

FTC#115: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2021-070 Whenuapai Green

Date Submitted:	17 February 2022	Tracking #: BRF-1050
Security Level	In-Confidence	MfE Priority: Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decisions on recommendations	TBA

Actions for Minister's Office Staff	Return the signed briefing to MfE.
Number of appendices: 6	Appendices: 1. Whenuapai Green application documents and further information received 2. Stage 1 Briefing Note and decisions 3. Statutory framework for making decisions 4. Draft Notice of Decisions letter to Neil Construction Limited and Maraetai Land Development Limited 5. Section 17 Report 6. Comments received from Ministers, Auckland Council, Auckland Transport and Watercare Services Limited

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Jess Hollis		
Manager	Stephanie Frame	s 9(2)(a)	✓
Director	Sara Clarke	s 9(2)(a)	

FTC#115: Application for referred projects under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions

Key Messages

1. This briefing seeks your decisions on the application received under section 20 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) from Neil Construction Limited and Maraetai Land Development Limited for referral of the Whenuapai Green project (the Project) to an expert consenting panel (a 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 relating to this application. The first (Stage 1) briefing (BRF-886) with your initial decisions annotated is in Appendix 2.
3. The Project is located at 98-100 and 102 Totara Road, Whenuapai, Auckland. It is to subdivide land and construct a housing development. The Project includes two development options, providing either approximately 459 residential lots and residential units, or approximately 354 residential lots and residential units and a balance lot for future development of a primary school. Both options also provide private access lots, and public roads and reserves intended to vest in Auckland Council.
4. The Project will involve activities such as:
 - a. subdivision of land
 - b. vegetation trimming and clearance, including of trees in roads and near streams
 - c. earthworks (including disturbance of contaminated soils)
 - d. diverting overland flow paths
 - e. diverting and discharging stormwater and contaminants to land and water
 - f. placing structures in an overland flow path and flood plain
 - g. construction of residential units
 - h. construction of roads and vehicle access, and three waters services
 - i. landscaping and planting of open spaces
 - j. any other activities that are –
 - i. associated with the activities described in a to i
 - ii. within the Project scope.
5. The Project will require subdivision and land use consents, and discharge permits under the Auckland Unitary Plan (AUP), and land use consent under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS).
6. The Project site is in the AUP's Future Urban Zone, which applies to greenfield land identified as suitable for urbanisation, and within the area covered by the Whenuapai Structure Plan (September 2016) (WSP). The site has not been subject to a plan change process, and we note that considering the Project via a resource consent in advance of re-zoning is generally not good planning practice. However, the FTCA does not preclude consideration of the Project for this reason and the Project is consistent with the anticipated land use under the WSP.
7. The Project has a non-complying activity status under the AUP, meaning that under clause 32 Schedule 6 of the FTCA a panel is required to consider whether any resource consent

application for the Project meets the 'gateway tests' in section 104D of the Resource Management Act 1991 (RMA). We note that Objective H18.2(4) of the AUP details that urbanisation is to be avoided until sites have been rezoned for urban purposes, however the applicants consider that the proposal is worthy of consent on its merits under the AUP policy framework and that the development, with appropriate conditions, would have no more than minor adverse environmental effects.

8. Auckland Council and Auckland Transport opposed Project referral and considered the Project does not align with the projected timing to provide necessary wastewater and transport infrastructure. We consider that these concerns can be appropriately addressed by a panel under the FTCA process.
9. We recommend you accept the referral application under section 24 of the FTCA and refer the Project to a panel for fast-track consenting. We seek your decision on this recommendation and on our recommendations on directions to the applicants and a panel, and notification of your decisions.

Assessment against Statutory Framework

10. The statutory framework for your decision-making is set out in Appendix 3. You must apply this framework when you are deciding whether or not to accept the application and when deciding on any further requirements or directions associated with Project referral.
11. Before accepting the application, you must consider the application and any further information provided by the applicants (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.
12. We have also considered if there are any reasons for declining the Project, including the criteria in section 23(5) of the FTCA, and provide our advice on these matters to assist your decision-making.

Further information provided by applicants

13. In response to requests under section 22 of the FTCA the applicants provided further information on a number of matters, including the expected time savings using the FTCA process, whether approval is required from the Overseas Investment Office (OIO), engagement with the New Zealand Defence Force (NZDF), and any required infrastructure upgrades and funding arrangements.
14. We have taken this information into account in our analysis and advice.

