

FTC#6: Application for referred projects under the COVID-19 Recovery (fast Track Consenting) Act – Stage 2 decision on:

Application 9 - Clutha Upper Waitaki Lines Project (CUWLP) Project Works and Workers' Village

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|-----------------|----------------|--------------------------|
| Date Submitted: | 25 August 2020 | Tracking #: 2020-B-07109 |
| Security Level | In- Confidence | MfE Priority: Urgent |

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|---|-----------------------|---------------------|
| | Action sought: | Response by: |
| To Hon David Parker, Minister for the Environment | Decision | 26/08/2020 |

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|---|---|
| Actions for Minister's Office Staff | Return the signed report to MfE. |
| Number of appendices and attachments: 6 | <p>Titles of appendices and attachments (ie separate attached documents):</p> <ol style="list-style-type: none"> 1. Clutha Upper Waitaki Lines Project (CUWLP) Project Works and Workers' Village Project Application and amended documentation received 21/09/2020 2. Stage 1 Briefing Note and Decision 3. Notice of Decision Letter to Transpower 4. Section 17 Treaty of Waitangi Report 5. Comments received from Ministers, Local Authorities and Iwi 6. Additional Information received within Fast-track Consenting process |

Ministry for the Environment contacts

| Position | Name | Cell phone | 1 st contact |
|---------------------|---------------|------------|-------------------------|
| Principal Author | Rachel Ducker | s 9(2)(a) | |
| Responsible Manager | Sara Clarke | s 9(2)(a) | ✓ |
| Director | Liz Moncrieff | s 9(2)(a) | |

FTC#6: Application for referred projects under the COVID-19 Recovery (fast Track Consenting) Act – Stage 2 decision

Key Messages

1. This briefing relates to the application received from Transpower New Zealand Limited for the Clutha Upper Waitaki Lines Project (CUWLP): Project Works and Workers' Village.
2. Officials recommend accepting this application and referring it to an expert consenting panel for fast-tracking.
3. This is the second briefing relating to this application. A copy of the first briefing (2020-B-07082) regarding this application is included in Appendix 2.
4. The application is to upgrade and increase the capacity of existing 220kV electricity transmission lines through the Otago-Southland region and the Waitaki Valley and establish a village to house workers for the duration of the project.
5. The transmission lines are located in a loop from Roxburgh north to Naseby, Livingstone, the Waitaki (including dams at Aviemore, Benmore, Ohau B and C) and Twizel, and south through Cromwell and Clyde to Roxburgh. The proposed temporary Workers' Village will be located near Roxburgh/ Naseby (refer application in Appendix 1).
6. Section 24 of the Act sets out the matters you must consider at this stage of the process. In accordance with section 24, you may now decide whether to accept all or part of a project for referral to an expert consenting panel or decline the application under section 23.
7. If you decide to accept an application for referral, you must consider:
 - a. the application; and
 - b. the Treaty of Waitangi report (prepared under section 17); and
 - c. any comments received (under section 21); and
 - d. any further information requested¹ and provided on an application.
8. A summary of our analysis and advice for this application is provided in Table 1. To meet your obligations under the Act, full details of the application, along with the Treaty of Waitangi report (Appendix 3), local authority and Ministers' comments and the further information provided by Transpower, is provided in the appendices.

Legal issues/risks

9. When lodged, a part of the project crossed an area (Naseby Forest) identified as land that was returned under a Treaty Settlement. This did present a legal risk at the time. However, this part of the project has now been withdrawn. The letter confirming this is attached with the application in Appendix 1.

Next steps

10. Once you make your decision on an application, you must give notice of this decision, and the reasons for it, to the applicant, and the persons, entities and groups listed in section 25 of the Act. We have attached a letter to the applicant based on our recommendations (refer Appendix 4). The Ministry will work with your office to give notice to the persons invited to

¹ Section 22

comment on the application on your behalf.

11. To refer a project, you must recommend that a referral order be made by way of an Order in Council. For the first Order in Council (OiC), standard Cabinet approval processes apply whereby Cabinet agreement is sought before drafting instructions can be issued to the Parliamentary Counsel Office (PCO). Once you have made your decision on this application, we will provide you with a draft Cabinet Paper for Ministerial consultation.
12. Cabinet has agreed for all subsequent OiC, that you can issue drafting instructions to PCO without the need for a policy decision to be taken by Cabinet in the first instance². Final decisions on an OiC will still be taken to the Cabinet Legislation Committee, followed by Cabinet confirmation.

² 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

1. We recommend that you:

- a. **Note** that section 23 of the Act requires you to decline an application for referral unless you are satisfied that the project meets the referral criteria in section 18 of the COVID-19 Recovery (Fast-track Consenting) Act 2020.
- b. **Note** that before deciding to accept an application for referral you must consider:
 - i. the application; and
 - ii. the Treaty of Waitangi report obtained under section 17; and
 - iii. any comments received; and
 - iv. any further information requested and provided.
- c. **Agree** that the Clutha Upper Waitaki Lines Project (CUWLP) Project Works and Workers' Village Project meets the referral criteria in section 18 and the purpose of the Act in section 19.

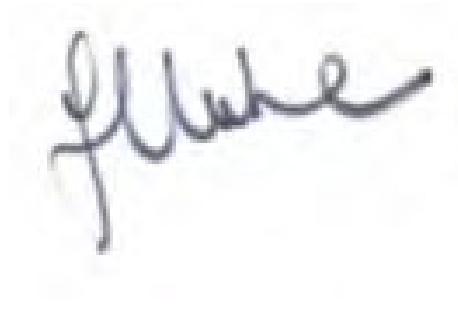
Yes/No
- d. **Agree** to refer all of the Clutha Upper Waitaki Lines Project (CUWLP) Project Works and Workers' Village Project to an expert consenting panel.

