

Memorandum on Compliance

File	FTC000043
To:	Sandra Balcombe, Manager, Land and Oceans Applications
From:	Mary McConnell, Project Lead
Date:	4 February 2022
Subject:	Otawere Water Storage Reservoir: Assessment whether the application complies with Clause 3(1) of Schedule 6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020

Purpose

1. The purpose of this memo is to assist you in making your decision on whether the Otawere Water Storage Reservoir application, received by the Environmental Protection Authority (**EPA**) on 1 February 2022, lodged by Te Tai Tokerau Water Trust, complies with the requirements of clause 3(1) of Schedule 6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**the Act**).

Conflict of interest

2. I confirm that I do not have any conflict of interest in this matter that would prevent me making this assessment.

The Application

3. A project referred to a panel by a referral order is eligible to be considered by an expert consenting panel. On 3 September 2021, Schedule 24, Otawere water storage reservoir application was included in the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020 (**the referral order**).
4. Te Tai Tokerau Water Trust applied for consents relating to the Otawere Water Storage Reservoir on 1 February 2022.
5. The EPA must either provide the Otawere Water Storage Reservoir consent application to the expert consenting panel (if complete) or return it to the person who lodged it (if incomplete), as set out in paragraphs 7 – 16 below.

Project

6. The scope of the project is to construct and operate a water storage reservoir and associated dams in the upper catchment of an unnamed tributary of the Waitangi River in Waimate North, Northland.

Fast-track consenting application process

Legislative context

7. Clause 2(1), Schedule 6 of the Act states that a person authorised in accordance with section 15 may apply for a resource consent that would otherwise be required under section 88 of the Resource Management Act 1991 (**RMA**).
8. Clause 3(1), Schedule 6 of the Act states that “*within 5 working days of receiving a consent application or notice of requirement, the EPA must determine whether the application or notice—*
 - (a) *relates solely to 1 or more of the listed projects or referred projects; and*
 - (b) *does not breach clause 2(3)(c) or (4); and*
 - (c) *contains all the information required under clauses 9 to 13.*”
9. Clause 3(2), Schedule 6 of the Act states that “*if the EPA is satisfied that a consent application or notice of requirement complies with the matters listed in subclause (1), the EPA must provide the application or notice to the panel appointed to determine that application or notice.*”
10. Clause 4(1), Schedule 6 of the Act states that “*if the EPA determines that a consent application or notice of requirement does not comply with the requirements of clause 3(1), it must return the application or notice immediately to the person who lodged it, with written reasons for the EPA’s determination*”.

Prerequisites for the application

11. There are a number of prerequisites for an application to be lodged as set out in this table.

Reference to clause in Schedule 6	Preliminary Matter	Comment	Accept/reject
Clause 2(1) or 2(2)	Application is made by authorised person or requiring authority	The Applicant is Te Tai Tokerau Water Trust.	Accept
Clause 2(3)(b)	Application is in approved form and manner	Yes	Accept
Clause 2(3)(c)	Application complies with any restrictions and obligations in either:		
	(i) Schedule 2; or	N/A This is a referred project and Schedule 2 does not apply.	Accept
	(ii) Schedule 3 and referral order	Yes Te Tai Tokerau Water Trust, the authorised person to apply for a	Accept

		<p>resource consent relating to the project and specified in the referral order.</p> <p>The scope of the application is within that specified in the referral order.</p> <p>The appropriate geographic location is consistent with that specified in the referral order.</p>	
Clause 2(4)(a)	Applications must not relate to an activity that is classified as a prohibited activity in a:		
	(i) Relevant plan or proposed plan	The draft application has not identified any prohibited activities in a relevant plan or proposed plan.	Accept
	(ii) RMA regulations (including any NES)	The draft application does not relate to an activity that is classified as a prohibited activity in any RMA regulations (including any NES).	Accept
Clause 2(4)(b)	Applications must not relate to an activity that is to occur within a customary marine title area unless agreed by the appropriate customary marine title group	The application does not relate to an activity that is to occur within a customary marine title area.	Accept
Clause 3(1)(a)	Relates solely to 1 or more of the listed projects or referred projects	The project is a referred project and is identified in Schedule 24 of the COVID-19 Recovery (Fast-track Consenting) Referral Projects Order 2020 (the referral order). The project is consistent	Accept

		with Schedule 24 of the referral order.	
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Conclusions on preliminary matters

12. The application can proceed to an assessment of whether the application contains all the information required under Clauses 9 to 13 of Schedule 6 of the Act.

