

FTA#62: Application for listed project under the Fast-track Approvals Bill – Kaipara Solar Farm Project for Schedule 2B

Date submitted to secretariat:	27 May 2024
Security level:	In-Confidence
To:	David TAPSELL, Chair – Fast-track Projects Advisory Group

Number of attachments: #	Attachments: 1. Application documents for Kaipara Solar Farm Project
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Applicant	Sector	Region	Identified in a priority/strategy?
Manawa Energy Ltd	Solar	Auckland	No

Ministry for the Environment contacts

Position	Name	Mobile	1 st contact
Principal Authors	Ben Bunting, Anna Galvin		
Manager	Stephanie Frame	s 9(2)(a)	✓
Director	Ilana Miller	s 9(2)(a)	

Project location

s 9(2)(b)(ii)



Key messages

1. The Kaipara Solar Farm project is to construct and operate a large-scale solar farm on land owned by Manawa Energy at s 9(2)(b)(ii) in the Auckland Region, and to connect to and supply electricity to the national grid. The solar farm will have an approximate peak output of 100 Megawatts.
2. The solar farm will comprise:
 - a. solar panels, occupying approximately 240 hectares
 - b. arrays and mounting structures, inverter cabinets, and associated infrastructure
 - c. a 220kV substation and transmission line to connect to the national grid

- d. an energy storage facility
 - e. underground electricity cables
 - f. ancillary buildings, structures and infrastructure (including roads, access, culverts, cabling, fencing, CCTV poles and other infrastructure
 - g. landscaping including planting, boundary screening and enhancement of streams and waterways.
3. The project will require land use consent, water take and discharge permits under the Resource Management Act 1991 (RMA).
 4. Subject to site assessments, approvals and/or authority under the Heritage New Zealand Pouhere Taonga Act 2014 and the Wildlife Act 1953 may be required.
 5. The project site is freehold land and operates as a dairy farm. The applicant states it has secured landowner approval.
 6. We have undertaken an initial (Stage 1) analysis of the application, and this is provided in Table A.
 7. We do consider the applicant has provided sufficient information to consider the project for inclusion on Schedule 2B.
 8. The project does not trigger the ineligibility criteria in clause 18 of the Fast-track Approvals Bill (the Bill).
 9. Advice on PSGE development priorities and Māori development is provided in Table A. Table A also includes the relevant PSGEs or Māori groups and the settlement mechanisms, that will/may be impacted by the project and whether the project is low, medium or high impact on Treaty settlement/s and other relevant arrangements. Appendix 1 provides further detail on how this advice should be considered and our approach to analysis.

Signature

A handwritten signature in blue ink, appearing to read 'S. Frame', is written over a light blue rectangular background.

Stephanie Frame
Manager – Listed Projects

Table A: Stage 1 initial assessment of project eligibility and Treaty settlement assessment and advice¹