Section 17 Report

15. The Section 17 Report indicates that there are 13 iwi authorities, six Treaty settlements and eight Treaty settlement entities relevant to the Project area.
16. The Project site drains to waterways on both the western and eastern sides of the site that flow a short distance northward to the upper Waitematā Harbour, which is covered by statutory acknowledgements in the Treaty settlements with Te Kawerau ā Maki and Ngāi Tai ki Tāmaki. No other cultural or commercial redress provided under the relevant Treaty settlements would be affected by the Project, and the 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

17. 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.

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

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

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

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

22. Auckland Council and Auckland Transport also opposed Project referral and considered the Project should be preceded by a plan change under standard RMA processes. Auckland Council raised specific concerns with wastewater capacity and transport-related effects. Auckland Transport noted the Project is misaligned with the timing of strategic transport network infrastructure needed to service the area, and no funding is currently set aside in the Regional Land Transport Plan (out to 2031) for required upgrades.

23. Auckland Council and Auckland Transport noted several reports and assessments that would normally be required for a project of this type in this area. We consider that these are generally covered by the requirements of clause 9 Schedule 6 of the FTCA but recommend you require the applicants to submit to a panel certain specific information, as detailed in Table A, to assist a panel with timely consideration of the application.

24. Watercare neither supported nor opposed Project referral noting the Project will require a local network extension for water supply and that wastewater servicing will be reliant on a new pump station that is expected to be completed at the end of 2024 (but cannot be confirmed until consents and landowner approvals are in place).

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

Section 18 referral criteria

26. 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)).
27. The Project does not include any ineligible activities, as explained in Table A.
28. 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. have positive effects on social well-being by generating employment and providing a diverse range of housing types, including terraced housing (which has the potential to be a lower-priced housing option)
 - b. generate employment by providing approximately 164 direct full-time equivalent (FTE) jobs per year over a 5-year design and civil construction period, approximately 22 direct FTE jobs in sales and marketing over a 5-year period, and approximately 342 direct FTE jobs over a 6-year residential unit construction period
 - c. increase housing supply through the provision of approximately 459 residential units (or approximately 354 residential units if a primary school is developed)
 - d. progress faster than would otherwise be the case under standard RMA process.
29. We consider that 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

30. 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
31. 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.
32. The key issue is whether the Project would be more appropriately considered through a plan change, followed sequentially by a resource consent application, under standard RMA processes. This is directly related to the concerns raised by Auckland Council and Watercare regarding the timing of necessary wastewater infrastructure, and by Auckland Transport regarding the Project's timing in relation to transport infrastructure planning and whether the Project will contribute to a well-functioning urban environment.
33. The Project site is in the AUP's Future Urban Zone, which applies to greenfield land identified as suitable for urbanisation, and within the area covered by the WSP. The WSP and several other subsequent Auckland Council strategy documents, including the Future Urban Land Supply Strategy (July 2017) and The Auckland Plan 2050 (June 2018), anticipate the site will be development ready between 2028-2032 (stage 2 of the WSP).
34. We note the site has not been subject to a plan change process that would provide an opportunity for public input, however the WSP identifies the site for medium density residential use and therefore the nature of the proposal is consistent with the WSP. We

consider that there is risk in referring the Project before a comprehensive policy framework is developed for the land contained in stage 2 of the WSP and this could result in misalignment between the Project and infrastructure planning. We consider that this risk can be reduced by the provision of appropriate reports and plans relating to infrastructure design and funding with an application to a panel.

