

FTC#54: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Joint Stage 2 decisions:

Application 2020-22 - Whakatāne Commercial Boat Harbour

Date Submitted:	29 April 2021	Tracking:	MfE: 2021-B-07800 DOC: 21-B-0329
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	TBA
To Hon Dr Ayesha Verrall, Acting Minister of Conservation	Decisions on recommendations	TBA

Actions for Minister's Office Staff	<ol style="list-style-type: none"> Return the signed briefing to MfE and DOC Send the Notice of Decisions letter (if signed)
Number of appendices: 6	<p>Titles of appendices:</p> <ol style="list-style-type: none"> Whakatāne Commercial Boat Harbour application documents and additional information received Stage 1 Briefing Note and decisions Statutory framework for making decisions Draft Notice of Decisions letter to Whakatāne District Council & other applicants Section 17 Report Comments received from Ministers, Whakatāne District Council and Bay of Plenty Regional Council

Ministry for the Environment contacts

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Department of Conservation contacts

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FTC#54: Application for referred projects under the COVID-19 Recovery (Fast-track Consenting) Act – Joint Stage 2 decisions

Key Messages

1. This briefing relates to the application received under section 20 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) for referral of the Whakatāne Commercial Boat Harbour Project (the Project) to an expert consenting panel (a panel), from the following applicants:
 - a. Whakatāne District Council (WDC)
 - b. Te Rāhui Lands Trust
 - c. Te Rūnanga o Ngāti Awa
 - d. Ngāti Awa Group Holdings Limited
 - e. Te Rāhui Lands General Partner Limited
 - f. Te Rāhui Herenga Waka Whakatane Limited
 - g. Provincial Growth Fund Limited
2. A copy of the application is in Appendix 1. This is the second briefing relating to this application. The first (Stage 1) briefing (MfE: 2020-B-07196 and DOC: 20-B-0728) with your initial decisions annotated is in Appendix 2.
3. The Project is located within and on:
 - a. Māori freehold land at 2 Keepa Road, Coastlands, Whakatāne
 - b. public reserve land vested in the Bay of Plenty Regional Council (BOPRC) and managed for soil and water conservation purposes (including stopbanks)
 - c. Crown-owned Keepa Road Scenic Reserve managed by the Department of Conservation (DOC)
 - d. land with no title on the true left of the Whakatāne River which lies¹ in the Coastal Marine Area (CMA)
 - e. freehold land owned by WDC partly in the river and CMA, downstream of the harbour area on the true left bank (possibly needed for dredging)
 - f. potential sites for disposal of material from the boat harbour, as listed in Table A.
4. The Project is to construct and operate a boat harbour on Māori freehold land close to the left bank of the Whakatāne River, immediately downstream of the State Highway 30 bridge. The Project includes two alternatives for a vessel access channel (approximately 50 metres wide), that will cross land in the CMA, the public reserve and/or the scenic reserve, depending on the final design of the boat harbour facility and the final resource consent application.
5. The Project involves the following activities:

¹ Under the Bay of Plenty Regional Coastal Environment Plan the Project site lies partially within the coastal environment, but outside the Coastal Marine Area (CMA). The CMA boundary is defined by an agreement between the Minister of Conservation and the five Bay of Plenty councils. The Whakatāne River downstream of the State Highway 30 bridge lies within the CMA, in accordance with the same agreement. The position of the CMA boundary in the river cannot be changed until the next review of the regional coastal plan unless the Minister of Conservation and the appropriate councils agree.

