

FTC#65 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2021- 034 - Otawere Water Storage Reservoir

Date Submitted:	1 July 2021	Tracking #: BRF-35
Security Level	In-Confidence	MfE Priority: Urgent

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

Actions for Minister's Office Staff	Return the signed briefing to MfE.
Number of appendices: 6	<p>Titles of appendices:</p> <ol style="list-style-type: none"> 1. Otawere Water Storage Reservoir application and further information received 2. Stage 1 Briefing Note and decisions 3. Statutory framework for making decisions 4. Draft Notice of Decisions letter to Te Tai Tokerau Water Trust 5. Section 17 Report 6. Comments received from Ministers, local authorities and Te Rūnanga-Ā-Iwi-O-Ngāpuhi

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Rachel Ducker		
Manager	Stephanie Frame	s 9(2)(a)	✓
Director	Sara Clarke (Acting)	s 9(2)(a)	

FTC#65: Application for referred projects under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions

Key Messages

1. This briefing relates to the application received under section 20 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) from Te Tai Tokerau Water Trust for referral of the Otawere Water Storage Reservoir project (the Project) to an expert consenting panel (a panel). A copy of the application is in Appendix 1.
2. This is the second briefing relating to this application. The first (Stage 1) briefing (2020-B-07586) with your initial decisions annotated is in Appendix 2.
3. The Project is located off Te Ahu Ahu Road, Waimate North, Northland. It is to construct and operate a water storage reservoir and associated dams, and to take and store approximately four million cubic metres of water for horticultural supply, municipal water supply and for civil defence and emergency purposes, in the upper catchment of an unnamed tributary of the Waitangi River.
4. The Project will involve activities such as:
 - a. vegetation clearance
 - b. earthworks (including bulk earthworks) and land disturbance, including within a significant wetland, a significant wetland setback and a Riparian Management Zone
 - c. construction of a main dam approximately 16 metres high on an unnamed tributary of the Waitangi River
 - d. construction of a saddle dam approximately 10 metres high
 - e. construction of a reservoir
 - f. construction of primary and auxiliary spillways
 - g. installation of culvert/s, a temporary dam and other structures necessary for the control and diversion of water during construction of the permanent dams
 - h. 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
 - i. drilling of bores, and taking, diversion and discharge of groundwater and stormwater to land, surface water and groundwater
 - j. damming, diversion and taking of water from catchment inflows above the dams and water storage in a reservoir formed behind the dams
 - k. inundation of approximately 56 hectares of land by a reservoir, including approximately 5 hectares of a significant wetland
 - l. taking stored water from the reservoir for horticultural use, municipal water supply and civil defence and emergency purposes.
5. The Project requires resource consents for land use, water takes, damming and diverting rivers, disturbing and depositing material on riverbeds, discharging water and contaminants to land, surface water and groundwater, and taking stored water for horticultural and municipal use and for civil defence and emergency purposes. These resource consents are required 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-F).

6. The applicant has obtained a resource consent from the Northland Regional Council (NRC) to take water from the Waiaruheiti Stream to partially fill the proposed reservoir. This consent is separate from the water take from catchment inflows sought by the Project.
7. Comments received raised questions about whether the Project includes any prohibited activities and would be ineligible for referral under section 18(3) of the FTCA. We have undertaken due diligence work to investigate this issue and are satisfied that the Project does not include any prohibited activities and is eligible for consideration for referral.
8. We recommend that you accept the referral application under section 24(2)(a) of the FTCA and refer the Project to a panel for fast-tracking. We seek your decision on this recommendation and on our recommendations for requirements of the applicant, directions to a panel 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 referral 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 local authorities, Ministers and Te Rūnanga-Ā-Iwi-O-Ngāpuhi (TRAION) (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. In response to your request under section 22 of the FTCA, the applicant provided further information on the Project's consistency with Policies 3 and 4 of the National Policy Statement for Freshwater Management 2020 (NPS-FM). We have taken this information into account in our analysis and advice.
13. Policy 3 of the NPS-FM relates to integrated freshwater management on a whole of catchment basis including effects on receiving environments. The applicant considered that land use change to horticulture, enabled through access to reliable water, is likely to lead to improvements in water quality through reduction of contaminants associated with pastoral agriculture.
14. The applicant provided further information on Policy 4 of the NPS-FM regarding managing water as part of an integrated response to climate change. The applicant considered the Project will improve resilience to climate change through diversifying land use to lower biological greenhouse gas emissions per hectare compared with existing agricultural uses.

