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Comments on applications for referral under the COVID-19 Recovery (Fast-track Consenting) Act 2020

This form is for local authorities to provide comments to the Minister for the Environment on an application to refer a project to an expert consenting panel under the COVID-19 Recovery (Fast-track Consenting) Act 2020.

Local authority providing comment	Northland Regional Council
Contact person (if follow-up is required)	Stuart Savill
	Consents Manager
	Click or tap here to enter text.

Comment form

Please use the table below to comment on the application.

Project name	Otawere Water Storage Reservoir Project
General comment – potential benefits	Significant district, if not regional, economic benefit by making water available for horticultural development of land.
General comment – significant issues	
Is Fast-track appropriate?	It is appropriate regarding the early implementation of the water storage dam and realising its benefits.
Environmental compliance history	As MfE will be aware, the applicant obtained consent under the Fast Track Consenting Act for the Matawii water storage dam/reservoir project (MWSP). The applicant is in the process of completing the pre-construction requirements of the consent for the project and is well aware that it needs to meet all these requirements before commencing construction works. The applicant also has other consents for water storage reservoirs which have not yet been exercised.
Reports and assessments normally required	<p>The reports provided are what would normally be required for such a proposal, except that there is no hydrological report assessing the effect of the damming of the streams.</p> <p>It is noted though that both the Ecology and Hydrology sections of Part VII: Adverse Effects make references to an assessment of hydrological effects prepared by Williamson Water & Land Advisory Ltd (WWLA) which was not included in the application document provided to council. Such a report would be necessary to understand what quantum of water is being applied for (both surface and ground water), the adverse effects of the activities and how the required allocation limits will be met.</p> <p>This is critical as it is a prohibited activity under the Proposed Regional Plan for Northland (PRP) to take water when flows in a river are below a minimum flow or exceeding an allocation limit (both surface and groundwater). The exception to this rule is if it the take is for a registered (public) drinking water supply (which is a non-complying activity) – we note the application does not appear to include provision of drinking water. The water permit to dam the streams would also need to meet the minimum flow requirements in the Proposed Regional Plan for Northland.</p>
Iwi and iwi authorities	Te Rununga A Iwi O Ngapuhi

Relationship agreements under the RMA	Click or tap here to summarise any JMAs, Mana Whakahono a Rohe, transfers of power, MOUs, accords or other relationship agreements under the RMA. Include the parties involved.
Insert responses to other specific requests in the Minister's letter (if applicable)	<p>The council considers it does not have enough information to determine whether the applicant's proposed earthworks within a natural wetland is strictly a prohibited activity under Section 53 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-FM), as the application document does not provide the methodology on how the dam structures will be built. There is also uncertainty in the interpretation and use of Section 53 of the NES FM, as discussed below.</p> <p>The application document and ecological assessment clearly identify that the southern dam structure will be constructed over a "natural wetland", effectively removing it.</p> <p>The NES-FM does not provide any definition of "<i>complete or partial drainage</i>" that is used in Section 53 of the NES FM. The Oxford Dictionary however defines drainage as "<i>the action or process of draining something</i>" and defines "drain" as "<i>Cause the water or other liquid in (something) to run out, leaving it empty or dry</i>". It is assumed the applicant considers that either the complete physical removal of the natural wetland prior to construction of the dam (i.e. digging it up) or the placement of earth into a natural wetland does not result in "drainage", as it does not leave the wetland "empty or dry". Alternatively, the earthworks may be undertaken when there is no water in the wetland if it is known to be intermittently dry during periods of the year.</p> <p>If MfE agrees with the above reasoning, then the applicant can apply for the consent for earthworks within the natural wetland using Section 54 of the NES-FM.</p> <p>This however then leads to a question on whether the proposal can satisfy Policy 6 of the National Policy Statement for Freshwater Management 2020 (NPS-FM) which requires that "<i>There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted</i>". The applicant has relied on wetland offsetting to state that it can achieve this policy. It is council's opinion that if the proposal is not for specified infrastructure, then the ability to apply offsetting may not be available to it under the policy that the council is required to insert into its regional plan by Section 3.22 of the NPS-FM. This policy only provides for the use of the "effects management hierarchy", which includes aquatic offset and aquatic compensation, if the regional council is satisfied the activity is necessary for the construction of specified infrastructure. It is council's opinion that this policy has immediate effect, as it must be included in every regional plan and so should be read as though it has already been included. The applicant has also made no argument that the works are for specified infrastructure.</p> <p>The ability to use the effects management hierarchy is also relevant for the loss of extent and values of the natural wetlands that will be flooded by the dam.</p> <p>If MfE considers that aquatic offset and aquatic compensation are available to the applicant, then council advises that providing an offset for a gumland wetland and its associated values is likely to be very challenging and would require some additional information on how an equivalent offset might actually be achieved.</p>
Other considerations	Click or tap here to insert any other responses you consider relevant for the Minister to be aware of.

