

FTC#248: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2023-150 Arawhata Wetland Project

Date submitted:	30 May 2023	Tracking #: BRF-3080	
Security level	In-Confidence	MfE priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decisions on recommendations	To be advised

Actions for Minister's Office staff	Return the signed briefing to MfE. Send the attached notice of decisions letter (if signed).
Number of appendices: 7	Appendices: 1. Arawhata Wetland Project application documents and further information received (Databox link) 2. Stage 1 Briefing Note and decisions (Databox link) 3. Statutory framework for making decisions (Databox link) 4. Draft Notice of Decisions letter to Manawatu-Wanganui Regional Council (Horizons) 5. Section 17 Report (Databox link) 6. Comments received from Ministers, Horizons, and First Gas Limited (Databox link) 7. Further information received post-consultation (Databox link).

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
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Acting Director	Lorena Stephen	s 9(2)(a)	

FTC#248: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions

Key messages

1. This briefing seeks your final decisions on the application received under section 20 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) from Manawatu-Wanganui Regional Council (Horizons) to refer the Arawhata Wetland Project (project) to an expert consenting panel (panel). A copy of the application is in Appendix 1.
2. This is the second briefing on this application. The first (Stage 1) briefing (BRF-2995) with your initial decisions annotated is in Appendix 2.
3. The project is to construct, operate and maintain a wetland complex in the Arawhata Stream catchment of Punahau/Lake Horowhenua in Manawātū-Whanganui Region to enhance water quality, ecology and cultural values of Punahau/Lake Horowhenua. The project site covers an area of approximately 119 hectares, located at 269 and 308 Hokio Beach Road, 217 Arawhata Road, Levin and adjacent land (legally described as Section 4 Survey Office Plan 465440). The project will include works within the Hokio Beach Road and Arawhata Road reserves.
4. The project will include activities such as:
 - a. carrying out earthworks (including disturbing contaminated soils)
 - b. constructing and installing structures including weirs bunds and stopbanks
 - c. modifying and upgrading existing culverts
 - d. damming, diverting and discharging water (including water containing contaminants) into water and onto land
 - e. taking, using and discharging groundwater
 - f. landscaping and planting
 - g. any other activities that are:
 - i. associated with the activities described in paragraphs 'a' to 'f'
 - ii. within the scope of the scope of the project as described in paragraph 3.
5. The purpose of the project is to improve the water quality of Punahau/Lake Horowhenua by reducing nitrogen, phosphorus and sediment loads entering the lake. The project is part of the Lake Horowhenua Water Quality Interventions Project funded by the government's Jobs for Nature programme.
6. The project will require land use consent under the Horowhenua District Plan, water and discharge permits under the Horizons One Plan, and resource consents under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) and Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS). The proposed activities are likely to have overall discretionary activity status.
7. One of the relevant local authorities, Horowhenua District Council, did not provide comments. No parties who responded to your invitation to comment opposed project referral.
8. We recommend you accept the referral application under section 24 of the FTCA and refer the project to a panel for fast-track consenting. We seek your decision on this recommendation and notification of your decisions.

Assessment against statutory framework

9. The statutory framework for your decision-making is set out in Appendix 3. You must apply this framework when you are deciding whether or not to accept the application and when deciding on any further requirements or directions associated with project referral.
10. Before accepting the application, you must consider the application and any further information provided by the applicant (in Appendix 1), the Section 17 Report (in Appendix 5) and comments from Ministers, Horizons Regional Council and First Gas Limited (in Appendix 6). Following that, you may accept the application if you are satisfied that it meets the referral criteria in section 18 of the FTCA. We provide our advice on these matters below.
11. We have also considered if there are any reasons for declining the project, including the criteria in section 23(5) of the FTCA, and provide our advice on these matters to assist your decision-making.

Further information provided by applicant

12. You did not request any further information from the applicant under section 22 of the FTCA.

Section 17 report

13. The Section 17 Report indicates that there are three iwi authorities, one Treaty settlement and one Treaty settlement entity relevant to the project area.
14. No specific cultural or commercial redress provided under the settlements would be affected by the project. The relevant Treaty settlements do not create any new co-governance or co-management processes that would affect decision-making under the Resource Management Act 1991 (RMA) for the project.