Project details	Project description	Approvals sought	Consultation undertaken	Does the project trigger the ineligibility criteria [clause 18]?				Discretionary ground to decline [clause 21(2)]	Would the project have significant regional or national benefits [clause 17(3)]
				Treaty settlement land, Māori customary land, customary marine title, customary rights, aquaculture settlement area, or prevented by RMA clauses [clauses 18(a-e, g)]	Access arrangement under CMA where a permit can't be granted, or is listed in items 1-11, 14 [clauses 18(f,h)]	Activity on a national reserve under Reserves Act which requires approval under that Act [clause 18(i)]	Prohibited activity under EEZA or regulations under that Act, decommissioning-related activities, offshore renewable energy progressing ahead of permitting legislation [clause 18(j-l)]		
High level summary			Y	N	N	N	N		
Schedule requested 2B Name Kaipara Solar Farm Applicants Manawa Energy Ltd Company directors Margaret Joanna BREARE Sheridan Adelene BROADBENT Deion Mark CAMPBELL Phillippa Mary HARMFORD Michael John SMITH Joseph Michael WINDMEYER Location s 9(2)(b)(ii) Land Status The project site is freehold land	The Kaipara Solar Farm Project is to construct and operate a large-scale solar farm on land in s 9(2)(b)(ii), Auckland Region, to connect to and supply electricity to the national grid. The solar farm will comprise: - solar panels, occupying approximately 240 hectares - arrays and mounting structures, inverter cabinets, and associated infrastructure - substation(s) and transmission lines to connect to the national grid - an energy storage facility - underground electricity cables - ancillary buildings, structures and infrastructure (including roads, access, culverts, cabling, fencing, CCTV poles and other infrastructure - landscaping including planting, boundary screening and enhancement of streams, waterways and wetlands.	The applicant seeks approval under the: - Resource Management Act 1991 Approvals may also under the: - Wildlife Act 1953 - Heritage New Zealand Pouhere Taonga Act 2014	Pre-application meetings with Auckland Council staff. Initial hui with Ngati Whatua o Kaipara in April 2023.	No.	No.	No.	No.	The project, or any part of it, is inconsistent with a relevant Treaty settlement, the NHNP Act, the Marine and Coastal Area (Takutai Moana) Act 2011, a Mana Whakahono ā Rohe, or a joint management agreement No - We do not consider any of these matters are triggered by the application. It is more appropriate to deal with the application under another Act No The project may have significant adverse effects on the environment Yes – These, along with potential actions to avoid, remedy or mitigate, are listed by the applicant who notes that a range of technical assessments will be required. Note the coastal perimeter of the site is subject to an significant ecological area (marine) overlay under the Auckland Unitary Plan. The applicant has a poor compliance history under the relevant legislation No - The applicant states it (Trustpower/Manawa Energy) has incurred some low-level technical infringements for consent non-compliance over the last 30 years. It has been subject to one prosecution	The project has been identified as a priority project in a central government, local government, or sector plan or strategy (for example, in a general policy statement or spatial strategy) or central government infrastructure priority list No - While the project has not be identified as a priority is has strategic alignment with NPS-Renewable Energy Generation and NZ Infrastructure Strategy and Auckland Climate Plan. While these documents promote renewable energy, they do not specifically identify this project. The project will deliver regionally or nationally significant infrastructure Yes - Nationally significant infrastructure and located to service areas of high economic activity and energy demand. The project will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment Yes - Through energy supply, security and resilience. The project will deliver significant economic benefits Yes - Employment during construction and operation with flow on effects locally and regionally. Approx 40 FTEs during construction and 3 FTEs for ongoing operation. s 9(2)(b)(ii) The project will support primary industries, including aquaculture Yes – Support to primary industries in proximity through energy supply, security and resilience. The project will support development of natural resources, including minerals and petroleum No. The project will support climate change mitigation, including the reduction or removal of greenhouse gas emissions Yes - Reduced GHG emissions compared to other modes of electricity generation. The project will support adaptation, resilience, and recovery from natural hazards

¹ **Disclaimer:** Given time and scope constraints, the initial assessment is solely based on information provided by applicants. There may be additional relevant information which has not been provided to MfE.

operating as a dairy farm.								brought by Otago Regional Council. The project involves an activity that would occur on land that the Minister for Treaty of Waitangi Negotiations considers necessary for Treaty settlement purposes No The project includes an activity that is a prohibited activity under the RMA No	Yes - Resilience through having a different mode of electricity generation in the mix. Greater resilience to climate change and natural hazards compared to other modes of electricity generation. The project will address significant environmental issues Yes - Solar generation is renewable and has reduced GHG emissions compared to other modes of electricity generation. The project is consistent with local or regional planning documents, including spatial strategies Yes - Consistent with Auckland Unitary Plan objectives and policies which promote renewable energy generation and reductions in GHG emissions.
PSGE Settlement Priorities and Māori Development assessment – <i>Note - given the time and scope constraints of this advice, some assumptions have been made and engagement has only been undertaken in limited circumstances. Given this, the advice may not be comprehensive and is not intended to reflect the views of relevant Post Settlement Governance Entities or other groups (unless specifically noted). In limited circumstances where engagement has been able to occur, it has most likely not been comprehensive due to the timeframes available.</i> Advice on Māori development and PSGE settlement priorities includes information relating to: • where projects align explicitly with PSGE or iwi strategic objectives/vision/other strategic documents. • where projects contribute towards addressing historical or systemic inequities faced by Māori. This would be undertaken through an equity assessment; and/or are being led by or in partnership with a Māori entity or business; to relevant provisions in Treaty settlements, Joint Management Agreements outside of settlement; Mana Whakahono ā Rohe; Iwi Environment Management plans; implications for groups yet to settle their historical Treaty of Waitangi claims; and implications arising under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.									
Ineligible projects - based on the considerations at cl18(a–e) of the Fast Track Approvals Bill (version as at introduction)		This project does not appear to be ineligible according to the information provided in the application.							
Affected Māori group/s		The project is located within the Te Uri o Hau and Ngāti Whātua o Kaipara areas of interests, as outlined in their Deeds of Settlement: AOI-Ngāti Whātua o Kaipara ; AOI-Te Uri o Hau . Ngāti Rango (Ngāti Whātua) and Ngāti Hine are also identified by the applicant as groups affected by the project. Officials note that from the information provided it appears the project site is located outside of Ngāti Hine’s area of interest as described by Te Kāhui Māngai: Ngāti Hine rohe							
Has the applicant consulted with those Māori groups?		The applicant states they have had an initial conversation with Ngati Whātua o Kaipara representatives regarding the proposal, but comprehensive engagement has not commenced. There is no reference in the application to any engagement with Te Uri o Hau, Ngāti Rango or Ngāti Hine who the applicant identifies as affected groups, or with Ngāti Mahuhiri Settlement Trust (who are referenced in the application, but from the information provided it is unclear whether they are affected by the proposal or whether the project site is within their area of interest).							

