

Terms of Reference

Licence Application to Construct Works - Panel

Version 10 May 2021

These Terms of Reference are in respect of a Panel appointed by the delegate of the Minister for Water pursuant to Part 5, Section 66 of the *Water Act 1989* (**Water Act**) to consider submissions made in respect of Works Application No AN JW1624119 (**Application**) to construct works under section 67 of the Water Act on or to a private dam (**Private Dam**) located at 1075 Horseshoe Bend Road, Torquay (**Property**)

Name


1. The Panel, is to be known as the “Horseshoe Bend – Private Dam Panel” and may be referred to as the “Panel”.
2. The Panel is to have not less than two members (**Members**) with the combined skills of the Members to include:
 - a. environmental policy and regulation;
 - b. experience of ministerial committees, panels or related processes or bodies;
 - c. civil engineering, dam construction and dam safety.
3. The Panel will include a Chair appointed by the Minister’s delegate.

Purpose

4. The purpose of the Panel is to consider submissions made in respect of the Application in response to a requirement to give notice of the Application under section 65 of the Water Act.
5. The Panel will consider all submissions and report, provide comment, advice and recommendations to the delegate of the Minister for Water who is to determine the Application.


Background

6. The Private Dam on the Property was constructed in or around 1987 to assist the operation of a flower farm on the Property, initially associated with a section 51 surface-water licence (Winter-fill from Bream Creek) and later also to serve as a water storage for the receipt and distribution of recycled water to both the Property and third-party users.
7. It became necessary for the Private Dam to obtain authorisation in respect of its existence as a regulated activity under section 75A of the Water Act. Such authorisation was not sought or obtained.
8. In October 2020 it was discovered that water had flowed from the Private Dam on the Property onto and under nearby properties which led to concerns regarding the stability of the Private Dam and safety for persons and property. Interim actions taken included the temporary evacuation of residents of the residential properties proximate to the Private Dam.

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9. Subsequent investigation of the Private Dam revealed:
 - a. minor defects on and in the embankment of the Private Dam; and
 - b. the existence of a redundant pipeline running from the Private Dam to a desalination plant (now decommissioned) on nearby land and the failure (after decommissioning of the desalination plant) to block, remove or otherwise make safe, that pipeline.
 10. Directions under section 80 of the Water Act have been issued which effectively require:
 - a. interim measures to facilitate the temporary safe operation of the Private Dam; and
 - b. that the owner of the Property either make application under section 67 of the Water Act to undertake particular works in respect of the Private Dam to ensure its safe operation, or cease the operation of the Private Dam and decommission it.
 11. The Application has been made and the Minister's delegate has:
 - a. directed notification of the Application under section 65 of the Water Act, both generally through public notice and advertising and by specific notice to particular property owners and occupiers;
 - b. appointed this Panel to consider any submissions, received in response to notification in respect of the Application;
 - c. invited submitters who wish to do so, to, in addition to written submissions, make oral submissions via a public hearing conducted by the Panel as contemplated in these Terms of Reference; and
 - d. advise and report in respect of the Application and submissions in respect of same.

Method

12. The Panel may regulate its own proceedings and inform itself in any way it thinks fit, but must consider:
 - a. these Terms of Reference;
 - b. all submissions in respect of the Application;
 - c. comments received from any government agency or department, municipal council, statutory corporation or authority;
 - d. comments (if any) the Department of Environment, Land, Water and Planning (DELWP); and
 - e. comments from the Applicant.
13. The Panel is not expected to carry out any additional public notification, however, it may seek the views of any government agency or department, municipal council, statutory corporation or authority.
14. Southern Rural Water will be responsible for managing any notification process required and shall provide secretariat services to the Panel.

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15. The Panel may seek advice from other experts, including legal counsel, environmental consultants, other engineers or dam safety experts.
 16. The Panel is expected to carry out a public hearing in relation to those submitters who wish to make oral representations in relation to their submission.
 17. In respect of the public hearing the Panel will make its own directions and set out its own processes for the purposes of the lead up to, conduct of and reporting in respect of that public hearing.
 18. The Panel may, in addition to any public hearing, assess any written or electronic material submitted, conduct discussions, forums or conferences (by video platform or otherwise).
 19. The Panel may seek to vary these Term of Reference in consultation with the Minister's delegate.
 20. The Panel must, through its deliberations, then its advice and reporting, consider:
 - a. all matters required to be taken into account under section 68 of the Water Act;
 - b. in particular, matters set out at sub-paragraph (b) to (m) of section 40(1) of the Water Act;
 - c. the relevant Australian National Committee on Large Dams (ANCOLD) guidelines; and
 - d. safety of the Property, surrounding properties, buildings and infrastructure, residents and the public.

Outcomes

21. The Panel must produce a report for the delegate of the Minister for Water tasked with determining the Application, including:
 - a. a response to the "Purpose" stated above;
 - b. an assessment of submissions considered by the Panel,
 - c. any other relevant matters identified in the course of the Panel's deliberations;
 - d. a list of persons, agencies or other entities in respect of which submissions, information or comments were received;
 - e. a list of any other persons or entities consulted or heard; and
 - f. recommendations as to:
 - i. whether the Application ought to be approved, approved with conditions or refused;
 - ii. if a recommendation to grant is made, recommendations as to particular conditions to be incorporated in respect of any licence which may be issued for the works and ongoing operation of the dam; and
 - iii. any other recommendations in relation to the application as the Panel thinks fit.

Timing

22. The Panel is required to:

- a. issue a general direction as to its intended process and any public hearings proposed no later than twenty (20) business days from the date of closure of submissions under section 65 of the Water Act;
- b. if the Panel thinks it is necessary, conduct a procedural or directions hearing, no later than twenty (20) business days from the date of issue of any directions under paragraph 22(a); and
- c. conduct a public hearing in respect of any person requesting an opportunity to be heard at that hearing, no later than forty (40) business days after the issue of any direction under 22(b).

23. The Panel must submit its report in written, electronic form, to the delegate of the Minister for Water by 30 September 2021.

Costs

24. The costs of the conduct of the Panel process (including costs of the Panel Members) will be met by Southern Rural Water.

Date: 21 / 6 / 2021



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Cameron FitzGerald
Managing Director
Southern Rural Water
Delegate of the Minister for Water