) neither supported nor opposed project referral and noted that in terms of water supply, the existing network has the capacity to provide the required demand to Sites A and D. Sites B and C would need to upgrade the rider main. In terms of wastewater, Watercare confirmed, in principle, the servicing proposal meets their expectations but may need to relocate the discharge location for Clarks Lane due to capacity availability in the network downstream of the proposed connection location.</p> <p>Waka Kotahi New Zealand Transport Agency (Waka Kotahi) opposed project referral as not enough information was provided to support it. Waka Kotahi noted that allowing urban development in the absence of this broader strategic exercise would result in piecemeal development and may result in isolated, car-dependent</p>	<p>FTCA process. The timeframe for completing a referral order following a decision to refer the project is dependent on certain statutory obligations, process steps and the capacity and resourcing of officials. This is becoming increasingly time-pressured as the 8 July deadline approaches.</p> <p>At this stage we consider there is still sufficient time for an Order in Council to be considered by Cabinet and (if approved) authorised by the Executive Council, should you decide to refer the project.</p> <p>Other issues & risks:</p> <p>The project site is in the AUP's FUZ, meaning that it has been identified as suitable for future urbanisation once it has been rezoned for such purposes. The standard approach under the RMA involves undertaking structure planning prior to rezoning through a plan change process, to identify constraints and opportunities for development and to align land use provisions with three-waters and transport infrastructure planning so that a well-functioning urban environment is created.</p> <p>Urbanisation of the area surrounding the Whenuapai airbase (RNZAF Base Auckland) was signalled through structure planning with development of the WSP in 2016. The WSP also identified the area including the project site as likely to be 'development-ready' between 2018 and 2026, while the Future Urban Land Supply Strategy for Auckland (FULSS) released in 2017 included the site in the Whenuapai Stage 1 area scheduled to be live-zoned between 2018 and 2022.</p> <p>Proposed Plan Change 5 (PPC5), to implement part of the WSP, was notified in 2017 and provided for a mixture of low and medium residential zoning in Sites A, B and C. PPC5 progressed through a public consultation including hearings but was withdrawn in full in June 2022.</p> <p>Auckland Council's reasons for withdrawing PPC5 included lack of budgeted funding for transport network upgrades to address traffic effects arising from development of land in PPC5 and lack of integration of infrastructure provision and rezoning of land.</p> <p>The residential component (Sites A, B & C) and industrial component (Site D) of the project are generally consistent with the urbanisation signalled by WSP, although we note that neither the WSP</p>	<p>adverse effects of concern and proposed mitigation measures</p> <ul style="list-style-type: none"> Auckland Transport's request for an ITA, stormwater management plan and further information on a proposed stormwater pond for Site D are adequately covered by the requirements of clauses 9–11 of schedule 6 of the FTCA; the requirement for approval from Auckland Transport should not impact project delivery as the proposal includes alternative designs for Sites B and C which would not require Sinton Road extension Watercare's concern about the need to relocate a wastewater discharge location for Clarks Lane site (Site A) can be addressed adequately by information that must be provided in accordance with clauses 9–11 of schedule 6 of the FTCA. <p>We recommend that you accept the application under section 24 of the FTCA and refer all of the project to a panel for the following reasons:</p> <ul style="list-style-type: none"> the project will provide approximately 154 full-time equivalent (FTE) jobs over a 4-year design and construction period and enable approximately 126 ongoing FTEs jobs through ongoing operation of industrial activities the project will increase housing supply through construction of approximately 227 residential units the project will have positive effects on social well-being by contributing to public amenity and opportunities for recreation the project will 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. <p>We recommend you require a panel to invite comments from:</p> <ul style="list-style-type: none"> Auckland Transport Watercare Services Limited Waka Kotahi New Zealand Transport Agency New Zealand Defence Force Ngāti Koheriki Claims Committee Whenua Haumi Roroa o Tāmaki Makaurau Limited Partnership
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				<p>communities. An integrated approach to land use and infrastructure, including the transport network, is critical to ensuring a quality, accessible development. Waka Kotahi recommended that it is essential to have an integrated approach to the wider land use and transport network, with an implementation plan, prior to development to ensure a community that has inclusive accessibility with good access to public transport and active modes.</p> <p>All responses received by parties invited to comment are attached in Appendix 6.</p>	<p>(nor former PPC5) provisions have legal weight.</p> <p>Auckland Council is concerned that the site cannot be serviced by the existing infrastructure and the council has no funding available to provide appropriate infrastructure.</p> <p>We consider these matters associated with out-of-sequence development can be tested with the benefit of a full resource consent application can be appropriately considered by a panel and we therefore do not consider that you should decline the referral application on this basis. However, if you decide to refer the project it will be important that Auckland Transport, Waka Kotahi and Watercare have an opportunity to provide comments to assist the panel with consideration of infrastructure matters.</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>A panel can consider any adverse effects arising from the project, including reverse sensitivity matters, in a merit-based assessment under the FTCA process and the panel can impose consent conditions to address these effects. Therefore, we do not consider that you should decline the referral application on the basis that it may result in reverse sensitivity effects on operations at the Whenuapai air base.</p> <p>On 21 April 2023, Auckland Council lodged an appeal on a panel's decision to grant consents for the Botanic Riverhead referred project. The reasons for the appeal include that the panel made an error in law relating to interpretation and application of Future Urban Zone provisions. The Botanic Riverhead site is also zoned Future Urban but unlike the current project site has not been subject to a structure planning process that has identified it as suitable for urbanisation.</p> <p>The existence of this appeal or the risk of any future appeals on other nearby</p>	<ul style="list-style-type: none"> • Tūpuna Taonga o Tāmaki Makaurau Trust • Marutūāhu Rōpū General Partner Limited • Hako Tūpuna Trust • Ngāti Pāoa Iwi Trust • Ngāti Pāoa Trust Board • Ngaati Whanaunga Incorporated Society • Ngaati Whanaunga Ruunanga Trust • Ngāti Manuhiri Settlement Trust. <p>Ngāti Manuhiri Settlement Trust. We recommend you provide a copy of the application and the notice of decision to the following parties in addition to those specified in section 25 of the FTCA:</p> <ul style="list-style-type: none"> • Ngāti Koheriki Claims Committee • Whenua Haumi Roroa o Tāmaki Makaurau Limited Partnership • Tūpuna Taonga o Tāmaki Makaurau Trust • Marutūāhu Rōpū General Partner Limited • Hako Tūpuna Trust • Ngāti Pāoa Iwi Trust • Ngāti Pāoa Trust Board • Ngaati Whanaunga Incorporated Society • Ngaati Whanaunga Ruunanga Trust • Ngāti Manuhiri Settlement Trust • Takutai Moana applicants (applicants seeking customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011, listed in Attachment 4 of the Section 17 Report).
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					referred projects in the FUZ (Whenuapai Green and Whenuapai Business Park) which are yet to be decided by a panel, does not preclude you from deciding to refer the project, but the outcome of such appeals may constrain a panel's granting determination of consents for the project. This is a risk that the applicants would need to assess before choosing to lodge their consent applications with the Environmental Protection Authority.	
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