

FTA#236: Application for listed project under the Fast-track Approvals Bill – Waihi Hydroelectric Power Scheme Reconsenting Project for Schedule 2A

Date submitted to secretariat:	29 May 2024
Security level:	In-Confidence
To:	David TAPSELL, Chair – Fast-track Projects Advisory Group

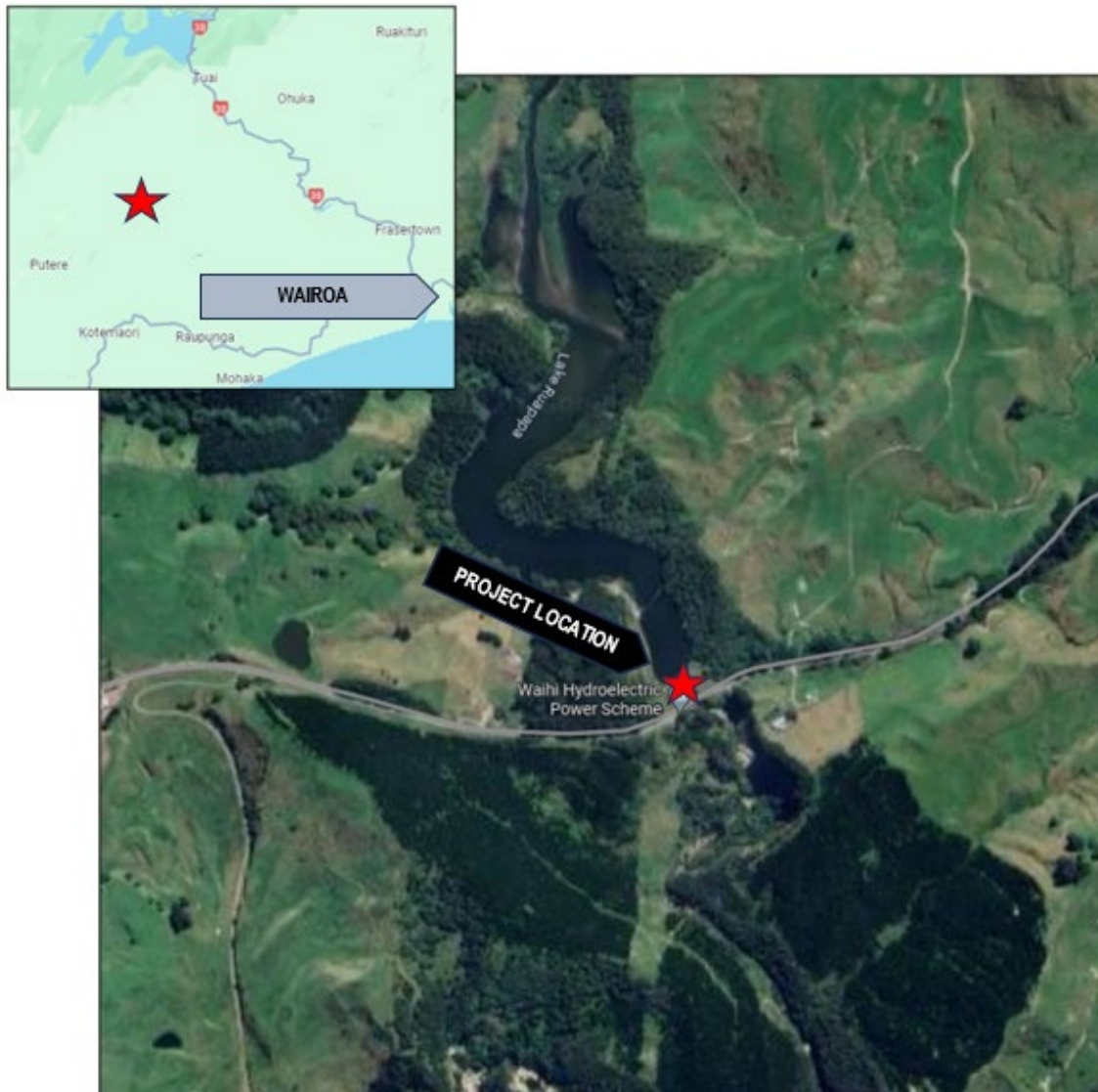
Number of attachments: #	Attachments: 1. Application documents for Waihi Hydroelectric Power Scheme Reconsenting Project
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Applicant	Sector	Region	Identified in a priority/strategy?
Eastland Generation Ltd	Hydro	Hawke's Bay	No

Ministry for the Environment contacts

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

Project location



Key messages

1. The Waihi Hydroelectric Power Scheme Reconsenting project is to continue the use, operations and maintenance of the hydro scheme on the Ruapapa Road, 26km northwest of Wairoa, Hawke's Bay. The scheme runs through a series of tunnels and dams between Lake Ruapapa, Waihi Stream and the Waiiau River to the powerhouse and will maintain the existing connection and supply of electricity to the national grid. The scheme will maintain an approximate peak output of 5 Megawatts.
2. The project will comprise renewal of the suite of resource consents (due to expire in September 2026).
3. The project will require resource consents under the Resource Management Act 1991 (RMA).
4. The project area covers multiple parcels of land. The applicant owns the land on which the dam, reservoir, power station and penstocks are located and has operating easements with respect to Landcorp Farming Limited land which includes the right to convey water by

tunnel in favour of the applicant.

