



FTC#258 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2023-152 Waiuku Wind Farm Project

Date submitted:	2 June 2023	Tracking #: BRF- 3153	
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	<p>Return the signed briefing to MfE.</p> <p>Send the attached notice of decisions letter (if signed).</p>
Number of appendices: 7	<p>Appendices:</p> <ol style="list-style-type: none"> 1. Waiuku Wind Farm Project application documents (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 LET Capital Number 3 Limited Partnership 5. Section 17 Report (Databox link) 6. Comments received from Ministers, Auckland Council, Waikato District Council, Waikato Regional Council, Counties Energy Limited and Transpower New Zealand 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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FTC#258: 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 LET Capital Number 3 Limited Partnership to refer the Waiuku Wind Farm 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-3038) with your initial decisions annotated is in Appendix 2.
3. The project is to construct and operate a wind farm on an approximately 560-hectare site, comprising multiple properties at 66 Huarau Way, 76 Robertson Road, 136, 191 and 260 Thomson Road, and 612 Forestry Road, Waiuku, Waikato¹, and to connect to and supply electricity to the national grid. The wind farm will have an approximate installed capacity of 80 megawatts peak and will comprise up to 18 wind turbines with blade tip heights up to 190 metres high. The project includes the construction of infrastructure and supporting structures including internal roads, turbine platforms, foundation and crane pads, underground electrical and fibre optic cables, two wind monitoring masts up to 100 metres high, an energy storage facility, a concrete batching plant and ancillary buildings.
4. The project includes two options to connect to and supply electricity to the national grid, with the transmission lines extending north into the Auckland Region:
 - a. Option A involves the construction of a new 33kV transmission line extending from the proposed wind farm to an existing 33kV Counties Energy Limited (CEL) transmission line south of Otua. Upgrades would also be required to the existing 33kV transmission line along the route to the Waiuku substation and then on to the Glenbrook substation
 - b. Option B involves the construction of a new 33kV transmission line, with two route options, extending from the proposed wind farm to the Waiuku substation and either a new 33kV transmission line, or upgrading to the existing 33kV CEL transmission line, between Waiuku and Glenbrook substations.
5. Option A involves works within road reserve and on various parcels of private land. Option B involves works within road reserve and on land owned by CEL. The applicant considers the works for Option A can be undertaken with relevant territorial authority approval for works within road reserve and via existing easements and statutory powers and without additional landowner approval, and that the works for Option B require relevant territorial authority approval for works within road reserve and CEL approval as landowner.
6. The project will involve activities such as:
 - a. carrying out earthworks (including earthworks that disturb potentially contaminated soil, earthworks within, or within 10m of natural inland wetlands, and earthworks within a high-risk erosion area)
 - b. removing vegetation (including within, or within 10m of, natural inland wetlands, and within a high-risk erosion area)
 - c. taking, using, damming or diverting stormwater, and discharging stormwater (which

¹ The first (Stage 1) briefing (BRF-3038) included 44 Robertson Road as part of the project site's physical address, however this has been amended to align with Waikato District Council's rating information.

may contain contaminants) onto land or into water (including within 100 metres of a natural inland wetland)

- d. taking surface water
 - e. diverting and discharging groundwater onto land or into water
 - f. discharging contaminants into air
 - g. constructing a concrete batching plant and other ancillary buildings
 - h. installing turbines, underground electricity transmission cables, underground electrical and communication cables, substation and grid connection equipment, and if a new transmission line is included, electricity transmission structures and overhead electricity transmission lines and associated infrastructure
 - i. constructing or installing infrastructure or structures, including
 - i. using, constructing, reconstructing, placing, extending or removing structures in or over the bed of streams for access purposes
 - ii. constructing new or upgrading existing bridges on the project site
 - iii. constructing roads, accessways, and infrastructure for three waters services, including culverts in the beds of streams
 - j. carrying out other activities that are:
 - i. associated with the activities described in paragraphs (a) to (i); and
 - ii. within the scope of the project as described in paragraphs 3 to 5.
7. The project will require land use consents under the operative Waikato District Plan (OWDP) and the proposed Waikato District Plan (PWDP)², water and discharge permits under the Waikato Regional Plan, and resource consents under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS) and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F). Part of the project is in the Auckland region. The applicant has not identified any resource consent requirements under the Auckland Unitary Plan (AUP).
8. The proposed wind farm is located in the Rural zone and the Awhitu Rural Management Area, Waikato River Catchment, and Significant Natural Area overlays, under the OWDP. The project is located in the General Rural zone and Coastal, Site and Areas of Significance to Māori, Notable Trees, and Waikato River Catchment overlays under the PWDP. The project will have overall discretionary activity status under the OWDP and PWDP. The Rural zone under the OWDP seeks to maintain and enhance opportunities for rural activities whilst the General Rural zone under the PWDP provides predominantly for primary production activities, including intensive indoor primary production. Both the OWDP and PWDP district wide policy supports an increase in renewable electricity generation.
9. The two transmission route options to connect to and supply electricity to the national grid cover various land parcels located in the Rural zone under the OWDP, General Rural zone under the PWDP, and Rural Production, Large Lot Residential, Light Industry, Heavy Industry, and Mixed Rural zones under the AUP.
10. s 9(2)(f)(ii), s 9(2)(g)(i)

² Hearings on the PWDP were completed in July 2021, however the zoning and overlays for the project site are still subject to appeals.

