

## FTC #48 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act 2020 – Stage 1 decisions

### Application 2020-034 – Otawere Water Storage Reservoir

Date Submitted:	8 April 2021	Tracking #: 2021-B-07586	
Security Level	In-Confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decisions on recommendations in Table A	TBA

Actions for Minister's Office Staff	<b>Return</b> the signed briefing to MfE. <b>Send out attached letters</b> (if agreed and signed).
Number of attachments: 2	Attachments: 1. Letters from the Minister for the Environment to relevant Ministers of the Crown 2. Copy of application and supporting information – to send with letters to Ministers

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal Author	Rachel Ducker		
Responsible Manager	Rebecca Perrett (Acting)	s 9(2)(a)	✓
Director	Sara Clarke (Acting)	s 9(2)(a)	

## FTC #48 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act 2020 – Stage 1 decisions

### Key Messages

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1. We seek your initial decisions on an application for referral of the Otawere Water Storage Reservoir project (the Project) to an expert consenting panel (a panel) under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA), from Te Tai Tokerau Water Trust.
2. The Project site is located off Te Ahu Ahu Road, Waimate North, Northland.
3. The Project is to construct and operate a water storage reservoir and associated dams in the upper catchment of an unnamed tributary of the Waitangi River. The reservoir will be able to store approximately four million cubic metres of water that will be used for horticultural purposes and municipal water supply.
4. The Project will involve activities such as:
  - a. vegetation clearance, earthworks (including bulk earthworks) and land disturbance, including within a significant wetland, a significant wetland setback and a Riparian Management Zone
  - b. construction of a main dam approximately 16 metres high on an unnamed tributary of the Waitangi River
  - c. construction of a saddle dam approximately 10 metres high
  - d. construction of reservoir embankment walls
  - e. construction of primary and auxiliary spillways
  - f. installation of culvert/s, a temporary dam and other structures necessary for the control and diversion of water during construction of permanent dams
  - g. reclamation, temporary diversion, disturbance, deposition of material and other associated works, in the beds of an unnamed tributary of the Waitangi River and other stream reaches
  - h. drilling of bores, and taking, diversion and discharge of groundwater and stormwater to land, surface water and groundwater
  - i. damming, diversion and taking of water from catchment inflows above the dams and storage of this water in a reservoir formed behind the dams
  - j. inundation of approximately 56 hectares of land by a reservoir, including approximately 5 hectares of a significant wetland
  - k. taking stored water from the reservoir for horticultural use and municipal water supply.
5. The Project will require resource consents for land use, water take, damming and diverting rivers, disturbing and depositing material on riverbeds, discharging water and contaminants to land, surface and groundwater, and taking stored water for horticultural and municipal use, under the Far North District Plan, the Proposed Regional Plan for Northland, the Operative Regional Water and Soil Plan for Northland and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-FW).
6. The applicant has obtained a resource consent from the Northland Regional Council to take water from the Waiaruheiti Stream to partially fill the proposed reservoir. This is in addition to the water from catchment inflows sought by the Project.
7. We have undertaken an initial (Stage 1) analysis of the referral application and this is

presented along with our recommendations in Table A.

8. We conclude that the Project likely meets all the eligibility criteria of section 18 of the FTCA. However, section 18(3)(a) of the FTCA requires that a project must not include a prohibited activity under the Resource Management Act 1991 (RMA), regulations made under that Act (including a national environmental standard) or a plan or proposed plan. As the Project will affect a natural wetland, we need to have confidence that this activity is not prohibited under the NES-FW.<sup>1</sup>
9. Specifically, the Project involves earthworks and other activities which have the potential to result in complete or partial drainage of a wetland during dam and reservoir construction, and inundation of the wetland once the reservoir is filled. Regulations 53(1) and 53(2) of the NES-FW list earthworks, and taking, use, damming, diversion or discharge of water within a natural wetland resulting in complete or partial drainage of the wetland, as prohibited activities unless they have another status under any of regulations 38 to 51. Inundation of a wetland is not prohibited under the NES-FW.
10. The applicant has clarified that the Project scope includes water storage for municipal water supply. On that basis, the applicant considers that the proposed works within wetlands are discretionary activities under regulation 45 of the NES-FW, rather than being prohibited under regulation 53, as they are for the purpose of constructing specified infrastructure.<sup>2</sup>
11. In the decision on the Matawii Water Storage Reservoir Listed Project (LP16) under the FTCA (paragraphs 300 to 307), Judge Newhook considered the same issue regarding earthworks and other works in wetlands. Judge Newhook recognised difficulties in interpreting the NES-FW, noted the applicability of regulation 45 of the NES-FW to specified infrastructure (in this case where a reservoir was identified as regionally significant works in a regional policy statement or plan)<sup>3</sup> and concluded that there were no prohibited activities associated with the project.
12. For this Project, the applicant also recognises the applicability of regulation 45 of the NES-FW to specified infrastructure. The applicant considers the Project to be specified infrastructure, as it applies to a service operated by a lifeline utility,<sup>4</sup> in order to reach the conclusion that the proposed works affecting the wetland are not prohibited activities.
13. While this approach appears reasonable, we would like to seek further comment, particularly from the Northland Regional Council, before providing you with definitive advice on the matter.
14. We therefore recommend you progress the Project to the next stage of analysis (Stage 2) and invite comments from:
  - a. Far North District Council and Northland Regional Council
  - b. Ministers listed in section 21(6) of the FTCA
  - c. Minister for Economic and Regional Development
  - d. Minister for Māori Development
  - e. Minister for Emergency Management.
15. We also recommend seeking comments from the following members of the Project Advisory