Note: All comments, including your name and contact details, will be made available to the public and the applicant either in response to an Official Information Act request or as part of the Ministry's proactive release of information. Please advise if you object to the release of any information contained in your comments, including your name and contact details. You have the right to request access to or to correct any personal information you supply to the Ministry.

Comments on applications for referral under the COVID-19 Recovery (Fast-track Consenting) Act 2020

This form is for persons requested by the Minister for the Environment to provide comments on an application to refer a project to an expert consenting panel under the COVID-19 Recovery (Fast-track Consenting) Act 2020.

Organisation providing comment	Te Rūnanga A Iwi O Ngāpuhi
Contact person (if follow-up is required)	Maraea Tahere
	Acting Executive Administrator
	Click or tap here to enter text.

Comment form

Please use the table below to comment on the application.

Project name	COVID-19 Recovery (Fast-Track Consenting) Act 2020 – Otawere Water Storage Reservoir – Comments sought
General comment	Te Rūnanga A Iwi O Ngāpuhi does not support fast-tracking this concept.
Other considerations	This position is consistent with the relevant hapu of Ngāpuhi
[Insert specific requests for comment]	Click or tap here to insert responses to any specific matters the Minister is seeking your views on.

Note: All comments, including your name and contact details, will be made available to the public and the applicant either in response to an Official Information Act request or as part of the Ministry's proactive release of information. Please advise if you object to the release of any information contained in your comments, including your name and contact details. You have the right to request access to or to correct any personal information you supply to the Ministry.

COMMENTS ON APPLICATIONS FOR REFERRAL

UNDER THE COVID-19 RECOVERY (FAST-TRACK CONSENTING) ACT 2020

Organisation providing comment	Te Rūnanga-Ā-Iwi O Ngāpuhi
Contact person (if follow-up is required)	Tania Pene Iwi Development Leader, Natural Resource Management s 9(2)(a)

COMMENTS

Project name	Otawere Water Storage Reservoir
General comment	Te Rūnanga-Ā-Iwi O Ngāpuhi does not support the fast-track consenting process for the development of the Otawere Water Storage Reservoir and associated dams in the upper catchment of the Waitangi River. This project has the potential to cause significant adverse environmental effects and for it not to be consented through a fast track process. It would be more appropriate for the project to go through the standard consenting process under the RMA 1991.
Other considerations	We have taken into account that Part 2 of the RMA contains the Act's purpose and principles and the key guide for decision-making must promote the sustainable management of natural and physical resources, which includes recognising and providing for matters of national importance in section 6. Again, it would be more appropriate for the project to go through the standard consenting process under the RMA 1991.
[Specific requests for comment]	Any project that has the potential to cause significant adverse environmental effects not be consented through a fast track process. Hapu and Iwi who are most-likely to be significantly affected will need to be satisfied that all persons exercising functions and powers in relation to managing the use, development and protection of natural and physical resources have recognised and taken into account the principles of Te Tiriti O Waitangi.