

File ref: FTC000043

22 March 2022

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Tēnā koe

### **Request for information from Te Tai Tokerau Water Trust in relation to the Otawere Water Storage Reservoir under COVID-19 Recovery (Fast-track Consenting) Act 2020**

The Otawere Water Storage Reservoir Expert Consenting Panel (the Panel) has directed the Environmental Protection Authority (EPA) to request further information from you under clause 25 of Schedule 6 of the COVID-19 Recovery Act 2020 (the Act), relating to the Otawere Water Storage Reservoir consent application.

At the direction of the Panel, The EPA is seeking the following information:

#### **Specified infrastructure exemption**

1. The AEE includes as Appendix N a legal opinion prepared for the purpose of the referral application. That opinion includes a qualification which states that the advice is provided on the basis that “the Reservoir Proposal will include consent conditions requiring completion and operation of the supply of water for the Ōhaeawai township.” Can the Applicant direct the Panel to where in the conditions such a requirement has been included?
2. It would also be useful if the Applicant could advise whether any discussions have been held with the relevant civil defence authorities in the area and if so the Applicant’s understanding of the views of those authorities in terms of the need for the reservoir to operate as a lifeline utility.
3. Further, since the date that the Applicant’s legal opinion was issued, the decision of the Fast Track Panel considering the *Kopu Marine Precinct* proposal was released (on 9 March 2022). One of the key issues in that case was the scope of the specified infrastructure exemption in s.45 of the Resource Management National Environmental Standards for Freshwater Regulations 2020. While it appears that the exemption relied on in that case was different (being regionally significant infrastructure rather than a lifeline utility), the Panel invites any comment the Applicant may wish to make on how that approach impacts its legal opinion (if at all).

### **Relationship to the land**

4. The AEE refers to the land on which the reservoir is to be constructed as being owned by two separate property owners. It also refers to a house downstream of the reservoir being relocated (Appendix T), and to offset planting occurring outside the footprint of the dam. It is not clear to the Panel what relationship the Applicant has to the land in these areas and therefore the ability of the Applicant to carry out works on those sites. The Panel seeks clarification of these matters.
5. It is also noted that the labelling of the title numbers in Figure 8 of the AEE does not appear to align with the titles in Appendices J1 and J2, with the result that some of the Appendices (K, O and P in particular) refer to the Site as comprising a single lot (although the inclusion of plans make it clear their respective assessments apply to both lots). The Panel requests clarification that its understanding is correct.

### **Reasons for consents**

6. At present the AEE contains a description of the reasons for consent which is organised under headings and spread across a number of pages. It would be helpful for the Panel if the Applicant could supply one tabling listing the consent triggers and the associated activity status for each such trigger.
7. The Panel would also appreciate clarification of how the water from the reservoir is to be conveyed to users. Is this through pipes in the ground? Have routes been determined yet and if not is the intention that any consents required would be part of a future consenting process?

### **Building across lot boundary**

8. As noted above, the AEE refers to the reservoir being constructed across two different lots. While the AEE acknowledges that building consent will be required for both dams, it does not appear that the issue of building across the boundary of two lots has been considered or discussed in the AEE.
9. The Panel seeks clarification from the Applicant as to whether it considers the location of the two dams gives rise to an issue of building across lot boundaries, and if so, how it proposes that this be addressed (whether through a requirement to hold the land parcels together or through another mechanism).

### **Importing of fill**

10. The AEE refers in section 2.3 to there being a need to import fill for the site. However, no details of where the fill is to be sourced from (locally, outside the region etc) is provided. It would also be of assistance to the Panel to understand whether the effects of sourcing from that location have been assessed by the Applicant's relevant experts.

### **Climate change and dam**

11. Section 8.5.6 of the AEE states that inflow design floods to the dam have not been specifically allowed for as is recommended under the New Zealand Dam Safety Guidelines 2015 (NZSOLD). The Panel seeks clarification of the reasons why such an allowance has not been made.

### **Landscape assessment**

12. The Landscape assessment (Appendix K) does not include any consideration of the cultural impact assessment (CIA) as the CIA had not been completed at that time. Now that the CIA is available, the Panel invites the Applicant to provide any further comments from a landscape perspective on the matters raised in the CIA.

### **CIA**

13. The CIA contains a number of recommendations (including as to requests for further surveys and reviews). It also includes a significantly different set of conditions to that included with the application as lodged with the EPA.
14. The Panel seeks clarification as to:
  - a. Whether the recommendations made in the CIA have been incorporated into the proposal and if not the reasons for that;
  - b. Whether tangata whenua were given an opportunity to review the conditions prior to lodgement and if so any feedback received on the extent to which the conditions address the concerns raised in the CIA.

