

## FTA#310: Application for listed project under the Fast-track Approvals Bill – Marsden Point Rail Link Project for Schedule 2A

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

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| Number of attachments: # | <b>Attachments:</b><br>1. Application documents for Marsden Point Rail Link Project<br>2. Agency feedback (MPI) |
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| Applicant                 | Sector         | Region    | Identified in a priority/strategy? |
|---------------------------|----------------|-----------|------------------------------------|
| KiwiRail Holdings Limited | Infrastructure | Northland | No                                 |

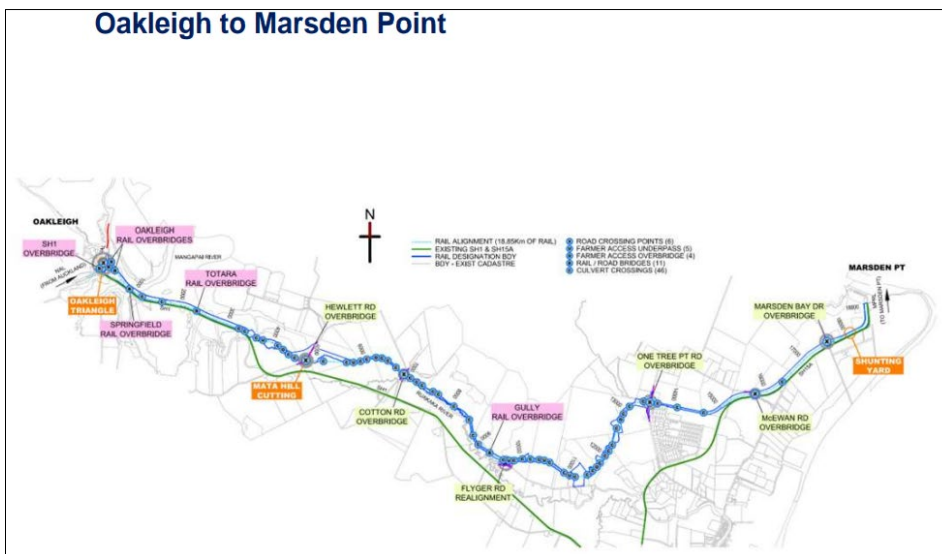
### Ministry for the Environment contacts

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

# Project location



## Oakleigh to Marsden Point



## Key messages

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1. The Marsden Point Rail Link project is to construct the connection and operate a rail link corridor extending from the North Auckland line at Oakleigh via Mata Hill, along the Ruakaka River out to Northport, at Marsden Point in the Northland region. The link will extend 19 kilometres.
2. The project will require approvals under the Resource Management Act 1991 (RMA) including exercising and/or amending the designation, Heritage New Zealand Pouhere Taonga Act 2014, the Wildlife Act 1953 and Public Works Act 1981.
3. The applicant holds an existing designation (due to expire in 2032) and ownership of 80 percent of the land within the designation. The applicant is negotiating further land acquisition under the Public Works Act 1981 and will seek to alter the designation.
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 2A (although we note that the project area is subject to additional land acquisition and, so alternatively it could be included on Schedule 2B based on the information provided).
6. The project does not trigger the ineligibility criteria in clause 18 of the Fast-track Approvals Bill (the Bill), although the project area is not fully defined and this may change.
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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A handwritten signature in black ink, appearing to read 'S. Frame', written over a light blue horizontal line.