35. We consider that referring the Project could be viewed negatively by the wider community who may expect the Project to be preceded by a plan change, or for involvement in the consenting process under the standard RMA processes. However, we note that the zoning of the site under the AUP and the provisions of the WSP clearly signal that the land will be urbanised. We also note the land immediately to the south of the site has already been developed as part of stage 1A of the WSP. If you decide to refer the Project, 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).
36. Auckland Council and Watercare identified that the existing wastewater network is at capacity and the Project is reliant on a new pump station that is expected to be completed at the end of 2024. Watercare advised that the timing for completion of the pump station is uncertain and cannot be confirmed until consents and landowner approvals are in place. Auckland Transport have identified that roading network upgrades are required to support urbanisation of land in the area and funding is not allocated to deliver the necessary infrastructure within the next 10 years. The applicants consider that timing of the wastewater pump station will not prevent nor delay delivery of the Project as an alternative design solution would be available if required, and the Project is not reliant on any transport upgrades to proceed. The applicants have also confirmed that all necessary new and upgraded infrastructure that is directly required to support the Project will be completed at their cost as part of Project delivery. We note that these matters can be considered by a panel under the FTCA process.
37. The Project has non-complying activity status under the AUP, meaning that under clause 32 Schedule 6 of the FTCA a panel is required to consider whether any resource consent application for the Project meets the 'gateway tests' in section 104D of the Resource Management Act 1991 (RMA). In particular, we note that Objective H18.2(4) of the AUP details that urbanisation is to be avoided until sites have been rezoned for urban purposes. The applicants consider that the proposal is worthy of consent on its merits under the AUP policy framework and that adverse environmental effects will be no more than minor.
38. We note that any adverse effects resulting from the Project and alignment with the local and national policy framework are matters that can be considered by a panel in a merit-based assessment under the FTCA process. 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 the standard consenting process under the RMA (section 23(5)(b)).
39. The applicants consider that the Project is consistent with the National Policy Statement on Urban Development 2020 (NPS-UD), however Auckland Transport disagrees. 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 of the Project, particularly the three waters and roading infrastructure. However, given the Project aligns with the land use anticipated for the site under the WSP, and the disagreement on infrastructure matters appears to relate primarily to timing, we do not consider that you should decline the referral application on the basis of section 23(5)(c) of the FTCA (inconsistency with a relevant national policy statement).

Other matters

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

– s 9(2)(f)(ii), s 9(2)(g)(i)

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

42. We note the comments from Auckland Council and Auckland Transport that the Project is out of sequence with respect to planned future urbanisation in the Auckland region and we consider that proceeding via a resource consent process in advance of re-zoning is generally not regarded as good planning practice. However, the FTCA does not preclude consideration of the Project for this reason and the Project provides an opportunity to generate employment and bring forward the delivery of housing in Auckland. Therefore, we do not consider that you should decline the referral application on the basis that it does not have a plan change in place or in progress.
43. We note that Neil Construction Limited (NCL)'s ultimate holding company is registered overseas so it would require consent under the Overseas Investment Act 2005 to acquire land and on-sell residential lots. NCL has a standing consent from the OIO for land acquisition and we consider that overseas investment matters will therefore not affect the ability of the Project to proceed.

Conclusions

44. You may decline the application for referral under section 23(5)(b) of the FTCA should you consider that it would be more appropriate for the Project to go through the standard consenting process under the RMA. You may also decline the application for referral under section 23(2) of the FTCA for any other reason, whether or not the Project meets the referral criteria.
45. We do not consider the matters noted above provide sufficient reason for declining to refer the Project, provided that appropriate information is provided by the applicants as part of their application to a panel. We consider that 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. However, we note there is a risk to the applicants that a panel may not approve the consent applications given the issues regarding out of sequence development noted above.
46. If you decide to refer the Project, we consider that you should specify under section 24(2)(d) of the FTCA (as requested in comments) that the applicants must provide the following

information, additional to the requirements of clause 9 of Schedule 6 of the FTCA, in an application submitted to a panel:

- a. a three-waters infrastructure capacity and funding assessment
- b. a transport infrastructure capacity and funding assessment
- c. a stormwater assessment and draft stormwater management plan
- d. an integrated transport assessment
- e. a report which addresses potential adverse effects on NZDF Base Auckland, including reverse sensitivity
- f. a heritage impact assessment
- g. a contaminated soils assessment

47. The above information is required to assist a panel in assessing the adverse effects of the Project.

48. If you decide to refer the Project, we consider that you should specify under section 24(2)(e) of the FTCA that a panel must invite comments on a consent application from the following:

- a. Ngāti Kōheriki Claims Committee
- b. Te Kupenga o Ngāti Hako Incorporated
- c. Ngaati Whanaunga Incorporated Society
- d. Auckland Transport
- e. Watercare Services Limited
- f. New Zealand Defence Force
- g. Associate Minister for the Environment (Urban Policy)

49. We consider that if you decide to refer the Project, the application and notice of decisions should be copied to the Ngāti Kōheriki Claims Committee, Te Kupenga o Ngāti Hako Incorporated, Ngaati Whanaunga Incorporated Society and New Zealand Defence Force as they do not automatically qualify for receipt of the notice of decisions under section 25 of the FTCA.