Impact/s of the project on Māori development and PSGE settlement priorities and related matters	<u>Impacts on PSGE settlement priorities and Māori development</u> - the project does not address historical or systemic inequalities faced by Māori - the application does not state the project is being led by or in partnership with a Māori entity or business - neither the applicant nor officials have identified any iwi documents that explicitly refer to solar farms. <u>Impact on Treaty settlements and other relevant arrangements</u> Ngāti Whātua o Kaipara Claims Settlement Act 2013 The Ngāti Whātua o Kaipara Claims Settlement Act 2013 provides for a Coastal Statutory Acknowledgement Area for the Kaipara Harbour. The proposed project site is adjacent to the Kaipara Harbour. Relevant councils must have regard to the statutory acknowledgement when deciding whether Ngāti Whātua o Kaipara is an 'affected person' for the purposes of notification decisions under the Resource Management Act 1991 (the RMA). The same applies to the Environment Court when considering participation in hearings under s274 of the RMA. The councils must send summaries of applications for resource consents to the iwi. The PSGE (or any member of the iwi) may, as evidence of the association with a statutory area, cite the statutory acknowledgement in submissions that are made to a consent authority, the Environment Court or the EPA. Te Uri o Hau Claims Settlement Act 2002 Te Uri o Hau Claims Settlement Act 2002 provides for a statutory acknowledgement over Kaipara Harbour coastal areas. Through this Statutory Acknowledgement, the Crown acknowledges the statement by Te Uri o Hau of the cultural, spiritual, historic, and traditional association of Te Uri o Hau with the Kaipara Harbour including food and other resource gathering and as the primary source of life and wellbeing for Te Uri o Hau. The proposed project site is adjacent to the Kaipara Harbour. Relevant councils must have regard to the statutory acknowledgement when deciding whether Ngāti Whātua o Kaipara is an 'affected person' for the purposes of notification decisions under the Resource Management Act 1991 (the RMA). The same applies to the Environment Court when considering participation in hearings under s274 of the RMA. The councils must send summaries of applications for resource consents to the iwi. The PSGE (or any member of the iwi) may, as evidence of the association with a statutory area, cite the statutory acknowledgement in submissions that are made to a consent authority, the Environment Court or the EPA. As this is a proposed 2B project, it would go through the Ministerial referral process including a cl.13 report and requirement of consultation with the noted groups. There is a requirement on the expert panel to invite comment from the relevant PSGEs on the application (so there is an automatic right to participate, which is currently discretionary under the statutory acknowledgement). In addition, for 2B and other referred projects, there is also a requirement for applicants to engage with PSGEs and for Ministers to invite comment from PSGEs. Listing this project, and the fast-track process generally, in other respects will not provide equivalent impact to the statutory acknowledgement, which may limit the substantive input from Ngāti Whātua o Kaipara and Te Uri o Hau on the project that would occur through the normal consenting regime. For example, under the RMA process, if a PSGE is notified as a result of the statutory acknowledgement, the PSGE has the right to make a submission, attend a hearing, appeal to the Environment Court, and appeal to the High Court and higher courts. The fast-track process does not provide those same rights to the PSGE (particularly the potential right to make a submission and then participate in a hearing and appeal). Iwi Environment Management plans Te Uri o Hau's planning document "Te Uri o Hau Kaitiakitanga o Te Taiao" in Part 4 outlines issues, objectives and policies in relation to freshwater; air; takutai moana (Marine and Coastal Area and Harbours); customary fisheries; oyster reserves; the land; growth and development; waahi tapu and waahi taonga; minerals; biodiversity; marine mammals and cultural landscapes. Part 4 has a focus on kaitiakitanga through the process of preparing and implementing the Plan. In general Te Uri o Hau policies in this section describe: "the ways in which Te Uri o Hau, as Kaitiaki, want to participate in natural resource management within their statutory area of interest; and the rangitiratanga and kaitiakitanga of natural resources as guaranteed by Article 2 of the Treaty of Waitangi." This Plan contains a policy that "Locally produced renewable energy that is of an appropriate scale and technology is supported by Te Uri o Hau." The plan addresses a range of issues, and a full analysis of the plan would need to be undertaken in conjunction with Te Uri o Hau before any firm conclusions can be reached. That is a matter to be considered in more detail in subsequent stages if this progresses through the fast-track processes. <u>Implications for groups yet to settle their historical Treaty of Waitangi claims</u> While most of Ngāti Whātua historical claims have been settled by deeds of settlement for Te Uri o Hau, Te Roroa, Ngāti Whātua o Kaipara and Ngati Whātua Ōrākei, the remaining Ngāti Whātua historical claims and redress over Kaipara Moana are yet to be finalised. The Ngāti Whātua o Kaipara deed of settlement set aside the issue of cultural redress in relation to Kaipara Moana to be dealt with at a future time² and that process is ongoing. <u>Other matters</u> The application also states Māori Land Court claims have been lodged by: - Ngāti Manuhiri Settlement Trust - for an order that the bed of the Hōteu River (upstream of the Tarakihi Falls well beyond the subject site) is Māori Customary land; - Te Rūnanga o Ngāti Whātua - that the bed of the Hōteu River from its mouth is also Māori Customary land. In the time available, officials have not identified any other impacts for Treaty settlements, implications arising under the Marine and Coastal Area (Takutai Moana) Act 2011 (noting that while the project site is not within the marine and coastal area – it is nearby and there are a number of applicant groups who have made applications under the Act for recognition of their customary interests), Joint Management Agreements outside of settlement or Mana Whakahono ā Rohe.
Is the project considered low, medium or high impact (based on assessment criteria above)	Based on the information provided officials consider the project to be medium impact due to the matters outlined above including potential impacts on Statutory Acknowledgements over the Kaipara Harbour and lack of comprehensive engagement with affected groups. As this is a 2B project it will go through the Ministerial referral process so Treaty protections drafted for the Bill including the section 13 report and requirement to consult relevant Māori groups will apply on enactment. This will be a mitigating factor providing the FTA Bill is enacted with this provision.
Has the Ministry for the Environment undertaken engagement?	Officials consider engagement would be necessary given the scope of interests and Treaty settlement arrangements potentially affected by the project but were unable to undertake this in the time available.
Additional comments/context	N/A