Comments received

15. Comments were received from § 9(2)(f)(ii), § 9(2)(g)(i) Horizons and First Gas Limited (First Gas). The key points of relevance to your decision are summarised in Table A.
16. § 9(2)(f)(ii), § 9(2)(g)(i)
17. § 9(2)(f)(ii), § 9(2)(g)(i)
18. The regulatory arm of Horizons provided comments in response to your invitation and neither supported nor opposed project referral. Horizons noted potential significant issues include effects on water quality, effects on cultural values, impacts on flooding risk and hydrology in the area, loss of habitat within a modified water course and effects associated with wetland construction. Horizons requested technical assessments such as an ecological assessment, archaeological assessment and erosion and sediment control plan be included in the resource consent applications for the project.
19. First Gas advised that it operates the 109 gas transmission line which feeds to the Levin Delivery Point station and which bisects the proposed location for the Arawhata Wetland. First Gas did not oppose project referral but advised their two key concerns relate to (a) physical impacts on the pipeline due to potential saturation and loss of adequate cover through drainage clearance and (b) ability to access and maintain the pipe in a safe and efficient manner, including regulatory compliance requirements under National Environmental Standards. First Gas advised they seek a panel to direct the applicant to revisit

the wetland proposal and indicative design in consultation with First Gas to ensure that appropriate and adequate allowance for the pipeline and access are provided.

Section 18 referral criteria

20. You may accept the application for project referral if you are satisfied that the project does not include ineligible activities (section 18(3)) and will help to achieve the purpose of the FTCA (section 18(2)).
21. The project does not include any ineligible activities, as explained in Table A.
22. The matters that you may consider when deciding if a project will help achieve the purpose of the FTCA are in Section 19 of the FTCA. Our assessment of these matters is summarised in Table A. We consider the project will help achieve the purpose of the FTCA, and thus meet the requirements of section 18(2), as it has the potential to:
 - a. generate approximately 45 direct full time equivalent (FTE) jobs over a 3-year design and construction period
 - b. improve environmental outcomes for freshwater quality and indigenous biodiversity
 - c. progress faster than would otherwise be the case under standard Resource Management Act 1991 process.
23. We consider any actual and potential effects arising from the project, together with any measures to avoid, remedy, mitigate, offset or compensate for adverse effects, could be tested by a panel against Part 2 of the RMA and the purpose of the FTCA.

Issues and risks

24. Even if the project meets the referral criteria in section 18 of the FTCA, section 23(2) of the FTCA permits you to decline to refer the project for any other reason.

Section 23 FTCA matters

25. Section 23(5) of the FTCA provides further guidance on reasons to decline an application, and our analysis of these matters is summarised in Table A. Note that you may accept an application even if one or more of those reasons apply.
26. We have considered whether it would be more appropriate to go through standard RMA consenting processes which might allow for wider public input than under the FTCA process, particularly in relation to consideration of potential adverse effects.
27. If you decide to refer the project, a panel can invite comments from any person they consider appropriate (clause 17(8), Schedule 6 of the FTCA) in addition to parties already prescribed by the FTCA.
28. We consider that a panel would be best placed to decide on any further appropriate consultation with the benefit of a complete resource consent application and note that a panel may also hold a hearing at its discretion. Therefore, we do not consider that you should decline the referral application on the basis that it would be more appropriate for the project to go through the standard consenting process under the RMA (as is provided for under section 23(5)(b) of the FTCA).
29. Section 23(5)(f) provides for you to decline an application because the applicant has a poor history of environmental regulatory compliance. The regulatory arm of Horizons advised that the applicant (being Horizon's River Management Group) has been issued with two previous infringement notices (in 2010 and 2018) relating to discharge of contaminants to air, one recent infringement notice in 2022 relating to disturbance of the bed of a river, and a formal warning in 2022 related to flood control and drainage. The applicant's agent advises that

these matters are now resolved. On this basis, we do not consider that you should decline to refer the project for this reason.

