

Report on Section 17 Covid-19 Recovery (Fast-track Consenting) Act 2020 requirements - Application 9 - Clutha Upper Waitaki Lines Project (Transpower NZ Ltd)

	Required action:
To Hon David Parker, Minister for the Environment	Consider this report prior to making a decision under section 24 of the Act

Contacts

Position	Name	Organisation	Cell phone	1 st contact
Principal Author	Pip Lee	Ministry for the Environment	██████████	
Responsible Manager	Sara Clarke	Ministry for the Environment	██████████	✓
Director	Liz Moncrieff	Ministry for the Environment	██████████	

Introduction

1. The Ministry for the Environment has prepared this report, in consultation with the Office for Māori Crown Relations – Te Arawhiti, and in accordance with section 17 of the Covid-19 Recovery (Fast-track consenting) Act 2020 (the Act).
2. The Minister for the Environment must consider this report before making a decision under section 24 of the Act on whether to refer a project to an expert consenting panel.
3. This is necessary to satisfy the Minister's obligations under section 6 of the Act relating to decisions on referral applications.

Proposed project

4. Transpower NZ Ltd is seeking to have a proposed upgrade of existing 220kV electricity transmission lines between the Otago-Southland region, the Waitaki Valley and Mackenzie Basin referred to an expert consenting panel for consideration under the Act.
5. Construction of a temporary workers' village near Ranfurly is included in the proposal. The specific location of this village is yet to be confirmed.

Essential information

6. The following information is required under section 17(3) of the Act for the project area.

Section of the Act	Information required	Detail
s17(3)(a)	Relevant iwi authority	Te Rūnanga o Ngāi Tahu (TRoNT) <i>Note: the Ngāi Tahu Paptipu Rūnanga of the South Canterbury/Otago & Southland areas represent TRoNT's interests with respect to RMA matters in</i>

Section of the Act	Information required	Detail
		<i>their respective areas and should be treated as relevant contacts.</i>
s17(3)(b)	Relevant Treaty settlement	Ngāi Tahu Claims Settlement Act 1998
s17(3)(a)	Relevant Treaty settlement entity	Te Rūnanga o Ngāi Tahu
s17(3)(c)	Relevant principles & provisions of the settlement	<i>See below</i>
s17(3)(d)	Negotiation mandates recognised by the Crown	None
s17(3)(d)	Current Treaty settlement negotiations	None
s17(3)(e)	Court orders recognising customary marine title or protected customary rights under the Marine & Coastal Area (Takutai Moana) Act 2011	None, and the project does not affect the coastal marine area.

Supporting material

Proposed project area

7. The project involves:

- a. two sections of existing 220kV National Grid transmission lines, as shown in red on the map in Appendix 1:
 - i. Roxburgh - Islington A (ROX-ISL-A): Roxburgh to Livingstone section.
 - ii. Roxburgh - Twizel A (ROX-TWZ-A): Cromwell to Twizel section.
- b. Construction of a temporary village for accommodating project workers, to be located somewhere within an area that includes much of the Maniototo Plain and environs. The settlements of Ranfurly, Naseby, Patearoa and Waipiata are located within this area, as shown in the maps attached to the original application.

8. None of the project affects the coastal marine area, meaning:

- a. it is unaffected by the provisions of the Marine & Coastal Area (Takutai Moana) Act 2011 (MACAA);
- b. there are thus no court orders recognising customary marine title or protected customary rights under MACAA of relevance to consider; and
- c. the Minister for the Environment is the sole party required to consider this report.

Iwi and iwi authorities

Information sources

9. Under section 7(1) of the Act, a relevant iwi authority means an iwi authority whose area of interest includes the area in which a project will occur. The Act does not define iwi authority, so under section 7(2) of the Act, it has the same meaning as in the Resource Management Act 1991 (RMA).
10. Thus, an iwi authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so.
11. Te Kāhui Māngai (TKM) is an online directory of iwi and Māori organisations maintained by the Ministry of Māori Development - Te Puni Kōkiri. Among other things, the database gives information supplied by Māori representative organisations on:
 - a. mandated bodies recognised by the Crown for Treaty of Waitangi settlement purposes, including Treaty negotiations and post-settlement governance entities; and
 - b. iwi authorities and groups that represent hapū for the purposes of the RMA.
12. This information is useful for:
 - a. broadly identifying the iwi authorities (and where appropriate hapū groups) within a region or district; and
 - b. identifying the rohe or tribal areas over which iwi advise that they exercise kaitiakitanga for RMA purposes.
13. It does not constitute advice from the Crown, nor any Crown agency, on which iwi authorities or hapū in a particular rohe should be consulted or engaged with on a particular matter. This issue must be determined in relation to the specific matters under consideration, taking into account the local decision-making landscape, any consultation or engagement that may have occurred, advice from local government, and the views of iwi themselves.