- a. vegetation clearance, earthworks, excavation of soil, rock and other material and deposition to land
 - b. disturbance and remediation of contaminated land (including removal of historic timber mill timber peelings that were consented and placed during the 1980's)
 - c. take of water, and discharge of water and contaminants to water and land, from construction, dewatering and earthworks
 - d. disturbance and dredging of the Whakatāne River (within the CMA) to create the required depth for the access channel and to improve access over parts of the riverbed
 - e. installation of navigation aids in the CMA
 - f. damming and diversion of the Whakatāne River (CMA) to flood the facility
 - g. potential disturbance of a wetland and restoration of degraded areas of wetland, subject to the final location for the boat harbour channel entrance
 - h. construction of moorings and associated infrastructure within the boat harbour, including parking areas
 - i. construction of a technical training centre, maintenance facilities and other buildings
 - j. all other works associated with the above activities.
6. The Project is proposed in two stages. Stage One is to excavate the area for the boat harbour and construct berthage and maintenance facilities for commercial (tourism, fishing, aquaculture) users and a technical training centre. Stage Two will provide additional berthage along with recreational and community facilities.
 7. The Project requires land use consents, water, discharge and coastal permits under the Bay of Plenty Regional Natural Resources Plan and Regional Coastal Environment Plan, and land use consents under the Whakatāne District Plan and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS).
 8. The northern vessel access channel option involves disturbance, and potentially also restoration, of a wetland that requires consideration under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F). The northern vehicle access channel option also crosses a DOC managed scenic reserve and requires a separate authorisation process to occupy the reserve. DOC officials have advised that they do not see any significant concern regarding effects on conservation values with either vessel access route option.
 9. The Project includes disturbance of potentially natural wetlands. BOPRC has confirmed that as the Project meets the regionally significant infrastructure definition in the Bay of Plenty Regional Policy Statement (RPS) it is a discretionary activity under the NES-F.
 10. The Project offers an opportunity to restore the economic potential of the land involved, as well as enhancing the Whakatāne River. This is because the proposed development will convert the site, which is currently in agricultural use of marginal economic benefit, into a commercial and community asset.
 11. You must make a joint decision on the referral application as the Project is partly within the CMA.
 12. We recommend you accept the referral application under section 24 of the FTCA and refer the Project to a panel for fast-tracking. We seek your decision on this recommendation and on our recommendations for requirements of the applicants, 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 referral 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 applicants (in Appendix 1), the Section 17 Report (in Appendix 5) and comments from relevant Ministers, the Minister for Economic and Regional Development, WDC and Bay of Plenty Regional Council (BOPRC) (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 the joint applicants

16. In response to a request for information under section 22 of the FTCA, the applicants provided further information on a number of matters. We have taken this information into account in our analysis and advice.
17. The applicants have confirmed the location of the Project in respect to the CMA, the extent of works for dredging within the Whakatāne River, within the local purpose reserve adjacent to the site that is vested in BOPRC, and within the Keepa Road Scenic Reserve.
18. The applicants have confirmed that they intend to apply for resource consents for the entire development in order to ensure the Project stages are constructed in an integrated manner.
19. The applicants identified Royal Forest & Bird Protection Society and Environmental Defence Society as having an interest in the Project.²

Section 17 Report

20. The Section 17 Report indicates that Te Rūnanga o Ngāti Awa (TRONA) is the sole relevant iwi authority, and the only post-settlement governance entity established under the Ngāti Awa Claims Settlement Act 2005 relevant to the proposed Project.
21. Commercial redress under the Ngāti Awa Treaty settlement gave Ngāti Awa a Right of First Refusal (RFR) until 2055 to buy Crown-owned properties in a specified area, should the Crown decide to dispose of them. Although the Project lies within the specified RFR area, the only Crown-owned land potentially affected by the Project is a scenic reserve managed by DOC under the Reserves Act 1977. We understand that this land is not surplus to Crown requirements, so is unlikely to be affected by the RFR provisions of the Ngāti Awa Treaty settlement in the foreseeable future.

Comments received

22. Comments were received from three Ministers (named in section 21(6) of the FTCA), the Minister for Economic and Regional Development, WDC and BOPRC. The key points of relevance to your decision are summarised in Table A. We have taken this information into account in our analysis and advice.