30. At this stage we consider there is sufficient time before 8 July 2023 for you to progress an Order in Council through Cabinet and for it to be authorised by the Executive Council, should you decide to refer the project. Therefore, we consider you should not decline to refer the project on the basis that there is insufficient time for the project to be referred and considered, and the Order made before the FTCA is repealed (23(5)(g)).

Other matters

31. First Gas has raised concerns about the effects of the proposed wetland on their pipeline which was not designed to be saturated, and potential issues relating to on-going access for maintenance and repair of the pipeline.
32. A panel can consider any adverse effects arising from the project in a merit-based assessment under the FTCA process and the panel can impose consent conditions to address these effects. Therefore, we do not consider that you should decline the referral application on the basis of adverse effects on the operation of the gas transmission line. However, to ensure that First Gas' concerns are fully addressed, and that this matter does not cause delays in a panel's processing of the applicant's consent applications, we consider that you should require the applicant to include with their applications an explanation of how project design will provide for continued operation of the gas transmission line, and details of their consultation with First Gas on the matter. We also consider if you decide to refer the project you direct a panel to invite comments from First Gas.

Conclusions

33. We do not consider that you should decline to refer the project in whole on the basis of the risks and issues identified above. You could accept the application under section 24 of the FTCA and refer all of the project to a panel.
34. If you decide to refer the project, we consider that you should specify under section 24(2)(d) of the FTCA that the applicant must submit with their resource consent applications to a panel an explanation of how project design will provide for the safe and continued operation of the gas transmission line operated by First Gas, and details of consultation, and any agreements made, with First Gas.
35. If you decide to refer the project, we consider you should specify under section 24(2)(e) of the FTCA that a panel must invite comments on consent for the project from First Gas Limited.

Next steps

36. If you decide to refer the project, you must give notice of your decisions on the referral application, and the reasons for them, to the applicant, anyone invited to comment under section 21, and the persons, entities and groups listed in section 25(2) of the FTCA.
37. If you decide to decline project referral, you must give the notice of your decisions, and the reasons for them, to the applicant and anyone invited to comment under section 21.
38. We have attached a notice of decisions letter to the applicant based on our recommendations (refer Appendix 4). Once you have signed the letter, we will assist your office to copy it to all relevant parties.
39. To refer the project, you must recommend that a referral order be made by way of an Order in Council (OiC). Cabinet has agreed that you can issue drafting instructions to the

Parliamentary Counsel Office without the need for a policy decision to be taken by Cabinet in the first instance.¹

40. As required by section 25(3) of the FTCA, you must ensure that your decisions on the referral application, the reasons and the Section 17 report are published on the Ministry for the Environment's website. We will undertake this task on your behalf in accordance with your direction.
41. Our recommendations for your decisions follow.

¹ Following the first OIC, the Minister for the Environment (and Minister of Conservation for projects in the Coastal Marine Area) can issue drafting instructions directly to the Parliamentary Counsel Office. Cabinet has also agreed that a Regulatory Impact Assessment is not required for an OIC relating to projects to be referred to a panel [ENV-20-MIN-0033 and CAB-20-MIN-0353 refer].

