

In Confidence

Office of the Minister for the Environment

Chair, Cabinet

COVID-19 Recovery (Fast-track Consenting) Act 2020: Implementation update and first application for referral to an Expert Consenting Panel

Proposal

- 1 This paper provides an implementation update of the COVID-19 Recovery (Fast-track Consenting) Act 2020 and seeks agreement to refer, by Order in Council, Transpower New Zealand Limited's Clutha Upper Waitaki Lines Project – Project Works and Workers' Village to an Expert Consenting Panel.

Executive Summary

- 2 The Government's response to COVID-19 has been wide ranging and comprehensive. The COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) is one such response. It aims to support New Zealand's economic recovery by providing a faster consenting pathway for projects.
- 3 Implementation of the FTCA has commenced at pace. Applications for two of the projects listed within the FTCA have been lodged with the Environmental Protection Authority with decisions expected in November this year. To date I have received 18 applications for the fast-track consenting process which I am considering.
- 4 Transpower New Zealand Limited's Clutha Upper Waitaki Lines Project – Project Works and Workers' Village is the first application I have accepted to be referred to a Panel through an Order in Council (OIC). I am seeking agreement for drafting instructions to be issued for the OIC.
- 5 I have considered whether this project helps to achieve the purpose of the FTCA, relevant Treaty of Waitangi considerations¹, and sought written comments from the relevant Ministers, local authorities, and iwi authorities.
- 6 I have accepted this application as the project:
 - a. offers economic benefits for the Otago, Canterbury, and Southland Regions
 - b. will progress faster than would otherwise be the case under standard RMA processes
 - c. will result in a public benefit, particularly in relation to facilitating further renewable energy development, emissions reductions by increasing New

¹ Through receiving a report identifies the relevant iwi authorities, Treaty settlements and other matters specified in section 17 of the FTCA.

Zealand's total share of renewable energy, and increasing the resilience of the national electricity grid in the project area.

- 7 I seek agreement to issue drafting instructions to the Parliamentary Counsel Office for an OIC to refer this project to an Expert Consenting Panel. To support the efficient drafting of future Orders in Council and to ensure they are accessible to the public, I am also seeking agreement to establish a framework OIC and have future Orders included as individual schedules to the OIC.

Background

- 8 The COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) received Royal assent on 8 July 2020. Its purpose is to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.
- 9 The FTCA provides two processes to fast-track resource consent and designation processes:
- a. **Projects listed in the FTCA:** Schedule 2 of the Act lists projects that will be automatically referred to an Expert Consenting Panel for consideration.
 - b. **Projects referred through Orders in Council:** any person with a project can apply to the Minister for the Environment² (the Minister) to fast-track their consent or designation. The Minister accepts an application and recommends an Order in Council³ (OIC) be made allowing an applicant to have the project considered by an Expert Consenting Panel.
- 10 Once referred to an Expert Consenting Panel (Panel), the FTCA speeds up usual Resource Management Act 1991 (RMA) timeframes for consents and designations by:
- a. reducing the timeframes for comments to be provided on an application (10 working days), and the decision made by a Panel (25 working days after comments are received, or 50 working days if extended)
 - b. reducing notification requirements
 - c. limiting appeal rights.

Implementation update for the *COVID-19 Recovery (Fast-track Consenting) Act 2020*

- 11 In April Cabinet noted the Minister for the Environment would report back at regular intervals to provide progress updates on the FTCA⁴. Since coming into effect implementation of the FTCA has commenced at pace. The paragraphs below detail the progress of different aspects of the FTCA.

² Clause 20 of the FTCA.

³ Orders in Council under the FTCA are referred to as 'referral orders' within the relevant sections of the FTCA.

⁴ CAB-20-MIN-0182, paragraph 88 refers.