Yes/No
- e. **Agree** to the Ministry for the Environment providing you with a draft Cabinet Paper for Ministerial consultation.

Yes/No
- f. **Sign** the attached (Appendix 3) notice of decision letter to Transpower New Zealand Limited.

Yes/No
- g. **Note** that the Ministry for the Environment is required to publish your decision, the reasons, and the section 17 Treaty of Waitangi report on the Ministry's website under section 25(3) of the Act.

Signature

A handwritten signature in dark ink, appearing to read 'Sara Clarke', is written on a light-colored background.

Sara Clarke
Manager – Fast Track Consenting

Hon David Parker
Minister for the Environment

Date

Table 1: Project Analysis Summary

| Project name, applicant and location | Project description | Does the project meet the eligibility criteria (s18)? | Treaty of Waitangi report (s17) – summary of key findings | Summary of comments received | Does the project help achieve the purpose of the Act (s19)? | Section 24 Assessment |
|--|---|---|--|---|--|--|
| <p>Clutha Upper Waitaki Lines Project (CUWLP) Project Works and Workers' Village</p> <p>Transpower New Zealand Limited</p> <p>Otago-Southland region and the Waitaki Valley.</p> | <p>To upgrade electricity transmission lines and construct and use land for a temporary Workers' Village.</p> | <p>The project meets the eligibility criteria in section 18 (3) (a-d) as:</p> <ul style="list-style-type: none"> Based on the information available, it does not include any prohibited activities. It does not include land returned under a Treaty settlement. Works on land subject to a previous Treaty settlement in Naseby Forest have been withdrawn from the application. The works do not occur in a customary marine title area or protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011. | <p>The Section 17 report identifies the matters in section 17(3) including the relevant iwi authorities.</p> <p>Full report attached at Appendix 4.</p> | <p>Ministers</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>Local authorities</p> <p>In general, Local Authorities were either neutral or did not support the use of fast-track consenting processes. This is due in part to perceptions about the ease of consenting processes under the relevant provisions of the National Environmental Standards for Electricity Transmission Activities and applicable district and regional plans. Local authorities summarised the potential adverse effects of the project and the types of conditions that would be required to avoid, remedy and mitigate effects.</p> <p>Iwi</p> <p>Te Runanga O Ngāi Tahu (TRoNT), Aukaha, Aoraki Environmental Consultancy Limited and Te Ao Marama were asked to provide comment on behalf of Papatipu Runanga. Te Ao Marama do not oppose referral of the application. Other agencies representing Papatipu Rūnanga do not support or are neutral to using the fast-track consent process due to:</p> <ul style="list-style-type: none"> Lack of available information. Concern that fast tracking will force rūnaka into having to respond in a tight, shortened window which may compromise cultural values. <p>A full copy of comments received is provided in Appendix 5. All of the comments received will be provided to the EPA and Panel Convenor for the expert consenting panel, to consider as a part of its merits-based assessment.</p> | <p>The project helps to achieve the purpose of the Act by promoting employment and supporting investment certainty across New Zealand as part of the COVID-19 response, while continuing to promote the sustainable management of natural and physical resources for the following reasons:</p> <ul style="list-style-type: none"> It will provide specialist and local employment opportunities in a region particularly impacted by the downturn in tourism caused by Covid-19. Public benefits of the project include assisting the transition to a low carbon economy and meeting NZ climate change targets and increasing resilience of the electricity system and NZ's national grid, infrastructure of national significance. Any adverse effects have the potential to be avoided, remedied or mitigated by conditions imposed by the expert consenting panel. Matters raised by industry regarding whether this project should proceed at this time are considered to be an issue for Transpower and the Electricity Commission rather than matters under the Act. | <p>Some comments received from local authorities do not support use of the fast-track consent process, citing the availability of standard RMA processes that are not complex. However, the fast-track consent process is a legitimate planning process and is considered to have the potential to reduce overall consent timeframes and provide increased investment certainty. These factors are important in this situation given the pending closure of Tiwai Point aluminium smelter resulting in excess capacity at the Manapouri generation scheme. This project has a critical role in allowing this excess, renewable generation to be brought north to meet the needs of electricity consumers.</p> <p>With respect to the considerations under section 24(2) of the Act, no reasons have been identified in the consultation/assessment process to:</p> <ul style="list-style-type: none"> Limit the scope of the project by referring it only in part. Refer the application in stages. Place any restrictions on the project. Require the applicant to provide any specific information to the panel. Invite any comments from any specific persons or groups in addition to those listed in Schedule 6, clause 17. Impose specific timeframes for panel consideration. <p>Further information is however provided in Appendix 6 regarding recommendations from local authorities on groups that the expert consenting panel may wish to invite comments from. It is considered more appropriate that this information is considered by the expert consenting panel, rather than as a directive in a referral order.</p> |

Schedule of Appendices and Attachments

Appendix 1 – Transpower NZ Limited – Application form and Additional Information Received

Appendix 2 – 2020-B-07082 FTC#3 – Application for referred project der the COVID-Recovery Act - Stage 1 decision on Application 9 Clutha Upper Waitaki Lines Project

Appendix 3 – Section 17 Treaty of Waitangi Report

Appendix 4 – Notice of Decision letter to Transpower New Zealand Limited

Appendix 5 – Comments received from Ministers, Local Authorities and Iwi

Appendix 6 - Additional information received within Fast-track Consenting process

Released under the provision of
the Official Information Act 1982