Recommendations

1. We recommend that you:

- a. **Note** section 23(1) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) requires you to decline the referral application from Manawatū-Whanganui Regional Council (Horizons) unless you are satisfied that the Arawhata Wetland Project (project) meets the referral criteria in section 18 of the FTCA including that it would help to achieve the FTCA's purpose.
 - b. **Note** when assessing whether the project would achieve the FTCA's purpose, you may consider a number of matters under section 19, including the project's economic benefits and costs, and effects on social or cultural well-being; whether it may result in a public benefit (such as generating employment or increasing housing supply); and whether it could have significant adverse effects.
 - c. **Note** before deciding to accept the application for project referral under section 24(1) of the FTCA you must consider:
 - i. the application
 - ii. the report obtained under section 17 of the FTCA
 - iii. any comments and further information sought and provided within the required timeframe.
 - d. **Note** if you are satisfied that all or part of the project meets the referral criteria in section 18 of the FTCA you may:
 - i. refer all or part of the project to an expert consenting panel (panel)
 - ii. refer the initial stages of the project to a panel while deferring decisions about the project's remaining stages
 - iii. still decline the referral application for any reason under section 23(2) of the FTCA.
 - e. **Note** if you do refer all or part of the project you may:
 - i. specify restrictions that apply to the project
 - ii. specify the information that must be submitted to a panel
 - iii. specify the persons or groups from whom a panel must invite comments
 - iv. set specific timeframes for a panel to complete their process.
 - f. **Agree** the project meets the referral criteria in section 18(3) of the FTCA.
- Yes/No
- g. **Agree** the project will help achieve the purpose of the FTCA (and therefore meets the referral criteria in section 18(2) of the FTCA) as it has the potential to:
 - i. generate approximately 45 direct full time equivalent (FTE) jobs over a 3-year design and construction period
 - ii. improve environmental outcomes for freshwater quality and indigenous biodiversity
 - iii. progress faster than would otherwise be the case under standard Resource Management Act 1991 process.

Yes/No

- h. **Agree** to **refer** all of the project to a panel.

Yes/No

- i. **Agree** to specify under section 24(2)(d) of the FTCA that the applicant must provide the following information with their consent applications to a panel:

- i. an explanation of how project design will provide for the safe and continued operation of the gas transmission line crossing the project site that is operated by First Gas Limited
- ii. details of consultation, and any agreements made, with First Gas Limited in relation to operation of, and access to, the gas transmission line crossing the project site.

Yes/No

- j. **Agree** to specify under section 24(2)(e) of the FTCA that a panel must invite comments from the following persons or groups in addition to those specified in clause 17 of Schedule 6 of the FTCA:

- i. First Gas Limited.

Yes/No

- k. **Agree** to the Ministry for the Environment issuing drafting instructions to the Parliamentary Counsel Office for an Order in Council to refer the project to a panel in accordance with your decisions recorded herein.

Yes/No

- I. **Sign** the notice of decisions letter to the applicant (attached in Appendix 4).

Yes/No

Signatures

A handwritten signature in black ink, appearing to read 'R Perrett', with a long horizontal stroke extending to the right.

Rebecca Perrett
Manager – Fast-track Consenting

Hon David Parker
Minister for the Environment

Date:

Table A: Stage 2 - Project summary and section 24 FTCA assessment for projects where the Minister for the Environment is the sole decision maker