50. Our recommendations for your decisions follow.

Next Steps

51. You must give notice of your decisions on the referral application, and the reasons for them, to the applicants and the persons, entities and groups listed in section 25 of the FTCA.
52. We have attached a notice of decisions letter to the applicants based on these requirements and our recommendations (refer Appendix 4). We will assist your office to give copies 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).
54. Cabinet has agreed that you can issue drafting instructions to the Parliamentary Counsel Office without the need for a policy decision to be taken by Cabinet in the first instance.¹

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

Recommendations

1. We recommend that you:

- a. **Note** section 23(1) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) requires you to decline this application for referral unless you are satisfied that the 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 (a 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. have positive effects on social well-being by generating employment and

providing a diverse range of housing types, including terraced housing (which has the potential to be a lower-priced housing option)

- ii. generate employment by providing approximately 164 direct full-time equivalent (FTE) jobs per year over a 5-year design and civil construction period, approximately 22 direct FTE jobs in sales and marketing over a 5-year period, and approximately 342 direct FTE jobs over a 6-year residential unit construction period
- iii. increase housing supply through the provision of approximately 459 residential units (or approximately 354 residential units if a primary school is developed)
- iv. progress faster than would otherwise be the case under standard Resource Management Act 1991 process.

Yes/No

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

Yes/No

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

- i. a detailed infrastructure assessment of –

- 1. the capacity of the existing infrastructure for three-waters services to service the completed Project
- 2. what upgrading is required to that infrastructure to service the completed Project
- 3. how any upgrading is to be funded

- ii. a detailed transport infrastructure assessment of –

- 1. the capacity of the local road network to service the construction of the Project and the completed Project
- 2. what upgrading is required to the local road network to service the completed Project
- 3. how any upgrading is to be funded

- iii. a stormwater assessment and a draft stormwater management plan, and information about discussions held and any agreements made with the Auckland Council Healthy Waters department regarding stormwater management

- iv. an integrated transport assessment, including –

- 1. an assessment of how the Project will support both public modes of transport and active modes of transport such as cycling and walking
- 2. information about discussions held and any agreements made with Auckland Transport

- v. a report which addresses potential adverse effects on NZDF Base Auckland, including -

1. measures to address reverse sensitivity and whether no-complaints covenants should be imposed on any new records of title for the Project site
2. confirmation that no buildings or structures will breach the Obstacle Limitation Surface in AUP designation 4311 without the prior approval of the New Zealand Defence Force
3. measures to avoid risk to flight safety and operations including bird strike, and lighting and glare
- vi. a heritage assessment and details of how adverse impacts on historic heritage values will be avoided, remedied, or mitigated
- vii. in relation to the land in the Project site, a report on a preliminary site investigation and, if required, on a detailed site investigation, within the meaning of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, that shows how the requirements of those regulations will be met.

Yes/No

- j. **Agree** to specify under section 24(2)(e) of the FTCA that a panel must invite comments from the following additional persons or groups:

- i. Ngāti Kōheriki Claims Committee
- ii. Te Kupenga o Ngāti Hako Incorporated
- iii. Ngaati Whanaunga Incorporated Society
- iv. Auckland Transport
- v. Watercare Services Limited
- vi. New Zealand Defence Force
- vii. Associate Minister for the Environment (Urban Policy)

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 Whenuapai Green project to a panel in accordance with your decisions recorded herein.

Yes/No

- l. **Sign the attached (Appendix 4)** notice of decisions to Neil Construction Limited and Maraetai Land Development Limited.

Yes/No

- m. **Agree** to copy the application and notice of decisions to the Ngāti Kōheriki Claims Committee, Te Kupenga o Ngāti Hako Incorporated, Ngaati Whanaunga Incorporated Society and the New Zealand Defence Force.

