

## FTA#81: Application for listed project under the Fast-track Approvals Bill – Lake Sumner Sourced Water Project for Schedule 2B

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

Number of attachments: 1	Attachments: 1. Application documents for Lake Sumner Sourced Water Project
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Applicant	Sector	Region	Identified in a priority/strategy?
Lake Sumner Sourced Water Project	Water Infrastructure	Canterbury	No

### Ministry for the Environment contacts

Position	Name	Mobile	1 <sup>st</sup> contact
Principal Authors	Karen Sannazzaro, Anna Galvin		
Manager	Stephanie Frame	s 9(2)(a)	✓
Director	Ilana Miller	s 9(2)(a)	

## Project location

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## Key messages

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1. The Lake Sumner Sourced Water project is to build a weir on Lake Sumner to enhance the water storage capacity for the Hurunui District. There is also hydrogeneration potential. The weir will provide 27 Mm<sup>3</sup> of storage, at its naturally occurring high water mark, around 1.4 m above its historical mean level.
2. The project will require resource consents under the Resource Management Act 1991 (RMA).
3. The affected land is owned by Mt Sumner Station and the Department of Conservation. The applicant currently has no legal access to the land but reports the owners of Mt Sumner Station to be supportive.
4. We have undertaken an initial (Stage 1) analysis of the application, and this is provided in Table A.
5. We consider the applicant **has** provided sufficient information to consider the project for inclusion on Schedule 2B.
6. The project does not trigger the ineligibility criteria in clause 18 of the Fast-track Approvals Bill (the Bill).
7. 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

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Stephanie Frame  
Manager – Listed Projects



**Table A: Stage 1 initial assessment of project eligibility and Treaty settlement assessment and advice<sup>1</sup>**

Project details	Project description	Approvals sought	Consultation undertaken	Does the project trigger the ineligibility criteria [clause 18]?				Discretionary ground to decline [clause 21(2)]	Eligibility [clause 17]  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)]		
<b>High level summary</b>			N	N	N	N	N		
<p><b>Schedule requested</b> 2B</p> <p><b>Project Name</b> Lake Sumner Sourced Water Project</p> <p><b>Applicant</b> Richard Sidey (on behalf of "a large group of locals who would like to progress 20 years of work done by the Hurunui Water Project")</p> <p><b>Location</b> Lake Sumner, Hurunui District</p> <p><b>Land Status</b> The affected landowners are Lake Sumner Station, who the applicant reports as being very supportive of the proposal, and the Department of Conservation.</p>	<p>To build a weir on Lake Sumner to enhance the water storage capacity for the Hurunui District, thereby benefiting:</p> <ul style="list-style-type: none"> <li>The river through low flow management</li> <li>Recreational water users</li> <li>Urban settlements</li> <li>Irrigators</li> </ul> <p>There is also some hydrogeneration potential.</p> <p>The weir will provide 27 Mm<sup>3</sup> of storage, at its naturally occurring high water mark, around 1.4 m above its historical mean level.</p> <p>This project is one aspect of the previous "Hurunui Water Project", established by farmers south of the Hurunui River to improve access to water for irrigation.</p> <p>Consents have been granted for the associated water take and use, land use change and nutrient discharge (which is not part of this project).</p>	<p>The applicant seeks approval under the:</p> <ul style="list-style-type: none"> <li>Resource Management Act 1991</li> </ul>	<p>The applicant identifies the following parties as affected:</p> <ul style="list-style-type: none"> <li>Hurunui community</li> </ul> <p>While substantial consultation on the proposal has occurred over its 20 year history, no consultation has occurred in regards to the current reinvestigation.</p> <p>However, the applicant has attached a letter of support for the proposal, from the Hurunui District Council.</p>	No.	No.	No.	No.	<p>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.</p> <p>No.</p> <p>It is more appropriate to deal with the application under another Act.</p> <p>No.</p> <p>The project may have significant adverse effects on the environment.</p> <p>Yes – Lake Sumner is the only large lake of its type in Canterbury that remains unaltered by dams and retains intact original vegetation.</p> <p>The applicant has a poor compliance history under the relevant legislation.</p> <p>No.</p> <p>The project involves an activity that would occur on land that the Minister for Treaty of Waitangi Negotiations considers necessary for Treaty settlement purposes.</p> <p>No.</p> <p>The project includes an activity that is a prohibited activity under the RMA.</p> <p>Potentially – the NPS-FM and NES-F impose certain restrictions in relation to wetlands, although they provide for operation and maintenance of existing water storage infrastructure.</p>	<p>The project:</p> <ul style="list-style-type: none"> <li>will deliver regionally significant infrastructure.</li> <li>will contribute to a well-functioning urban environment.</li> <li>will deliver significant economic benefits.</li> <li>will support primary industries.</li> <li>will support development of natural resources.</li> <li>will support climate change mitigation.</li> <li>will support adaptation, resilience, and recovery from natural hazards.</li> <li>will address significant environmental issues.</li> <li>is consistent with local or regional planning documents, including spatial strategies.</li> </ul>

<sup>1</sup> **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.

**PSGE Settlement Priorities and Māori Development assessment –**

*This table provides an overview. In the time available, it has not been possible to undertake a detailed review of all Treaty settlement and related matters, or to engage with the relevant PSGE, iwi or Māori groups in relation to the potential impacts of the project. If the project does progress through the fast-track process, it will be important this more detailed and comprehensive analysis and engagement is undertaken (there are some mechanisms in the proposed legislation, such as the clause 13 report (which will apply to Schedule 2 Part B (but not Part A) applications) and the requirements to invite comment from these groups, which are intended to address these matters).*

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.