5. We have undertaken an initial (Stage 1) analysis of the application and this is provided in Table A.
6. We consider the applicant **has** provided sufficient information to consider the project for inclusion on Schedule 2A (although we note it could still be included on Schedule 2B based on the information provided).
7. The project does not trigger the ineligibility criteria in clause 18 of the Fast-track Approvals Bill (the Bill).
8. 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 black ink, appearing to read 'S. Frame', with a stylized flourish at the end.

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)]	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)]
High level summary			Y	N	N	N	N			
<p>Schedule requested 2A</p> <p>Project Name Waihi Hydroelectric Power Scheme Reconsenting</p> <p>Applicants Eastland Generation Limited</p> <p>Company Director/s</p> <ul style="list-style-type: none"> Kenichi Ando Matanuku Kihirini Mahuika Yukio Mashimo Jon Edmond Nichols <p>Location Ruapapa Road, 26km northwest of Wairoa.</p> <p>The scheme is sited near Lake Ruapapa, Waihi Stream and the Waiiau River.</p> <p>PCL: Land immediately adjoining the western boundary of the allotment on which the power station is situated is a 'Waiiau River Conservation Area'. It is a 1.3-hectare parcel of land administered by the Department of Conservation (DoC).</p>	<p>The project is to continue the use, operations and maintenance of the hydroscheme. The scheme runs through a series of tunnels and dams between Lake Ruapapa, Waihi Stream and the Waiiau River to the powerhouse and will maintain the existing connection and supply of electricity to the national grid. The scheme will maintain an approximate peak output of 5 Megawatts.</p> <p>The project will comprise renewal of the suite of resource consents (due to expire in September 2026).</p>	<p>The applicant seeks approval under the:</p> <ul style="list-style-type: none"> Resource Management Act 1991 <p>The applicant may require approval under the:</p> <ul style="list-style-type: none"> Freshwater Fisheries Regulations 1983 – if applicable to reconsenting Conservation Act 1987 Wildlife Act 1953 	<p>The application identifies the following as persons affected:</p> <ul style="list-style-type: none"> Hawke's Bay Regional Council (HBRC) Wairoa District Council Ngāi Tamaterangi – hapū of Ngāti Kahungunu iwi Ngāti Mihi – hapū of Ngāti Kahungunu iwi Ngāti Ruapani <p>Adjoining neighbours</p> <ul style="list-style-type: none"> Department of Conservation Landcorp Farming Limited Other Interested Parties – situated around Lake Ruapapa <p>The applicant is at various stages of consultation with the identified parties and "will offer to support preparation of cultural impact assessments" with affected Māori groups.</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 – The application and Treaty advice below has not identified any inconsistency grounds.</p> <p>It is more appropriate to deal with the application under another Act.</p> <p>No – 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>The project may have significant</p>	<p>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.</p> <p>Yes - The applicant identifies that reconsenting of the existing scheme is expected to progress more quickly under the Fast Track process than a traditional RMA consenting pathway. While the application is to consent an existing hydro-scheme, it requires a complex suite of water take, damming, diversion and discharge consents under the Hawkes Bay Regional Resource Management Plan. Due to this complexity, there is potential for HBRC to double the standard consent processing timeframes. There is also potential for public notification, in the event HBRC deems there to be insufficient certainty around the nature and scale of downstream effects and the ability for the Scheme to effectively manage these. This would result in delays to the project.</p> <p>The impact referring this project will have on the efficient operation of the fast-track process.</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>No – The applicant refers to the National Policy Statement for Renewable Energy Generation. While this document promotes renewable energy, it does not specifically identify this application.</p> <p>The project will deliver regionally or nationally significant infrastructure.</p> <p>Yes – The project will maintain nationally significant infrastructure delivering 5MW of renewable energy to meet the demands of approximately 1,400 households that will be supplied directly to the national grid.</p> <p>The project will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment.</p> <p>No.</p> <p>The project will deliver significant economic benefits.</p> <p>Yes – By continuing to provide security and resilience of renewable generation to the energy sector the scheme is supporting growth in the Hawke's Bay as well as minimising costs associated with obtaining electricity from outside the Wairoa District. Despite its small scale, it is regionally significant and its replacement would be costly, and require alternative methods of generation in the interim.</p>

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.