² Royal Forest & Bird Protection Society of New Zealand Incorporated and Environmental Defence Society Incorporated are listed in Schedule 6, Clause 17(6) of the FTCA as persons who must be invited to comment on a referred project.

27. WDC, in its regulatory capacity, considered that the fast-track process will not lead to any diminishment of assessment and decision making for the Project under the Resource Management Act 1991 (RMA), and will bring about significant economic, employment and other benefits in a more timely way.
28. WDC recommended technical assessment reports for inclusion in any resource consent application to a panel, including an ecological report and traffic assessment. WDC also nominated potentially affected parties as listed in Table A.
29. BOPRC considered that the fast-track process is likely to be appropriate, noting that no significant issues were identified that would deem the Project inappropriate. BOPRC raised matters to be addressed by the applicants in a resource consent application to a panel, including river flood protection, ecological values and freshwater management, along with advising of potentially affected parties, as listed in Table A.

Section 18 referral criteria

30. You may accept the application for referral of the Project 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)).
31. We confirm that the Project does not include ineligible activities, and therefore satisfies the requirements of section 18(3) of the FTCA, as explained in Table A.
32. 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 confirm that the Project will help to achieve the purpose of the FTCA, and satisfy the requirements of section 18(2), as it has the potential to:
 - a. generate employment by providing up to 30 direct full-time equivalent (FTE) jobs during the civil works and approximately 30 in-direct FTEs in marine servicing. The applicants estimate longer-term employment of 229 in-direct jobs from the on-water development,

373 boat building jobs, 230 new tourism-centred jobs, and new jobs in mussel harvesting and processing. These jobs are in sectors impacted by COVID-19.

- b. provide infrastructure to improve economic outcomes for the marine farming, boat building and tourism industries
 - c. provide infrastructure by transforming the site, which is currently in agricultural use of marginal economic benefit, into a commercial and community asset
 - d. have positive effects on social wellbeing via the provision of employment, economic benefits and fit-for-purpose facilities for commercial and recreational users, and reskilling and upskilling opportunities via the proposed training facility
 - e. progress faster than would otherwise be the case under standard RMA processes.
33. We consider that any adverse effects arising from the Project, together with any proposed mitigation measures, could be appropriately tested by a panel against Part 2 of the RMA and the purpose of the FTCA.

Issues and Risks

34. 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(5) FTCA matters

35. Section 23(5) of the FTCA provides further guidance on reasons to decline an application, and a summary of our analysis of these matters is in Table A. Note that you may accept an application even if one or more of those reasons apply. We do not consider that there are any grounds under section 23(5) to recommend that you decline the project referral.

Other

36. A separate authorisation is required from DOC for construction and use of the Project's northern vessel access channel to the boat harbour through Keepa Road Scenic Reserve, which is administered by DOC under the Reserves Act 1977. Following engagement with the applicants, DOC has confirmed that there is no significant impediment to gaining the necessary approvals under this legislation in parallel to the fast track consenting process.
37. There are potentially natural wetlands within the proposed harbour development site. If confirmed to be natural wetlands, they will need to be considered under the NES-F and the National Policy Statement for Freshwater Management. The Project is for a commercial port. On that basis, the applicant considers that the proposed works within wetlands are discretionary activities under regulation 45 of the NES-F, rather than being prohibited under regulation 53, as they are for the purpose of constructing specified infrastructure. Specified infrastructure includes regionally significant infrastructure as identified in the Bay of Plenty Regional Policy Statement (RPS), and the RPS definition of regionally significant infrastructure includes commercial ports. BOPRC have confirmed that the Project will be a discretionary activity under the NES-F.