<p><b>Ineligible projects - based on the considerations at cl18(a–e) of the Fast Track Approvals Bill (version as at introduction)</b></p>	<p>The project does not appear to be ineligible according to the information provided in the application.</p>
<p><b>Affected Māori group/s</b></p>	<p>The applicant did not identify any Māori groups with interests in the project area. We have identified the following group as potentially having interests in the proposed project location:</p> <ul style="list-style-type: none"> <li>• Ngāi Tahu</li> </ul> <p><u>Ngāi Tahu</u> Information from Te Kāhui Māngai confirms the proposed project location as being within the area of interest for Ngāi Tahu as provided in the Ngāi Tahu Deed of Settlement dated 21 November 1997.<sup>2</sup></p>
<p><b>Has the applicant consulted with those Māori groups?</b></p>	<p>The applicant states that it has consulted with the Hurunui Community; however, does not specify that it has engaged with any Māori groups with interests or provide any further details in relation to its wider community engagement. The applicant provided a letter from Hurunui District Council in support of the application; however, that letter does not provide any further details on community engagement.</p>
<p><b>Impact/s of the project on Māori development and PSGE settlement priorities and related matters</b></p>	<p><b><u>Impacts on PSGE settlement priorities and Māori development</u></b></p> <p>There is no information in the application to suggest that this application is made by or on behalf of a Māori organisation, or that the project will have a direct benefit in terms of Māori development.</p> <p>In the time available, we have identified the following relevant plans and documents:</p> <ul style="list-style-type: none"> <li>• Te Runanga o Ngāi Tahu Freshwater Policy</li> <li>• Te Whakatau Kaipapa Ngāi Tahu Resource Management Strategy for the Canterbury Region</li> <li>• Ngāi Tahu 2025, which states the aspiration is that "Te Rūnanga o Ngāi Tahu fully participates in the decision-making processes of resource management agencies."</li> </ul> <p>It is not possible to confirm from those documents that the project does or does not align with the strategic priorities of those iwi or Māori groups.</p> <p>A full analysis of the plan would need to be undertaken in conjunction with the relevant iwi 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.</p> <p><b><u>Impact on Treaty settlements and other relevant arrangements</u></b></p> <p><b>Ngāi Tahu Claims Settlement Act 1998</b></p> <p><i>Statutory acknowledgements</i></p> <p>This Treaty settlement contains a number of statutory acknowledgements. It is not clear from the application whether a statutory acknowledgement covers or is adjacent to the project site or is directly impacted by the proposed project. There is a statutory acknowledgement in relation to Waipara River that may be relevant.</p> <p>If the project activity is within or adjacent to, or directly affects, the area of the statutory acknowledgement, the following text applies. Generally, a statutory acknowledgement by the Crown of a 'statement of association' between the iwi and an identified area. A council must have regard to the statutory acknowledgement when deciding whether the iwi 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. A council 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 Environmental Protection Authority.</p> <p>An impact of listing this project under Schedule 2 Part A is that the Ministers will not have to exercise their 'referral discretion' including considering the Treaty settlement impacts through that process, nor will they have the benefit of the clause 13 report. There is a requirement on the expert panel to invite comment from the PSGE on the application (noting this is an automatic right to participate, which is currently discretionary under the statutory acknowledgement). For a Schedule 2 Part B listing, Ministers will have to exercise their 'referral discretion' including considering the Treaty settlement impacts through that process, and they will have the benefit of the clause 13 report. The expert panel will also be required to invite comment from the PSGE on the application (again, noting this is an automatic right to participate, which is currently discretionary under the statutory acknowledgement).</p> <p>Listing this project, and the fast-track process generally, will not provide equivalent weight to the statutory acknowledgement, which may limit the influence of the iwi compared to the usual consenting regime. For example, under the RMA process, if a PSGE is notified due to the statutory acknowledgement, the PSGE has the right to make a submission, attend a hearing, appeal to the Environment</p>

<sup>2</sup> [TKM | Iwi | Ngāi Tahu | Te Kāhui Māngai](#)



	<p>Court, and appeal to the High Court and higher courts. The fast-track process does not provide exactly the same rights to the PSGE (particularly the potential right to make a submission and then participate in a hearing and de novo appeal), but as noted above there are some other enhanced rights of participation.</p> <p><b><u>Iwi Environment Management plans</u></b></p> <p>Note the comments above in relation to iwi management plans.</p> <p><b><u>Other matters</u></b></p> <p>In the time available, officials have not identified any other impacts for the Marine and Coastal Area (Takutai Moana) Act 2011 (noting the project area does not appear to be in the common marine and coastal area), groups yet-to-settle their historical claims, Joint Management Agreements outside of settlement or Mana Whakahono ā Rohe.</p>
<p><b>Is the project considered low, medium or high impact (based on assessment criteria above)</b></p>	<p>From the information available we consider this project is likely to be of medium impact. This is due to the nature of interests and the consultation yet to be undertaken with Ngai Tahu.</p> <p>A mitigating factor is that at this stage of the process, given this is proposed to be a Schedule 2B project, Ngai Tahu would have the opportunity to input at both the Ministerial referral and expert panel stage.</p>
<p><b>Has the Ministry for the Environment undertaken engagement?</b></p>	<p>Officials consider engagement would be beneficial given the nature and range of interests present in the project area but were unable to undertake this in the time available.</p>
<p><b>Additional comments/context</b></p>	<p>N/A</p>

## **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.