Section 17 Report

15. The Section 17 Report indicates that TRAION is the sole iwi authority. There are no Treaty settlements nor Treaty settlement entities relevant to the Project area.

16. If the views of tāngata whenua are to be fully represented when considering any resource consent application for the Project, a panel would need to consult more widely with the numerous hapū having an interest in the Project area rather than only with the iwi authority. This is reflected in the Minister for Treaty of Waitangi Negotiations' comments and request for a panel direction in relation to consultation.

Comments received

17. Comments were received from Far North District Council (FNDC), NRC, s 9(2)(f)(ii), s 9(2)(g)(i) and TRAION. The key points relevant to your decision are summarised in Table A.
18. s 9(2)(f)(ii), s 9(2)(g)(i)
19. TRAION opposed fast tracking as it considered the Project would be more appropriately assessed through standard Resource Management Act 1991 (RMA) processes. TRAION considered the Project has the potential to cause significant adverse environmental effects, and hapū and iwi need to be satisfied that principles of Te Tiriti O Waitangi have been taken into account.
20. FNDC considered that fast tracking the Project is appropriate due to its scale. However, it indicated a preference for processing the application internally through standard RMA processes due to its local knowledge, its ability to address community concerns, and to ensure that conditions are enforceable.
21. NRC considered that fast track consenting is appropriate. However, NRC raised concerns about whether the Project includes damming streams or water takes below a minimum flow or exceeding an allocation limit, and earthworks draining natural wetlands, which are prohibited activities under regional plans and the NES-F. NRC did not have sufficient information about earthworks resulting in wetland drainage to determine whether it was a prohibited activity.
22. We note that the comments from FNDC were received 11 working days late. Under section 21(5) of the FTCA you are not required to consider any comments received after the 10 working day response period, but may do so at your discretion if you have not already made decisions on this application. In this instance we consider that the comments help shape understanding of local interests and should be accepted.

Section 18 referral criteria

23. You may accept the application for referral of the Project if you are satisfied that it does not include ineligible activities (section 18(3)) and will help to achieve the purpose of the FTCA (section 18(2)).
24. s 9(2)(f)(ii), s 9(2)(g)(i) NRC questioned whether the proposed water allocation and earthworks in natural wetlands are prohibited activities under any national environmental standard or regional plan. However, we consider the Project satisfies the requirements of section 18(3) of the FTCA, as explained in the issues and risks section and Table A.
25. 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 confirm that the Project will help to achieve the purpose of the FTCA, and satisfy the requirements of section 18(2) as it has the potential to:

- a. have positive effects on social well-being by providing increased opportunities for employment
- b. generate employment by providing up to 31 full-time equivalent (FTE) jobs during construction
- c. result in public benefit by contributing to a municipal water supply and water supply for civil defence and other emergency purposes
- d. progress faster by using processes provided by the FTCA than would otherwise be the case, provided that the applicant lodges their applications for resource consents with the Environmental Protection Authority in a timely manner following referral.

26. We consider that any actual and potential adverse effects arising from the Project, together with any measures to avoid, remedy, mitigate, offset or compensate for adverse effects, can be considered and determined by a panel having regard to Part 2 of the RMA and the purpose of the FTCA.

Issues and Risks

Whether the Project includes prohibited activities

27. Key issues relate to whether the Project includes a prohibited activity, resulting in it being ineligible for referral, due to:

- a. earthworks within a natural wetland that may result in temporary drainage of the natural wetland
- b. taking, using, damming, diversion or discharge of water, associated with reservoir and dam within a natural wetland
- c. the proposed water take from catchment inflows to the reservoir exceeding water allocation limits of the Proposed Northland Regional Plan.

28. We note that the requirement in section 18 of the FTCA regarding prohibited activities is absolute. A project "must not" include an activity that is described in a regional plan or a National Environmental Standard as a prohibited activity. You must have enough information to be certain on this point.