Conclusions

38. We do not consider there are any significant reasons for you to decline to refer the Project. We consider that you could accept the application under section 24 of the FTCA and that all of the Project could be referred to a panel.
39. We consider that if you decide to refer the Project, you should specify under section 24(2)(d) of the FTCA that the joint applicants must provide the following information, additional to the requirements of clause 9 of Schedule 6 of the FTCA, in a resource consent application submitted to a panel:

- a. an ecological assessment
 - b. a river flood protection assessment, including:
 - i. adverse effects on the Whakatāne River stopbanks
 - ii. adverse effects of erosion and scour from dredging on the stopbanks and flood protection structures
 - c. a freshwater management assessment including:
 - i. adverse effects on the disturbance of a natural wetland
 - ii. adverse effects on freshwater ecology and water quality due to dredging of the river
 - d. an integrated transport including, but not limited to, modelling and analysis that covers the effects on the surrounding road network.
40. The above information is required to inform a panel of the actual and potential effects of the Project.
41. 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 resource consent application from:
- a. Whakatāne Volunteer Coastguard Association Incorporated, to inform a panel's assessment of actual and potential effects of the development on the operational use of the Whakatāne River, as recommended by BOPRC
 - b. Whakatāne Harbour Care Group, to inform a panel's assessment of actual and potential effects of the development on the fauna and flora within and along the banks of the Whakatāne River, as recommended by WDC and BOPRC
 - c. Waka Kotahi New Zealand Transport Agency, to inform a panel's assessment of actual and potential effects of the development including on the nearby State Highway 30, as recommended by WDC.
42. Our recommendations for your decisions follow.

Next Steps

43. 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.
44. We have attached a letter to the applicants based on these requirements and our recommendations (refer Appendix 4). We will assist your offices to give copies to all relevant parties.
45. To refer the Project, you must recommend that a referral order be made by way of an Order in Council (OiC).
46. 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.³

³ 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

47. 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 this referral application 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** that when assessing whether the Project will help to achieve the purpose of the FTCA, you may consider a number of matters under section 19, including the Project's economic benefits and costs, and effects on social and cultural well-being; whether it may result in a public benefit including generating employment and providing infrastructure to improve economic outcomes, and whether it could have significant adverse effects.
- c. **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 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.
- d. **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.
- e. **Note** that before deciding to accept a referral application 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 received
 - iv. any further information requested and provided within the required timeframe.
- f. **Agree** that the Project meets the referral criteria in section 18(3) of the FTCA.

Yes/No
- g. **Agree** that the Project will help achieve the purpose of the FTCA (and therefore meets the referral criteria in section 18(2) of the FTCA) as it has the potential to:
 - i. generate employment by providing up to 30 new direct full-time equivalent (FTE) jobs during the civil works and approximately 30 in-direct FTEs in marine servicing. There is also the potential for longer-term new employment of 229 in-direct jobs from the on-water development, 373 boat building jobs, 230 new tourism-centred jobs, and new jobs in mussel harvesting and processing. These jobs are in sectors impacted by COVID-19
 - ii. provide infrastructure to improve economic outcomes for the marine farming, boat building and tourism industries, provide infrastructure by transforming the

site, which is currently in agricultural use of marginal economic benefit, into a commercial and community asset

- iii. have positive effects on social wellbeing via the provision of employment, economic benefits and fit-for purpose facilities for commercial and recreational users, and reskilling and upskilling opportunities via the proposed training facility
- iv. progress faster than would otherwise be the case under standard Resource Management Act 1991 processes.

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 consent application lodged with the Environmental Protection Authority:

- i. an ecological assessment
- ii. a river flood protection assessment, including:
 - adverse effects on the Whakatāne River stopbanks
 - adverse effects of erosion and scour from dredging on the stopbanks and flood protection structures
- iii. a freshwater management assessment including:
 - adverse effects on the disturbance of a natural wetland
 - adverse effects on freshwater ecology and water quality due to dredging of the river
- iv. an integrated transport assessment including, but not limited to, modelling and analysis that covers the effects on the surrounding road network.