Assessment of compliance table

13. An assessment table against Clauses 9-12 of Schedule 6 of the Act is included in Appendix 1.
14. The information provided must be in sufficient detail to correspond to the scale and significance of the effects that the activity is anticipated to have on the environment, taking into account any proposal by a consent applicant or requiring authority to manage adverse effects through conditions, including requiring the preparation of a management plan (Clauses 13(3) and 14 of Schedule 6 of the Act).
15. The information in the application has been assessed on the basis that the scale of the activity is medium, and potentially minor to moderate effects on the environment after taking into account mitigation measures and conditions.
16. My view is that the application **complies** with clause 3(1) of Schedule 6 of the Act and can be provided to the Panel.

Appendix 1: Clauses 9-11

Resource consent application for the Otawere Water Storage Reservoir

Table 1: Checklist of completeness requirements in Clauses 9-11 of Schedule 6 of the Act

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
Clause 9			
Clause 9(1)(a)	A description of the proposed activity	Yes Section 2 of the AEE	Yes
Clause 9(1)(b)	A description and map of the site at which the activity is to occur	Yes Section 3 of the AEE	Yes
Clause 9(1)(c)	Confirmation that the consent application complies with clause 3(1)	Yes Section 1.4 of the AEE	Yes
Clause 9(1)(d)	The full name and address of:	Yes	Yes
	<ul style="list-style-type: none"> i. Each owner of the site and of land adjacent to the site 	Section 3.2 of the AEE	
	<ul style="list-style-type: none"> ii. Each occupier of the site and of land adjacent to the site who, after reasonable enquiry, is able to be identified by the applicant 	Yes Section 3.2 of the AEE	Yes It is noted that some address details are missing. The EPA will locate the addresses for these sites.

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	Were reasonable inquiries made?	Yes Section 3.2 of the AEE	Yes
Clause 9(1)(e)	A description of any other activities that are part of the proposal to which the consent application relates	Yes Section 4 of the AEE	Yes
Clause 9(1)(f)	A description of any other resource consents, notices of requirement for designations, or alterations to designations required for the proposal to which the consent application relates	Yes Section 4 of the AEE	Yes
Clause 9(1)(g)	An assessment of the activity against—	Yes	Yes
	(i) Part 2 of the RMA	Section 7.1 of the AEE	
	(ii) the purpose of this Act	Yes Section 7.2 of the AEE	Yes

