

**Before an Independent Hearing Commissioner
At Lower Hutt**

Under the Resource Management Act 1991 (the Act)

In the matter of A notice of requirement for a designation by Wellington Water Limited ('**WWL**'), on behalf of Hutt City Council ('**HCC**'), in accordance with section 168A of the Act, for the construction, operation and maintenance of a water supply reservoir at Summit Road, Fairfield, Lower Hutt.

Legal submissions for Wellington Water Limited

Dated 26 November 2024

DENTONS

40 Bowen Street
PO Box 10246
Wellington 6011

P +64 4 472 7877
F +64 4 472 2291
DX SP26517

Solicitor: E Hudspith/B Attwood
E Ezekiel.hudspith@dentons.com/ben.attwood@dentons.com

Contents

1	Introduction	2
2	Scope of legal submissions	3
3	Background to the Project	3
4	Description of the Project	6
5	Statutory framework for determining the NOR	9
6	Assessment of effects	9
7	Consideration of alternatives	16
8	Reasonably necessary to achieve the objectives	17
9	Relevant statutory instruments	19
10	Other matters	20
11	Matters raised by submitters	21
12	Matters raised in the Section 42A Officer's Report	23
13	Part 2 RMA considerations	23
14	Proposed conditions	24
15	Evidence to be presented	25
16	Conclusion	26

May it please the Commissioner:

1 Introduction

- 1.1 On 29 February 2024, Wellington Water Limited (**'WWL'**) issued a Notice of Requirement (**'NOR'**) on behalf of Hutt City Council (**'HCC'**) to provide for a Designation for the construction, operation and maintenance of the Eastern Hills Reservoir (**'Project'**) located at the top of Summit Road, Fairfield, Lower Hutt.
- 1.2 The purpose of the NOR is to establish a new designation that will provide for the construction, operation and maintenance of a new 15ML concrete reservoir (the Project), to the south of the existing 'Naenae' reservoir.
- 1.3 The Project will significantly expand water supply infrastructure within the Lower Hutt Central Water Storage Area (**'WSA'**) and address part of the volume shortfall. Compared with the current water infrastructure within the Lower Hutt Central and Taitā WSAs, which cannot meet current storage, service, and seismic requirements, the Project will:¹
- a Improve disaster resilience of the Lower Hutt and Taitā WSAs;
 - b Ensure the Lower Hutt and Taitā WSAs are operationally resilient;
 - c Deliver a secure, safe and reliable water storage solution that has a 100-year design life; and
 - d Be integrated within the Lower Hutt Central WSA network in a cost-effective manner.
- 1.4 The Project will meet present needs, whilst also providing for future growth and operational and disaster resilience. These functions are critical to supporting Hutt City's economy, the health of its communities, its ability to withstand temporary water supply disruption, and its ability to recover from significant events, such as a large earthquake.²
- 1.5 The Project includes activities that require resource consents under the Natural Resources Plan, which are being sought separately from Greater Wellington Regional Council (**'GWRC'**).
- 1.6 The key findings reached in WWL's technical assessments and evidence are accepted by the s 42A Officer's Report (**'Officer's Report'**). The only divergence relates to a handful of conditions recommended in the Officer's Report which

¹ AEE, pages 14-15.

² NOR Lodgement Letter, 28 February 2024.

have not been adopted by WWL's experts, as discussed below and in the evidence of **Ms Crooks**.³

- 1.7 WWL's expert witnesses have also considered the questions raised by the Commissioner's second Minute,⁴ and an updated version of the proposed conditions is provided with these legal submissions.

2 Scope of legal submissions

2.1 These submissions will address:

- a The background to the Project;
- b A description of the Project;
- c The statutory framework for a NOR;
- d The assessment of effects;
- e The consideration of alternatives;
- f Whether the proposed works and designation are reasonably necessary to achieve the objectives;
- g The relevant statutory instruments;
- h Relevant 'other matters';
- i Matters raised by submitters;
- j Matters raised in the Officer's Report;
- k Part 2 RMA considerations;
- l Proposed conditions; and
- m The evidence to be presented in support of the NOR.

3 Background to the Project

- 3.1 HCC is a territorial authority, and a requiring authority pursuant to section 166 of the RMA. HCC has financial responsibility for all water-related infrastructure assets and asset development programmes within Hutt City, which includes the proposed Eastern Hills Reservoir. WWL is a shared-service Council Controlled Organisation ('**CCO**') jointly owned and funded by the Wellington, Hutt City,

³ EIC Crooks, at 15.

⁴ Dated 19 November 2024.

Upper Hutt, Porirua City Councils, South Wairarapa District Council, and the Greater Wellington Regional Council (**GWRC**). WWL's is responsible for the delivery of three waters services on behalf of its client councils.

- 3.2 Although HCC is the Territorial Authority with overall financial responsibility for the Project,⁵ WWL is responsible for the development of the Project, including obtaining the necessary RMA approvals on HCC's behalf.
- 3.3 The Project strongly aligns with one of HCC's key priority areas – investing in infrastructure – and will contribute towards HCC's aspirations for a resilient community.⁶
- 3.4 WWL will be responsible for the construction, operation and maintenance of the Project, including delivery and overflow pipelines and associated connections.⁷

Need for the Project

- 3.5 The need for the Project is described in the Assessment of Environmental Effects ('AEE') and in the evidence of **Mr Laurence Edwards**.⁸
- 3.6 There is an immediate need to introduce additional storage capacity serving the Lower Hutt Central WSA and adjoining Taitā WSA to meet the Wellington Water level of service requirements.⁹ The interconnected nature of the Lower Hutt Central and Taitā WSAs means that a combined approach (a single reservoir) for addressing the storage deficit is feasible and preferred.¹⁰
- 3.7 Potable water storage for Lower Hutt Central WSA and Taitā WSA is currently provided by three existing reservoirs at Naenae (11.3ML), Gracefield (5.7ML), and Taitā (5.5ML).¹¹ This total storage volume does not meet current level of service requirements (of 30ML)¹², with a shortfall of approximately 12 ML.

⁵ And also the applicant and intended consent holder in relation to the regional resource consents being sought in parallel.

⁶ AEE page 6.

⁷ AEE page 7.

⁸ AEE, section 9; EIC Edwards, sections 7 and 8.

⁹ EIC Edwards, at 8.2, 9.4, 9.7

¹⁰ EIC Edwards, at 9.3.

¹¹ EIC Edwards, at 7.3.

¹² Hutt City Water Supply Zone Management Report, Stantec, November 2020, page 21.