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

11. CEL neither supported nor opposed project referral but noted that no connection or infrastructure upgrade approvals had been granted and the necessary approvals and project timeframes would remain uncertain until detailed investigations had been completed. Based on the information provided by the applicant, we do not consider that any of the matters raised by CEL present a high risk to project delivery or timing, however we note the nature and scale of the project is such that unforeseen delays may arise.
12. Given the nature and scale of the project, particularly the height of the proposed turbines, we consider there is a risk that referring the project could be viewed negatively by the wider community who may expect to be involved in a standard consenting process under the RMA, and this risk cannot be avoided. However, we note the project will result in public benefits such as generating employment, providing infrastructure to improve economic and employment outcomes, and contributing to New Zealand's efforts to mitigate climate change and transition more quickly to a low-emissions economy by increasing New Zealand's renewable energy generation.
13. On balance, 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 on recommendations for directions to the applicant and a panel, and notification of your decisions.

Assessment against statutory framework

14. 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.
15. 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, Waikato District Council (WDC), WRC, Auckland Council, CEL and Transpower New Zealand Limited (Transpower) (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.
16. 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

17. In response to your request under section 22 of the FTCA, the applicant provided details of ongoing jobs associated with the project.
18. Following the Stage 1 briefing, the applicant provided additional information regarding the location of the project's transmission lines, approvals required and potential impacts on project delivery and timing, and engagement with CEL. The applicant also provided a legal opinion in support of its position that the upgrade or replacement of electricity transmission

lines on private land can be undertaken via existing powers under the Electricity Act 1992 and does not require additional landowner approvals. We have taken this information into account in our analysis and advice.

Section 17 report

19. The Section 17 Report identifies 3 iwi authorities, 3 Treaty settlements and 3 Treaty settlement entities relevant to the project area. The report also identifies 3 other parties who may have an interest in the project.
20. No specific cultural or commercial redress provided under the settlements would be affected by the project and 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

21. Comments were received from s 9(2)(f)(ii), s 9(2)(g)(i) WDC, WRC, Auckland Council, CEL and Transpower. The key points of relevance to your decision are summarised in Table A.

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

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

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

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

³ At Risk', 'Threatened' and 'Threatened – Nationally Critical' are categories included in the Department of Conservation's New Zealand Threat Classification System that provides a tool for assigning a threat status to taxa (such as a species).

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

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

27. Auckland Council and WDC did not oppose project referral. WDC identified a number of matters, such as increased traffic and damage to roads, erosion and sedimentation during construction, stormwater management and impacts on waterbodies, ecological effects, cultural and archaeological impacts, and loss of highly productive land, that are relevant for the project.
28. WRC did not oppose project referral but identified potential risks regarding biodiversity, particularly the effects on birds and bats. WRC requested if the project is referred you require the applicant to provide further information to address WRC's concerns in its resource consent applications to a panel.
29. WDC and WRC also noted several reports and assessments that would normally be required for a project of this type.
30. Transpower supported project referral and noted it has had preliminary discussions with CEL about the proposed connection to the national grid. Transpower noted the connection option via the existing CEL line appears to require no upgrade to Transpower assets, however CEL would have an obligation to work with Transpower in relation to protection co-ordination and power quality requirements. Transpower also noted generating commissioning approval would be required before generation could occur but this would not impact on project delivery or timing. Transpower noted that the option to connect via a new line may impact on construction, and if an application to the queue management framework was made and accepted, a connection could potentially occur within the three-year timeframe set out in the application.
31. CEL neither supported nor opposed project referral but noted that no connection or infrastructure upgrade approvals had been granted and the necessary approvals and project timeframes would remain uncertain until detailed investigations had been completed. CEL identified a number of issues due to the potential complexity of the project, including the need to relocate existing lines, obtain landowner agreements and obtain additional resource consent approvals.