Ngāi Tahu

14. Te Rūnanga o Ngāi Tahu (TRoNT) is identified on TKM as the iwi authority that represents Ngāi Tahu interests under the RMA for the area that includes the proposed project. It is also identified as the only iwi authority for this area.
15. TRoNT advises that eighteen Papatipu Rūnanga represent TRoNT's interests at the regional level, and that the appropriate Papatipu Rūnanga should be consulted on all RMA matters as well as the iwi authority.
16. Te Rūnanga o Arowhenua is the rūnanga representing the interests of Ngāi Tahu tangata whenua in the area south of the Rakaia River to the Waitaki River. RMA & environmental matters are handled by its subsidiary company Aoraki Environmental Consultancy Ltd (AEC).
17. The 5 Papatipu Rūnanga in the Otago/South Canterbury areas (Te Rūnanga o Hokonui, Te Rūnanga o Ōtākou, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga of Moeraki and Te Rūnanga o Waihao) are represented by Aukaha Ltd.
18. Te Ao Marama, based at Murihiku Marae in Invercargill, represents Ngāi Tahu ki Murihiku tangata whenua (Te Rūnanga o Awarua, Te Rūnaka o Ōrāka-Aparima, Te Rūnanga o Waihōpai and Te Rūnanga o Hokonui).

19. Comments received from local authorities in response to invitations under section 21(2)(a) indicate that they consider the Ngāi Tahu rūnanga representatives as the most appropriate primary contacts. Details are in Appendix 1.
20. Environment Canterbury (ECan) advise that it has existing Service Level Agreements with AEC, Aukaha and the Arowhenua, Waihao and Moeraki Rūnanga, regarding decision-making on resource consents under the RMA.
21. The Otago Regional Council, Central Otago District Council and Waitaki District Councils advise they do not have any similar agreements with Ngāi Tahu.

Other groups

22. Waitaki District Council has a formal relationship agreement with Waitaha Taiwhenua o Waitaki, which recognises this group as kaitiaki with the district. Waitaha is recognised as as a hapu Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998, however Waitaha have long strived for recognition as a separate iwi and continue to do so. They are represented by the Waitaha Taiwhenua o Waitaki Trust Board. Details are in Appendix 1.

Treaty settlement and Treaty settlement entities

23. The Ngāi Tahu Claims Settlement Act 1998 is the only settlement of historical Treaty claims relating to the proposed project area.
24. The Act gave effect to the deed of settlement between TRoNT and Her Majesty the Queen, dated 21 November 1997.
25. The settlement applies to the takiwā of Ngāi Tahu, which covers the majority of the South Island of Aotearoa (Te Waipounamu).
26. The area is defined as all the area of Te Waipounamu south of the northernmost boundaries described in the decision of the Maori Appellate Court in *Re a claim to the Waitangi Tribunal* by Henare Rakihia Tau, 12 November 1990, 4 South Island Appellate Court Minute Book 672 (reproduced in the report of the Waitangi Tribunal on the Ngai Tahu claim, February 1991, Volume 3, page 1122).
27. TRoNT is the post-Treaty settlement governance entity associated with the Treaty settlement.

Relevant principles and provisions in the Ngāi Tahu Treaty settlement

28. The Treaty settlement with Ngāi Tahu was one of the early substantial Treaty settlements undertaken by the Crown. The key principles and provisions of the settlement are outlined below.
29. Te Rūnanga o Ngāi Tahu and the Crown signed a deed of settlement on 21 November 1997, and legislation necessary to enact it is contained in the Ngāi Tahu Claims Settlement Act 1998.
30. In the Act the Crown acknowledged and apologised for its failings in respect of historical land purchases and obligations under the Treaty of Waitangi, which have led to suffering and hardship for Ngāi Tahu, and harm to the tribe's welfare, economy and development.
31. The Crown specifically acknowledged Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the takiwā of Ngāi Tahu Whānui, as part of its apology. This area covers the majority of the South Island of Aoteroa/New Zealand.

32. Importantly, the legislation and its associated deed set out the measures by which the Crown, on behalf of all New Zealanders, proposed to atone for the past failures, as far as was possible, and thus to begin the process of healing and movement into a new age of co-operation with Ngāi Tahu.
33. A key symbol of this goodwill was the return of the sacred maunga (mountain) Aoraki/Mt Cook to Ngāi Tahu and its subsequent gift back to the nation.
34. The initial financial value of the settlement was \$170m, which gave Ngāi Tahu the opportunity to buy certain Crown assets (including farms, forests and other commercial properties) to help fund its economic development. The settlement also included provisions for top-up payments to Ngāi Tahu to allow them to maintain relativity with the value of other Treaty settlements.
35. Redress also included transfer and vesting of many other Crown reserves, river and lake beds and land throughout the South Island, name changes to certain places and special features, nohoanga entitlements (rights to temporarily occupy an area close to a waterway), tōpuni (overlay classification), deeds of recognition and statutory acknowledgements. Complementing some of the transfers were newly created rights allowing Ngāi Tahu a role in decision-making for some resources and areas within the conservation estate.
36. The settlement did not create any new co-governance or co-management processes affecting decision-making under the RMA.
37. These provisions were intended to restore and strengthen the iwi's association and connection to its traditional lands and resources, to provide for the exercise of rangatiratanga over them, and for the tribe's on-going cultural development.
38. The statutory acknowledgements recognise the cultural, spiritual, historical and/or traditional association of Ngāi Tahu with several specifically named sites and areas.
39. Section 208 of the Ngāi Tahu Claims Settlement Act 1998 requires consent authorities to have regard to statutory acknowledgements in forming an opinion under the RMA as to whether Te Rūnanga o Ngāi Tahu is a person who may be adversely affected by the granting of a resource consent for activities within, adjacent to, or impacting directly on, statutory areas.
40. The Environment Court and Heritage New Zealand Pouhere Taonga also must have regard to statutory acknowledgements in certain limited decision-making situations under the RMA and other legislation.
41. The statutory acknowledgements of particular relevance to the proposed project include:
 - Lake Roxburgh;
 - Lake Dunstan;
 - Lake Aviemore;
 - Lake Benmore; and
 - the Waitaki River.
42. While the Treaty settlement identifies the Ngāi Tahu association with these specific sites and areas, there are many sites within the Ngāi Tahu takiwā which are not specifically