29. Earthworks within a natural wetland resulting in partial or full drainage of that wetland are a prohibited activity under clause 53(1) of the NES-F unless regulations 38 to 51 specify otherwise. Clause 45(2) of the NES-F provides for earthworks within natural wetlands for the purpose of constructing specified infrastructure as a discretionary activity.¹ Permanent inundation of wetlands is not a prohibited activity under the NES-F.

¹ Specified infrastructure is defined in the NPS-FM as being any of the following:

- (a) infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002)
- (b) regionally significant infrastructure identified as such in a regional policy statement or regional plan
- (c) any public flood control, flood protection, or drainage works carried out:
 - (i) by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or
 - (ii) for the purpose of drainage by drainage districts under the Land Drainage Act 1908

30. s 9(2)(f)(ii), s 9(2)(g)(i)

The applicant provided further information on 29 March 2021, clarifying their position that proposed earthworks in a natural wetland are for specified infrastructure and are therefore a discretionary activity under clause 45(2) of the NES-F. This was on the basis that the Project is to construct specified infrastructure being a lifeline utility as defined in Schedule 1, Part B of the Civil Defence Emergency Management Act 2002 (CDEMA).

31. s 9(2)(h)

32. The applicant confirmed its commitment to use the reservoir to store water for municipal water supply and for emergency situations including fire-fighting and civil defence purposes on 28 June 2021.

33. s 9(2)(h)

34. On the basis of the applicant's clarification that the infrastructure will provide for both municipal supply and civil defence and emergency purposes, and comments received from NRC advising that there are no prohibited activities, we are satisfied that the Project does not include an activity that would be a prohibited activity and the eligibility criteria of section 18(3)(a) of the FTCA are met.

35. NRC questioned whether the proposed water take will exceed water allocation limits of rule C.5.1.16 of the Proposed Northland Regional Plan, which is a prohibited activity. The applicant has confirmed that the water take will not exceed water allocation limits and that the proposed reservoir will be filled in part from a water take from the Waiaruheiti Stream which has been previously granted a resource consent by NRC. Based on advice received from NRC on 11 June 2021 that the Project does not include any prohibited activity under any regional plan, we consider that the proposed water take is not a prohibited activity.

Section 23 FTCA matters

36. Section 23(5) of the FTCA provides further guidance on reasons to decline an application, and a summary of our analysis of these matters is in Table A. You may accept an application for referral even if one or more of those reasons apply.

37. Comments received from TRAION and FNDC commented that it would be more appropriate for the Project to be considered through standard RMA consenting processes with FNDC also citing community concern regarding the lack of opportunities for public participation in the Matawii Water Storage project.²

38. We consider it appropriate for the Project to be referred for fast tracking. A panel must invite comments from local authorities, iwi authorities and adjacent landowners and occupiers. A panel can also consider the actual and potential effects of the Project taking into account information provided by invited parties which may include matters such as local conditions, community concerns and condition enforceability. Therefore, we do not consider that you

² Listed project LP16 under Schedule 2 of the Covid-19 Recovery (Fast-track Consenting) Act 2020.

should decline the referral application on the basis of section 23(5)(b) of the FTCA (it would be more appropriate for the Project to go through standard consenting processes under the RMA).

Other matters

39. TRAION raised issues regarding potential adverse environmental effects and whether the principles of Te Tiriti O Waitangi have been taken into account. Under section 17(1) of the FTCA, considering the Section 17 Report satisfies your obligations under section 6 of the FTCA to act in a manner consistent with the principles of the Treaty of Waitangi when considering whether to refer an application.
40. If you decide to refer the Project, the applicant must submit a cultural impact assessment with their resource consent application. This will assist a panel's consideration of the Project's effects, including on tangata whenua cultural values. In accordance with section 6 of the FTCA, a panel must also ensure any decisions are consistent with the principles of the Treaty and Treaty settlements.
41. The Project has a risk of dam breach with the potential to affect properties downstream. The application states that the proposed dams have a medium potential impact classification (PIC) under the NZSOLD Guidelines. In the recent decision for the Matawai Water Storage Reservoir project under the FTCA, the panel noted that the RMA requires consideration of matters of health and safety of a dam proposal. If you decide to refer the Project, a panel will assess dam safety effects and can consider whether to invite comments from parties potentially affected by a dam breach and consider appropriate conditions on dam safety through design, construction and monitoring as part of a merit assessment.