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. Whakatāne Volunteer Coastguard Association Incorporated
- ii. Whakatāne Harbour Care Group
- iii. Waka Kotahi New Zealand Transport Agency

Yes/No

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

Yes/No

- l. **Sign the attached (Appendix 4)** notice of decisions to Whakatāne District Council and other applicants with copies to be provided as noted.

Yes/No

- m. **Agree** to provide a copy of the notice of decisions to the relevant applicants for marine customary title and protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011, identified in the Section 17 Report

Yes/No

- n. **Note** that to ensure your compliance with section 25(3) of the FTCA, the Ministry for the Environment will publish the decisions, the reasons, and the Section 17 Report on the Ministry's website.

Signatures



Madeleine Berry
Responsible Manager – Fast Track Consenting
Ministry for the Environment

Date



Geoff Deavoll
RMA Manager
Department of Conservation

Date:

Hon David Parker
Minister for the Environment

Date

Hon Dr Ayesha Verrall
Acting Minister of Conservation

Date

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?		Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations	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 Whakatāne Commercial Boat Harbour Applicants <ul style="list-style-type: none"> Whakatāne District Council Te Rāhui Lands Trust Te Rūnanga o Ngāti Awa Ngāti Awa Group Holdings Limited Provincial Growth Fund Limited Te Rāhui Lands General Partner Limited Te Rāhui Herenga Waka Whakatāne Limited Location The Project is located within and on: <ul style="list-style-type: none"> 2 Keepa Road, Coastlands, Whakatāne public reserve land vested in the Bay of Plenty Regional Council (BOPRC) and managed for soil and water conservation purposes 	<p>To construct and operate a boat harbour on Māori freehold land close to the left bank of the Whakatāne River. The project includes two alternatives for the vessel access channel (approximately 50m wide), either a "northern" or "southern" location. These are subject to confirmation of the design of the facility and the final consent application.</p> <p>The Project is expected to be completed in two stages. Stage One is to construct berthage and maintenance facilities for commercial (tourism, fishing, aquaculture) users and a technical training centre. Stage Two will provide additional berthage along with recreational and community facilities.</p> <p>The first stage of the Project includes:</p> <ul style="list-style-type: none"> construction of the boat harbour including its channel entrance and the first berths focused on the commercial industry (tourism, fishing and aquaculture) construction of the Marine Technical Training Centre facility along with other buildings and the commercial hardstand maintenance facility flood protection works remediation of the site to remove historic timber mill timber peelings that were consented and placed during the 1980's. <p>Construction on the second stage is expected to commence soon after the completion of the first stage in late 2022, including:</p> <ul style="list-style-type: none"> additional berthage recreational and community facilities (including car and boat trailer parking). 	<p>The Project is eligible under section 18(3)(a-d) as:</p> <ul style="list-style-type: none"> based on reasonable information provided by the applicant, 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 protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA) 	<p>Economic benefits for people or industries affected by COVID-19 (19(a)):</p> <p>The applicants estimate that the Project will provide up to 30 direct full-time equivalent (FTE) jobs during the civil works (to later 2022 for completion of stage 1) and approximately 30 indirect FTEs in marine servicing. The joint applicant's estimates of longer-term employment are 229 in-direct jobs from the on-water development, 373 boat building jobs, 230 tourism-centred jobs, and jobs in mussel harvesting and processing. These jobs are in sectors impacted by COVID-19.</p> <p>Economic costs for people or industries affected by COVID-19 (19(a)):</p> <p>N/a</p> <p>Effect on the social and cultural well-being of current and future generations (19(b)):</p> <p>The Project will have positive effects on social wellbeing via the provision of employment, economic benefits and fit-for purpose facilities for commercial and recreational users.</p> <p>The Project includes a training facility (co-funded by the PGF) providing reskilling and upskilling opportunities via training providers to support contractors who will be asked by the applicants to focus on locally sourced employees.</p> <p>The applicants have considered the effects of the Project on cultural wellbeing. Five duly notified meetings have been held at Hokowhitu Marae where there has been unanimous support from owners of the Project site to progress the application. Te Rāhui Lands Trust and Te Rūnanga o Ngāti Awa (TRONA) are partners in the Project. Te Rūnanga o Ngāti Awa signed a Heads of Agreement to signify their support for the Project within Whakatāne.