Section 18 referral criteria

32. You may accept the application for project referral if you are satisfied the project does not include ineligible activities (section 18(3)) and will help to achieve the purpose of the FTCA (section 18(2)).
33. The project does not include any ineligible activities, as explained in Table A.
34. Section 19 provides a range of matters you may have regard to when considering, for the purpose of section 18(2), whether a project will help to achieve the purpose of the FTCA, including whether there is potential for the project to have significant adverse environmental effects, including greenhouse gas emissions (section 19(e)). s 9(2)(f)(ii), s 9(2)(g)(i) raised concerns the project would potentially have significant adverse effects on ecological values, including on the 'Threatened - Nationally Critical' Australian bittern and long-tailed bat. The applicant has supplied an interim assessment of cumulative collision risk to avifauna and a preliminary assessment of effects on long-tailed bats, and both assessments identify the need for further sampling, monitoring and assessment. The applicant considers the effects on avifauna can be appropriately managed and will not be significant, however the

effects on bats are less certain and subject to further site- and species-specific research. We agree s 9(2)(f)(ii), s 9(2)(g)(i) that further information, including detailed assessments, will be required should the project be referred to a panel. The referral application details that ecological monitoring has commenced and is ongoing and the applicant considers it will be able to prepare all necessary assessments within the timeframes of the FTCA.

35. We accept there is potential for the project to have significant adverse environmental effects, however we consider a panel will be best placed to assess the project's effects, with the benefit of a complete resource consent application.
36. Our assessment of the matters in section 19 of the FTCA is summarised in Table A. Despite the concerns raised by the Minister of Conservation, we consider the project will help to achieve the purpose of the FTCA, and thus meet the requirements of section 18(2), as it has the potential to:
 - a. generate employment by providing approximately 330 direct full-time equivalent (FTE) jobs over a 2-year construction period, and 31 ongoing direct FTE jobs once construction is complete
 - b. provide infrastructure that will contribute to improving economic and employment outcomes
 - c. contribute to New Zealand's efforts to mitigate climate change and transition more quickly to a low-emissions economy by increasing New Zealand's renewable energy generation
 - d. progress faster than would otherwise be the case under standard RMA process.
37. 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

38. 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

39. 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.
40. Section 23(5)(b) of the FTCA enables you to decline a project if it is more appropriate for the project to go through standard RMA consenting processes. We have considered whether it would be more appropriate for the project to be considered under standard RMA consenting processes, which may enable broader public input than under the FTCA process. We have considered this particularly given the potential for significant adverse ecological effects identified s 9(2)(f)(ii), s 9(2)(g)(i) and the potential public interest in a large-scale wind farm in a rural area.
41. s 9(2)(f)(ii), s 9(2)(g)(i) opposed project referral and raised concerns the project would potentially have significant adverse effects on ecological values, including on the 'Threatened - Nationally Critical' Australian bittern and long-tailed bat. This is discussed in paragraph 34 of this briefing. We accept there is potential for the project to have significant adverse environmental effects, however we consider a panel will be best placed to assess the project's effects, with the benefit of a complete resource consent application.
42. Given the nature and scale of the project, particularly the height of the proposed turbines, it is likely that that some members of the public will consider the project should be subject to

the full scrutiny and public consultation provided for by the RMA. We consider there is a risk that referring the project could be viewed negatively by the wider community who may expect to be involved in a standard consenting process under the RMA, and this risk cannot be avoided. If you decide to refer the project, a panel must invite comments from adjacent landowners and occupiers under clauses 17(6)(g) and 17(6)(h), Schedule 6 of the FTCA. A panel also can invite comments from any person they consider appropriate (clause 17(8), Schedule 6 of the FTCA), so may consult as widely as they consider necessary.

43. Despite the project's potential for adverse environmental effects and the potential for high public interest, s 9(2)(f)(ii), s 9(2)(g)(i). We also note the project may result in public benefits such as generating employment, providing infrastructure to improve economic and employment outcomes, and contributing to New Zealand's efforts to mitigate climate change and transition more quickly to a low-emissions economy by increasing New Zealand's renewable energy generation. On balance, we therefore 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 (section 23(5)(b)).
44. Section 23(5)(c) enables you to decline a project if the project is considered to be inconsistent with a relevant national policy statement. The National Policy Statement for Highly Productive Land 2022 (NPS-HPL) came into effect on 17 October 2022 and includes a definition of 'highly productive land'⁴. The project site includes areas of land that are Land Use Capability Class 3 and therefore are likely to meet the definition of 'highly productive land' under the NPS-HPL. The NPS-HPL places restrictions on development, subdivision and inappropriate use of highly productive land. The applicant considers the project meets the definition of specified infrastructure under the NPS-HPL and has noted the project site will also continue to be used for productive farming activities. The applicant has provided a high-level assessment of the project against the NPS-HPL and considers the project is not inconsistent with it. We consider a panel will be best placed to assess the project against the NPS-HPL, with the benefit of a complete resource consent application, and we do not consider that you should decline the referral application on the basis that it would be inconsistent with a relevant national policy statement (section 23(5)(c)).
45. Section 23(5)(g) enables you to decline a project if there is insufficient time for the application to be referred and considered before the FTCA is repealed. 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 before the FTCA is repealed (23(5)(g)).