Conclusions

42. We do not consider there are any significant reasons for you to decline to refer the Project. We consider that you could accept the application under section 24 of the FTCA and that all of the Project could be referred to a panel.
43. 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 provide the following information, additional to the requirements of clause 9 of Schedule 6 of the FTCA, in an application submitted to a panel:
 - a. final versions of all draft technical reports or assessments including proposed mitigation and/or management approaches for all Project works for:
 - i. geotechnical effects
 - ii. hydrology and hydraulic effects of all damming, diversions, water takes and discharges on surface water bodies, groundwater and wider catchments, water allocation limits and operations in drought conditions and based on projected climate change scenarios
 - iii. ecology including avifauna, terrestrial fauna, aquatic fauna and ecology, lizards, vegetation, wetlands (including gumland wetlands) and biodiversity
 - iv. landscape and visual effects
 - v. economic effects including assessment of economic benefits and effects for Māori
 - b. technical reports or assessments, including proposed mitigation and/or management approaches, prepared by suitably qualified persons for:
 - i. construction management including construction methodology and staging, construction traffic, dust and noise management and erosion and sediment control for all Project works including the reservoir and water abstraction
 - ii. dam failure risks

- iii. reservoir operations including dam safety
 - c. draft management plans for:
 - i. construction environmental management
 - ii. erosion and sediment management.
- 44. The above information is required to inform a panel of the actual and potential effects of the Project and proposed mitigation.
- 45. If you decide to refer the Project we consider that you should specify under section 24(2)(e) of the FTCA that a panel must invite comments on a resource consent application from the following parties:
 - a. Minister for Economic and Regional Development due to the potential employment and economic benefits to a regional area
 - b. Minister for Māori Development as the Project relates to potential economic benefits for Māori
 - c. parties nominated by the Minister for Treaty of Waitangi Negotiations:
 - i. representatives of the four nearby marae: Tauwhara, Oromāhoe, Parawhenua and Rāwhitiroa
 - ii. representatives of Ngāwhā Marae (located in the upper catchment of the Waiaruhe River at Ngāwhā), Te Kotahitanga Marae and Kohewhata Marae (both of which are located near Kaikohe) and Te Tii Waitangi Marae (located on the coast near Waitangi)
 - iii. members of the Taiāmai ki te Marangai takiwā (within which the project lies), and adjoining Hokianga ki te Raki takiwā (to the west) and Hauāuru takiwā (to the southwest)
 - iv. Taiāmai ki te Takutai Moana, the Trust representing the interests of the hapū from the Taiāmai ki te Marangai takiwā of Ngāpuhi for the purposes of the RMA.
- 46. Our recommendations for your decisions follow.

Next Steps

- 47. You must give notice of your decisions on the referral application, and the reasons for them, to the applicant and the persons, entities and groups listed in section 25 of the FTCA.
- 48. We recommend that if you decide to refer the Project, the notice of decisions should also be copied to the following parties nominated by the Minister for Treaty of Waitangi Negotiations:
 - a. representatives of the four nearby marae: Tauwhara, Oromāhoe, Parawhenua and Rāwhitiroa
 - b. representatives of Ngāwhā Marae (located in the upper catchment of the Waiaruhe River at Ngāwhā), Te Kotahitanga Marae and Kohewhata Marae (both of which are located near Kaikohe) and Te Tii Waitangi Marae (located on the coast near Waitangi)
 - c. members of the Taiāmai ki te Marangai takiwā (within which the project lies), and adjoining Hokianga ki te Raki takiwā (to the west) and Hauāuru takiwā (to the southwest)
 - d. Taiāmai ki te Takutai Moana, the Trust representing the interests of the hapū from the Taiāmai ki te Marangai takiwā of Ngāpuhi for the purposes of the RMA
 - e. applicants for customary marine title and/or protected customary rights under the MACAA in the common marine and coastal area downstream of the proposed reservoir.

49. We have attached a notice of decisions letter to the applicant based on these requirements and our recommendations (refer Appendix 4). We will assist your office to give copies to all relevant parties.
50. To refer the Project, you must recommend that a referral order be made by way of an Order in Council (OiC).
51. 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.³

Recommendations

1. We recommend that you:

- a. **Note** that section 23(1) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) requires you to decline this application for referral unless you are satisfied that the Project meets the referral criteria in section 18 of the FTCA including that it would help to achieve the FTCA's purpose.
- b. **Note** that 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) and also whether it could have significant adverse effects.
- c. **Note** that 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 (a 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.
- d. **Note** that 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.
- e. **Note** that before deciding to accept an application for 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 received
 - iv. any further information requested and provided within the required timeframe.
- f. **Agree** that the Project meets the referral criteria in section 18 (3) of the FTCA.