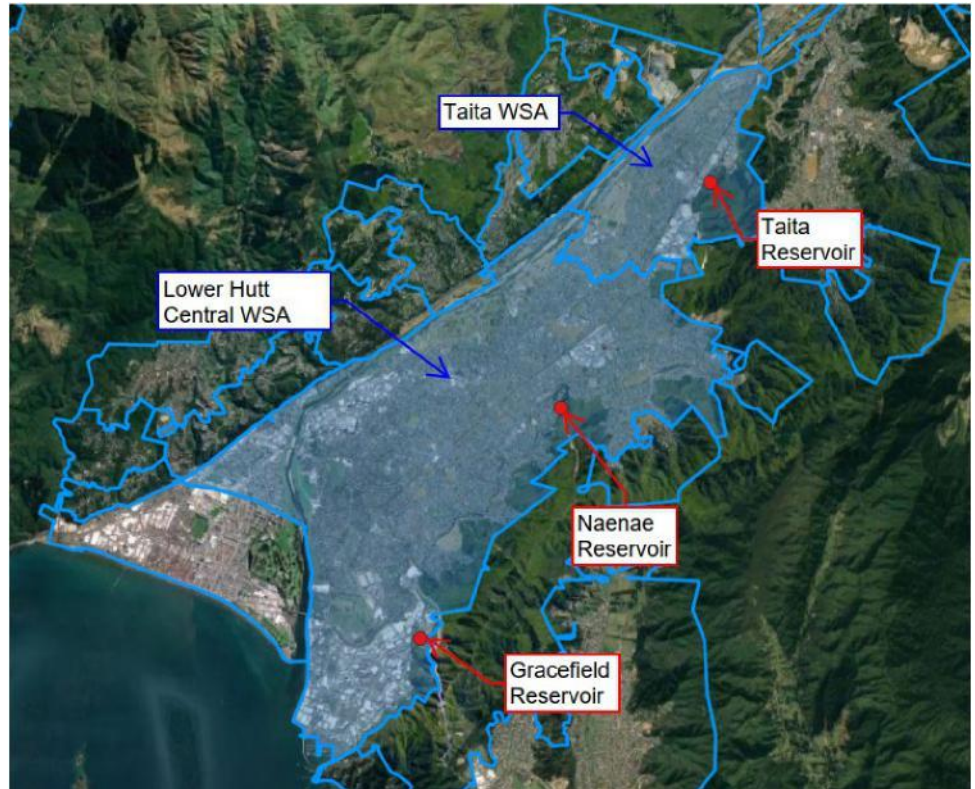


Figure 1: Water Service Areas within the Hutt Valley (AEE page 9)

- 3.8 Additional issues with the current infrastructure include:
- a The existing Gracefield reservoir has structural issues, requiring replacement of the reservoir within the next 10 years, during which time the available volume of storage within the Lower Hutt Central WSA would be impacted.¹³
 - b The Lower Hutt Central WSA does not currently meet the seismic resilience level of service requirements, meaning it cannot store sufficient volume of water to enable supply after an earthquake or to reconnect supply to critical users, such as hospitals and rest homes.¹⁴
- 3.9 Due to the level of service being driven by both demand and seismic measures, an increase in storage capacity provided by a new reservoir has been identified as the optimal solution in order to address both the current water storage shortfall and improve disaster resilience.¹⁵
- 3.10 Within both the Lower Hutt Central and Taitā WSAs, population growth and future development will exacerbate impacts on the level of service, out-pace any

¹³ EIC Edwards, at 8.14. It is most likely that the Gracefield reservoir would be demolished and then reconstructed in the same location (and would obviously be offline during that time).

¹⁴ EIC Edwards, at 6.4, and 8.13.

¹⁵ EIC Edwards, at 9.4.

demand reduction measures, necessitating the need for additional storage to serve these WSAs.¹⁶

- 3.11 A new reservoir would therefore meet the present needs, whilst also providing for future growth.¹⁷ The Project will directly contribute to supporting, sustaining and growing the Hutt Valley's economy by improving water supply safety and reliability and increasing business and residential confidence in the quality and reliability of the city's water infrastructure¹⁸.

4 Description of the Project

- 4.1 The Project is comprehensively described in the AEE and the evidence of **Ms Crooks**.¹⁹
- 4.2 The Project involves a new 15ML reservoir be developed to provide sufficient storage capacity within the WSA through to 2049.²⁰

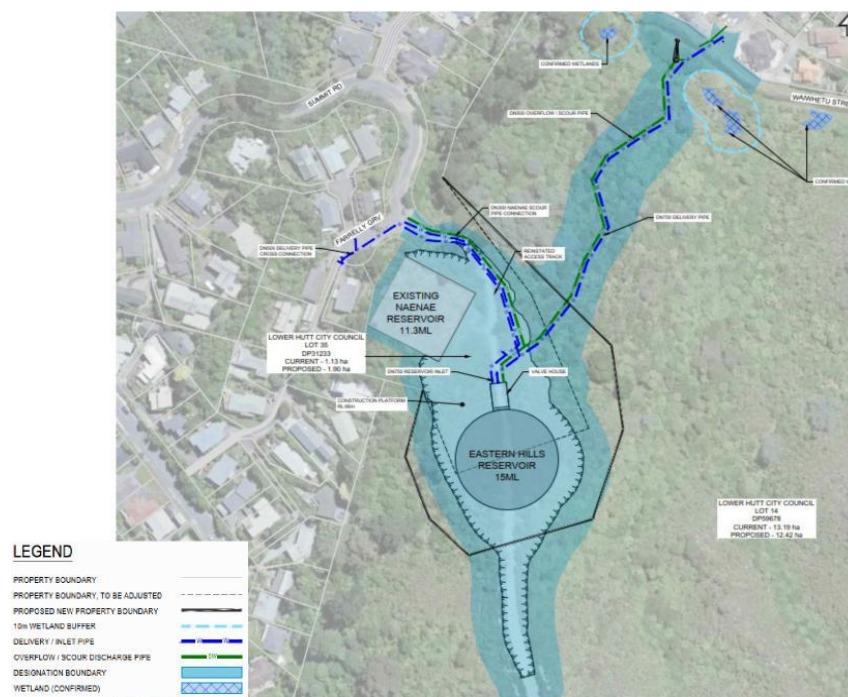


Figure 2: Image depicting the proposed designation (AEE page 43)

- 4.3 The NOR is needed to authorise the construction and ongoing operation and maintenance of the reservoir, including associated pipework, earthworks and vegetation clearance, and construction noise.²¹ Other aspects of the Project

¹⁶ EIC Edwards, at 8.2. and 8.7; AEE page 8.