</p> <p>Is the Project likely to progress faster by using the FTCA (19(c))?</p> <p>The applicants consider that the fast-track process is likely to be faster than standard RMA processes given the potential for public notification and appeal/s under standard processes.</p> <p>Will the Project result in a public benefit (19(d))?</p>	<p>Ministers</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>Local authorities</p> <p>Whakatāne District Council (WDC) in its regulatory capacity, considered that the fast-track process will not lead to any diminishing of the process of assessment and decision making and will bring about significant economic, employment and other benefits in a more timely way. WDC advised the Rural Plains zoning of the boat harbour site broadly contemplates development of facilities of the type proposed. The policy framework recognises a fundamental need for some activities to be located where there is access to water.</p> <p>WDC advise that the most significant environmental issue is likely to be the impact of the development on ecological values alongside the Whakatāne River. Some impact is unavoidable. WDC's policy is that restoration and rehabilitation of ecosystems and habitats, both on and off site, should be required where avoidance is not possible, and that this should achieve a net ecological gain.</p> <p>WDC also advise that Keepa Road is a collector road and it is likely to have significant growth in the foreseeable future. While traffic safety and efficiency will be addressed in any traffic assessment the proposed five crossing points for the Project could be reduced to minimise conflicts, particularly for the future development of the adjacent vacant industrial zoned land. The vacant industrial zoned land on the opposite side of Keepa Road (about 7 ha) can be used for complimentary uses supporting a boat harbour and marine related activities. Part of this industrial and (about 4 ha) is currently subject to a request for a private plan change for the land to be zoned residential. This request is on hold. WDC advise the while the requested residential zoning has no legal weight, a change to a residential receiving environment is a foreseeable environmental outcome that should</p>	<p>Section 23(5) matters:</p> <p>Insufficient information (23(5)(a))</p> <p>The applicant has 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>In agreement with the comments received we do not consider it would be more appropriate for all or part of the Project to proceed through the standard consenting process under the RMA.</p> <p>Inconsistent with a relevant national policy statement (23(5)(c))</p> <p>We do not consider that the Project is inconsistent with any relevant national policy statement.</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 an activity on land needed for Treaty settlement purposes (23(5)(e))</p> <p>The Project site does not include land needed for Treaty settlement purposes.</p> <p>Applicant has poor history of</p>	<p>s 9(2)(g)(i), s 9(2)(f)(iv) we advise as follows:</p> <ul style="list-style-type: none"> The Section 17 Report identifies relevant MACAA applicants and notes if the Project is referred to a panel, they should be invited to comment on any resource consent applications. We also recommend that you agree to provide a notice of your decisions on the referral application to these MACAA applicants, in addition to the groups identified in section 25(1) and (2) of the FTCA, s 9(2)(g)(i), s 9(2)(f)(iv) <p>In response to WDC's comments, we advise as follows:</p> <ul style="list-style-type: none"> a panel can assess the merits of an application against the New Zealand Coastal Policy Statement (NZCPS), relevant National Environmental Standards and District Plans. the comments raised relevant matters requiring further information and assessment, including ecological and traffic effects. Provision of this information would inform the panel's assessment of actual and potential effects of the Project and assist a panel to identify any other parties from whom comments should be invited. a panel can consider potential adverse effects. We note that a panel's assessment will be informed by comments received from WDC relevant local authorities, iwi authorities and Treaty settlement entity, owners of the Project site, owners and occupiers of adjacent land and Royal Forest & Bird Protection Society of New Zealand Incorporated (RFBPS) are already invited to comment under Schedule 6, Clause 17(6) of the FTCA. <p>In response to BOPRC's comments, we advise as follows:</p> <ul style="list-style-type: none"> a panel can assess the merits of an application against the NZCPS, relevant National Environmental Standards and Regional Plans the comments raised relevant matters requiring assessment, including effects on river flood protection, ecological values and freshwater management. Provision of this information would inform the panel's assessment of actual and potential effects of the development and assist a panel to identify any other parties from whom comments should be invited