Projects listed in the FTCA

- 12 Schedule 2 of FTCA lists 12⁵ projects that can be directly referred to a Panel, and which have a high level of certainty of being approved. These projects were listed in the FTCA as they offered significant economic and public benefits and were considered 'shovel-ready'. Appendix 3 includes a status update of the applications for these projects, this is summarised below.
- 13 Applications for the Matawii water storage reservoir and Rāpaki Papakāinga development have been lodged with the Environmental Protection Authority (EPA). The Panel that will consider the Matawii application has been appointed⁶ and the Panel for Rāpaki Papakāinga is in the process of being appointed. I understand a decision on these projects is expected this November.
- 14 Applications for a further four projects, Waitohi Picton Ferry Precinct Redevelopment, Papakura to Pukekōhe Rail Electrification, Te Ara Tupua (Petone to Ngarganga cycle way) and the Queenstown Arterial projects are expected to be lodged with the EPA before the end of the year. Construction for these projects is expected to commence by June 2021.
- 15 Three of the six Papakāinga developments, Whaingaroa (Waikato), Chatham Islands and Point Chevalier (Auckland), have or are in the process of being consented through standard RMA processes. While it cannot be said definitively, it appears the listing of these projects and the certainty provided by the FTCA has resulted in local authorities accelerating their consideration of the projects.
- 16 Applications for the Waitara and Kaitia Papakāinga developments, Te Pā Tahuna Residential Development (Queenstown), and Unitec Residential Development (Auckland) are currently being prepared for lodgement. These projects may use either the fast-track or standard RMA process.
- 17 I understand the applications for the Papakura to Drury South State Highway 1 improvements, Northern Pathway, Wellington Metro (Train) upgrade and Britomart Station Eastern End Upgrade will be lodged in 2021. I encourage Waka Kotahi NZ Transport Agency and KiwiRail to work at pace to lodge their respective applications, to meet the purpose of the FTCA and support immediate economic outcomes.

Projects referred through Order in Council

- 18 As of 2 September 2020, I have received 18 applications to be considered for the fast-track consenting process. I have sought written comments on nine applications and are still considering four. I have declined three applications, on the basis that they do not meet the purpose of the FTCA and it would be more appropriate for them to go through the standard consenting process under the RMA. Two applications have been withdrawn.
- 19 Transpower New Zealand Limited's (Transpower) Clutha Upper Waitaki Lines Project – Project Works and Workers' Village (CUWLP) is the first project I have accepted for referral to a Panel. The project details and reasons for my decision are outlined in paragraphs 24 to 36 of this paper.

⁵ This includes a sub-set of six papakāinga developments across New Zealand which are counted as one main project.

⁶ The Panel is being chaired by Judge Laurie Newhook and consists of Kevin Prime, Robert Voorthuysen, and Russell Howie.

- 20 A new business unit has been established within the Ministry for the Environment (MfE) to support implementation of the FTCA. This team holds pre-application conversations with potential applicants and are aware of a further 12-15 projects that are likely to apply to access the fast-track consenting process in the near future.

Works on infrastructure

- 21 In addition to the consenting pathways outlined above, the FTCA also enables Waka Kotahi NZ Transport Agency and KiwiRail to carry out smaller scale works on existing infrastructure without the need for a resource consent. Section 34 of the FTCA also enables Kāinga Ora, the Ministry of Housing and Urban Development (MHUD), and local authorities to access these provisions if confirmed through an OIC.
- 22 Waka Kotahi and Kiwirail are currently assessing their programme of works to establish what work to undertake within the works on infrastructure provisions of the FTCA.
- 23 No additional agency or local authority has yet sought to access these provisions through an OIC. I will seek Cabinet agreement should an agency or local authority wish to pursue this pathway.

First project for referral to an Expert Consenting Panel

- 24 Transpower applied for the fast-track consenting process for their Clutha Upper Waitaki Lines Project (CUWLP) on 4 August 2020. A map of the project area is contained in Appendix 1. The purpose of the CUWLP is to increase the transmission capacity for electricity between the Otago-Southland region and Waitaki Valley. This project has two objectives:
- a. to increase energy resilience in Otago-Southland by providing additional electricity when needed
 - b. transport additional electricity northward if the Tiwai Point smelter ceases or reduces its operations.
- 25 The CUWLP consists of five sections. Two sections have been completed. The remaining three sections involve:
- a. adding additional lines (duplexing) to the Roxburgh – Naseby – Livingstone circuits
 - b. thermally upgrading the Cromwell – Twizel circuits
 - c. duplexing the Aviemore – Benmore circuits.
- 26 To complete these sections, works are required along the lines including to improve access to, and raise and strengthen, some existing towers, carry out mid-span earthworks, upgrade existing substations and transformers and other associated works. The project will also involve the establishment of a temporary village and supporting infrastructure near Ranfurly to house workers for the duration of works on the Roxburgh – Naseby – Livingstone circuits.
- 27 The project will require consents from five regional and district councils. Transpower is seeking the resource consent applications they would require under the RMA to be referred to a Panel for determination.