² [Ngāti Whātua - Agreement in Principle - 18 August 2017 \(www.govt.nz\)](http://www.govt.nz)

Appendix One: Approach and considerations for Treaty settlement advice on listed project applications advice in Table A

1. Ministers have advised the Advisory Group should receive advice from officials on “Māori development and PSGE settlement priorities” relevant to each application. Note this differs from section 13 requirements of the current Fast Track Consenting Bill that ‘Ministers must consider Treaty settlements and other obligations report’ as these reports will not be in existence at the time, although matters identified in section 13 (2)(a)-(j) will be considered as part of official's analysis.
2. We have interpreted “Māori development” and “PSGE priorities” to mean primarily projects that:
 - a. align explicitly with PSGE or iwi strategic objectives/vision/other strategic documents; and/or
 - b. contribute towards addressing historical or systemic inequities faced by Māori. This would be undertaken through an equity assessment; and/or
 - c. the project is being led by or in partnership with a Māori entity or business.
3. Given the time constraints and limited engagement this advice cannot be considered as comprehensive and does not intend to reflect their views, and should not be read as such.
4. Engagement with PSGEs and other relevant groups has been considered based on potential high-risk factors including, but not limited to, if:
 - a. a project will take place on or effect any taonga or areas of significance that are protected by Treaty settlement arrangements.
 - b. a project will have a substantive and/or ongoing environment impact on any taonga or areas of significance.
 - c. a project will include a consenting arrangement that will require a significant take, or be ongoing for an extended period, in relation to a taonga or area of significance, or in regions where PSGEs have specific planning mechanisms in place.
 - d. PSGEs or other Māori entities have previously strongly contested the project or a similar type of project, particularly where court action has been taken.
 - e. The project is clearly in conflict with or undermines PSGE priorities.
 - f. Engagement would be required to maintain and uphold the Te Tiriti Crown relationship.
5. In limited circumstances where engagement occurs, it has been brief. Where engagement has been undertaken it is reflected in our analysis but should not be taken to mean that our Treaty Partners endorse our advice.