

HOLLAND BECKETT
L A W

21 March 2023

Ministry for the Environment
BY EMAIL ONLY

BY EMAIL
fasttrackconsenting@mfe.govt.nz

Attention Madeleine Berry

Request for Further Information - Taheke Geothermal Project

1. We refer to your letter of 7 March 2023 and the requests for further information set out within it.
2. We write to provide further information on the requests to provide "Evidence that you have a legal right to access all of the land within the project site".
3. We have been provided with copies of the following:
 - (a) The Project Participation Agreement dated 5 September 2012 (**Participation Agreement**) between John Merito, Alan McCaulay, James Vercoe, Tawhri Morehu and Hulton Patchell Support Services Ltd as trustees of the Whangamoa Trust (**Whangamoa Trust**), The Proprietors of Taheke 8C and Adjoining Blocks Incorporation (**Taheke**) and Contact Energy Ltd.
 - (b) The Deed of Assignment dated on or about 2017 between the Whangamoa Trust, Taheke and Contact Energy Ltd (**Deed of Assignment**).
 - (c) Project Agreement for the Taheke Geothermal Development Project" dated 17 December 2019 (**Agreement**) between Taheke and Eastland Generation Ltd (**Eastland**).
 - (d) Letter dated 16 March 2023 from Taheke (**Taheke Letter**).

Access to Taheke's Land

4. We confirm that the Agreement provides the following:
 - (a) The Project as defined in the Agreement is "the exploration and development of the Geothermal Resource on or under the Land including the planning and investigation, and if economically viable, financing, design, construction, Commissioning, operation and maintenance of a Facility or Facilities on the electricity generation (**Project**).
 - (b) A Limited Partnership is to be formed by Eastland and Taheke.
 - (c) An access licence for 5 years from the date of the Agreement between Taheke to the Project SPV for the purpose of undertaking the Project exploration and development work on terms set out in the Agreement (**Access Licence**). The Access Licence is an exclusive right from the date of the Agreement to the date all necessary

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consents are issued for the Project, it then becomes an non-exclusive right until the expiry of the term i.e. 40 years from the date of the Agreement.

- (d) The Access Licence applies to the Land set out at Schedule 1 of the Agreement, this comprises the following records of title:

- (i) SA69A/795;
- (ii) 509150;
- (iii) 646099;
- (iv) 438880; and
- (v) SA1289/79.

- (e) Various records of title are categorised as being “Excluded Land” in Schedule 2 of the Agreement, these titles include the following which form part of the project site:

- (i) SA18B/1385, however the table notes “easement for waterline required”;
- (ii) SA18B/1383, however the table notes “easement required for waterline”; and
- (iii) SA1289/78.

- (f) That Taheke shall grant the Project SPV the right to lease the footprint of the Facility, buildings, structures and pipelines for a term of 40 years less the time already lapsed from the date the Agreement was signed (**Lease**). The terms of the Lease shall be as set out in the Agreement and as negotiated by the parties, provided that those terms will enable the Project SPV to effectively carry out the Project.

- (g) That the Project SPV may request a non-exclusive easement over the records of title listed in the Agreement as:

- (i) “Included Land” for the purposes of accessing the subsurface geothermal resource; and
- (ii) “Excluded Land” for transmission lines, substation, steam pipeline and/or water pipeline.

(together, the **Easements**)

The Easements are to be on terms to be agreed between the parties and as set out in the Agreement.

- (h) If the Lease is required over record of title 438880 where Taheke owns 2.5 out of 3 shares, then Taheke shall seek approval by the requisite majority of owners and the Maori Land Court within 12 months if requested by the SPV.

- (i) That if part of the footprint of the land required within the Lease is subject to Forestry Right Instrument 11017119.3, then Taheke will use best endeavours to negotiate with

the licensee to achieve the requested surrenders, releases and terms of access to those areas.

5. We note that while the records of title set out at paragraph 4(e) above:

- (a) are included within the project site; and
- (b) are not listed as being part of the "Included Land" in the Agreement to which the Access Licence and Lease will apply,

the Taheke Letter confirms that Taheke is willing to grant the Project SPV all necessary access licences and leases over those three records of title on a similar basis to the Licence and Lease so that the Project SPV can deliver the Project. The Agreement already allows for the Project SPV to request an Easement over them.

Access to the Whangamoa Trust's Land

6. Taheke has the benefit of an easement (in gross) to convey geothermal fluids and electricity together with a geothermal exploitation easement and profit a prendre over:

- (a) The areas marked "A" and "E" on DP 465688 which are located on the land comprised in record of title SA36C/174; and
- (b) The areas marked "B", "C" and "D" on DP 465688 which are located on the land comprised in record of title 505759,

As set out in Easement Instrument 9603429.1 (**Easement Instrument**).

7. Clause 22 of the Easement Instrument provides that Taheke cannot transfer, lease, assign or licence all or any part of its interest in the Servient Tenements or in the Easement Instrument itself without:

- (a) the consent of the Trust (such consent not to be unreasonably refused or delayed);
- (b) the transfer or assignment of its interest in the Servient Tenements being in conjunction with an assignment of the Project Participation Agreement as consented to by the Trust.

8. We confirm that the Participation Agreement provides that consent must be obtained from the other party prior to assignment of any rights and obligations under the Participation Agreement. However, Taheke may assign and transfer its rights and obligations under the Participation Agreement to the limited partnership or other joint venture entity established by Taheke (and previously Contact), provided that certain conditions are met.

9. We further confirm that the Participation Agreement was previously assigned from Taheke and Contact to Taheke in the Deed of Assignment.

10. We are advised that the Whangamoa Trust will provide a letter (**Anticipated Whangamoa Letter**) confirming that the Whangamoa Trust will consent to the assignment of both the Easement Instrument and the Participation Agreement to both Taheke and Eastland or the Project SPV (as appropriate).

11. The Taheke letter confirms that Taheke will consent to the assignment of both the Easement Instrument and the Participation Agreement to both Taheke and Eastland or the Project SPV (as appropriate).

Conclusion

12. As mentioned above, final terms of the Lease and the Easements with respect to the Land are yet to be agreed between the parties. Further, Taheke is yet to obtain approval from the remaining shareholders and the Maori Land Court with respect to the Lease over record of title 438880.
13. Subject to our comments above and the Anticipated Whangamoia Letter being provided, our view is that there is, or there is an agreement to grant, a legal right to access all of the land within the project site within the Taheke Letter, the Agreement, the Easement Instrument and the Participation Agreement.

Yours faithfully

HOLLAND BECKETT LAW



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s 9(2)(a)