Comments received on the Clutha Upper Waitaki Lines Project

28 In accordance with section 21 of the FTCA I have sought written comments on this application from the relevant Ministers and local authorities. Due to the potential significance of this project to the relevant iwi, I also sought written comments from Te Rūnanga o Ngāi Tahu, Te Rūnanga o Arowhenua, Aukaha and Te Ao Marama Inc. (on behalf of Papatipu Rūnanga).

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

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

31 While Naseby forest was returned to Ngāi Tahu, it has since been sold. Section 18 of the FTCA makes a project ineligible if it occurs on land returned under a Treaty settlement (when consent of the relevant landowner has not been obtained). As consent of the new landowner has not been obtained this section of the project has been withdrawn from the application.

32 Comments were received from Central Otago District Council, Waitaki District Council, Environment Canterbury and Otago Regional Council. No comments were received from MacKenzie District Council. Environment Canterbury did not express a position on whether the application should be fast-tracked, however the remaining councils who responded considered it inappropriate. The key concerns raised were:

- a. standard RMA consenting processes were sufficient to approve this project, especially due to the enabling provisions of the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009
- b. the workers village would not be dismantled and would be repurposed, resulting in residential buildings in an inappropriate location
- c. the potential impact on the roading network and concerns about the impact on other electricity infrastructure.

33 Comments received from iwi authorities were varied. Te Ao Marama do not oppose referral of the application. Other groups representing Papatipu Rūnanga do not support or are neutral on using the fast-track consent process. Concerns were raised about the lack of available information, that fast-tracking will force rūnaka to respond in shortened timeframes, and that cultural values will be compromised.

Decision-making obligations under the COVID-19 Recovery (Fast-track Consenting) Act 2020

34 To be eligible for referral the Minister must be satisfied that section 18 of the FTCA is met; this includes being satisfied that the project will help to achieve the purpose of the FTCA. In considering whether a proposal would help achieve the purpose of the FTCA, section 19 specifies the social, cultural, economic and environmental matters the Minister may consider.

- 35 Section 6 of the FTCA requires all persons performing functions and exercising powers under it, to act in a manner that is consistent with the principles of the Treaty of Waitangi and Treaty settlements. To satisfy this obligation the Minister must obtain and consider a report that identifies the relevant iwi authorities, Treaty settlements and other matters specified in section 17 (a section 17 report). The section 17 report for the CUWLP noted that Te Runanga o Ngāi Tahu and Papatipu Rūnanga should be consulted by the Panel if the project is referred.

Decision to refer the Clutha Upper Waitaki Lines Project to an Expert Consenting Panel

- 36 In deciding whether to refer Transpower's CUWLP to a Panel I have considered whether the project helps to achieve the purpose of the FTCA and relevant section 19 matters, the section 17 report, and responses from Ministers, local authorities, and iwi authorities. I have decided to accept Transpower's CUWLP for referral to a Panel as the CUWLP meets the eligibility criteria in section 18 of the FTCA and achieves the purpose of the Act by:

- a. offering economic benefits for people or industries affected by COVID-19:
 - i. the project will provide approximately 100 direct employment opportunities to the Otago and Canterbury Region which has been significantly impacted by the down-turn in tourism caused by COVID-19
 - ii. equipment and supplies are likely to be sourced locally, further contributing to the regional economy
 - iii. the temporary workers village will generate other local benefits such as spending on goods and services in the central Otago area
- b. enabling progress faster than would otherwise be the case:
 - i. under standard RMA processes, approvals would be required from five local authorities to undertake the works, increasing the time it would take to obtain the necessary resource consents
 - ii. a single fast-tracked application with reduced appeal rights and restricted notification will be more expedient than standard RMA processes
- c. resulting in a public benefit:
 - i. facilitates further renewable energy developments in the Otago and Southland regions. This contributes to the electrification of process heat and transport in other parts of the South Island
 - ii. the project will result in significant long-term emissions reductions, increasing New Zealand's total share of renewable energy. The project will enable more renewable electricity to be sent northward, helping to displace non-renewable electricity generation
 - iii. increasing the resilience of the national electricity grid in the project area
 - iv. at the completion of the project, the temporary workers village will be disestablished with the housing units distributed and/or sold locally if possible.