³ 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].

Yes/No

- g. **Agree** that 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. have positive effects on social well-being by providing increased opportunities for employment
- ii. generate employment by providing up to 31 full-time equivalent (FTE) jobs during construction
- iii. result in a public benefit by contributing to a municipal water supply and water supply for civil defence and other emergency purposes
- iv. progress faster by using the processes provided by the FTCA than would otherwise be the case, provided that the applicants lodge their applications for resource consent with the Environmental Protection Authority in a timely manner following referral.

Yes/No

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

Yes/No

- i. **Agree** to specify under section 24(2)(d) of the FTCA the following additional information that the applicant must submit with any resource consent application lodged with the Environmental Protection Authority:

- i. final versions of all draft technical reports or assessments including proposed mitigation and/or management approaches for all Project works for:
 - a. geotechnical effects
 - b. hydrology and hydraulic effects of all damming, diversions, water takes and discharges on surface water bodies, groundwater and wider catchments, water allocation limits and operations in drought conditions and based on projected climate change scenarios
 - c. ecology including avifauna, terrestrial fauna, aquatic fauna and ecology, lizards, vegetation, wetlands (including gumland wetlands) and biodiversity
 - d. landscape and visual effects
 - e. economic effects including assessment of any direct economic benefits for Māori
- ii. technical reports or assessments, including proposed mitigation and/or management approaches, prepared by suitably qualified persons for:
 - a. construction management including construction methodology and staging, construction traffic, dust and noise management and erosion and sediment control for all Project works including the reservoir and water abstraction
 - b. dam failure risks
 - c. reservoir operations including dam safety
- iii. draft management plans for:
 - a. construction environmental management
 - b. erosion and sediment management

Yes/No

j. **Agree** to specify under section 24(2)(e) of the FTCA that a panel must invite comments from the following additional persons or groups:

- i. Minister for Economic and Regional Development
- ii. Minister for Māori Development
- iii. representatives of the four nearby marae: Tauwhara, Oromāhoe, Parawhenua and Rāwhitiroa
- iv. representatives of Ngāwhā Marae, Te Kotahitanga Marae, Kohewhata Marae and Te Tii Waitangi Marae
- v. members of the Taiāmai ki te Marangai takiwā, Hokianga ki te Raki takiwā and Hauāuru takiwā
- vi. Taiāmai ki te Takutai Moana.

Yes/No

k. **Agree** to provide the notice of the decision to refer the Project to the following parties additional to those specified in section 25 of the FTCA:

- i. representatives of the four nearby marae: Tauwhara, Oromāhoe, Parawhenua and Rāwhitiroa
- ii. representatives of Ngāwhā Marae, Te Kotahitanga Marae, Kohewhata Marae and Te Tii Waitangi Marae
- iii. members of the Taiāmai ki te Marangai takiwā, Hokianga ki te Raki takiwā and Hauāuru takiwā
- iv. Taiāmai ki te Takutai Moana
- v. applicants for customary marine title and/or protected customary rights under the MACAA in the common marine and coastal area downstream of the proposed reservoir.

Yes/No

l. **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.

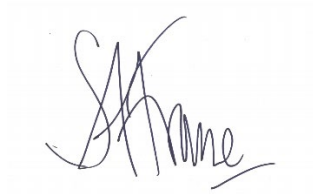
Yes/No

m. **Sign the attached (Appendix 4)** notice of decisions to Te Tai Tokerau Water Trust with copies to be provided as agreed.

Yes/No

- n. **Note** that to ensure compliance with section 25(3) of the FTCA, the Ministry for the Environment will publish the decisions, the reasons, and the Section 17 Report on the Ministry for the Environment's website.

Signatures

A handwritten signature in blue ink, appearing to read 'S. Frame', is shown within a rectangular box.