¹⁷ EIC Edwards, at 9.7.

¹⁸ EIC Edwards, at 5.5.

¹⁹ AEE page 15.

²⁰ AEE, page 13.

²¹ EIC Crooks, at 6.6.

works (relating to regional land use consents for earthworks, the removal of vegetation, disturbance of the bed of a stream and construction of an outfall structure, and a water permit to temporarily take groundwater) will be authorised by resource consents from Greater Wellington Regional Council.²² Applications for these activities have been lodged and are currently being processed; the effects of those aspects of the Project will be considered in that context.

- 4.4 If the NOR is confirmed, WWL (on behalf of HCC) will finalise the Project's design and submit both an Enabling Works Outline Plan, and Project Construction Outline Plan to HCC (in its regulatory capacity) prior to the commencement of relevant works onsite.²³ Once construction is complete, the area of the designation will be reviewed and likely reduced.²⁴
- 4.5 As described in the evidence of **Ms Crooks**²⁵ the key activities associated with the Project will include:
- a Geotechnical investigations including boreholes to inform the detailed design of the reservoir;
 - b A 14m wide corridor of vegetation will be cleared for underground pipework to be installed and approximately 90,000m³ of earthworks²⁶ to create a construction platform for the reservoir and to install associated pipes;
 - c Construction and subsequent operation and maintenance of a 15 ML, 55m diameter circular, above ground reservoir;
 - d Installation of a 1.1 km long DN 750²⁷ delivery pipeline connecting the new reservoir to the bulk water supply network;
 - e Installation of a DN 500 combined overflow pipe that will be used to discharge water from the reservoir in an emergency or maintenance overflow, as well as stormwater, into Waiwhetū Stream; and
 - f Remediation works including landscape planting (see **Figure 3**).

²² AEE, page iii.

²³ EIC Crooks, at 6.5. It is intended that enabling works can be carried out pursuant to the Enabling Works Outline Plan, prior to the Project Construction Outline Plan being prepared.

²⁴ Refer proposed condition 4.

²⁵ EIC Crooks, at 6.8.

²⁶ AEE, page 17. Approximately 83,000 m³ of earthworks for the construction of the reservoir, with an additional 7,000 m³ for the overflow/ scour pipeline will be required.

²⁷ 'DN' meaning diameter nominal. DN 750 refers to pipe with a 750 mm diameter.

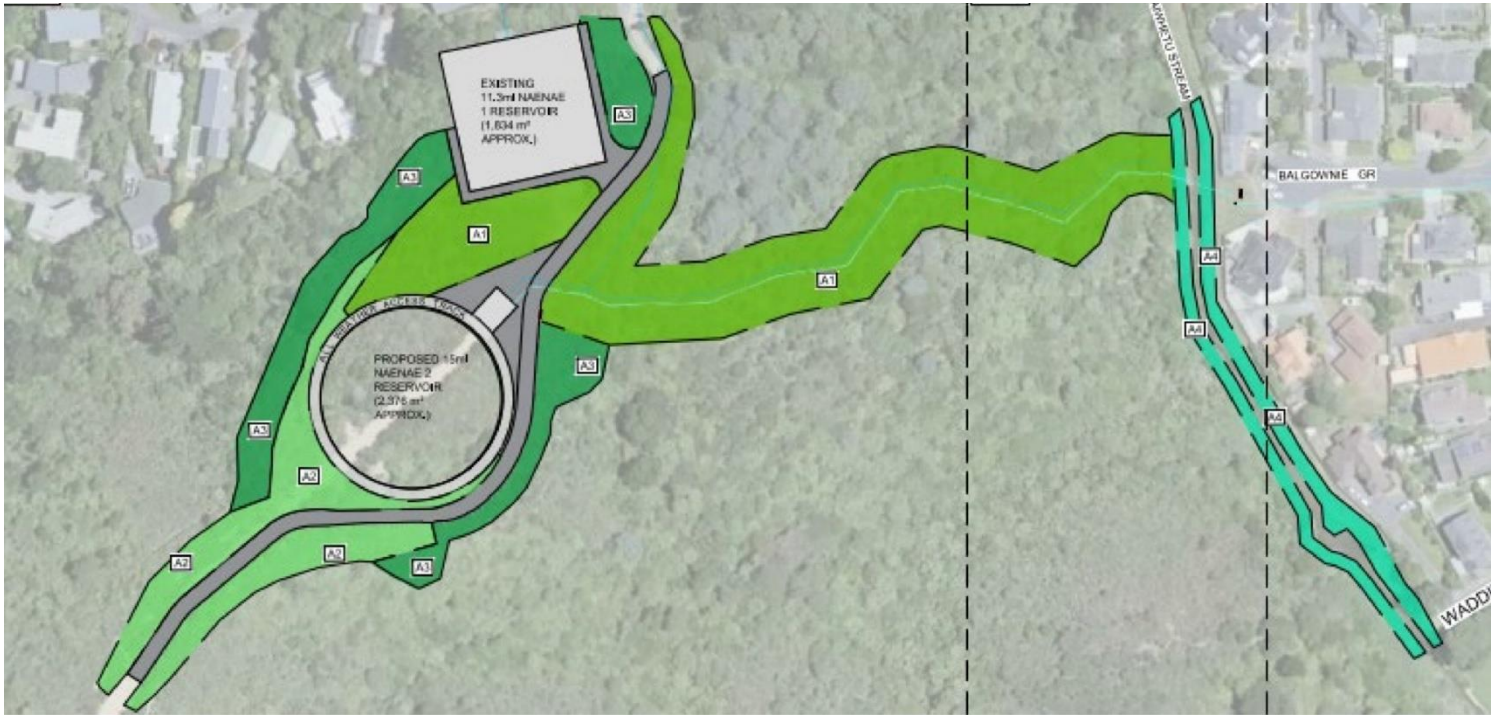


Figure 3: Proposed landscape planting (AEE page 21)

- 4.6 The new reservoir will be constructed on top of a flat platform, cut into the existing ridgeline up to 20m below existing ground level, so as to achieve the required water level of the reservoir (72.53m).
- 4.7 A buffer of approximately 20m will be provided between the existing Naenae reservoir and the new reservoir. The new reservoir will be an above ground reservoir with a valvehouse. Landscaping around the reservoir is proposed.
- 4.8 The new reservoir will achieve the design standards as set out in the AEE, meaning the Project's design life will be 100 years and it will be designed to remain operational after a 1-in-500 year event.²⁸

²⁸ AEE pages 16-17.