Preparation of Order in Council

- 37 Transpower's application for the CUWLP is the first project that I have accepted to be referred to a Panel. I seek agreement for drafting instructions to be issued to the Parliamentary Counsel Office (PCO) for an OIC to refer the CUWLP to a Panel.
- 38 Section 24 of the Act allows the Minister to specify restrictions on the scope of the project, and requirements on the Panel and applicant. I do not propose to place any restrictions on Transpower's CUWLP application.
- 39 I do not propose to refer the Project in stages; specify particular information requirements; processing timeframes for the Panel; or particular persons or groups they should consult. I consider it appropriate for the Panel appointed to consider the application to use its discretion on these matters. I consider the statutory requirements in the FTCA will address the matters raised by Ministers, local authorities, and iwi authorities. The Panel will be able to impose conditions on the Project to avoid, remedy and mitigate any adverse environmental effects.
- 40 Appendix 2 outlines the information about the CUWLP that will be contained in the OIC as required by Schedule 3 of the FTCA. Appendix 2 will form the basis of drafting instructions sent to PCO.

Framework Order in Council

- 41 Cabinet has agreed that for subsequent Orders in Council which refer a project to a Panel the Minister for the Environment can issue drafting instructions directly to PCO⁷. Future Orders will be considered directly by the Cabinet Legislation Committee, followed by Cabinet approval.
- 42 To support efficient drafting of future OIC and to ensure OIC are readily accessible by the public, I also seek agreement to issue drafting instructions to the PCO for a framework OIC which can have future approved projects added as individual schedules to the OIC.
- 43 Schedule 3 to the FTCA sets out the requirements for an OIC. The OIC must include:
- a. the name of each person that is authorised to apply for a resource consent or lodge a notice of requirement for a designation relating to the project
 - b. a description of the project and the activities it involves
 - c. the approximate geographical location of the project
 - d. any provisions to give effect to the Minister's decisions
 - e. a statement of the Minister's reasons for the decision.
- 44 The above matters will form the OIC framework that will enable all future referred projects to be added as individual schedules to the OIC.

Financial Implications

- 45 The OIC to refer Transpower's application for the CUWLP to a Panel has no financial implications.

⁷ ENV-20-MIN-0033 and CAB-20-MIN-0353 refer.

- 46 There will be costs associated with lodging CUWLP applications for resource consent with the EPA and for consideration by a Panel. These costs will be met by Transpower.

Legislative Implications

- 47 Section 27 of the FTCA enables the Governor-General, by OIC, to refer a project or part of a project to a Panel.

Impact Analysis

Regulatory Impact Statement

- 48 The regulatory impact assessment (RIA) requirements for this proposal have been waived. Cabinet has agreed that a RIA is not required for Orders in Council relating to projects to be referred to an Expert Consenting Panel.⁸

Climate Implications of Policy Assessment

- 49 The Climate Implications of Policy Assessment (CIPA) team at MfE has confirmed that the CIPA requirements do not apply to this proposal. The decision to refer this project to a Panel will not have a direct emissions impact. Likely emissions implications of this project have been considered at a high-level during the referral process. They are also expected to be considered by the Panel.
- 50 The completion of the CUWLP will result in significant long-term emissions reductions as it will help raise New Zealand's total share of renewable energy. This project will enable more renewable electricity to be sent northward, helping to displace non-renewable electricity generation. The project facilitates further renewable energy developments in the Otago-Southland region, likely supporting further emissions reductions by contributing to the electrification of process heat and transport in other parts of the South Island.
- 51 Scenario modelling of the emissions impact of Tiwai aluminium smelter closing, undertaken by the Interim Climate Change Committee and the Ministry of Business, Innovation and Employment, shows this project is estimated to result in an annual emissions reduction in the medium to long term of 300 to 500 thousand tonnes of carbon dioxide equivalent (kt CO₂-e).

Population Implications

- 52 There are no population implications associated with this paper.

Human Rights

- 53 There are no human rights implications associated with this paper.

Consultation

Consultation carried out by Transpower

⁸ ENV-20-MIN-0033 and CAB-20-MIN-0353 refer.

- 54 Transpower has entered discussions with central government, iwi and local authorities about this project.

Consultation carried out for this paper

- 55 MfE sought comment on this paper from the Parliamentary Counsel Office, Department of Conservation, Ministry for Housing and Urban Development, Ministry for Culture and Heritage, Te Puni Kokiri, Ministry of Education, Corrections, Land Information New Zealand, Treasury, Ministry of Transport, Ministry of Business, Innovation and Employment, Ministry for Primary Industries, Department of Prime Minister and Cabinet, Ministry of Health, New Zealand Defence Force, Department of Internal Affairs and Te Arawhiti.