Stephanie Frame
Manager – Fast Track Consenting

Date

Hon David Parker
Minister for the Environment

Date

Released under the provision of
the Official Information Act 1982

Table A: Stage 2 - Project Summary and Section 24 Assessment

[illegible]

Project details	Project description	Does all or part of the Project meet the referral criteria in section 18?		Summary of comments received	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3a - d))	Section 18(2) - Does the Project help achieve the purpose of the FTCA (as per section 19)?			
			<p>significance of effects should the Project be referred.</p> <p>Other relevant matters (19(f)):</p> <p>The applicant has not yet secured the land for this Project, however, agreements to purchase are in place.</p>	<p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>Local authorities</p> <p>Far North District Council (FNDC) identified likely positive Project benefits as; opening up land for horticulture; increased employment and economic gain; and climate change resilience. Other potential effects identified include: effects on wetlands and ecological offsetting which should result in a net gain.</p> <p>FNDC questioned how water flow and dam levels will be maintained in a drought, how the dam will support community drinking water needs, and sought more information about the Project's social benefits.</p> <p>FNDC identified a wide range of technical assessments typically required for similar consent applications relating to; ecology; landscape; economic; cultural impact; traffic impact; design and operation; hydrology and hydraulic; geotechnical; and site suitability assessments. It also identified management plans on the following matters: construction</p>	<p>NRC initially commented that it did not have enough information to determine whether the Project contained any prohibited activities related to earthworks within wetlands under the NES-F. The applicant subsequently provided NRC with a legal opinion stating that the proposed earthworks are a discretionary activity under clause 45(2) of the NES-F rather than a prohibited activity as the Project will deliver water, including for fire-fighting purposes, operated by a lifeline utility.</p> <p>The legal opinion also addressed whether the proposed taking, use, damming and diverse or discharge of water within a natural wetland is a prohibited activity under 53 (2) and concluded that these works are also for specified infrastructure and are a discretionary activity under clause 45 (4).</p> <p>On 11 June 2021, NRC advised at that it accepted that the Project does not include any prohibited activities under the NES-F or any regional plan. The applicant has also provided further evidence of its intention to use the reservoir to store and provide municipal water supply that can also be used for emergency including fire-fighting and civil defence purposes.</p> <p>A further matter raised by NRC relates to whether the Project contains a further prohibited activity (under Rule C.5.1.16 of the Proposed Northland Regional Plan) related to a water take exceeding water allocation limits. The applicant confirmed that the Project does not propose to exceed water allocation limits and that the proposed reservoir will be filled in part by a water take from the Waiauruheiti Stream granted consent by NRC.</p> <p>On the basis of this advice from the applicant regarding the proposed civil defence and emergency use of the water, and NRC's advice about whether it includes any prohibited activity, we do not</p>	<p>merit assessment. Further information is recommended to ensure the panel has sufficient information to make a considered assessment</p> <ul style="list-style-type: none"> • comments from the iwi authority and the additional parties specified, together with the mandatory cultural impact assessment, should provide sufficient information to assist a panel make a considered assessment of the cultural effects of the Project. <p>Recommendations</p> <p>There are no reasons to decline to refer the Project. We recommend that you accept the application under section 24 of the FTCA and refer all of the Project to a panel.</p> <p>We recommend that you do not place any restrictions on the Project, nor impose any specific timeframes for panel consideration.</p> <p>We recommend that you make a direction to a panel to invite comments from:</p> <ul style="list-style-type: none"> • Minister for Economic and Regional Development • Minister for Māori Development • parties nominated by the Minister for Treaty of Waitangi Negotiations <p>We also recommend you require the applicant to submit the following information with any consent application lodged with the Environmental Protection Authority:</p> <ol style="list-style-type: none"> final versions of all draft technical reports or assessments including proposed mitigation and/or management approaches for all Project works for: <ol style="list-style-type: none"> geotechnical effects hydrology and hydraulic effects of all damming, diversions, water takes and