Yes/No

- n. **Note** to comply with section 25(3) of the FTCA, you must ensure that the decisions, the reasons, and the Section 17 Report are published on the Ministry for the Environment's website. We will work with your office to complete this task.

Signatures



Stephanie Frame
Manager – Fast-track Consenting
Date 17 February 2022

Hon David Parker
Minister for the Environment

Date

Released under the provision of
the Official Information Act 1982

Table A: Stage 2 - Project Summary and Section 24 Assessment

Project details	Project description	Does all or part of the Project meet the referral criteria in section 18?		Summary of comments received	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3a - d))	Section 18(2) - Does the Project help achieve the purpose of the FTCA (as per section 19)?			
Project name Whenuapai Green Applicant Neil Construction Limited (NCL) and Maraetai Land Development Limited (MLDL) c/- Campbell Brown Planning Limited Location 98-100 and 102 Totara Road, Whenuapai, Auckland	The Whenuapai Green project is to subdivide a greenfield site covering approximately 16 hectares and construct a housing development at the western edge of the NZ Defence Force Whenuapai Airbase. The project includes two development options, providing either approximately 459 residential lots and residential units, or approximately 354 residential lots and residential units and a balance lot for future development of a primary school. Both options also provide private access lots, and public roads and reserves intended to vest in Auckland Council. The project will involve activities such as: a. subdivision of land b. vegetation trimming and clearance, including of trees in roads and near streams c. earthworks (including disturbance of	The Project is eligible under section 18(3)(a-d) as: - it does not include any prohibited activities - it does not include activities on land returned under a Treaty settlement - it does not include activities in a customary marine title area or a protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011	Economic benefits for people or industries affected by COVID-19 (19(a)) The applicants estimate that the Project will provide: - approximately 164 direct full-time equivalent (FTE) jobs over a 5-year design and civil construction period - approximately 342 direct FTE jobs over a 6-year residential unit construction period - approximately 22 direct FTE jobs in sales and marketing over a 5-year period. Economic costs for people or industries affected by COVID-19 (19(a)) N/A Effect on the social and cultural well-being of current and future generations (19(b)) The applicants consider that the Project will provide for the social wellbeing of current and future generations as it will: - provide for additional housing in a range of typologies that will provide for more affordable homes at a time when house prices are rapidly escalating in the Auckland region. Terrace house formats in particular provide a more affordable option due to the smaller lot sizes and the resultant lower land component in the overall housing cost. - provide for employment opportunities.	Ministers s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i)	Section 23(5) matters: Insufficient information (23(5)(a)) The applicants have provided sufficient information for you to determine whether the Project meets the criteria in section 18 of the FTCA. More appropriate to go through standard RMA process (23(5)(b)) Despite the comments from Auckland Council and Auckland Transport, we do not consider it would be more appropriate for all or part of the Project to proceed through the standard consenting processes under the RMA. The Project site is in the Future Urban Zone, which applies to greenfield land identified as suitable for urbanisation. Whilst there is no plan change in process, we note that the Whenuapai Structure Plan (WSP) identifies the site for medium density residential use and therefore the nature of the proposal is consistent with the WSP. We consider that the risk of misalignment between the Project and infrastructure planning can be reduced by the provision of appropriate reports and plans relating to infrastructure design and funding with an application to a panel. We also note that any adverse effects resulting from the Project and alignment with the local and national policy framework are matters that can be considered by a panel in a merits-based assessment under the FTCA process. Inconsistency with a national policy statement (23(5)(c)) At this stage we cannot provide definitive advice on whether the	In response to Ministers' comments: - 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) In response to Auckland Council and Auckland Transport comments: - we note the comments from Auckland Council and Auckland Transport that the Project is out of sequence with respect to planned future urbanisation in the Auckland region. However, the FTCA does not preclude consideration of the Project for this reason, and we note that any