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

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

Communications

- 59 I intend to announce my decision to refer Transpower's application following Cabinet's decision.

Proactive Release

- 60 This paper will be proactively released on MfE's website within 30 working days of the final decision being made by Cabinet, subject to any redactions consistent with the Official Information Act 1982.

Recommendations

The Minister for Environment recommends that Cabinet:

- 1 **note** implementation of the COVID-19 Recovery (Fast-track Consenting) Act 2020 has commenced
- 2 **note** that the Minister for the Environment has decided under section 24 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 to accept Transpower New Zealand Limited's (Transpower) Clutha Upper Waitaki Lines Project – Project Works and Workers' Village (Clutha Upper Waitaki Lines Project) for referral to an Expert Consenting Panel
- 3 **note** that Transpower's Clutha Upper Waitaki Lines Project is considered to help achieve the purpose of the COVID-19 Recovery (Fast-track Consenting) Act 2020 and meets the eligibility criteria in section 18
- 4 **agree** that an Order in Council be prepared under section 27 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 to refer Transpower's Clutha Upper Waitaki Lines Project to an Expert Consenting Panel

- 5 **note** that the draft content for the Order in Council for Transpower's Clutha Upper Waitaki Lines Project is provided in Appendix 1 to this Cabinet paper
- 6 **agree** for a framework Order in Council to be developed to support efficient drafting of future Orders in Council and to ensure they are readily accessible by the public
- 7 **note** that in accordance with Schedule 3 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 an Order in Council will specify:
- 7.1 the name of each person that is authorised to apply for a resource consent relating to the project
 - 7.2 a description of the project and the activities it involves
 - 7.3 the approximate geographical location of the project
 - 7.4 any provision necessary to give effect to the Minister's decision
 - 7.5 a statement of the Minister's reasons for the decision as required by Schedule 3 of the COVID-19 Recovery (Fast-track Consenting) Act 2020
- 8 **invite** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to achieve the policy decisions set out in recommendations four to seven above
- 9 **agree** to delegate to the Minister for the Environment to approve any final details or technical changes required to give effect to the policy in this paper
- 10 **note** that costs associated with lodging applications for resource consent or notices of requirement with the Environmental Protection Authority and consideration by a Panel will be met by the applicant.