Project details	Project description	Does all or part of the Project meet the referral criteria in section 18?		Summary of comments received	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3a - d))	Section 18(2) - Does the Project help achieve the purpose of the FTCA (as per section 19)?			
				<p>environment; erosion and sediment; operations, offset and compensation; freshwater fauna relocation; fauna and avifauna; kiwi; flora disease and pests; and water supply.</p> <p>The FNDC considers that the fast-track process is appropriate due to the Project scale but that local views and knowledge should be considered. It identified community concerns over the lack of public consultation regarding the Matawii Water Storage Reservoir project. FNDC would prefer to consider the application in house due to local knowledge and to ensure conditions are clear and enforceable.</p> <p>NRC considered the fast-track consent process to be appropriate given the significant benefits for horticultural development and the need for early implementation.</p> <p>NRC identified the following additional information required:</p> <ul style="list-style-type: none"> • a hydrological report which identifies the quantum of groundwater and surface water and assess the effects of damming on streams and how allocation limits will be met. • information to determine whether the proposed earthworks within a natural wetland are prohibited activities under section 53 of the NES-F • an offset for loss of gumland wetland <p>NRC considered that clarifying water take volumes and whether the Project includes public drinking water is important particularly to identify whether any takes are a prohibited activity.</p> <p>NRC questioned whether the Project can satisfy Policy 6 of the NPS-FM regarding no further loss of the extent of natural inland wetlands and associated restoration and protection objectives</p> <p>Iwi Authority</p> <p>Te Rūnanga-Ā-Iwi-O-Ngāpuhi (TRAION) opposed fast tracking and preferred standard RMA processes due to the potential for significant adverse effects.</p> <p>TRAION commented that hapū and iwi will need to be satisfied that the principles of Te Tiriti O Waitangi are recognised and taken into account.</p> <p>All responses received by parties invited to comment are attached at Appendix 6.</p>	<p>consider that the Project contains any prohibited activities.</p> <p>Dam safety risks</p> <p>In the recent decision for the Matawii Water Storage Reservoir project under the FTCA, the panel found that the RMA must consider matters of health and safety of a dam proposal. The risk of dam breach has the potential to affect properties downstream. The application states that the proposed dams have a medium potential impact classification (PIC) under the NZSOLD Guidelines.</p> <p>If you decide to refer the Project, a panel will assess dam safety effects and can consider whether to invite comments from parties potentially affected by a dam breach. We note that the resource consent for the Matawii Water Storage Reservoir project contained conditions on dam safety through design, construction and monitoring. A panel can consider the appropriateness of conditions to address dam breach safety risks for this Project as part of a merit assessment.</p> <p>Treaty of Waitangi principles</p> <p>TRAION raised concern whether the principles of Te Tiriti O Waitangi have been taken into account. Under section 17(1) of the FTCA, considering the Section 17 Report satisfies your obligations under section 6 of the FTCA to act in a manner consistent with the principles of the Treaty when considering whether to refer an application.</p> <p>If you decide to refer the Project, the applicant must submit a cultural impact assessment which will assist a panel's consideration of the Project's effects, including on tangata whenua. In accordance with section 6 of the FTCA, a panel must also ensure that any decisions are consistent with Treaty principles and Treaty settlements.</p>	<p>discharges on surface water bodies, groundwater and wider catchments, water allocation limits and operations in drought conditions and based on projected climate change scenarios</p> <p>c. ecology including avifauna, terrestrial fauna, aquatic fauna and ecology, lizards, vegetation, wetlands (including gumland wetlands) and biodiversity</p> <p>d. landscape and visual effects</p> <p>e. economic effects including assessment of economic effects for Māori</p> <p>ii. technical reports or assessments, including proposed mitigation and/or management approaches, prepared by suitably qualified persons for:</p> <p>a. construction management including construction methodology and staging, construction traffic, dust and noise management and erosion and sediment control for all Project works including the reservoir, water abstraction and distribution infrastructure</p> <p>b. dam failure risks</p> <p>c. reservoir operations including dam safety</p> <p>iii. draft management plans for:</p> <p>a. construction environmental management</p> <p>b. erosion and sediment management.</p>

Schedule of Appendices and Attachments

Appendix 1 – Otawere Water Storage Reservoir – Application form and additional information received

Appendix 2 – 2021-B-2020-B- 07586 FTC#48 – Application for referred project under the COVID-Recovery FTCA - Stage 1 decisions on Otawere Water Storage Reservoir project

Appendix 3 – Statutory framework for making decisions

Appendix 4 – Draft Notice of Decisions letter to applicant

Appendix 5 – Section 17 Report

Appendix 6 – Comments received from Ministers, local authorities and Te Rūnanga-Ā-Iwi-O-Ngāpuhi

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