Project details	Project description	Does all or part of the Project meet the referral criteria in section 18?		Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations	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)?			
<ul style="list-style-type: none"> Crown-owned scenic reserve managed by the Department of Conservation (DOC) Crown land with no title on the true left of the Whakatāne River which lies in the Coastal Marine Area (CMA) freehold land owned by WDC partly in the river and CMA, downstream of the harbour area on the true left bank (possibly needed for dredging) potential sites for disposal of material from the boat harbour (23 Keepa Rd, 49A Keepa Rd, 65D Keepa Rd, 85 Thornton Rd, 60 Bunyan Rd, 191 Awahou Rd, 268 Fosters Rd and 234 State Highway 30 (SH 30)). 	<p>The Project involves the following activities:</p> <ul style="list-style-type: none"> Earthworks, land disturbance and vegetation clearance to construct the facility excavation of soil, rock and other material and deposition to land remediation and disturbance of contaminated land to construct the facility take of water and sediment laden discharges to water and land, from construction, dewatering and earthworks activities disturbance and dredging of the Whakatāne River to create the required depth for the access channel navigation aids installed within the river inside the Coastal Marine Area damming and diversion of the river (CMA) to flood the facility subject to the final location for the boat harbour channel entrance the works may involve the disturbance of wetlands and potentially, the restoration of degraded areas of wetland potential dredging or otherwise modify other parts of the riverbed (within the CMA) to improve access all other works associated with the above activities. <p>The Project requires land use consents under the Whakatāne District Plan, land use consents under the Waikato Regional Plan, coastal permits under the Waikato Regional Coastal Plan 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).</p>		<p>Based on the information provided we consider the Project may result in the following public benefits:</p> <ul style="list-style-type: none"> generating employment (19(d)(i)) provide infrastructure to improve economic outcomes for the marine farming industry (19(d)(iv)) have positive effects on social wellbeing (19(d)(ix)) <p>Potential to have significant adverse environmental effects, including greenhouse gas emissions (19(e)):</p> <p>The Project has the potential for adverse environmental effects, including:</p> <ul style="list-style-type: none"> construction activities – traffic, noise, vibration and earthworks wetlands and terrestrial ecology freshwater ecology coastal / marine ecology coastal processes / natural hazards hydrology water quality – fresh and coastal water contaminated land navigational safety biosecurity stormwater management and discharges. operational noise building form and amenity access, parking and loading <p>The applicants have provided details of mitigation measures to address potential adverse effects and have confirmed that technical experts have completed a range of supporting assessments. The applicants advise that subject to appropriate mitigation, the proposed activities will not result in significant adverse environmental effects.</p> <p>The applicants also intend to provide details of greenhouse gas emission reductions resulting from the Project in any referred application.</p> <p>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 assess environmental effects and appropriate mitigation should you decide to refer the Project.</p> <p>Other relevant matters (19(f)):</p> <p>N/A</p>	<p>also be addressed. However, there appears to be no reason why the boat harbour could not co-exist alongside residential activities with appropriate amenity protection in place.