Other matters

46. The project includes two alternative options for the wind farm connection to the national grid. Option A involves works within road reserve and on various parcels of private land, and Option B involves works within road reserve and on land owned by CEL. The applicant considers the works for Option A can be undertaken with relevant territorial authority approval

⁴ Until a regional policy statement contains maps of highly productive land, each territorial and consent authority must apply the NPS-HPL as if references to 'highly productive land' were references to land that, at the commencement date: (a) is (i) zoned general rural or rural production; and (ii) LUC 1, 2, or 3 land; but (b) is not: (i) identified for future urban development; or (ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

Under the NPS-HPL, 'Identified for future urban development' means: (a) identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or (b) identified: (i) in a strategic planning document as an area suitable for commencing urban development over the next 10 years; and (ii) at a level of detail that makes the boundaries of the area identifiable in practice. While the land has been identified for future development in the KCDC growth strategy and WRGF, it is unclear whether this will be commenced over the next 10 years.

for works within road reserve, and via existing easements and statutory powers and without additional landowner approval, and the works for Option B only require territorial authority approval for works within road reserve and CEL approval as landowner.

47. CEL did not agree with the applicant's view that the upgrade or replacement of electricity transmission lines on private land can be undertaken via existing powers under the Electricity Act 1992. CEL considered that agreements/approvals will be required for the project, including the need to relocate existing lines, obtain landowner agreements and obtain additional resource consent approvals. CEL also raised concern with the capacity of the CEL substation at Waiuku.
48. Connection Option B is located within road reserve and on land owned by CEL and therefore additional approvals are likely to only be required from the relevant territorial authorities and CEL. Despite the concerns raised by CEL, we note it has confirmed that 'while there is a difference in opinion on the scope of work that can be undertaken under the Electricity Act 1992 there are options available for a transmission line for the project including the ones put forward by the project team'. We also note that no relevant territorial authorities oppose project referral.
49. With respect to CEL's comments regarding additional resource consent approvals, we note the applicant has identified the extent of resource consents they consider are required for the project. CEL have not identified any additional specific reasons for consent and it is therefore unclear what these would be, however we note this is the applicant's risk.
50. Transpower noted that the option to connect via a new transmission line may impact on construction, and if an application to the queue management framework was made and accepted, a connection could potentially occur within the three-year timeframe set out in the application. We note if you refer the project it will be considered by a panel which the applicant estimates could take approximately 6 to 7 months, and if resource consents are granted the project is proposed to be constructed over a 24-month period. Therefore, we consider the potential delay in being able to connect a new transmission line to the national grid will not significantly impact project delivery.
51. We do not consider that any of the other matters discussed above present a high risk to project delivery or timing, however we note the nature and scale of the project is such that unforeseen delays may arise. However, we do not consider that you should decline to refer the project on the basis of these other matters.

Conclusions

52. On balance, we do not consider that you should decline to refer the project in whole or in part on the basis of the risks and issues identified above, provided the applicant provides appropriate information (including the information we recommend you specify) to a panel. You could accept the application under section 24 of the FTCA and refer all of the project to a panel.
53. If you decide to refer the project, we consider you should specify under section 24(2)(d) of the FTCA that the applicant must submit an ecological assessment to a panel with their resource consent applications, in addition to the requirements of clause 9 of Schedule 6 of the FTCA.
54. 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 resource consent applications for the project from the following parties:
 - a. Minister of Energy and Resources
 - b. Minister of Agriculture

- c. Transpower New Zealand Limited
- d. Counties Energy Limited
- e. Te Ākitai Waiohua Iwi Authority
- f. Ngāti Koheriki Claims Committee
- g. Ngati Karewa Ngāti Tāhinga Trust.

Next steps

- 55. 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. We consider you should also give the notice of decisions together with a copy of the application to Te Ākitai Waiohua Iwi Authority, Ngāti Koheriki Claims Committee and Ngati Karewa Ngāti Tāhinga Trust as identified in the Section 17 report.
- 56. 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.
- 57. 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.
- 58. 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.⁵
- 59. 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.
- 60. Our recommendations for your decisions follow.

⁵ 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 LET Capital Number 3 Limited Partnership unless you are satisfied that the Waiuku Wind Farm 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. s 9(2)(f)(ii), s 9(2)(g)(i)
 - g. **Agree** the project meets the referral criteria in section 18(3) of the FTCA.

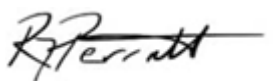
Yes/No
 - h. **Agree** the project will help achieve the purpose of the FTCA (and therefore meets the referral criteria in section 18(2) of the FTCA) as it has the potential to:
 - i. generate employment by providing approximately 330 direct full-time equivalent (FTE) jobs over a 2-year construction period, and 31 ongoing direct FTE jobs once construction is complete
 - ii. provide infrastructure that will contribute to improving economic and employment outcomes