5 Statutory framework for determining the NOR

- 5.1 The NOR is for a new designation for the construction, operation and maintenance of the Eastern Hills Reservoir.
- 5.2 Section 168A(3) provides that, when considering a NOR and any submissions received, a territorial authority must, “subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to”:²⁹
- a any **relevant provisions** of—
 - i a national policy statement:
 - ii a New Zealand coastal policy statement:
 - iii a regional policy statement or proposed regional policy statement:
 - iv a plan or proposed plan; and
 - b whether **adequate consideration** has been given to **alternative** sites, routes, or methods of undertaking the work if—
 - i the requiring authority does not have an interest in the land sufficient for undertaking the work; or
 - ii it is likely that the work will have a significant adverse effect on the environment; and
 - c whether the work and designation are **reasonably necessary** for achieving the objectives of the requiring authority for which the designation is sought; and
 - d **any other matter** the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.
- 5.3 These matters (to be considered by the Commissioner, standing in the shoes of HCC³⁰) are addressed in the following sections of these submissions.

6 Assessment of effects

‘Existing environment’

- 6.1 In assessing the effects of a notice of requirement it is necessary to consider effects on the surrounding environment as it might be modified in the future (often called the ‘existing environment’).³¹ In this respect, the environment affected by

²⁹ Resource Management Act 1991, section 168A(3).

³⁰ It is understood that Commissioner Jones has been appointed by HCC to consider, hear and determine the NOR for the Project.

³¹ This is in the sense of the Court of Appeal’s finding in *Queenstown Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 (CA) at para [84], that “the word “environment” embraces the future state of the environment as it might be modified by the utilisation.

the Project is simply the environment as it currently exists – there is no legal ‘gloss’ that needs to be taken into account. The existing land use and existing environment is described in the AEE and in the evidence of **Ms Crooks**.

- 6.2 Under the Hutt City District Plan part of the site is zoned as ‘Medium Density Residential’ and part is zoned as ‘Passive Recreation’, with a Significant Natural Resource (‘SNR12’) over both parts of the site (see **Figure 4**).



Figure 4: Hutt City District Plan Zoning (AEE page 31)

- 6.3 In her evidence, **Ms Crooks** explains the Waiwhetū Stream runs through the northern extent of the site. Upstream, the Waiwhetū Stream is “highly modified”. Three unnamed tributaries of the Waiwhetū Stream are present on site.³² Four wetlands were identified within the Waiwhetū Stream floodplain at the northern extent of the site .³³

³² AEE, page 40. Also see AEE, Appendix G.

³³ EIC Crooks, at 7.14.



Figure 5: Delineated Tributaries and Wetlands (AEE page 41)

6.4 The positive effects or benefits of the Project are discussed in the evidence of **Ms Crooks** and **Mr Edwards**, and in the AEE.³⁴ In summary, the key benefits of the reservoir are:

- a The Project will deliver a significant regional public benefit as it will contribute towards the Hutt Valley's water resilience following a significant natural hazard event;³⁵ and it will contribute to meeting demand for water across the region³⁶.
- b The Summit Road Firebreak Track will be reinstated to the eastern side of the Eastern Hills Reservoir post construction and enhanced with seating and signage, resulting in improved recreational outcomes;³⁷
- c Improvement of the underlying character and composition of vegetation on-site resulting from removal of exotic weeds and planting with indigenous eco-sourced vegetation suitable for the site conditions and consistent with the values of SNR12;³⁸ and
- d Improvement of the habitat along the stream resulting from revegetation of the Waiwhetū Stream with native vegetation.³⁹

Ecology

6.5 Vegetation will be removed to enable construction, resulting in less than 1 ha of permanently lost vegetation and associated habitat.⁴⁰ Only a portion of the

³⁴ EIC Crooks, at 9.3 – 9.5; AEE pages 62-63.

³⁵ EIC Crooks, at 9.3; EIC Edwards, at 11.1.

³⁶ EIC Edwards, at 9.6.a.

³⁷ EIC Crooks, at 9.3.

³⁸ EIC Crooks, at 9.4; EIC Hansen, at 11.2.

³⁹ EIC Crooks, at 9.4.

⁴⁰ EIC Hansen, at 8.1.

vegetation which may be permanently lost due to the development is indigenous, which amounts to less than 0.1% of the 671 ha of the SNR. Since preparing his evidence **Mr Mark Hansen** has revised his calculations of the areas affected (such that a slightly smaller area of indigenous vegetation will be affected than previously thought), and will address this in his summary statement.

- 6.6 The effects on ecological values have been assessed by **Mr Hansen** and **Ms Crooks** as being 'no more than minor' with the implementation of the proposed bird and lizard managements plans, and vegetation management plan.⁴¹ There will be no ongoing Project related effects to ecological features upon Project completion.⁴²
- 6.7 The Officer's Report concludes that, subject to suggested amendments (discussed below), the NOR in regard to ecological matters is acceptable.⁴³

Erosion and sediment control

- 6.8 As part of the construction of the Project, erosion and sediment control measures will be used to minimise erosion and prevent sediment-laden water from entering the Waiwhetū Stream or stormwater network at the top of Summit Road, as detailed in the draft Erosion and Sediment Control Plan ('**ESCP**').⁴⁴
- 6.9 The adverse effects associated with discharge of sediment during construction have been assessed by **Ms Crooks** as being no more than minor, provided the ESCP is implemented.⁴⁵
- 6.10 The proposed NOR conditions provide for the ESCP to be supplied to HCC prior to construction commencing once it has been certified by GWRC (under the regional resource consents, which more squarely focus on such matters).⁴⁶

Geotechnical matters

- 6.11 Geotechnical matters, including the assessments that have been made to date, are contained in the evidence of **Mr Campbell Keepa**.
- 6.12 The Officer's Report concludes that with the appropriate technical analysis, investigation, and peer review of the ground conditions and applied engineering solutions, under seismic and non-seismic conditions, a reservoir can be appropriately designed for this site.⁴⁷

⁴¹ EIC Hansen, at 13.1; EIC Crooks, at 15.4.(d).

⁴² EIC Hansen, at 8.1.

⁴³ Officer's Report, at [112].

⁴⁴ EIC Crooks, at 6.19, 9.11.

⁴⁵ EIC Crooks, at 9.12. Namely, Summit Road and Balgownie Grove (see AEE, Appendix F, draft ESCP).

⁴⁶ EIC Crooks, Appendix 2, condition 13.