Section 19	<p>(iii) the following matters (set out in section 19 of the Act - whether project helps to achieve purpose of Act):</p> <p>(a) the project's economic benefits and costs for people or industries affected by COVID-19</p> <p>(b) the project's effect on the social and cultural well-being of current and future generations</p> <p>(c) whether the project would be likely to progress faster by using the processes provided by this Act than would otherwise be the case</p> <p>(d) whether the project may result in a public benefit by, for example: generating employment; increasing housing supply; contributing to well-functioning urban environments; providing infrastructure in order to improve economic, employment, and environmental outcomes, and increase productivity; improving environmental outcomes for coastal or freshwater quality, air quality, or indigenous biodiversity; minimising waste; contributing to New Zealand's efforts to mitigate climate change; and transition more quickly to a low-emissions economy (in terms of reducing New Zealand's net emissions of greenhouse gases); promoting the protection of historic heritage; strengthening environmental, economic, and social resilience, in terms of managing the risks from natural hazards and the effects of climate change; or any other benefit(s) identified.</p> <p>(e) whether there is potential for the project to have significant adverse environmental effects, including greenhouse gas emissions:</p> <p>(f) any other matter that the Minister considers relevant.</p>	<p>Yes</p> <p>Section 7.3 of the AEE</p>	<p>Yes</p>
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Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
Clause 9(1)(h)	An assessment of the activity against -- (a) any relevant provisions in a national environmental standard, including:	Yes Section 4.1 of the AEE	Yes
	i. Any relevant objectives, policies or rules	Yes Section 4.1 and 8.2 of the AEE	Yes
	ii. Any requirement, condition, or permission in any rules	Yes Section 4.1 of the AEE	Yes
	iii. Any other requirements	Yes Section 4.1 of the AEE	Yes
	(b) Any relevant provisions in any other regulations made under the RMA, including:	Yes Section 4 of the AEE	Yes
	i. Any relevant objectives, policies or rules	Yes Section 8 of the AEE	Yes
	ii. Any requirement, condition, or permission in any rules	Yes Section 8 of the AEE	Yes
	iii. Any other requirements	Yes Section 8 of the AEE	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	(c) Any relevant provisions in any national policy statement, including:	Yes Section 8.3 of the AEE	Yes
	i. Any relevant objectives, policies or rules	Yes Section 8.3 of the AEE	Yes
	ii. Any requirement, condition, or permission in any rules	Yes Section 8.3 of the AEE	Yes
	iii. Any other requirements	Yes Section 8.3 of the AEE	Yes
	(d) Any relevant provisions in a New Zealand coastal policy statement, including:	N/A The New Zealand Coastal Policy Statement is not relevant to this application	N/A
	i. Any relevant objectives, policies or rules	N/A	N/A
	ii. Any requirement, condition, or permission in any rules	N/A	N/A
	iii. Any other requirements	N/A	N/A
	(e) Any relevant provisions in any regional policy statement or proposed regional policy statement, including:	Yes Section 8.4 of the AEE	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	i. Any relevant objectives, policies or rules	Yes Section 8.4 of the AEE	Yes
	ii. Any requirement, condition, or permission in any rules	Yes Section 8.4 of the AEE	Yes
	iii. Any other requirements	Yes Section 8.4 of the AEE	Yes
	(f) Any relevant provisions in a plan or proposed plan, including:	Yes Section 4.2 of the AEE	Yes
	i. Any relevant objectives, policies or rules	Yes Section 8.5 and 8.6 of the AEE	Yes
	ii. Any requirement, condition, or permission in any rules	Yes Section 8.5 and 8.6 of the AEE	Yes
	iii. Any other requirements	Yes Section 8.5 and 8.6 of the AEE	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	(g) Any relevant provision in any planning document recognised by a relevant iwi authority and lodged with a local authority, including:	N/A	N/A
	i. Any relevant objectives, policies or rules	N/A	N/A
	ii. Any requirement, condition, or permission in any rules	N/A	N/A
	iii. Any other requirements	N/A	N/A
Clause 9(1)(i)	Information about any Treaty settlements that apply in the project area, including—	N/A – there are no Treaty settlements that apply to the project area.	N/A
	(i) the identification of the relevant provisions in those Treaty settlements		
	(ii) a summary of any redress provided by those settlements that affects natural and physical resources relevant to the project or project area	N/A	N/A
Clause 9(1)(j)	The conditions that the applicant proposes for the resource consent	Yes Section 9 of the AEE	Yes
Clause 9(4)(a)	An assessment of the activity's effects on the environment that includes the following information (set out in clause 10 Schedule 6 of the Act): ¹	Yes Section 5.2 of the AEE	Yes
	i. an assessment of the actual or potential effects on the environment		

¹ The application does not need to include any additional information specified in a relevant regional policy statement or plan that that would be required in an assessment of environmental effects under Schedule 4 of the RMA.