- iii. contribute to New Zealand's efforts to mitigate climate change and transition more quickly to a low emissions economy by increasing New Zealand's renewable energy generation
 - iv. progress faster than would otherwise be the case under standard Resource Management Act 1991 process.
- Yes/No
- i. **Agree** to refer all of the project to a panel.
- Yes/No
- j. **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. an ecological assessment, including:
 - 1. an assessment of the effects of the activities involved in the project (including the operation of the wind farm) on vegetation, natural inland wetlands, birds and bats, and their habitats
 - 2. complete field survey data and survey reports for birds and bats
 - 3. a description of measures to avoid or mitigate these effects, including a draft bird management plan and a draft bat management plan.
- Yes/No
- k. **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 the parties listed in clause 17 of Schedule 6 of the FTCA:
 - i. Minister of Energy and Resources
 - ii. Minister of Agriculture
 - iii. Transpower New Zealand Limited
 - iv. Counties Energy Limited
 - v. Te Ākitai Waiohū Iwi Authority
 - vi. Ngāti Koheriki Claims Committee
 - vii. Ngāti Karewa Ngāti Tāhinga Trust.
- Yes/No
- l. **Agree** to copy the application and notice of decisions to the following parties additional to those specified in section 25 of the FTCA:
 - i. Te Ākitai Waiohū Iwi Authority
 - ii. Ngāti Koheriki Claims Committee
 - iii. Ngāti Karewa Ngāti Tāhinga Trust.
- Yes/No
- m. **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
- n. **Sign** the notice of decisions letter to the applicant (attached in Appendix 4).

Yes/No

- o. **Require** the Ministry for the Environment to publish your decisions, reasons and the Section 17 report on the Ministry for the Environment's website.

Signatures



Rebecca Perrett
Acting 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(–) - does the project help achieve the purpose of the FTCA (as per section 19)?			
<p>Name Waiuku Wind Farm Project</p> <p>Applicant LET Capital Number 3 Limited Partnership [c/- Jennifer Valentine, 4sight Consulting Limited]</p> <p>Location <u>Wind farm:</u> 66 Huarau Way, Waiuku and 76 Robertson Road, Waiuku, 136, 191 and 260 Thomson Road, Otaua and 612 Forestry Road, Waiuku (Allotment 144 and Allotment 199 Parish of Waiuku West, Lot 1 DP 497779, Lot 1 Deposited Plan 497891, Lot 1-2 Deposited Plan 507466, Lot 2 DP 456384, Allotment 197 Parish of Waiuku West, Lot 1 Deposited Plan 526041, Lot 1 DP 448864, Part Allotment 355</p>	<p>The project is to construct and operate a wind farm on an approximately 560-hectare site, comprising multiple properties at 66 Huarau Way, 76 Robertson Road, 136, 191 and 260 Thomson Road, and 612 Forestry Road, Waiuku, Waikato, and to connect to and supply electricity to the national grid. The wind farm will have an approximate installed capacity of 80 megawatts peak and will comprise up to 18 wind turbines with blade tip heights up to 190 metres high. The project includes the construction of infrastructure and supporting structures including internal roads, turbine platforms, foundation and crane pads, underground electrical and fibre optic cables, two wind monitoring masts up to 100 metres high, an energy storage facility, a concrete batching plant and ancillary buildings.</p> <p>The project includes two options to connect to and supply electricity to the national grid, with the transmission lines extending north into the Auckland Region:</p> <p>a. Option A involves the construction of a new 33kV transmission line extending from the proposed wind farm to an existing 33kV Counties Energy Limited (CEL) transmission line south of Otaua. Upgrades would also be required to the existing 33kV transmission line along the route to the Waiuku substation and then on to the Glenbrook substation</p> <p>b. Option B involves the construction of a new 33kV transmission line, with two route options, extending from the proposed wind farm to the Waiuku substation and either a new 33kV transmission line, or upgrading to the existing 33kV CEL transmission line.</p>	<p>The project is eligible for referral under section 18(3)(a)–(d) as:</p> <ul style="list-style-type: none"> 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 or a protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011. 	