<sup>1</sup> The NES-FW are regulations made under section 43 of the Resource Management Act 1991

<sup>2</sup> Under the NES-FW 'specified infrastructure' has the meaning given under the National Policy Statement for Freshwater Management 2020 (NPS-FM) which includes infrastructure that delivers a service operated by a lifeline utility as defined in the Civil Defence Emergency Management Act 2002 (CDEMA). Schedule 1 Part B 3 of the CDEMA defines a lifeline utility as 'an entity that supplies or distributes water to the inhabitants of a city, district or other place'.

<sup>3</sup> Part (b) of the definition of specified infrastructure in Section 3.21 (1) of the NPS FM

<sup>4</sup> Part (a) of the definition of specified infrastructure in Section 3.21 (1) of the NPS FM

Group and the Cultural Impact Assessment team, given their ongoing involvement in the Project:

- a. Te Rūnanga-Ā-Iwi-O-Ngāpuhi
  - b. John (Hone) Tiatoa
  - c. Arnold Maunsell
  - d. Te Rau Arena
  - e. Nicole Anderson.
16. We recommend that you request specific feedback from Northland Regional Council on the applicant's interpretation of the works in significant wetlands and in setbacks from significant wetlands being a discretionary rather than a prohibited activity. Our Stage 2 briefing note will report further on this matter to inform your referral decision.
17. We also recommend you request further information from the applicant and/or local authorities as detailed in Table A.

### Statutory Framework Summary

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18. You are the sole decision maker for referral of the Project as it will not occur in the coastal marine area.
19. You may decline a referral application before seeking comments from the relevant local authorities and any relevant Ministers:
- a. if you are satisfied the Project does not meet referral criteria in section 18 of the FTCA, (which include you being satisfied the Project meets the purpose of the FTCA) (see sections 18(2) and 23(1) of the FTCA)
  - b. for any other reason (see section 23(2) of the FTCA).
20. If you do not decline a referral application at this stage, section 21 of the FTCA:
- a. requires you to provide the application to, and invite comments from, the relevant local authorities and any relevant Ministers
  - b. permits you to provide the application to, and invite comments from, any other person.
21. You are also able to request further information from the applicant or any relevant local authority at any time before you decide to decline or accept a referral application (see section 22 of the FTCA).

## Action Sought

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22. Please indicate your decisions on the recommendations in Table A.

## Signature

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Rebecca Perrett  
**Acting Manager – Fast Track Consenting**

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the Official Information Act 1982