⁴⁷ Officer's Report, at [162].

Landscape, natural character and visual

- 6.13 Earthworks and vegetation clearance as part of the Project will result in landscape, natural character and visual effects during construction. Overall, the effects on landscape, natural character and visual effects have been assessed by **Dr Wendy Hoddinott** as being 'no more than minor', as mitigation and remediation measures will mean effects generated by the construction of the Project, while initially ranging from low adverse to high adverse, will eventually become low adverse to moderate adverse. In RMA planning terms, this corresponds to effects that are no more than minor.⁴⁸
- 6.14 While temporary adverse landscape, natural character and visual effects will occur, **Dr Hoddinott** concludes that the Project is able to be accommodated within this location given the proposed reservoir is located close to an existing reservoir and will not introduce a completely new built element to the surrounding context. In addition, mitigation planting will screen the reservoir so that it becomes effectively integrated within its surroundings, to ensure no residual long-term adverse landscape, natural character and visual effects.⁴⁹
- 6.15 The Officer's Report concludes landscape, natural character and visual effects will reduce over time and that there appears to be no additional mitigation that could be employed.⁵⁰ In her evidence, **Dr Hoddinott** stated she reviewed the Officer's Report and remained of the opinion that the effect will be no more than minor.

Traffic and transport

- 6.16 Construction of the Project is expected to take place over 30-36 months, Monday to Saturday, 7am to 6pm, with construction traffic varying throughout.⁵¹ The busiest stage of the Project (in Year 2, and possibly Year 3) will involve heavy vehicle traffic over a period of 8-9 months for Summit Road, and 1-2 months for Balgownie Grove.⁵² It is proposed that on-street parking will be restricted during this time.⁵³
- 6.17 The effects on traffic and transport have been assessed by **Ms Hilary Fowler** as being minor (at most) with the implementation of a Construction Traffic

⁴⁸ EIC Hoddinott, at 5.2, 5.4, 9.6, 9.7. As explained in Ms Hoddinott's evidence, she has first undertaken assessments in terms of the NZILA's 7-point scale (which ranges from 'very low' to 'very high'), and then converted or translated these to 'RMA effects' ratings with reference to the NZILA guidance.

⁴⁹ EIC Hoddinott, at 14.1.

⁵⁰ Officer's Report, at [149].

⁵¹ EIC Fowler, at 8.1.

⁵² EIC Fowler, at 8.1.

⁵³ EIC Fowler, at 9.8. An estimated 12 of the approximately 44 current on-street parking spaces on Summit Road are expected to be retained during construction, estimated 19 to be retained on Tilbury Street, and estimated 11 to be retained on Balgownie Grove.

Management Plan.⁵⁴ No adverse effects are anticipated upon completion of the Project.⁵⁵

- 6.18 The Officer's Report concludes that traffic effects can be appropriately managed and mitigated subject to a number of amendments to conditions.⁵⁶ In her evidence, **Ms Fowler** agreed with the substance of the Officer's Report and the intent of the conditions proposed, however proposed further refinements as included in the evidence of **Ms Crooks**.⁵⁷

Noise and vibration

- 6.19 **Mr Leonard Terry** does not expect there to be any adverse noise and vibration effects due to the operation of the reservoir.⁵⁸
- 6.20 During construction, there will be noise effects from activities occurring within the construction site boundary, and from activities occurring on site access roads, which fall outside the construction site boundary.⁵⁹
- 6.21 Vibration effects from construction activities have been assessed by **Mr Terry** as minor, as no dwellings lie within the construction vibration stand-off distances.⁶⁰ **Mr Terry** considers that with mitigation through the implementation of a Construction Noise and Vibration Management Plan ('**CNVMP**'), noise effects can be reasonably mitigated.⁶¹
- 6.22 The Officer's Report concludes that the proposed conditions relating to noise and vibration effects are appropriate and that noise effects are acceptable. The Officer's Report does not recommend any changes to the proposed conditions.⁶²

Recreation and amenity

- 6.23 Construction activities will restrict access to the Firebreak Track for the duration of construction for health and safety reasons, and to Waiwhetū streamside at Balgownie Grove cul-de-sac for 7-9 months (during pipeline construction).⁶³
- 6.24 However, the impacts on recreational use and values will be positive following mitigation and during the operational phase.⁶⁴ As noted above, effects on landscape, natural character and visual amenity have been assessed by **Dr**

⁵⁴ EIC Fowler, at 13.1.

⁵⁵ EIC Fowler, at 5.4; Officer's Report at [40].

⁵⁶ Officer's Report, at [72].

⁵⁷ EIC Fowler, at 12. – 12.3; EIC Crooks, Appendix 2, condition 26

⁵⁸ EIC Terry, at 8.1.

⁵⁹ EIC Terry, at 8.3.

⁶⁰ EIC Terry, at 5.10.

⁶¹ EIC Terry, at 12.5.

⁶² Officer's Report, at [127].

⁶³ EIC Crooks, at 14.10; Appendix O to the AEE, at 2.1, pages 7-8.

⁶⁴ EIC Crooks, at 9.6.

Hoddinott as being no more than minor on the completion of construction.⁶⁵ The Officer's Report concludes that the effects on recreation values are largely unavoidable during construction (and are minor but will be positive post construction).⁶⁶

Social impacts

- 6.25 During construction, social impacts, including perceptions of restricted traffic movements, disruption to daily movements due to changes in parking, and reduced quality of environment due to construction noise and loss of access to recreational opportunities, will be experienced by residents in close proximity to the construction works along Tilbury Street, Summit Road and Balgownie Grove.⁶⁷
- 6.26 The effect on social impact has been assessed by **Ms Crooks** as being temporary and restricted to a small portion of nearby receivers, and that adverse effects will be reduced or mitigated (although some impact may remain moderate). The operational phase will bring with it positive social effects as the reservoir will result in improved future water security and resilience, enhanced enjoyment of the reserve area and overall positive visual impact as a result of the proposed landscape planting.⁶⁸

Potential impact on values of significance to mana whenua

- 6.27 The potential for effects on values of significance to Māori has been an important consideration from the development of this project, and an adviser to Taranaki Whānui joined the multi-criteria assessment ('**MCA**') workshop as an observer.⁶⁹ Engagement with mana whenua continued throughout the options assessment process, with the Naenae 2 site having the lowest risk of significant impacts on mana whenua values, reinforcing the MCA outcome.⁷⁰
- 6.28 The proposed reservoir site has no identified Māori sites of significant in the vicinity, with no known pā, kāinga, urupā or ngakinga nearby.⁷¹ The effects on mana whenua values have been outlined in the evidence of **Mr Paul Carran** as being at the lowest risk of significant impact at the preferred 'Naenae 2' site, out of the shortlisted options.⁷²

⁶⁵ EIC Hoddinott, at 9, 14.2.