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]  |  |
|---|---|---|---|---|--|---|--|---|--|--|
|   |   |   |   | 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)] |   | Is the project eligible [clause 17(2)]   | Would the project have significant regional or national benefits [clause 17(3)]  |
| <b>High level summary</b>   |   |   | Y   | N   | N  | N   | N  |   |  |  |
| <p><b>Schedule requested</b><br/>2A</p> <p><b>Project Name</b><br/>Marsden Point Rail Link</p> <p><b>Applicant</b><br/>KiwiRail Holdings Limited – is a Crown-owned entity</p> <p><b>Company director/s</b></p> <ul style="list-style-type: none"> <li>• Sina Kitiona Cotter Tait</li> <li>• Robert Jan Jager</li> <li>• Susan Mary Anna McCormack</li> <li>• David Alexander McLean</li> <li>• Rachel Sarah Pinn</li> <li>• Edward Stewart Aiden Sims</li> <li>• Maryan Street</li> <li>• Elizabeth Anne Ward</li> <li>• Bruce James Wattie.</li> </ul> <p><b>Location</b><br/>from the North Auckland line at</p> | <p>The Marsden Point Rail Link project is to construct the connection and operate a rail link corridor extending from the North Auckland line at Oakleigh via Mata Hill, along the Ruakaka River out to Northport, at Marsden Point in the Northland region.</p> <p>The link will extend 19 kilometres.</p> | <p>The applicant seeks approval under the:</p> <ul style="list-style-type: none"> <li>• Resource Management Act 1991</li> <li>• Heritage New Zealand Pouhere Taonga Act 2014</li> <li>• Wildlife Act 1953</li> <li>• Public Works Act 1981</li> </ul> | <p>The application identifies the following as persons affected:</p> <ul style="list-style-type: none"> <li>• Central Government</li> <li>• Ministry of Transport</li> <li>• NZ Transport Agency</li> <li>• Regulators</li> <li>• WorkSafe</li> <li>• Te Puni Kokiri</li> <li>• Mana whenua</li> <li>• Ngāti Whātua</li> <li>• Ngāti Wai</li> <li>• Ngāpuhi</li> <li>• Patuharakeke;</li> <li>• Te Parawhau;</li> <li>• Kopuawaiwaha Land Trust</li> <li>• Northland Regional Council</li> <li>• Whangarei District Council</li> <li>• Northport</li> <li>• Landowners and/or leaseholders.</li> </ul> <p>The applicant has provided an outline of how engagement has informed the project, in the application documents.</p> | <p>No – although the application and Treaty advice below has not identified any ineligibility triggers at this stage, we note the project area is still subject to further land acquisition.</p> <p>The application identifies that one Māori freehold property is impacted by the existing designation, and that the designation will be altered to avoid the affected land.</p> | 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><b>Potentially</b> – although the application and Treaty advice below has not identified any inconsistency grounds at this stage, we note the project area is still subject to further land acquisition.</p> <p><b>It is more appropriate to deal with the application under another Act.</b></p> <p><b>No</b> – although the application identifies that approvals will be required under the RMA, we consider the project could be assessed by an expert panel with the benefit of a full application, in a post-enactment context.</p> <p><b>The project may have significant adverse effects on the environment.</b></p> <p><b>Potentially</b> – the applicant identifies that an assessment of the adverse effects will be undertaken as part of any application process, including effects relating to construction (including earthworks, stormwater runoff, erosion and sediment control, traffic and nuisance, effects of noise and</p> | <p><b>Whether access to the fast-track process will enable the project to be processed in a more timely and cost-efficient way than under normal processes.</b></p> <p><b>Yes</b> – the applicant identifies that the existing designation expires in 2032 and there are strong economic and surety reasons for giving effect to the designation prior to that date. A fast-track consenting process will allow the designation to be given effect to in a more efficient way allowing the economic benefits of the rail link to be realised more quickly.</p> <p>If approvals were sought under the traditional consenting processes the applicant will be relying on multiple authorities issuing a suite of consents.</p> <p>There is likely to be extensive public interest in any consenting process, however given the</p> | <p>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.</p> <p><b>No</b> – not directly. The application identifies that Whangarei District Council adopted its Whangarei District Growth Strategy in September 2021 which refers to Marsden Point as a high growth area and employment node and anticipates that increased freight in Northland will require an efficient, integrated road-rail transport system in the region, recognising the role of the route between Oakleigh and Northport/Marsden Point.</p> <p><b>The project will deliver regionally or nationally significant infrastructure.</b></p> <p><b>Yes</b> – the project will deliver a regionally significant infrastructure option for the movement of rail freight through Northport, which doesn't currently exist.</p> <p><b>The project will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment.</b></p> <p><b>No.</b></p> <p><b>The project will deliver significant economic benefits.</b></p> |

<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.