### Project to progress

Project details	Project description	Project funding	Is the Project eligible for referral? [section 18(3)]	Will the project help to achieve the purpose of the FTCA? [section 18(2)]						Recommendations	Minister's decisions
				Economic benefits and costs for people or industries affected by COVID-19 [section 19(a)]	Effect on social and cultural wellbeing of current and future generations [section 19(b)]	Likelihood the project will progress faster under the Act than would otherwise be the case [section 19(c)]	Public benefit [section 19(d)]	Potential for significant adverse environmental effects, including greenhouse gas emissions [section 19(e)]	Any other relevant matters [section 19(f)]		
<b>Project name</b>  Otawere Water Storage Reservoir  <b>Applicant</b>  Te Tai Tokerau Water Trust  <b>Location</b>  Off Te Ahu Ahu Road, Waimate North, Northland  Lot 2 Deposited Plan 479002 (Record of Title: 678203) Lot 2 Deposited Plan 208031 (Record of Title: NA135D/350)	<p>The Project will involve activities such as:</p> <ul style="list-style-type: none"> <li>• vegetation clearance, earthworks (including bulk earthworks) and land disturbance, including within a significant wetland, a significant wetland setback and a Riparian Management Zone</li> <li>• construction of a main dam approximately 16 metres high on an unnamed tributary of the Waitangi River</li> <li>• construction of a saddle dam approximately 10 metres high</li> <li>• construction of reservoir embankment walls</li> <li>• construction of primary and auxiliary spillways</li> <li>• installation of culvert/s, a temporary dam and other structures necessary for the control and diversion of water during construction of the permanent dams</li> <li>• reclamation, temporary diversion, disturbance, deposition of material and other associated works, in the beds of an unnamed tributary of the Waitangi River and other stream reaches</li> <li>• drilling of bores, and taking, diversion and discharge of groundwater and stormwater to land, surface water and groundwater</li> <li>• damming, diversion and taking of water from catchment inflows above the dams and storage of this water in a reservoir behind the dams</li> <li>• inundation of approximately 56 hectares of land by a reservoir,</li> </ul>	<p>The applicant has secured funding for reservoir construction from the Provincial Growth Fund (PGF).</p> <p>The Project will be funded through sale of shares in a cooperative entity for horticulture land development, as required by the PGF funding agreement.</p>	<p>Based on available information, we consider the Project does not:</p> <ul style="list-style-type: none"> <li>• include land returned under a Treaty settlement</li> <li>• occur in a customary marine title area or protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011.</li> </ul> <p>We consider it likely that the Project does not include any prohibited activities. While works within a wetland resulting in partial or full wetland drainage are prohibited activities under regulation 53 of the NES-FW, works for specified infrastructure including municipal water supply are provided for as discretionary</p>	<p>The applicant estimates that the Project will provide approximately 31 Full-time Equivalent (FTE) jobs over a one-year construction period.</p> <p>The application refers to the reservoir's potential to enable increased horticultural development and subsequent employment and economic activity in the Northland region.</p> <p>Based on information provided, economic effects appear positive although there is limited evidence to verify the applicant's statements about specific flow-on economic and employment opportunities.</p>	<p>The Project has the potential for positive effects on social and cultural wellbeing by facilitating access to water for horticultural use, which may also assist in providing opportunities for development of Māori land.</p> <p>We consider key Ngāpuhi representatives of the Project Advisory Group and the Cultural Impact Assessment teams associated with the Project should be invited to comment on the application for referral. This is to allow further opportunity for comment on social and cultural effects to inform your further decisions.</p>	<p>The applicant considers that the FTCA will allow the Project to progress more than one year faster than under standard RMA processes, due to the likelihood of notification and appeals under standard process.</p> <p>We recommend seeking feedback from the relevant local authorities on the use of the FTCA or standard RMA processes.</p>	<p>Based on the information provided we consider the Project may result in the following public benefits:</p> <ul style="list-style-type: none"> <li>• providing infrastructure to improve economic and employment outcomes</li> <li>• flow-on social benefits of increased employment and economic activity.</li> </ul>	<p>The Project has the potential for adverse environmental effects, including on:</p> <ul style="list-style-type: none"> <li>• wetland habitat and fauna</li> <li>• stream flows and water quality</li> <li>• Māori cultural values (particularly in relation to water)</li> <li>• landscape and cultural landscape values</li> <li>• freshwater and terrestrial fauna and avifauna</li> <li>• streams and stream habitat</li> <li>• noise levels, traffic volumes, air quality</li> <li>• risks related to dam safety.</li> </ul> <p>The applicant has provided details of mitigation measures to address potential adverse effects and has confirmed that technical experts have been engaged to complete a range of assessments. The applicant considers that the Project will not result in significant adverse environmental effects.</p> <p>We note that you do not require a full Assessment of Environmental Effects and supporting evidence</p>	<p>The Project is one of four proposed reservoirs in the Northland Water Storage and Use Project's Mid-North Scheme. The proposed Matawii Water Storage Reservoir is another of these reservoirs and is a listed project in Schedule 2 of the FTCA. A panel has granted consents for this project under the FTCA.</p> <p>There is likely to be significant interest in this Project given the scale of works and potential for adverse environmental effects.</p> <p>The Northland Regional Council has granted a resource consent for a water take from the Waiauruheiti Stream to partially fill the proposed reservoir.</p> <p>The applicant has not yet secured the land for this Project, however.</p>	<p>a. Note that section 23(3) of the FTCA permits you to decline an application for referral without inviting comments on an application from the relevant local authorities and any relevant Ministers</p> <p>b. Note that the application has not been provided to, or had any comments sought from, relevant local authorities or relevant Ministers and that you are required to do so if you do not decline an application under section 23(3) of the FTCA</p> <p>c. Note that section 21(3) of the FTCA permits you to forward an application to, and invite written comments from, any other person</p> <p>d. Note that section 22 of the FTCA permits you to request further information from the applicant at any time before you decide whether to accept or decline an application</p> <p>e. Agree to progress the Otawere Water Storage Reservoir project to our Stage 2 analysis. The Project warrants further analysis because it has potential to achieve the purpose of the FTCA</p> <p>f. Agree to provide the application to, and invite comments from:</p> <ul style="list-style-type: none"> <li>• the Ministers listed in section 21(6) of the FTCA</li> <li>• the Minister for Economic and Regional Development:</li> <li>• the Minister for Māori Development</li> <li>• the Minister for Emergency Management</li> <li>• Relevant local authorities</li> <li>• Te Rūnanga-Ā-iwi-O-Ngāpuhi</li> <li>• John (Hone) Tiatoa</li> <li>• Arnold Maunsell</li> </ul>	<p>Yes/No</p> <p>Yes/No</p>