⁶⁶ Officer's Report, at [168].

⁶⁷ EIC Crooks, at 9.9.

⁶⁸ EIC Crooks, at 9.10.

⁶⁹ EIC Carran, at 7.17.

⁷⁰ EIC Carran, at 7.22.

⁷¹ AEE, Appedix K (Cultural Impact Assessment).

⁷² EIC Carran, at 5.6.

6.29 The name proposed by Taranaki Whānui, Waiwerowero, is likely to be applied to the Project once constructed.⁷³ **Ms Crooks** concluded there will not be any adverse impacts on cultural values as a result of the Project.⁷⁴

Geotechnical matters

6.30 The reservoir site is underlain by Wellington Greywacke rock and residual soils which are not susceptible to liquefaction. There are no known active faults through the site, but the site is in an area of high seismicity.⁷⁵ Geotechnical matters, such as the risk of major rupture of the reservoir from ground failure in very severe storms or strong earthquakes, have been assessed by **Mr Keepa** as being very low risk.⁷⁶

7 Consideration of alternatives

7.1 Section 168A(3)(b) requires the territorial authority to have regard to:

(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—

(i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or

(ii) it is likely that the work will have a significant adverse effect on the environment;

7.2 These legal submissions address the assessment of alternatives for the Project, as described in the AEE and in the evidence of **Ms Crooks**.⁷⁷

7.3 With respect to this, the case law has held that:

a 'Adequate consideration' does not mean exhaustive or meticulous consideration, but means that the consideration must be sufficient or satisfactory and this will depend on the circumstances.⁷⁸

b The requiring authority is not required to demonstrate that it has considered all possible alternatives, nor that it has selected the best of all available alternatives.⁷⁹ In particular, it is not required to eliminate alternatives that are clearly speculative or suppositious,⁸⁰ nor is it required to consider every

⁷³ EIC Edwards, at 10.2; AEE, Appendix K, page 3.

⁷⁴ EIC Crooks, at 9.8.

⁷⁵ EIC Campbell, at 5.1, 8.1.

⁷⁶ EIC Campbell, at 5.4.

⁷⁷ EIC Crooks, at 10; AEE, at section 8.

⁷⁸ *NZ Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 (*Basin Bridge*), at [137].

⁷⁹ *NZ Transport Agency v Architectural Centre Inc* [2015] NZHC 1991, at [154].

⁸⁰ *Queenstown Airport Corporation Limited v Queenstown Lakes District Council* [2013] NZHC 2347, at [122].

alternative that is non-suppositious with potentially reduced effects.⁸¹ It is for the requiring authority to establish an appropriate range of alternatives and properly consider them.⁸²

7.4 As described above, the adverse effects of the Project have not been assessed as significant. The area of land to be designated is also entirely owned by HCC. As such, the adequate consideration of alternatives directed by s 168A(3)(b) is not strictly required for the Project.⁸³

7.5 However, a robust and (more than) adequate⁸⁴ alternatives process was undertaken in any event. In particular, as further described in the evidence of **Mr Carran**⁸⁵

a A range of sites and methods were robustly assessed through a structured process (including multicriteria analyses), to move from an initial list of 28 potential sites, to preliminary assessment of 14, further assessment of 7, and an in-depth assessment of the final three sites (as detailed in the Site Selection Report);⁸⁶ and

b A number of 'pipe route options' were also considered for construction of the delivery and overflow/scour pipelines from the proposed reservoir.⁸⁷

7.6 The Officer's Report acknowledged that "adequate consideration to alternative sites, routes and methods has been given".⁸⁸ Nonetheless, some submitters⁸⁹ have raised concerns with the *merits* of the chosen site and pipe route. These are addressed further below.

8 Reasonably necessary to achieve the objectives

8.1 Under section 168A(3)(c) RMA, the proposed works and designation must be reasonably necessary for achieving the objectives for which the designation is sought.

⁸¹ *NZ Transport Agency v Architectural Centre Inc* [2015] NZHC 1991, at [154].

⁸² *NZ Transport Agency v Architectural Centre Inc* [2015] NZHC 1991, at [154].

⁸³ Noting however that the NPS-IB remains relevant, and highlights somewhat overlapping considerations.

⁸⁴ 'Adequate consideration' does not mean exhaustive or meticulous consideration, but means that the consideration must be sufficient or satisfactory and will depend on the circumstances: *NZ Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [137].

⁸⁵ EIC Carran, at section 7.

⁸⁶ AEE, Appendix M.

⁸⁷ EIC Carran, and AEE, Appendix P, Pipe Alignment Report.

⁸⁸ Officer's Report, at [175].

⁸⁹ Submissions from C Holt, R Parry, J Foster, and F&P Clarke.

8.2 The objectives for the Project are:⁹⁰

1. Address the current storage shortfall and ensure sufficient storage for future growth in the Lower Hutt Central and Taita Water Storage Areas (WSA):
 - To improve disaster resilience of the Lower Hutt Central and Taita WSAs by providing a seismically resilient water supply capable of meeting Wellington Water’s target level of service; and
 - To ensure the Lower Hutt Central and Taita WSAs are operationally resilient by providing sufficient secure, safe and reliable water storage to supply 48 hours of water to residents, businesses and critical water users (including Fire and Emergency NZ) under normal operating conditions, based on projected demand with appropriate consideration of population growth.
2. To deliver a secure, safe, and reliable water storage solution that has a 100-year design life.
3. To integrate the chosen solution into the Lower Hutt Central WSA network in a cost-effective manner.

8.3 The courts have held that in this context ‘reasonable necessity’ requires that:⁹¹

- a There is a ‘nexus’ between the works proposed and the achievement of the requiring authorities objective for the NOR;
- b The spatial extent of land required is justified in relation to those works; and
- c The designated land is able to be used for the purpose of achieving WCC’s objectives for which the designation is sought.

8.4 Notably, 168A(3)(c) does not require the Project to absolutely fulfil its objectives, or that a designation could only be for the minimum amount of land necessary to realise a project’.⁹²

8.5 The evidence of **Ms Crooks** describes how the Project is reasonably necessary to meet the Project objectives.⁹³ In particular, she notes that the Project results in benefits which include addressing the current storage deficit in the potable water

⁹⁰ EE, page iii, and 2.3..