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| <p>Oakleigh via Mata Hill, along the Ruakaka River out to Northport, at Marsden Point, Northland region.</p> <p><b>Land Status</b></p> <p>The applicant holds an existing designation (due to expire in 2032) and ownership of 80 percent of the land within the designation. The applicant is negotiating further land acquisition under the Public Works Act 1981 and will seek to alter the designation.</p> |  |  |  |  |  |  |  | <p>vibration), operational noise, hydrological effects (including effects on coastal and stream processes), public access, and access to private land and the roading network, environmental effects (including noise, vibration, ecological, landscape/visual and natural character), cultural and historic/ heritage effects (including modifying and removing archaeological sites), effects on values of importance to Māori, amenity effects (including visual and noise impacts on amenity), social effects (including potential impacts on day to day running of landowners' farms), economic effects (including disruption to local farms and businesses), recreational and navigational effects.</p> <p>We consider that the appropriate management of adverse effects, including remediation and mitigation could be assessed by an expert panel with the benefit of a full application, in a post-enactment context.</p> <p><b>The applicant has a poor compliance history under the relevant legislation.</b></p> <p><b>No.</b></p> <p><b>The project involves an activity that would occur on land that the Minister for Treaty of Waitangi Negotiations considers necessary for Treaty settlement purposes.</b></p> <p><b>Potentially</b> – although the application and Treaty advice below has not identified any such land at this stage, we note the project area is subject to further land acquisition.</p> <p><b>The project includes an activity that is a prohibited activity under the RMA.</b></p> <p><b>Potentially</b> – although the project area is subject to further land acquisition, we note any such activities are still able to be assessed under the Bill as drafted.</p> | <p>existing designation, land ownership and approvals in place a fast-track process would be more efficient to manage and assess the consents sought and the effects along the route in relation to all affected landowners and stakeholders.</p> <p><b>The impact referring this project will have on the efficient operation of the fast-track process.</b></p> <p><b>No</b> – the project through the Provincial Growth Fund has obtained initial consents and as such the applicant identifies that “the potential adverse effects are known.” In addition, the applicant identifies as an established infrastructure provider with a high level of in house and external capability and experience of obtaining consents and approvals for such projects.</p> <p><b>Whether the application contains sufficient information to inform the referral decision.</b></p> <p><b>Yes</b> – we consider the applicant has provided sufficient information to consider it for listing in Schedule 2A.</p> <p>Although we note that the project area is subject to further land acquisition.</p> | <p><b>Yes</b> – the re-establishment of the connection will generate employment with construction of the infrastructure and operationally with alternative rail freight options and expected increases in volume through the port facility.</p> <p><b>The project will support primary industries, including aquaculture.</b></p> <p><b>Yes</b> – new infrastructure, providing a rail link to the port enabling the movement of freight.</p> <p><b>The project will support development of natural resources, including minerals and petroleum.</b></p> <p><b>No.</b></p> <p><b>The project will support climate change mitigation, including the reduction or removal of greenhouse gas emissions.</b></p> <p><b>No.</b></p> <p><b>The project will support adaptation, resilience, and recovery from natural hazards.</b></p> <p><b>No.</b></p> <p><b>The project will address significant environmental issues.</b></p> <p><b>No.</b></p> <p><b>The project is consistent with local or regional planning documents, including spatial strategies.</b></p> <p><b>Yes</b> – the project corridor is designated in the relevant local (Whangarei District Plan) and regional planning documents where adverse effects on the receiving environment are able to be appropriately managed and mitigated.</p> <p>We note the project area is subject to further land acquisition and notices of requirement to alter the designation may be required.</p> |
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**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.

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| <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 applicant has stated that the project is not ineligible, however we note that the applicant has not provided details of the remaining land required for the proposed project and its landowners (except to note that the remaining land that needs to be acquired is privately owned and is not Māori land).</p>   |
| <p><b>Affected Māori group/s</b></p>   | <p>The applicant has identified the following groups with interests in the project area:</p> <ul style="list-style-type: none"> <li>• Mana whenua (described as “broadlist”): <ul style="list-style-type: none"> <li>○ Ngāti Whātua</li> <li>○ Ngātiwai</li> <li>○ Ngāpuhi</li> </ul> </li> <li>• Mana whenua (described as “targeted groups”): <ul style="list-style-type: none"> <li>○ Patuharakeke</li> <li>○ Te Parawhau</li> </ul> </li> </ul> <p><u>Ngāti Whātua</u></p> <p>Ngāti Whātua are yet to settle their historical Treaty of Waitangi claims and so the area of interest of Ngāti Whātua is not confirmed. Information from Te Kāhui Māngai confirms the proposed project location as being within the area of interest for Ngāti Whātua.<sup>1</sup> Note this area of interest may be refined and confirmed throughout the course of Treaty settlement negotiations.</p> <p><u>Ngātiwai</u></p> <p>Ngātiwai are yet to settle their historical Treaty of Waitangi claims and so the area of interest of the Ngāti Wai is not confirmed through a Treaty settlement as yet. Information from Te Kāhui Māngai confirms the proposed project location as being within the area of interest for Ngāti Wai.<sup>2</sup> Note this area of interest may be refined and confirmed throughout the course of Treaty settlement negotiations.</p> <p><u>Ngāpuhi</u></p> <p>Ngāpuhi are yet to settle their historical Treaty of Waitangi claims and so the area of interest of the Ngāpuhi is not confirmed through a Treaty settlement as yet. Information from Te Kāhui Māngai confirms the proposed project location as being closely adjacent to the area of interest for Ngāpuhi.<sup>3</sup> Note this area of interest may be refined and confirmed throughout the course of Treaty settlement negotiations.</p> <p><u>Patuharakeke</u></p> <p>Patuharakeke Hapū are yet to settle their historical Treaty of Waitangi claims and so the area of interest of Patuharakeke Hapū is not confirmed through a Treaty settlement as yet. Information from Te Kāhui Māngai confirms the proposed project location as being within the area of interest for Patuharakeke Hapū. Note this area of interest may be refined and confirmed throughout the course of Treaty settlement negotiations.</p> <p><u>Te Parawhau</u></p> <p>Te Parawhau are yet to settle their historical Treaty of Waitangi claims and so the area of interest of the Te Parawhau is not confirmed through a Treaty settlement as yet. There is no information on Te Kāhui Māngai and in the time available, it has not been possible to confirm whether the proposed project location is within the area of interest for Te Parawhau.</p> <p>In addition to the groups identified by the applicant, we have also identified that Ngāti Hine may potentially have interests in the proposed project location.</p> <p><u>Ngāti Hine</u></p> <p>Ngāti Hine are yet to settle their historical Treaty of Waitangi claims and so the area of interest of Ngāti Hine is not confirmed. Information from Te Kāhui Māngai confirms the proposed project location as being closely adjacent to the area of interest for Ngāti Hine.<sup>4</sup> Note this area of interest may be refined and confirmed throughout the course of Treaty settlement negotiations.</p> <p><u>Marine and Coastal Area (Takutai Moana) Act 2011 applicants</u></p> <p>The proposed project includes activities in relation to the coastal marine area. There are a number of groups with applications under the Marine and Coastal Area (Takutai Moana) Act 2011 in that area that may therefore be affected.</p> |
| <p><b>Has the applicant consulted with those Māori groups?</b></p>   | <p>The applicant sets out that some historical engagement has been undertaken.</p>  |