<p>Economic benefits for people or industries affected by COVID-19 (19(a))</p> <p>The applicant estimates the project will provide approximately 330 direct full-time equivalent (FTE) jobs over a 2-year construction period, and 31 ongoing direct FTE jobs once construction is complete.</p> <p>Economic costs for people or industries affected by COVID-19 (19(a))</p> <p>N/A</p> <p>Effect on the social and cultural well-being of current and future generations (19(b))</p> <p>The applicant considers the project will contribute to the overall wellbeing of the area from the economic benefits and employment opportunities, and contribute to increased electricity supply and security which will assist communities.</p> <p>Is the project likely to progress faster by using this Act? (19(c))</p> <p>The applicant estimates the FTCA process will allow the project to progress 4 months faster than under standard RMA processes due to the likelihood of notification, a hearing and potential for appeals under standard process. We consider the applicant's time-saving estimate to be conservative and likely to be higher given the nature and scale of the project.</p> <p>Will the project result in a public benefit? (19(d))</p>	<p>Ministers</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p>	<p>Section 23(5) matters:</p> <p>Insufficient information (23(5)(a))</p> <p>The applicant has provided sufficient information for you to determine whether the project meets the criteria in section 18 of the FTCA.</p> <p>More appropriate to go through standard RMA process (23(5)(b))</p> <p>We have considered whether it would be more appropriate for the project to be considered under standard RMA consenting processes, which may enable broader public input than under the FTCA process s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i) opposed project referral and raised concerns the project would potentially have significant adverse effects on ecological values, including on the 'Threatened - Nationally Critical' Australian bittern and long-tailed bat. This is discussed in paragraph 34 of this briefing. We accept there is potential for the project to have significant adverse environmental effects, however we consider a panel will be best placed to assess the project's effects, with the benefit of a complete resource consent application.</p> <p>Given the nature and scale of the project, particularly the height of the proposed turbines, it is likely that that some members of the public will consider the project should be subject to the full scrutiny and public consultation provided by the RMA. We consider there is a risk that referring the project could be viewed negatively by the wider community who may expect to be involved in a standard consenting process under the RMA and this risk cannot be avoided. If you decide to refer the project, a panel must invite comments from adjacent landowners and occupiers under clauses 17(6)(g) and 17(6)(h), Schedule 6 of the FTCA. A panel also can invite comments from any person they consider appropriate (clause 17(8), Schedule 6 of the FTCA), so may consult as widely as they consider necessary.</p> <p>Despite the project's potential for adverse environmental effects and the potential for high public interest, we note that s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>We also note the project may result in public benefits such as generating employment, providing infrastructure to improve economic and employment outcomes, and contributing to New Zealand's efforts to mitigate climate change and transition more quickly to a low-emissions economy by increasing New Zealand's renewable energy generation. On balance, we therefore 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 (section 23(5)(b)).</p>	<p>In response to key comments:</p> <ul style="list-style-type: none"> s 9(2)(f)(ii), s 9(2)(g)(i) we note that WDC and WRC identified a number of reports and assessments which would normally be required for a project of this type. We consider these reports are generally covered by the requirements of clause 9-11 Schedule 6 of the FTCA and we note WDC and WRC will have the opportunity to comment on resource consent applications to a panel. We therefore do not consider you need to require the applicant to provide all the information specified by WDC and WRC in their resource consent applications to a panel. we note CEL's concerns about the connection to the national grid, complexity