⁹¹ *Re Queenstown Airport Corporation Ltd* [2017] NZEnvC 46 at [9]. While this criteria is in the context of section 171(1)(c), this is also equally applicable to section 168A(3), due to the wording being the same in the two subsections. Also see *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 at [19], [94]-[95].

⁹² *Aokautere Land Holdings Ltd v Palmerston North City Council* [2024] NZHC 2870 at [50] – [52].

⁹³ EIC Crooks, at 11.

supply network, enabling future growth and development and a more resilient water supply network.⁹⁴

- 8.6 The Officer's Report agrees that the Project and designation are reasonably necessary to achieve the objectives of HCC.⁹⁵

9 Relevant statutory instruments

- 9.1 Relevant statutory and policy instruments have been considered in the evidence of **Ms Crooks** and in the Officer's Report.

- 9.2 Overall, both **Ms Crooks**⁹⁶ and the Officer's Report⁹⁷ conclude that the Project is consistent with the applicable provisions of the relevant statutory documents, being the:

- a National Policy Statement on Urban Development;
- b National Policy Statement for Freshwater Management ('**NPS-FM**');
- c National Policy Statement for Indigenous Biodiversity ('**NPS-IB**');
- d Regional Policy Statement for the Wellington Region; and
- e Hutt City District Plan.

NPS-IB

- 9.3 Of these, the NPS-IB is perhaps of most relevant for the Project given the site is wholly within SNR12, which has the status of a 'significant natural area' under the SNA.⁹⁸ The NPS-IB is also relevant to the recommendation from Ms Tessa Roberts that further 'enhancement' planting (offsetting) be undertaken,⁹⁹ which has not been adopted by WWL's witnesses.¹⁰⁰

- 9.4 While the starting point in the NPS-IB is that effects on SNAs are to be avoided, an exemption applies for regionally significant infrastructure,¹⁰¹ and it has been accepted by Ms Tessa Roberts that the exemption applies here.¹⁰²

- 9.5 Of central importance in the NPS-IB is the 'effects management hierarchy'. In their evidence, **Ms Crooks** and **Mr Hansen** discuss the application of NPS-IB clause 3.10(3) under which, once the exemption applies, any adverse effects

⁹⁴ EIC Crooks, at 11.3.

⁹⁵ Officer's Report, at [177] – [179].

⁹⁶ EIC Crooks, at 13.1.

⁹⁷ Officer's Report, at [149].

⁹⁸ EIC Crooks, at 7.4, 13.6.

⁹⁹ Officer's Report, Evidence of Ms Tessa Roberts, at [25].

¹⁰⁰ EIC Hansen, at 12.11; EIC Crooks, at 15.4.

¹⁰¹ NPS-IB, clause 3.11.

¹⁰² Officer's Report, Evidence of Ms Tessa Roberts, at [92]; EIC Crooks, at 13.7.

have to be managed by applying the effects management hierarchy.¹⁰³ Where avoidance is not possible or practicable, mitigation requirements and/or recommendations to minimise and where possible remediate adverse effects have been provided, consistent with the hierarchy.

9.6 Following these measures the residual effects of the Project on the ecological values of SNR12 have been assessed as no more than minor, and as such biodiversity offsetting and/or compensation were not required.¹⁰⁴ That finding was not disputed by Ms Tessa Roberts.¹⁰⁵ As such, under the effects management hierarchy, no further action is required (as the hierarchy only directs consideration of offsetting or compensation where residual effects are 'more than minor').

9.7 Accordingly, **Ms Crooks** and **Mr Hansen** conclude that there is no need or justification for additional 'enhancement planting' (offsetting) in this case.¹⁰⁶

NPS-FM

9.8 It is not anticipated that the NPS-FM will have a particular bearing on the NOR, given that, while it is prima facie applicable under s 168A, it is more directly relevant to the regional consent applications.

9.9 However, for completeness, the Resource Management (Freshwater and Other Matters) Amendment Act 2024 came into force on 25 October 2024 and sets out that certain parts of the NPS-FM are not to be considered in the context of resource consent applications¹⁰⁷. These changes apply retrospectively.¹⁰⁸ However, those changes do not apply to notices of requirement (so remain on their face applicable, to the extent that they may be relevant).

10 Other matters

10.1 The AEE and **Ms Crooks** evidence contains an assessment of the Project against 'other matters' for the purposes of sections 168A(3)(d).¹⁰⁹ Both **Ms Crooks** and the Officer's Report conclude the Project is consistent with these other matters.¹¹⁰

¹⁰³ EIC Crooks, at 13.7; EIC Hansen at 6.6.

¹⁰⁴ EIC Crooks, at 13.7.

¹⁰⁵ Officer's Report, Evidence of Ms Tessa Roberts, at [94].

¹⁰⁶ EIC Crooks, at 16.10; EIC Hansen at 12.11.

¹⁰⁷ See section 104(2F) and (2G) RMA.

¹⁰⁸ See clause 43, Part 7, Schedule 12 RMA.

¹⁰⁹ AEE, page 103; EIC Crooks, at 17. Those matters are: Civil Defence Emergency Management Act 2002, Getting the basis rights: Our 10-year plan 2021 – 2031, and Reserves Strategic Directions 2016 – 2026.

¹¹⁰ EIC Crooks, at 17.3, 17.6, 17.8; Officer's Report, at [174].

11 Matters raised by submitters

- 11.1 The NOR was publicly notified on 28 March 2024. A total of 6 submissions were lodged, 1 in support¹¹¹, 2 seeking changes,¹¹² and 3 opposed or raising concerns¹¹³ about the Project.
- 11.2 The matters identified in submissions have been addressed in the expert evidence for WWL. In essence, the evidence is that the potential effects associated with the Project which are noted in the submissions will be adequately mitigated.
- 11.3 Some of the specific concerns raised by submitters are addressed below.

Traffic

- 11.4 The submission from the Ministry of Education relates to the potential for road safety effects on students in and around the four schools in Naenae from heavy construction traffic effects. The submission sought to add a general condition so that heavy vehicles must avoid travelling past the schools during peak before and after school times.
- 11.5 The Officer's Report and Ms Fraser's report found that it is not necessary for construction vehicles to avoid school start and finish times, and the report recommends a condition requiring details of inductions or briefings to Project drivers regarding potential risks and the importance of slowing down when driving past any school site and adhering to speed limits to be provided to HCC.¹¹⁴ **Ms Fowler** agreed with this assessment in her evidence.¹¹⁵

Location

- 11.6 The submission from Mr J Foster asks whether the construction of the reservoir will impact a future road that is to go from Upper Fitzherbert Road to Summit Road and whether certain tracks will be affected. The evidence of **Ms Crooks** addresses these concerns, noting there is (as far as she is aware) no current plans for a new road.¹¹⁶

¹¹¹ Submission by Ministry of Education, support with changes.