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	ii. if the activity includes the use of hazardous installations, an assessment of any risks to the environment that are likely to arise from such use	Yes Section 5.7 of the AEE	Yes
	iii. if the activity includes the discharge of any contaminant, a description of— (i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and (ii) any possible alternative methods of discharge, including discharge into any other receiving environment	Yes Section 5.6 of the AEE	Yes
	iv. a description of the mitigation measures (including safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect of the activity	Yes Section 9 of the AEE	Yes
	v. identification of persons who may be affected by the activity and any response to the views of any persons consulted, including the views of iwi or hapū that have been consulted in relation to the proposal	Yes Section 6 of the AEE	Yes
	vi. if iwi or hapū elect not to respond when consulted on the proposal, any reasons that they have specified for that decision	N/A Both the Hapū of Te Waimate and Te Rūnanga-Ā-Iwi-O-Ngāpuhi have been consulted.	N/A
	vii. if the scale and significance of the activity's effects are such that monitoring is required, a description of	Yes Section 9 of the AEE	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	how the effects will be monitored and by whom, if the activity is approved		
	viii. an assessment of any effects of the activity on the exercise of a protected customary right	N/A	N/A
Clause 9(4)(b)	An assessment of the activity's effects that also covers the following matters (set out in clause 11 of Schedule 6 of the Act): (a) any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects	Yes Section 5.2 of the AEE	Yes
	(b) any physical effect on the locality, including landscape and visual effects	Yes Section 5.3 of the AEE	Yes
	(c) any effect on ecosystems, including effects on plants or animals and physical disturbance of habitats in the vicinity	Yes Section 5.4 of the AEE	Yes
	(d) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations	Yes Section 5.5 of the AEE	Yes
	(e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants	Yes Section 5.6 of the AEE	Yes
	(f) the unreasonable emission of noise	Yes	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
		Section 5.2.2 of the AEE	
	(g) any risk to the neighbourhood, the wider community, or the environment through natural hazards or hazardous installations.	Yes Section 5.7 of the AEE	Yes
Clause 9(5)(a)	A cultural impact assessment, provided by or on behalf of the relevant iwi authority	No Appendix M The Cultural Impact Assessment in Appendix M has been prepared by Taiamai ki te Takutai Moana Resource Management Unit on behalf of the hapu of Waimate.	
Clause 9(5)(b)	If a cultural impact assessment is not provided, a statement of reasons given by the relevant iwi authority for not providing that assessment	Yes Appendix Z contains a letter of support for the CIA prepared by Taiamai ki te Takutai Moana Resource Management Unit on behalf of the hapu of Waimate. The letter has been signed by Babe Kapa, on behalf of Te Rūnanga a Iwi o Ngāpuhi. I accept this as being a statement of reasons from the relevant iwi authority for not providing a CIA.	
Clause 9(6)(a)	If a permitted activity is part of the proposal to which the consent application relates, a description that demonstrates that the activity complies with the requirements, conditions, and permissions for the permitted activity (so that a resource consent is not required for that activity under section 87A(1) of the RMA)	Yes Section 4 of the AEE	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
Clause 9(6)(b)	If the activity is to occur in an area that is within the scope of a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, an assessment of the activity against any resource management matters set out in that planning document (for the purposes of clause 30(3))	N/A The activity does not occur in an area that is within the scope of planning document prepared by a customary marine title group.	N/A
Clause 9(6)(c)	In the case of a referred project, all the additional information required by the relevant referral order. Clause 6 of the referral order requires the following information must be submitted to the panel with any consent application relating to the project:		
	6(a) a geotechnical assessment	Yes Appendix A of the Preliminary Dam Design Assessment (Appendix B to the AEE)	Yes
	6(b) an assessment of the hydrological and hydraulic effects of the proposed damming, diversions, water takes, and discharges on— i. bodies of surface water; and ii. groundwater and wider catchments; and iii. water allocation limits; and iv. operating in drought conditions; and v. projected climate change scenarios	Yes Appendix G and H	Yes
	6(c) an ecological assessment that includes an assessment of the effects of the project on avifauna, terrestrial fauna, aquatic	Yes	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	fauna and ecology, lizards, vegetation, wetlands (including gum wetlands), and biodiversity.	Appendix I	
	6(d) a landscape and visual assessment of the proposed reservoir and dams.	Yes Appendix K	Yes
	6(e) an assessment of the economic effects of the reservoir on the local economy, including for Māori.	Yes Appendix R	Yes
	6(f) a construction management plan for the proposed activities that includes construction methodology and staging, construction traffic, and dust and noise management.	Yes Appendix C	Yes
	6(g) an erosion and sediment control plan for the project site that includes the reservoir and the impact of the water takes.	Yes Appendix D	Yes
	6(h) an assessment of the risks of dam failure and proposed mitigation measures that is prepared by a suitably qualified person	Yes Appendix B and E	Yes
	6(i) an assessment of reservoir operations, including dam safety, that is prepared by a suitably qualified person.	Yes Appendix F	Yes