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(-) - does the project help achieve the purpose of the FTCA (as per section 19)?			
<p>Parish of Waiuku</p> <p>West, Lot 96B PSH of Waiuku West, Lot 3 Deposited Plan 407996, Part Lot 2 DP 22917, Lot 1 DP 116009 and Lot 3 DP 120338, Lot 2 DP 427487)</p> <p><u>Transmission route:</u></p> <p>Options A and B involve works on private land and road reserve including as detailed in the application.</p>	<p>between Waiuku and Glenbrook substations.</p> <p>Option A involves works within road reserve and on various parcels of private land, and Option B involves works within road reserve and on land owned by CEL. The applicant considers the works for Option A can be undertaken via existing easements and statutory powers and without additional landowner approval, and the works for Option B only require territorial authority approval for works within road reserve and CEL approval as landowner.</p> <p>The project will involve activities such as:</p> <ol style="list-style-type: none"> carrying out earthworks (including earthworks that disturb potentially contaminated soil, earthworks within, or within 10m of natural inland wetlands, and earthworks within a high risk erosion area) removing vegetation (including within, or within 10m of natural inland wetlands, and within a high risk erosion area) taking, using, damming or diverting stormwater, and discharging stormwater (which may contain contaminants) onto land or into water (including within 100 metres of a natural inland wetland) taking surface water diverting and discharging ground water onto land or into water discharging contaminants into air constructing a concrete batching plant and other ancillary buildings installing turbines, underground electricity transmission lines, underground electrical and communication cables, 		<p>Based on the applicant's information we consider the project may result in the following public benefits:</p> <ul style="list-style-type: none"> generating employment by providing approximately 330 direct FTE jobs over a 2-year construction period, and 31 ongoing direct FTE jobs once construction is complete providing infrastructure that will contribute to improving economic and employment outcomes assisting New Zealand's efforts to mitigate climate change and transition more quickly to a low emissions economy by increasing New Zealand's total amount of renewable energy generation. <p>Potential to have significant adverse environmental effects, including greenhouse-gas emissions (19(e))</p> <p>The project has the potential for adverse environmental effects including:</p> <ul style="list-style-type: none"> landscape and visual effects traffic generation and effects on access ecological and biological effects temporary construction effects noise and vibration glint and glare effects contaminated land effects loss of productive land <p>The applicant has confirmed that specialists have prepared technical assessments on the above matters. The applicant considers the project will not result in significant adverse environmental effects.</p> <p>We note that you do not require a full Assessment of</p>	<p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>Local authorities</p> <p>Auckland Council and Waikato District Council (WDC) did not oppose project referral. WDC identified a number of matters, such as increased traffic and damage to roads, erosion and sedimentation during construction, stormwater management and impacts on waterbodies, ecological effects, cultural and archaeological impacts, and loss of highly productive land, that are relevant for the project.</p> <p>WDC noted that further engagement with WDC's Roding Manager would be required in regard to the use of Council roads. WDC noted that a stormwater management plan, integrated traffic assessment, ecological assessment, landscape and visual assessment, cultural impact assessment, archaeological assessment, acoustic assessment, assessment of the proposal against the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, assessment of natural hazards and site specific assessment Land Use Capability Classification, should be required to support the referral application.</p>	<p>Inconsistency with a national policy statement (23(5)(c))</p> <p>Section 23(5)(c) enables you to decline a project if the project is considered to be inconsistent with a relevant national policy statement. The National Policy Statement for Highly Productive Land 2022 (NPS-HPL) came into effect on 17 October 2022 and includes a definition of 'highly productive land'. The project site includes areas of land that are Land Use Capability Class 3 and therefore are likely to meet the definition of 'highly productive land' under the NPS-HPL. The NPS-HPL places restrictions on development, subdivision and inappropriate use of highly productive land. The applicant considers the project meets the definition of specified infrastructure under the NPS-HPL and has noted the project site will continue to be used for productive farming activities. The applicant has provided a high-level assessment of the project against the NPS-HPL and considers the project is not inconsistent with it. We consider a panel will be best placed to assess the project against the NPS-HPL, with the benefit of a complete resource consent application, and we do not consider that you should decline the referral application on the basis that it would be inconsistent with a relevant national policy statement (section 23(5)(c)).</p> <p>Inconsistent with a Treaty settlement (23(5)(d))</p> <p>The project is not inconsistent with Treaty Settlement redress.</p> <p>Involves land needed for Treaty settlements (23(5)(e))</p> <p>The project is located on private land which is not available for Treaty settlement purposes.</p> <p>Applicant has poor regulatory compliance (23(5)(f))</p> <p>WDC and WRC did not identify a poor history of environmental regulatory compliance for the applicant.</p> <p>Insufficient time for the project to be referred and considered before FTCA repealed (23(5)(g))</p> <p>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.</p> <p>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.</p> <p>Other issues and risks:</p> <p>The project includes two alternative options for the wind farm connection to the national grid. Option A involves works within road reserve and on various parcels of private land,</p>	<p>and the need for detailed investigations and design to be completed. However, we also note that CEL did not oppose project referral and we consider these matters can be considered by a panel with the benefit of a full resource consent application.</p> <p>Given the nature and scale of the project, particularly the height of the proposed turbines, we consider there is a risk that referring the project could be viewed negatively by the wider community and this risk cannot be avoided. However, we note the project will result in public benefits such as generating employment, providing infrastructure to improve economic and employment outcomes, and contributing to New Zealand's efforts to mitigate climate change and transition more quickly to a low-emissions economy by increasing New Zealand's renewable energy generation.</p> <p>On balance, we do not consider you should decline to refer the project in whole or in part on the basis of the issues and risks identified. 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 you require the applicant to provide with their resource consent applications to a panel:</p> <ol style="list-style-type: none"> an ecological assessment, including: <ol style="list-style-type: none"> an assessment of the effects of the activities involved in the project (including the operation of the wind farm) on vegetation, natural inland wetlands, birds