</p> <p>WDC recommended technical assessment reports that should be included in any resource consent application to a panel, including an ecological report and traffic assessment, and advised of the following parties that potentially have an interest in the Project:</p> <ul style="list-style-type: none"> DOC (as adjoining landowner) Bay of Plenty Regional Council (as adjoining landowner) Lysaght Developments (Ian and Adrienne Lysaght) (as adjacent landowners) TRONA (as an entity having statutory acknowledgement of the Whakatāne River) Waka Kotahi New Zealand Transport Agency (Waka Kotahi) Royal Forest and Bird Protection Society New Zealand Incorporated (RFBPS) Whakatāne Harbour Care Group <p>Bay of Plenty Regional Council (BOPRC) considered that the fast-track process is likely to be appropriate, noting that no significant issues were identified that would deem the project inappropriate. BOPRC noted that the Project is likely to provide economic and social benefits to the community through the construction process and the long term provision of moorings and port facilities.</p> <p>BOPRC raised matters to be addressed by the applicants in a resource consent application to a panel (including river flood protection, ecological values and freshwater management), along with advising of the following parties that are potentially affected by the Project:</p> <ul style="list-style-type: none"> Department of Conservation RFBPS Whakatāne Harbour Care Group Whakatāne Volunteer Coastguard Association Incorporated <p>Other parties</p> <p>§ 9(2)(f)(ii), § 9(2)(g)(i)</p> <p>All responses received by parties invited to comment are attached at Appendix 6.</p>	<p>environmental regulatory compliance (23(5)(f))</p> <p>BOPRC has advised that within recent years, the Whakatāne District Council has had an exemplary compliance record on relevant consents, including the Whakatāne River wharf maintenance, Whakatāne River dredging, earthworks at the Whakatāne skate park which is a contaminated site, maintenance of the Whakatāne River boat ramp and upgrade works at the Ohope Wharf.</p> <p>Insufficient time for the Project to be referred and considered before the FTCA is repealed (23(5)(g))</p> <p>There is sufficient time for the application to be referred and considered before the FTCA is repealed.</p>	<ul style="list-style-type: none"> a panel can consider potential adverse effects. We note that a panel's assessment will be informed by comments received from BOPRC The Minister of Conservation and RFBPS are already invited to comment under Schedule 6, Clause 17(6) of the FTCA. <p>Recommendations</p> <p>There are no reasons to decline to refer the Project. We recommend that you accept the application under section 24 of the FTCA and refer all of the Project to a panel.</p> <p>We recommend that you do not place any restrictions on the Project, nor impose any specific timeframes for panel consideration.</p> <p>We recommend you make the following directions to the panel:</p> <ul style="list-style-type: none"> to invite comments from Whakatāne Harbour Care Group, Whakatāne Volunteer Coastguard Association Incorporated and Waka Kotahi in addition to those parties specified in clause 17(6) of Schedule 6 of the FTCA. <p>We also recommend you require the applicant to submit the following information (in addition to the information specified in Schedule 6 of the FTCA) with any consent application lodged with the Environmental Protection Authority:</p> <ol style="list-style-type: none"> an ecological assessment a river flood protection assessment, including: <ul style="list-style-type: none"> adverse effects on the Whakatāne River stopbanks adverse effects of erosion and scour from dredging on the stopbanks and flood protection structures a freshwater management assessment including: <ul style="list-style-type: none"> adverse effects on the disturbance of a natural wetland adverse effects on freshwater ecology and water quality due to dredging of the river an integrated transport assessment including, but not limited to, modelling and analysis that covers the effects on the surrounding road network.

Schedule of Appendices

Appendix 1 – Whakatāne Commercial Boat Harbour Project – Application form and additional information received

Appendix 2 – Briefing (MfE: 2020-B-07196 and DOC: 20-B-0728) – Application for referred project under the COVID-Recovery FTCA - Stage 1 decision on Whakatāne Commercial Boat Harbour application

Appendix 3 – Statutory framework for making decisions

Appendix 4 – Draft Notice of Decisions letter to Whakatāne District Council and other applicants

Appendix 5 – Section 17 Report

Appendix 6 – Comments received from Ministers, Whakatāne District Council and Bay of Plenty Regional Council

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