Project details	Project description	Does all or part of the project meet the referral criteria in section 18?		Summary of comments received <i>(Note: for analysis and/or recommended responses to these comments refer to column 7)</i>	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3)(a)–(d))	Section 18(2) - does the project help achieve the purpose of the FTCA (as per section 19)?			
Name Arawhata Wetland Project Applicant Manawatu-Whanganui Regional Council (Horizons) c/- Resources Management Group Ltd Location 269 and 308 Hokio Beach Road, 217 Arawhata Road, Levin and Section 4 Survey Office Plan 465440 (land with no address) Hokio Beach Road and Arawhata Road reserves	The project is to construct, operate and maintain a wetland complex in the Arawhata Stream catchment of Punahau/Lake Horowhenua in Manawatu-Whanganui Region to enhance water quality, ecology and cultural values of Punahau/Lake Horowhenua. The project site covers an area of approximately 119 hectares, located at 269 and 308 Hokio Beach Road, 217 Arawhata Road, Levin and adjacent land (legally described as Section 4 Survey Office Plan 465440). The project will include works within the Hokio Beach Road and Arawhata Road reserves. The project will include activities such as: - carrying out earthworks (including disturbing contaminated soils) - constructing and installing structures including weirs bunds and stopbanks - modifying and upgrading existing culverts - damming, diverting and discharging water (including water containing contaminants) into water and onto land - taking, using and discharging groundwater	The project is eligible for referral under section 18(3)(a)–(d) as: - it does not include any prohibited activities - it does not include activities on land returned under a Treaty settlement - it does not include activities in a customary marine title area under the Marine and Coastal Area (Takutai Moana) Act 2011.	Economic benefits for people or industries affected by COVID-19 (19(a)) Based on the information provided by the applicant, we consider the project may result in the following economic benefits: - creating approximately 45 direct full time equivalent (FTE) jobs over a 3-year construction period. Economic costs for people or industries affected by COVID-19 (19(a)) - N/A Effect on the social and cultural well-being of current and future generations (19(b)) The project has the potential for positive effects on the social and cultural wellbeing of current and future generations as it will: - contribute to job creation and flow-on economic benefits - restore a natural wetland - contribute to enhancement of water quality of Lake Horowhenua - provide opportunities for recreation and public amenity. The applicant has engaged with Muaupoko and Ngāti Raukawa ki te Tonga who will provide cultural impact assessments. Mātauranga Rōpu (Kāhui Ārahi) will also provide mātauranga input into detailed design of the project. Is the project likely to progress faster by using this Act? (19(c)) The applicant considers that the fast-track process will allow the project to progress 3-12 months faster than under standard Resource Management Act 1991 (RMA) process due to the likelihood of notification and appeals. Will the project result in a public benefit? (19(d)) Based on the information provided by the applicant we consider the project may result in the following public benefits:	Ministers s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) Local authorities The regulatory arm of Horizons Regional Council (Horizons) responded to your invitation to comment and neither supported or opposed project referral. Horizons noted potential project benefits include provision of jobs during the wetland construction, contribution to improvement of water quality and freshwater ecology to Lake Horowhenua and enhancement of the relationship of Maori with their ancestral lands. Horizons noted potential significant issues include effects on water quality, effects on cultural values, impacts on flooding risk and hydrology in the area, loss of habitat within a modified water course and effects associated with wetland construction Horizons noted a list of technical assessments that they expect to be included in applications for resource consents for projects of this scale. Other parties First Gas Limited (First Gas) did not oppose project referral and was concerned with the applicant's lack of consultation and the lack of detail on the wetland design. First Gas's key interests relate to: - physical impacts on the pipeline due to potential saturation and loss of adequate cover through drainage clearance - ability to access and maintain the pipe in a safe and efficient manner, including regulatory compliance requirements under National Environmental Standards. First Gas advised they seek a panel to direct the applicant to revisit the wetland proposal and indicative design in consultation with First Gas to ensure that appropriate and adequate allowance for the pipeline and access are provided.	Section 23(5) matters: Insufficient information (23(5)(a)) The applicants have provided sufficient information for you to determine whether the project meets the criteria in section 18 of the FTCA. More appropriate to go through standard RMA process (23(5)(b)) We have considered whether it would be more appropriate to go through standard RMA consenting processes which might allow for wider public input than under the FTCA process, particularly in relation to consideration of potential adverse effects. If you decide to refer the project, a panel can invite comments from any person they consider appropriate (clause 17(8), Schedule 6 of the FTCA) in addition to parties already prescribed by the FTCA. Inconsistency with a national policy statement (23(5)(c)) We do not consider the project is inconsistent with any relevant national policy statements. Inconsistent with a Treaty settlement (23(5)(d)) The project does not directly affect any Treaty settlement redress. Involves land needed for Treaty settlements (23(5)(e)) The project site does not include any land needed for Treaty Settlement purposes. Applicant has poor regulatory compliance (23(5)(f)) Horowhenua District Council have not provided any comments. Horizons' regulatory arm noted that the applicant had been issued two previous infringement notices (in 2010 and 2018) for the discharge of contaminants to air and one infringement notice in 2022 for disturbing the bed of the river, and a formal warning in 2022 related to flood control and drainage. The applicant advised that there are no outstanding matters relating to these infringements, and that they have no compliance or enforcement actions against them by a territorial authority.	In response to key comments: - s 9(2)(f)(ii), s 9(2)(g)(i) - in relation to Horizon's comments on adverse effects, we consider these can be adequately assessed and tested by a panel with the benefit of a full consent application and supporting information from the applicant - with respect to First Gas' comments, we note you cannot direct a panel to make directions to the applicant. However, to address First Gas's concerns we consider that you should require the applicant to provide a panel with an explanation of how project design will provide for the safe and continued operation of the gas transmission line and details of consultation, and any agreements made, with First Gas. Also, we consider that you should direct a panel to invite comments from First Gas. We do not consider that you should decline the project on the basis of the risks and issues identified above. We recommend that you accept the application under section 24 of the FTCA and refer all of the project to a panel for the following reasons: - the project will provide approximately 45 direct full-time equivalent (FTE) jobs over a 3-year design and construction period - the project will improve environmental outcomes for freshwater quality and indigenous biodiversity - the project will progress faster than would otherwise be the case under standard RMA process. We recommend that you require the applicant to provide a panel with an