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		Project eligibility for referral (section 18(3)(a)–(d))	Section 18(–) - does the project help achieve the purpose of the FTCA (as per section 19)?			
	<p>substation and grid connection equipment, and if a new transmission line is included, electricity transmission structures and overhead electricity transmission lines and associated infrastructure</p> <p>i. constructing or installing infrastructure or structures, including</p> <p>i. using, constructing, reconstructing, placing, extending or removing structures in or over the bed of streams for access purposes</p> <p>ii. constructing new or upgrading existing bridges on the project site</p> <p>iii. constructing roads, accessways, and infrastructure for three waters services, including culverts in the beds of streams</p> <p>j. carrying out other activities that are:</p> <p>i. associated with the activities described in paragraphs (a) to (j); and</p> <p>ii. within the scope of the project as described in paragraphs 3, 4 and 5.</p> <p>The project will require land use consents under the operative Waikato District Plan (OWDP) and the proposed Waikato District Plan (PWDP)⁶, water and discharge permits under the Waikato Regional Plan, and resource consents under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS) and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020</p>		<p>Environment Effects and supporting evidence to make a referral decision, and that a panel will consider the significance of effects and appropriate mitigation should the project be referred.</p> <p>We note the concerns raised s 9(2)(f)(ii), s 9(2)(g)(i) and we accept there is potential for the project to have significant adverse environmental effects on ecological values, particularly avifauna and bats. However, we consider a panel will be best placed to assess the project's effects, with the benefit of a complete resource consent application. This is discussed further in the body of this briefing.</p> <p>Other relevant matters (19(f))</p> <p>The project involves vegetation clearance, earthworks and land disturbance within, or within a 10-metre setback, from natural wetlands. The applicant has provided an assessment which states the project is specified infrastructure under the NES-F and NPS-FM, as it is infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002). We are satisfied the project will not include prohibited activities.</p>	<p>Waikato Regional Council (WRC) did not oppose project referral but identified potential risks regarding biodiversity, particularly the effects on birds and bats. WRC requested if the project is referred you require the applicant to provide further information to address WRC concerns in its resource consent applications to a panel.</p> <p>WRC noted that a map showing the location of Significant Natural Areas and identified remnants in the vicinity, erosion sediment control plan, ecological assessment and proposed management plans including for effects on vegetation remnants, wetlands, long-tailed bats and their habitat, complete field surveys for birds and bats, evidence of consultation with relevant iwi and evidence of consultation with affected neighbours and other parties including Department of Conservation should be required to support the referral application.</p> <p>Other parties</p> <p>Transpower supported project referral and noted it has had preliminary discussions with CEL about the proposed connection to the national grid. Transpower noted the connection option via the existing CEL line appears to require no upgrade to Transpower assets, however CEL would have an obligation to work with Transpower in relation to protection co-ordination and power quality requirements. Transpower also noted generating commissioning approval would be required before generation could occur but this would not impact on project delivery or timing. Transpower noted that the option to connect via a new line may impact on construction, and if an application to the queue management framework was made and accepted, a connection could potentially occur within the three-year timeframe set out in the application.</p> <p>CEL neither supported nor opposed project referral but noted that no connection or infrastructure upgrade approvals had been granted and the necessary approvals and project timeframes would remain uncertain until detailed investigations had been completed. CEL identified a number of issues due to the potential complexity of the project, including the need to relocate existing lines, obtain landowner agreements and obtain additional resource consent approvals.</p> <p>All responses received by parties invited to comment are attached in Appendix 6.</p>	<p>and Option B involves works within road reserve and on land owned by CEL. The applicant considers the works for Option A can be undertaken with relevant territorial authority approval for works within road reserve, and via existing easements and statutory powers and without additional landowner approval, and the works for Option B only require territorial authority approval for works within road reserve and CEL approval as landowner.</p> <p>CEL did not agree with the applicant's view that the upgrade or replacement of electricity transmission lines on private land can be undertaken via existing powers under the Electricity Act 1992. CEL considered that agreements/approvals will be required for the project, including the need to relocate existing lines, obtain landowner agreements and obtain additional resource consent approvals. CEL also raised concern with the capacity of the CEL substation at Waiuku.</p> <p>Connection Option B is located within road reserve and on land owned by CEL and therefore additional approvals are likely to only be required from the relevant territorial authorities and CEL. Despite the concerns raised by CEL, we note it has confirmed that 'while there is a difference in opinion on the scope of work that can be undertaken under the Electricity Act 1992 there are options available for a transmission line for the project including the ones put forward by the project team'. We also note that no relevant territorial authorities oppose project referral.</p> <p>With respect to CEL's comments regarding additional resource consent approvals, we note the applicant has identified the extent of resource consents they consider are required for the project. CEL have not identified any additional specific reasons for consent and it is therefore unclear what these would be, however we note this is the applicant's risk.</p> <p>Transpower noted that the option to connect via a new transmission line may impact on construction, and if an application to the queue management framework was made and accepted, a connection could potentially occur within the three-year timeframe set out in the application. We note if you refer the project it will be considered by a panel which the applicant estimates could take approximately 6 to 7 months, and if resource consents are granted the project is proposed to be constructed over a 24-month period. Therefore, we consider the potential delay in being able to connect a new transmission line to the national grid will not significantly impact project delivery.</p> <p>We do not consider that any of the other matters discussed above present a high risk to project delivery or timing, however we note the nature and scale of the project is such that unforeseen delays may arise.</p>	<p>and bats, and their habitats</p> <ol style="list-style-type: none"> complete field survey data and survey reports for birds and bats a description of measures to avoid or mitigate these effects, including a draft bird management plan and a draft bat management plan. <p>We recommend you direct a panel to invite comment on any resource consent applications for the project from:</p> <ul style="list-style-type: none"> Minister of Energy and Resources Minister of Agriculture Transpower New Zealand Limited Counties Energy Limited Te Ākitai Waiohū Iwi Authority Ngāti Koheriki Claims Committee Ngāti Karewa Ngāti Tāhinga Trust. <p>We recommend you provide a copy of the application and the notice of decision to the following parties in addition to those specified in section 25 of the FTCA:</p> <ul style="list-style-type: none"> Te Ākitai Waiohū Iwi Authority Ngāti Koheriki Claims Committee Ngāti Karewa Ngāti Tāhinga Trust.

⁶ Hearings on the PWDP were completed in July 2021, however the zoning and overlays for the project site are still subject to appeals.

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	(NES-F). The applicant has not identified any resource consent requirements under the Auckland Unitary Plan (AUP).					