<p>The applicant has been engaging with DoC on the matter.</p> <p>Land ownership</p> <p>The applicant notes the registered owner as:</p> <ul style="list-style-type: none"> • Eastland Generation Ltd (as above) • Landcorp Farming Ltd <p>Company Director/s</p> <p>Landcorp Farming Limited</p> <ul style="list-style-type: none"> • Nigel William Atherfold • Tanira Te Tupara Kingi • Desiree Robin Mahy • Joanna Mary Montgomerie-Davidson • Claire Rosalind Nicholson • Nicholas Brian Pyke • Paula Anne Savage <p>Land Status</p> <p>The project area covers multiple parcels of land. The applicant owns the land on which the dam, reservoir, power station and penstocks are located and has operating easements with respect to Landcorp Farming Limited land which includes the right to convey water by tunnel in favour of the applicant.</p>								<p>adverse effects on the environment.</p> <p>No – The application identifies effects relating to cultural effects, landscape and natural character, hydrology, freshwater ecology and water quality, and dam safety.</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>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>No.</p>	<p>The applicant notes they and their consultants are familiar with consenting regionally significant infrastructure projects and have a track record of providing robust, complete applications that are based on robust monitoring of existing environmental conditions and address all relevant environmental, cultural and operational matters. This will ensure the proposed consenting of the existing scheme through the fast-track process can be undertaken in an efficient manner in accordance with the requirements and timeframes set by the fast-track process.</p> <p>Whether the application contains sufficient information to inform the referral decision.</p> <p>We consider the applicant has provided sufficient information to consider it for listing in Schedule 2A.</p>	<p>The project will support primary industries, including aquaculture.</p> <p>No.</p> <p>The project will support development of natural resources, including minerals and petroleum.</p> <p>No.</p> <p>The project will support climate change mitigation, including the reduction or removal of greenhouse gas emissions.</p> <p>Yes - The project will continue to have significant climate change mitigation benefits, including the reduction of greenhouse gas emissions. The project will continue to substitute fossil fuel energy with renewable energy, and therefore will contribute to reductions in the country's greenhouse gas inventory.</p> <p>The project will support adaptation, resilience, and recovery from natural hazards.</p> <p>Yes – The project will aid the resilience and recovery from natural hazards. The applicant identifies that the Waihi Dam structure is inspected and maintained in accordance with the NZSOLD dam safety guidelines to ensure that it is resilient to natural hazard events such as earthquakes and floods.</p> <p>The project will address significant environmental issues.</p> <p>Yes – The project will contribute to addressing New Zealand's response to climate change by providing renewable electricity.</p> <p>The project is consistent with local or regional planning documents, including spatial strategies.</p> <p>Yes – On the basis that the potential adverse effects of the consenting project on the surrounding environment are able to be appropriately managed, the project will be consistent with the local and regional planning documents.</p>
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PSGE Settlement Priorities and Māori Development assessment –

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.

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>Ineligible projects - based on the considerations at cl18(a–e) of the Fast Track Approvals Bill (version as at introduction)</p>	<p>This project does not appear to be ineligible according to the information provided in the application.</p>
<p>Affected Māori group/s</p>	<p>The applicant has identified the following groups with interests in the project area:</p> <ul style="list-style-type: none"> • Ngāti Tamaterangi - hapū of Ngāti Kahungunu • Ngāti Mihi – hapū of Ngāti Kahungunu • Ngāti Ruapani <p><u>Ngāi Tamaterangi</u></p> <p>Ngāi Tamaterangi is a hapū of Ngāti Kahungunu and is part of the iwi and hapū of Te Rohe o Te Wairoa. Te Wairoa Iwi and Hapū area of interest includes the proposed project site, based on the area of interest agreed between Te Wairoa Iwi and Hapū and the Crown in the Deed of Settlement signed 26 November 2016.²</p> <p><u>Ngāti Mihi</u></p> <p>Ngāti Mihi is a hapū of Ngāti Kahungunu and is part of the iwi and hapū of Te Rohe o Te Wairoa. Te Wairoa Iwi and Hapū area of interest includes the proposed project site, based on the area of interest agreed between Te Wairoa Iwi and Hapū and the Crown in the Deed of Settlement signed 26 November 2016.³</p> <p><u>Ngāti Ruapani</u></p> <p>Ngāti Ruapani are yet to settle their historical Treaty of Waitangi claims and so the area of interest of Ngāti Ruapani is not confirmed through a Treaty settlement as yet. There is a proposed area of interest included in the Agreement in Principle signed 27 August 2022 and the proposed project location is within this area.⁴</p> <p>In addition to the groups identified by the applicant, we have also identified the following additional groups as potentially having interests in the proposed project location:</p> <ul style="list-style-type: none"> • Ngāti Pāhauwera • Ngāi Tūhoe <p><u>Ngāi Tūhoe</u></p> <p>Ngāi Tūhoe is an iwi whose area of interest includes the proposed project site, based on the area of interest agreed between Ngāi Tūhoe and the Crown in the Deed of Settlement signed 4 June 2013.⁵</p> <p><u>Ngāti Pāhauwera</u></p> <p>Ngāti Pāhauwera is an iwi whose area of interest includes the proposed project site, based on the area of interest agreed between Ngāti Pāhauwera and the Crown in the Deed of Settlement signed 17 December 2010.⁶</p>
<p>Has the applicant consulted with those Māori groups?</p>	<p>The applicant does not appear to have consulted with those Māori groups to date and it is not clear who the entities involved in the consultation will be. The applicant states that:</p> <ul style="list-style-type: none"> • Once available, it will share summaries of specialist reports and application material, particularly with respect to addressing the effects of the Waihi HEPS on water quality and quantity and ecological effects. Further information will be provided as requested. • It will also offer to support preparation of Cultural Impact Assessments to assist with identifying issues considered important and understanding whether these can be addressed by the application. <p>If supported by iwi and hapu groups, a combined hui is proposed to be held at one of the downstream Marae to discuss any issues and concerns from an iwi perspective and whether these can be addressed by the application.</p>
<p>Impact/s of the project on Māori development and PSGE settlement priorities and related matters</p>	<p><u>Impacts on PSGE settlement priorities and Māori development</u></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"> • Ngāti Kahungunu Kaitiakitanga Mo Nga Taonga Kuku Iho 1992 • Kahungunu ki Uta Kahungunu ki Tai Marine and Freshwater Fisheries Strategic Plan <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 plans 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><u>Impact on Treaty settlements and other relevant arrangements</u></p> <p>Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Act 2018</p> <p><i>Statutory acknowledgements</i></p>

