

COVID 19 Recovery (Fast-track Consenting) Act 2020

Te Tai Tokerau Water Trust Application for Matawii Water Storage Reservoir, Kaikohe

M-3 Minute of the Matawii Expert Consenting Panel – 16 September 2020

Request for information from Te Tai Tokerau Water Trust

The Matawii Expert Consenting Panel directs the EPA under clause 25 (1)(a)(i) of Schedule 6 FTCA 2020 to request the following items of further information from the applicant Te Tai Tokerau Water Trust.

The applicant's responses are to be provided pursuant to clause 25(2), within 10 working days from the EPA issuing the panel's direction (subclause (3)).

1. Who or what is the Te Tai Tokerau Water Trust? Is it an incorporated body (and if so, under what legal provisions), and does it have powers of land ownership, development and indefinite operation for the project proposed?
2. If it is not an incorporated body, who are the persons or entities at law that comprise it, such as trustees or members? Such persons or entities may need to be deemed the applicants in such situation, and need to be named and described to the panel with precision, in order for the consent to be granted to them.
3. What relationship at law does/do the applicant(s) have with the land on which all parts of the project are to be established and operated? This may be important should the panel decide securities are necessary for the long term performance of conditions of consent, for instance covenants under s108(2)(d) RMA, or bonds under s108A RMA, both deemed by s109 RMA to be instruments registrable under the Land Transfer Act that run with the land.
4. If the information requested in 3 above cannot be supplied in timely fashion, the applicant(s) may need to accept a pre-condition that before any work can be undertaken on site to implement the consent, those matters must be established and secured to the satisfaction of appropriate delegates of the two councils.
5. The design of the dam is at best conceptual at this time. Does/do the applicant(s) accept it will likely need to be made the subject of comprehensive conditions of consent ensuring the following: dam safety requiring thorough investigation and design, meticulous construction, built-in safety factors, comprehensive drainage (collection and monitoring), carefully monitored commissioning, knowledgeable and responsible operation, timely maintenance, independent ongoing review at all stages; all pursuant to milestones requiring expert engineer review and certification and adherence to the Dam Safety Guidelines?
6. As a related question, does/do the applicant(s) accept the description at law of the relationship at law between the RMA and the Building Act for regulatory purposes of dams like this one (pursuant

to some recent changes and repeals), described by the Environment Court in EYRE Community v CRC [2016] NZEnvC 178, at paras [50] to [53] under the heading "RMA and the building regulatory regime"

7. If it/they do not accept that description, it/they should lodge comprehensive legal submissions within the timeframe of these requests, setting out their legal view with reasons.
8. Provision of the information and clarification of the points made above are expected by **30 September 2020**.



Judge Laurie Newhook

Chairperson

Matawii Expert Consenting Panel