Project details	Project description	Does all or part of the Project meet the referral criteria in section 18?		Summary of comments received	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3a - d))	Section 18(2) - Does the Project help achieve the purpose of the FTCA (as per section 19)?			
	contaminated soils) d. diverting overland flow paths e. diverting and discharging stormwater and contaminants to land and water f. placing structures in an overland flow path and flood plain g. construction of residential units h. construction of roads and vehicle access, and three waters services i. landscaping and planting of open spaces j. any other activities that are – i. associated with the activities described in a to i; and ii. within the Project scope. The Project will require subdivision consent and land use consents, and discharge permits under the Auckland Unitary Plan (AUP), and land use consent under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in		The applicants have engaged with mana whenua and advised that to date only Te Kawerau ā Maki has expressed an interest in the Project. Te Kawerau ā Maki has prepared a Cultural Impact Assessment and the applicants intend to work collaboratively with them to ensure that appropriate mitigation is incorporated into the development. Is the Project likely to progress faster by using this Act? (19(c)) The applicants consider that the fast-track process will allow the Project to progress approximately 18-24 months faster than under standard RMA processes. We agree that this is likely to be the case given the zoning of the site and therefore the likelihood of notification and a hearing, and potential for appeals, under standard process. Will the Project result in a public benefit? (19(d)) Based on the information provided we consider the Project may result in the following public benefits: - generating employment throughout the land development and construction works - increasing housing supply. Potential to have significant adverse environmental effects, including greenhouse gas emissions (19(e))	s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i)	Project is consistent with the National Policy Statement on Urban Development 2020 (NPS-UD) as that would require further detailed analysis of the Project, particularly the three waters and roading infrastructure. However, given the Project aligns with the land use anticipated for the site under the WSP, and the disagreement on infrastructure matters appears to relate primarily to timing, we do not consider that you should decline the referral application on the basis of section 23(5)(c) of the FTCA (inconsistency with a relevant national policy statement). Inconsistent with a Treaty settlement (23(5)(d)) The Project does not directly affect any Treaty settlement redress. Involves land needed for Treaty settlements (23(5)(e)) The Project site does not include any land needed for Treaty settlement purposes. Applicant has poor regulatory compliance (23(5)(f)) Auckland Council noted that past abatement notices have been issued to Neil Construction Limited, however there are no identified outstanding issues or compliance concerns. Maraetai Land Development Limited has no compliance history. Insufficient time for the Project to be referred and considered before FTCA repealed (23(5)(g)) There is sufficient time for the application to be referred and considered before the FTCA is repealed. Other issues & risks: s 9(2)(f)(ii), s 9(2)(g)(i)	adverse effects resulting from the Project, alignment with infrastructure provision, and alignment with the local and national policy framework, are matters that can be considered by a panel in a merits-based assessment under the FTCA process. - we recommend you accept Auckland Transport's request to require the applicants to submit an integrated transport assessment to a panel - we note Auckland Council and Auckland Transport concerns relating to wastewater and transport infrastructure, however we consider that the risk of misalignment between the Project and infrastructure planning can be reduced by the provision of appropriate reports and plans relating to infrastructure design, capacity and funding with an application to a panel. The applicants have also confirmed that all necessary new and upgraded infrastructure will be completed at their cost as part of Project delivery. Although Auckland Council and Auckland Transport oppose Project referral under the FTCA, you could accept the application under section 24 of the FTCA and refer all the Project to a panel as the Project will have positive effects on social well-being, generate employment and increase housing supply. We recommend you require the applicants to provide the following information with an application for resource consent to a panel: i. a detailed infrastructure assessment of – - the capacity of the existing infrastructure for three-waters services to service the completed Project - what upgrading is required to that infrastructure to service the completed Project - how any upgrading is to be funded ii. a detailed transport infrastructure assessment of – - the capacity of the local road network to service the construction of the Project and the completed Project - what upgrading is required to the local road network to service the completed Project - how any upgrading is to be funded