noted in the Treaty settlement but which are sacred or hold special significance for both local Ngāi Tahu tangata whenua and the iwi as a whole.

43. Importantly, cultural associations with ancestral lands, water, sites, waahi tapu, and other taonga – regardless of whether or not they are specifically identified in a Treaty settlement or affected by a statutory acknowledgement - are deemed to be matters of national importance that must be recognised and provided for in decision-making under Part 2 section 6(e) of the RMA.
44. An inherent assumption of the settlement was that the Crown was sincere in its intention not to repeat its mistakes of the past and would act as a reasonable and honourable Treaty partner in its dealings with Ngāi Tahu in the post-settlement era.
45. In practice, recognising the iwi as the tāngata whenua of, and as exercising rangatiratanga over, the takiwā of Ngāi Tahu Whānui means (among other things) that all those who act for the Crown will not overlook the traditional role of Ngāi Tahu as kaitiaki of the land and resources within this area. Importantly, this responsibility remains even if the land or resources have been alienated.
46. Respect for Ngāi Tahu views on these matters and ensuring the rights of the iwi to be involved in decision-making in relation to them are protected are important ways in which the Crown can give effect to its acknowledgement of Ngāi Tahu rangatiratanga, and uphold its relationship with Ngāi Tahu.
47. This is particularly important when opportunities for involvement are limited and timeframes for engagement are curtailed, such as under the Covid-19 Recovery (Fast-track Consenting) Act 2020. This is because such processes generate additional pressures on the ability of many Māori groups to respond within the confines of their own decision-making processes.

Current negotiation mandates and settlement negotiations

48. There are no recognised mandates for negotiation of any further historical Treaty claims, or any current or anticipated negotiations for settlement of historical Treaty claims, affecting the proposed project area.

Appendix 1: Contact information for iwi authorities, Treaty settlement entities & other groups

Entity	Description	Contact person	Copies to	Contact details
Aoraki Environmental Consultancy Limited	Arowhenua is the principal Māori kainga of South Canterbury, and Te Rūnanga o Arowhenua represents the interests of Ngāi Tahu tangata whenua in the area (south of the Rakaia River to the Waitaki River). RMA & environmental matters are handled by its subsidiary company Aoraki Environmental Consultancy Ltd	Manager – Ally Crane [REDACTED]	Kylie Hall – Principal planner [REDACTED]	75 Main South Road, Sockburn, Christchurch 8042 Office: 03 684 8723
Aukaha Ltd	An advisory company which represents 5 Papatipu Rūnanga from Otago/South Canterbury (Te Rūnanga o Hokonui, Te Rūnanga o Ōtākou, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga of Moeraki and Te Rūnanga o Waihao).	Manager – Nicola Morand [REDACTED]	Senior Resource Management Planner - Maree Kleinlangevelsloo [REDACTED]	PO Box 446 Dunedin 9054 Phone: 03 477 0071
Te Ao Marama Inc	Represents the 4 Papatipu Rūnanga in Southland ((Te Rūnanga o Awarua, Te Rūnaka o Ōrāka-Aparima, Te Rūnanga o Waihōpai and Te Rūnanga o Hokonui).	Manager – Dean Whaanga [REDACTED]		C/- Murihiku Marae 408 Tramway Rd Invercargill 9844 Phone: 03 931 1242
Te Rūnanga o Ngāi Tahu	Represents Ngāi Tahu as an 'iwi authority' for RMA purposes. Is the post-Treaty settlement governance entity that was established under the Ngāi Tahu Claims Settlement Act 1998.	Kaihautū / CEO – Arihia Bennett [REDACTED]		P.O. Box 13 046 Christchurch 8141 Phone: 0800 524 8248
Waitaha Taiwhenua o Waitaki Trust Board	Waitaha are recognised by Waitaki District Council as kaitiaki (via a formal relationship agreement)			8 Redcliff Road Glenavy R D 10 Waimate 7980