### **Iwi/hapū management plans**

15. The AEE does not currently include reference to any iwi/hapū management plans. The Panel is aware that Ngāti Rēhia has an environmental management plan which appears to extend into this area.
16. The Panel seeks further information from the Applicant as follows:
  - a. Whether the Ngāti Rēhia plan includes the Site and if so:
    - i. a copy of that plan; and
    - ii. any comments the Applicant may have on the consistency of this proposal with that plan;
  - b. Whether it has checked with Northland Regional Council and Far North District Council as to whether there are any other iwi or hapū management plans that apply to the area, and if so:
    - i. a copy of any such plan; and
    - ii. any comments the Applicant may have on the consistency of this proposal with that plan.

### **Ecological**

17. The ecological peer review (Appendix S) makes a number of comments about the preliminary ecological assessment (Appendix I). These include that:
  - a. the preliminary assessment does not specify whether the wetland delineation used the Ministry for the Environment Guidelines 2020;
  - b. it is not clear whether the mitigation hierarchy set out in the National Policy Statement for Freshwater Management 2020 (NPSFM) has been applied;
  - c. it is not clear what aspects (if any) are intended as compensation;
  - d. it may be more appropriate to undertake further surveys (such as a kiwi survey) now to determine whether management plans for such fauna is required;
  - e. new wetlands as opposed to improving existing wetlands may be required.
18. The Panel seeks clarification as to whether these matters have been considered by the Applicant, how they have been addressed in the proposal, and if they have not been addressed, the reasons why.

## Management plans

19. Drafts of a number of management plans have been provided to the Panel. The Panel notes that in the draft Construction Environmental Management Plan reference is made to Waikato District Council which would appear to be a typographical error.
20. Drafts of other management plans proposed in the conditions (such as but not limited to the Construction Traffic Management Plan, Water Supply Management Plan, and Operational Reservoir Management Plan) have not been provided. This may be because the Applicant considers drafts of such plans are not necessary at this stage given the conditions it has proposed or for some other reason. The Panel would appreciate the Applicant clarifying why drafts of these plans have not been provided.

## Conditions

21. The expert reports appended to the AEE contain a range of recommendations ranging from the inclusion of specific conditions/management plans and the adoption of certain mitigatory measures. However, it is not clear to the Panel whether all of these recommendations have been incorporated into conditions. By way example (there may be others not listed below):
  - a. Appendix B includes a recommendation for additional gas monitoring during different weather conditions;
  - b. Appendix I refers to legal protections for offset planting however no detail is provided of such protections in conditions;
  - c. Appendix L (and the CIA) include a recommendation that the outer slope of both dams be eased so the gradient reflects the adjoining land;
  - d. Appendix O recommends that if fill materials or unexpected contamination is discovered further geotechnical investigations may be required;
  - e. Appendix P include recommendations in Appendix D as well as section 4.4 of the conditions;
  - f. Appendix Q includes recommendations around what the CTMP must cover.
22. Proposed condition 4 requires that adequate drainage discharge provide for precise monitoring. The plans provided do not appear to show the segmented drainage that would be required to monitor each of the seepage flows from the various critical zones in the dam. The Panel requests that the Applicant confirm whether this design has been undertaken, and if so provide a copy of the relevant design plans. If the design has not yet been done, and the intention is that this would be provided for via conditions, the Panel requests the Applicant confirm how it proposes to provide for this in conditions to achieve the objective of monitoring seepage flows from the critical zones and for the design to be peer reviewed.

## Supply of Information

In accordance with clause 25 of Schedule 6 of the Act the Te Tai Tokerau Water Trust must:

- i. Provide electronic copies of the information or report requested; or
- ii. Advise the EPA, with reasons that you decline to provide the information or report requested.

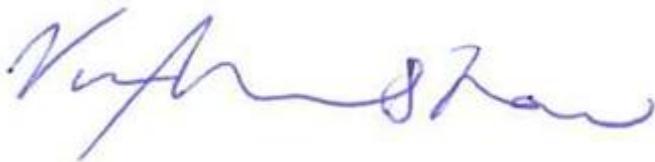
Please provide the further information to the EPA by **8 April 2022**.

If the information requested is not received, the panel must proceed as if the request for further information has been declined.

Please note, the information will be provided to the panel, the applicant and every person who provided comments on the application/notice of requirement. The information will also be made available on the EPA website.

If you have any questions or further queries, please don't hesitate to contact please contact Mary McConnell, Project Lead on 021 721 623 or at [mary.mcconnell@epa.govt.nz](mailto:mary.mcconnell@epa.govt.nz).

Nāku noā, na



Vicki Morrison-Shaw

**Chair, Otawere Water Storage Reservoir Expert Consenting Panel**