² Wairoa rohe.pdf (tkm.govt.nz)

³ Wairoa rohe.pdf (tkm.govt.nz)

⁴ Ng ti Ruapani - Agreement in Principle.pdf (tkm.govt.nz)

⁵ AOI-Tuhoe.jpg (1103×1635) (tkm.govt.nz)

⁶ AOI-NgatiPahauwera.jpg (841×594) (tkm.govt.nz)

	<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. The applicant has noted the statutory acknowledgement for the Waiau River and its tributaries within the area of interest and has identified that the tributaries include Waihi Stream and Lake Ruapani (we assume they mean Lake Ruapapa).</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 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>Ngāti Pāhauwera Claims Settlement Act 2012 <i>Statutory acknowledgements</i></p> <p>This Treaty settlement contains a statutory acknowledgement. It is not clear from the application whether the statutory acknowledgement covers or is adjacent to the project site or is directly impacted by the proposed project. The text above in relation to statutory acknowledgements applies here also.</p> <p>Hawke's Bay Regional Planning Committee Act 2015 <i>Hawke's Bay Regional Planning Committee</i></p> <p>The Hawke's Bay Regional Planning Committee is a joint committee consisting of equal numbers of iwi and council appointed members established under the Hawkes Bay Regional Planning Act 2015.</p> <p>The purpose of the Hawke's Bay Regional Planning Committee is to oversee the development and review of RMA documents prepared in accordance with the RMA for the Regional Planning Committee region.</p> <p>The functions of the entity include:</p> <ul style="list-style-type: none"> • Overseeing the development and review of RMA regional planning documents (regional policy statements and regional plans) and recommending to the Council for public notification the content of any such document. If a recommendation is not accepted, the matter must be referred back to the Committee. • Monitoring the efficiency and effectiveness of the RMA documents in accordance with section 35 of the RMA. <p>Under the terms of reference, there are also powers to recommend appointment to hearing commissioner panel.</p> <p>This is a significant mechanism which has its origins in the Ngāti Pāhauwera Treaty settlement. If this project is progressed through the fast-track process, there is a risk that regional policy statements and plans will have a lesser effect than they would under the RMA, and hence the impact of this arrangement will be diminished.</p> <p>Iwi Environment Management plans</p> <p>Note the comments above in relation to iwi management plans.</p> <p><u>Implications for groups yet to settle their historical Treaty of Waitangi claims</u></p> <p>There are groups still working through their Treaty settlement processes. For example, Ngāti Ruapani. 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><u>Other matters</u></p> <p>There have been no joint management agreements, mana whakahono ā rohe or Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 considerations identified. In the time available, officials have not identified any other relevant matters.</p>
<p>Is the project considered low, medium or high impact (based on assessment criteria above)</p>	<p>From the information available we consider this project is likely to be of medium impact. This is due to the nature and complexity of the Treaty settlements and related arrangements 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>Has the Ministry for the Environment undertaken engagement?</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>Additional comments/context</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.