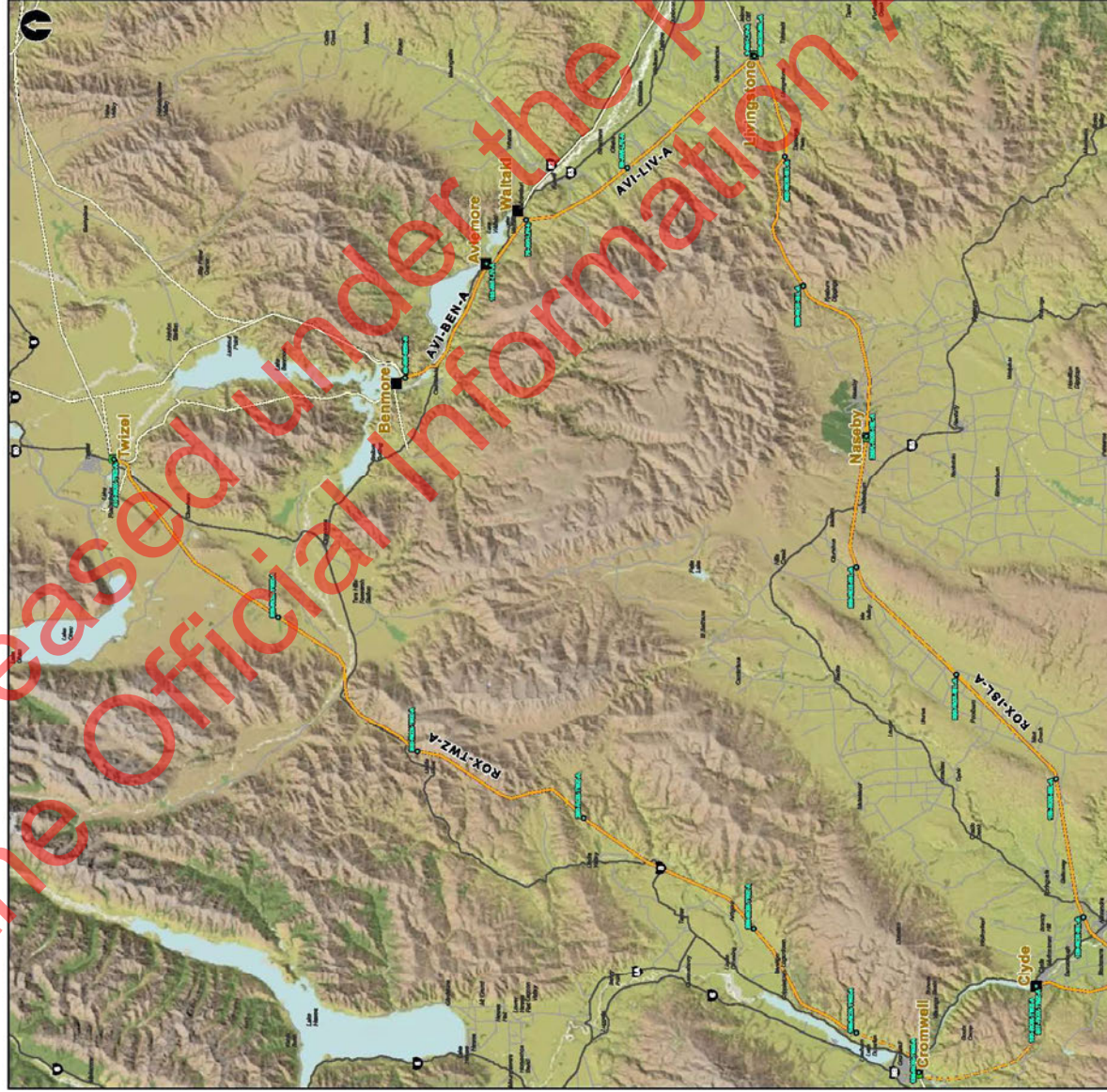
Authorised for lodgement

Hon David Parker
Minister for the Environment

Appendix 1 – Map of the Clutha Upper Waitaki Lines Project (CUWLP) - Works and Workers' Village

Released under the provision of
the Official Information Act 1982

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the Official Information Act 1982



Released under the provision of
the Official Information Act 1982

Appendix 2 – Indicative content for Clutha Upper Waitaki Lines Project - Works and Workers' Village Order in Council

Project name:	Clutha Upper Waitaki Lines Project (CUWLP) - Works and Workers' Village
Applicant name:	Transpower New Zealand Limited
Project Description:	<p>To upgrade existing 220kV electricity transmission lines to increase the electricity transmission capacity between the Otago-Southland region and the Waitaki Valley, and construct and use land for a temporary Workers' Village. The works involve strengthening/upgrading parts of the transmission loop including:</p> <ul style="list-style-type: none"> • Duplexing the Roxburgh – Naseby – Livingstone circuits • Thermally upgrading the Cromwell – Twizel circuits • Duplexing the Aviemore – Benmore circuits (may not be required if a lower cost solution is possible). <p>The proposed works include:</p> <ul style="list-style-type: none"> • establishment of sites to support the duplexing and thermal upgrading works. This includes earthworks, vegetation trimming/removal and placement of base course for wiring sites • foundation strengthening and refurbishment including earthworks, vegetation trimming/removal, abrasive blasting, concrete placement and reinstatement • tower replacement including the establishment of temporary towers and removal of replaced towers • works to raise and strengthen existing towers • mid span earthworks to clear areas so separation requirements for lines are met • relocating lines underground, upgrading transformers and upgrades to existing substations • establishment of a temporary workers village and supporting infrastructure. The village will be temporary and will be removed and the site remediated at the end of the project.
Location	<p>Works will occur along the corridor of the existing transmission lines. These 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.</p> <p>The proposed temporary Workers' Village is located near Roxburgh/ Naseby.</p>
Reasons for referral	<p>Having considered the application, the section 17 report, comments receiving under section 21, further information provided under section 22 and the purpose of the Act, the Minister for the Environment is satisfied that the Project meets the referral criteria in section 18 as the project:</p> <ol style="list-style-type: none"> a. offers economic benefits for the Otago, Canterbury and Southland Regions b. will progress faster than would otherwise be the case under standard RMA processes c. will result in a public benefit, particularly in relation to facilitating further renewable energy development, emissions reductions by increasing New Zealand's total share of renewable energy, and increasing the resilience of the national electricity grid in the project area