Project details	Project description	Does all or part of the Project meet the referral criteria in section 18?		Summary of comments received	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3a - d))	Section 18(2) - Does the Project help achieve the purpose of the FTCA (as per section 19)?			
	Soil to Protect Human Health) Regulations 2011 (NES-CS).		The Project has the potential for adverse environmental effects including: • effects on character, visual and amenity values • noise, vibration, odour, and other temporary construction effects • effects relating to infrastructure and servicing capacity • effects on floodplains and overland flow paths • effects relating to construction phase and operational phase traffic • stormwater and sediment discharge effects • effects relating to disturbance of contaminated land • effects relating to overland flow path diversion • reverse sensitivity effects. The applicants consider that any adverse effects can be avoided, remedied or mitigated by employing industry best practice, standard techniques or appropriate conditions of resource consent. We note that you do not require a full Assessment of Environmental Effects and supporting evidence to make a referral decision, and that a panel will consider the significance of effects and appropriate mitigation should the Project be referred. Other relevant matters (19(f)) N/A	s 9(2)(f)(ii), s 9(2)(g)(i) Local authorities Auckland Council opposed Project referral and noted that while the Project will add residential capacity and provide an opportunity for additional open space, concerns still exist with the Project. Key concerns relate to: • the lack of a plan change and out of sequence development • capacity constraints on the stormwater, wastewater and transport network, including a lack of public transport options, that service the area Auckland Council noted several reports which would normally be required for an application of this nature in this area, including on: transport, three waters services, geotechnical, earthworks and construction management, natural hazards, urban design, landscape and visual, noise, archaeology, ecology, watercourses and contaminated land. We consider that these are generally covered by the requirements of clause 9 Schedule 6 of the FTCA but have taken this list into account in our referral conclusions and recommendations. Other parties Auckland Transport opposed Project referral for the following reasons: • it is considered more appropriate for the Project to proceed through a private plan change process as the Project will not help achieve the purpose of the FTCA given a well-functioning urban environment will not result due to misalignment between the timing to provide the minimum necessary infrastructure and services ahead of the occupation of residential units • strategic transport network infrastructure is required to service the area as identified in the Future Urban Land Supply Strategy (FULSS) and identified by Supporting Growth Alliance (a partnership of Auckland Transport and Waka Kotahi). As the FULSS identifies this area as intended to be development ready in 2028-2032, there are concerns about whether the Project is development ready • upgrades to the roading network will be required to support urbanisation of land in the Project area. The Regional Land Transport Plan (RLTP) sets out the 10-year plan for the transport network in Auckland (out to 2031) and does not currently set aside funding for the required works, meaning any bulk or strategic network upgrades are more than 10-years away. Auckland Transport requested that if the Project is referred, the applicants be required to provide an integrated transport assessment to a panel and noted that options for stormwater management should also be addressed.	s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) We note the comments from Auckland Council and Auckland Transport that the Project is out of sequence with respect to planned future urbanisation in the Auckland region and we consider that proceeding via a resource consent process in advance of re-zoning is generally not good planning practice. However, the FTCA does not preclude consideration of the Project for this reason and the Project provides an opportunity to generate employment and bring forward the delivery of housing in Auckland. Therefore, we do not consider that you should decline the referral application on the basis that it does not have a plan change in place or in progress.	iii. a stormwater and a draft stormwater management plan, and information about discussions held and any agreements made with the Auckland Council Healthy Waters department regarding stormwater management iv. an integrated transport assessment, including – 1. an assessment of how the Project will support both public modes of transport and active modes of transport such as cycling and walking 2. information about discussions held and any agreements made with Auckland Transport v. a report which address potential adverse effects on NZDF Base Auckland, including – 1. measures to address reverse sensitivity and whether no-complaints covenants should be imposed on any new records of title for the Project site 2. confirmation that no buildings or structures will breach the Obstacle Limitation Surface in AUP designation 4311 without the prior approval of the New Zealand Defence Force 3. measures to avoid risk to flight safety and operations including bird strike, and lighting and glare vi. a heritage assessment and details of how adverse impacts on heritage values will be avoided, remedied, or mitigated vii. in relation to the land in the Project site, a report on a preliminary site investigation and, if required, on a detailed site investigation, within the meaning of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, that shows how the requirements of those regulations will be met. We also recommend you direct a panel to invite comments on any resource consent applications for the Project from: • Ngāti Kōheriki Claims Committee • Te Kupenga o Ngāti Hako Incorporated • Ngaati Whanaunga Incorporated Society • Auckland Transport

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				Watercare Services Limited (Watercare) neither supported nor opposed Project referral noting the Project will require a local network extension for water supply and that wastewater servicing will be reliant on a new pump station that is expected to be completed at the end of 2024 (but cannot be confirmed until consents and landowner approvals are in place). All responses received by parties invited to comment are attached at Appendix 6.	We consider that overseas investment matters for Neil Construction Limited will not affect the ability of the Project to proceed.	• Watercare Services Limited • New Zealand Defence Force • Associate Minister for the Environment (Urban Policy)

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