Project details	Project description	Does all or part of the project meet the referral criteria in section 18?		Summary of comments received (Note: for analysis and/or recommended responses to these comments refer to column 7)	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3)(a)–(d))	Section 18(2) - does the project help achieve the purpose of the FTCA (as per section 19)?			
	f. landscaping and planting g. any other activities that are: i. associated with the activities described in paragraphs 'a' to 'f' ii. within the scope of the scope of the project.		- generating employment - improving environmental outcomes for freshwater quality and indigenous biodiversity - providing recreation benefits. Potential to have significant adverse environmental effects, including greenhouse-gas emissions (19(e)) The applicant notes the project has the potential for adverse environmental effects, including: - earthworks and construction effects - temporary ecological effects. We note that you do not require a full Assessment of Environment Effects and supporting evidence to make a referral decision and a panel can consider this and any appropriate mitigation, offsetting or compensation to manage adverse effects of the development. Other relevant matters (19(f)) - The project site is located in the Rural Zone and meets the definition of highly productive land under the National Policy Statement for Highly Productive Land 2022 (NPS-HPL), having Class I and II soil overlays. However, the project is not considered by the applicant as an inappropriate use or development under NPS-HPL (Clause 3.9 (2)(c), (e) and (f)). The applicant considered that the project will improve water quality and will restore natural resources. - No comments received from Horowhenua District Council (HDC), but the applicant noted they consulted with HDC who indicated that they were comfortable with the project being referred to a panel.	All responses received by parties invited to comment are attached in Appendix 6.	Insufficient time for the project to be referred and considered before FTCA is repealed (23(5)(g)) The FTCA will be repealed on 8 July 2023, meaning that a referral order must exist for the project by this date if the project's resource consent applications are to be considered by a panel under FTCA process. The timeframe for completing a referral order following a decision to refer the project is dependent on certain statutory obligations, process steps and the capacity and resourcing of officials. This is becoming increasingly time-pressured as the 8 July deadline approaches. At this stage we consider there is still sufficient time for an Order in Council to be considered by Cabinet and (if approved) authorised by the Executive Council, should you decide to refer the project. Other issues and risks: First Gas has raised concerns about the effects of the proposed wetland on their pipeline which was not designed to be saturated, and potential issues relating to on-going access for maintenance and repair of the pipeline. A panel can consider any adverse effects arising from the project in a merit-based assessment under the FTCA process and the panel can impose consent conditions to address these effects. Therefore, we do not consider that you should decline the referral application on the basis of adverse effects on the operation of the gas transmission line. However, to ensure that First Gas' concerns are fully addressed, and that this matter does not cause delays in a panel's processing of the applicant's consent applications, we consider that you should require the applicant to include with their applications an explanation of how project design will provide for continued operation of the gas transmission line, and details of their consultation with First Gas on the matter. We also consider if you decide to refer the project you direct a panel to invite comments from First Gas.	explanation of how project design will provide for the safe and continued operation of the gas transmission line operated by First Gas and which includes details of consultation, and any agreements made, with First Gas. We recommend you require a panel to invite comments from: First Gas Limited.