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| <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 Iwi o Ngatiwai Iwi Environmental Policy Documents 2007</li> <li>• Ngatiwai Aquaculture Plan 2005</li> <li>• Patuharakeke Hapū Environmental Management Plan 2014</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>Mana Whakahono ā Rohe</u></b></p> <p>There is a Mana Whakahono ā Rohe between the Northland Regional Council and the hapū of Te Taitokerau, which includes Te Patuharakeke and Te Parawhau. The location of the project appears to fall within the area covered by the Mana whakahono ā Rohe. The Mana whakahono ā Rohe provides for an on-going role for Te Patuharakeke in decision-making and resource management. Listing this project may impact the application of the Mana whakahono ā Rohe, which provides for substantive input from Te Patuharakeke, into processes related to this project that would occur through the standard consenting regime, noting in particular, that this is an application for a Schedule 2A listing.</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>Implications for groups yet to settle their historical Treaty of Waitangi claims</u></b></p> <p>There are groups still working through their Treaty settlement processes. [For example, [provide details of any obvious groups if there are any.]] It will be important that these interests are considered in more detail if the project progresses through the fast-track process, but in the time available there are no further impacts noted.</p> <p><b><u>Implications arising under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019</u></b></p> <p>The project area is in the common marine and coastal area. Within this area there are no customary marine title or protected customary rights holders under the Marine and Coastal Area (Takutai Moana) Act 2011 recorded on the register – <a href="#">Marine and Coastal Area Register   Toitū Te Whenua - Land Information New Zealand (linz.govt.nz)</a>. There are however approximately 30 applications by whānau, hapū and iwi groups who have applied to have their customary interests recognised under the Act.</p> <p>Under the Act, takutai moana applicant groups have certain rights in relation to consenting processes under the Resource Management Act 1991, including the right to be consulted on resource consent applications in their takutai moana application area. The Fast-track Approvals Bill currently provides for consultation with takutai moana applicant groups on Schedule 2B projects at the Ministerial referral stage, and the clause 13 report must include information about the relevant takutai moana applicant groups in the project area. For schedule 2A projects these steps would not apply. For listed projects (both Schedule 2A and 2B), the Fast-track Approvals Bill as currently drafted, does not provide for consultation with takutai moana applicant groups at the expert panel stage.</p> <p>This means that an implication of listing a project under Schedule 2A is that takutai moana applicants would not have the ability to input into the process at all, and for Schedule 2B listing the only opportunity for any input is at the Ministerial referral stage.</p> <p>As the project area is outside of ngā rohe moana o ngā hapū o Ngāti Porou there are no implications for the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 arising from this application.</p> <p><b><u>Other matters</u></b></p> <p>In the time available, officials have not identified any other impacts for Treaty settlements, 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 and range of interests present in the project area including the operation of the Mana Whakahono ā rohe, and the potential implications for takutai moana applicant groups in the area.</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. For Part A projects, there is a requirement on the expert panel to invite comment from the PSGE on the application.</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>See the attached advice from MPI on potential impacts on aquaculture and fisheries settlement considerations.</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.