¹¹² Submissions by C Burt and J Foster.

¹¹³ Submissions by F and P Clarke, R Parry, and C Holt.

¹¹⁴ Officer's Report, at [70]; Evidence of Ms Fraser at [25]-[27].

¹¹⁵ EIC Fowler, at 11.2, 12.2.

¹¹⁶ EIC Crooks, at 14.5.

Recreational values

- 11.7 Submitters J Foster and C Burt asked about the potential impacts on certain tracks.¹¹⁷ The evidence of **Ms Crooks** addresses these concerns and details the plans for the relevant tracks specified both during and after construction.¹¹⁸

Ecology effects

- 11.8 Ms C Burt asked about the loss of native bush,¹¹⁹ which is addressed in the evidence of **Mr Hansen**.¹²⁰

Flooding

- 11.9 Submitters C Holt and R Parry have raised concerns that there is a flooding risk associated with the Project.¹²¹ The assessment appended to the evidence of **Ms Crooks** addresses these concerns, concluding that the risk of flooding associated with the Project is less than minor.¹²²

Ground instability

- 11.10 C Holt¹²³ has raised concerns about an active fault in the Waiwhetū Stream and potential ground instability leading to slips. The evidence of **Mr Keepa** addresses these concerns, which are discussed above, concluding there are no known active faults and no evidence of previous deep seated slope instability at the site.

¹²⁴

Construction noise

- 11.11 R Parry¹²⁵ has raised concerns about the noise generated during construction and the potential to impact people working from home for a prolonged period of time.
- 11.12 **Mr Terry** has considered the potential effects of noise on residents and has responded to Mr R Parry's submission in his evidence, noting that Mr R Parry's residence falls outside of the predicted noise contours and below the noise limit thresholds.¹²⁶

¹¹⁷ Submitter J Foster asked whether Wet Jandal, Waddington Winder, and Judd Crescent Firebreak tracks would be impacted by the Project. Submitter C Burt asked if the Summit Road walking track would be reinstated.

¹¹⁸ EIC Crooks, at 14.6, 14.10

¹¹⁹ Submitter C Burt raised concerns about the Project's impact on native bush and the wild life within.

¹²⁰ EIC Hansen, at 11.2.

¹²¹ Submitters C Holt and R Parry both raised concerns that the run-off from the reservoir would cause flooding in the Waiwhetū stream. Submitter C Holt also raised concerns about the reservoir being over his property.

¹²² EIC Crooks, Appendix 1 and 14.12.

¹²³ Submitter C Holt

¹²⁴ EIC Keepa, at 8.1.

¹²⁵ Submitter R Parry

¹²⁶ EIC Terry, at 10.3.

Prioritisation of spending

- 11.13 R Parry¹²⁷ has raised concerns about WWL's prioritisation of spending. **Mr Edwards** addresses this concerns in his evidence, explaining that the Eastern Hills Reservoir is only one project that WWL is undertaking, and is currently also addressed water shortfalls through a range of other methods.¹²⁸

12 Matters raised in the Section 42A Officer's Report

- 12.1 The Officer's Report recommends that the NORs be confirmed, subject to the conditions outlined in the Officer's Report.¹²⁹ The Officer's Report agrees that the positive benefits as outlined in the NOR will result from the proposal¹³⁰.
- 12.2 As noted above the Officer's Report and supporting peer review evidence is in almost complete agreement with the evidence of the witnesses for WWL. The only (minor) matters of divergence are in relation to ecology, i.e. that residual levels of effects on vegetation have been assessed by WWL's witnesses (and seemingly accepted in the Officer's Report¹³¹) as being 'no more than minor' such that biodiversity offsetting and/or compensation is not required under the NPS-IB, as discussed above.¹³²

13 Part 2 RMA considerations

- 13.1 The determinations to be made under section 168A are expressed as being 'subject to Part 2'.¹³³
- 13.2 Case law has held that Part 2 of the RMA is relevant and must be considered when determining a notice of requirement.¹³⁴ In this case it is not anticipated or submitted that Part 2 has a material role to play, given the extent to which the Project is consistent with the relevant policy directions in the planning framework.¹³⁵
- 13.3 However, for completeness, an assessment of the Project in light of Part 2 of the RMA is presented in Ms Crooks evidence.¹³⁶ To the extent that Part 2 may be

¹²⁷ Submitter R Parry

¹²⁸ EIC Edwards, at 103.

¹²⁹ Officer's Report, page 2.

¹³⁰ Officer's Report, at [41].

¹³¹ AEE, at [107] - [112].

¹³² EIC Crooks, at 15.4.

¹³³ RMA s 168A(3).

¹³⁴ See *NZ Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 ('*Basin Bridge*') at [118]; *Re Queenstown Airport Corporation Ltd* [2017] NZEnvC 46 at [66]. It follows that Part 2 is potentially somewhat more relevant in considering a designation than it is in considering a resource consent. There may now be some uncertainty surrounding those findings following the decision of a majority of the Supreme Court in *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26, but such distinctions do not have any bearing on the current Project.

¹³⁵ In other words, there are no potentially decisive 'directive policies' that would lead the territorial authority to seek refuge in Part 2 of the RMA.

¹³⁶ EIC Crooks, at 8, 13.32 - 13.40.

considered relevant it is submitted that the Project is wholly consistent with the purpose of the RMA, as the Project will enable people and communities to provide for their social, economic and cultural wellbeing and for their health and safety through the provision of secure, safe, and reliable additional water storage.¹³⁷

13.4 **Ms Crooks** also agrees with the assessment contained in the AEE that section 6, 7, and 8 matters have been adequately provided for by the Project.¹³⁸

13.5 The Officer's Report concludes that the Project is consistent with Part 2 RMA.¹³⁹

14 Proposed conditions

14.1 Proposed conditions were provided as part of the AEE, and an updated set of conditions was provided in evidence by Ms Crooks to respond to the recommendations in the Officer's Report.

14.2 Since evidence was lodged, Minute 2 issued by the Commissioner raised a number of questions in relation to the proposed conditions. WWL and Ms Crooks have considered those further, and a revised condition set together with a table explaining the changes made or not made will be provided with these submissions. Ms Crooks will be available to speak to those changes at the hearing.

14.3 In other respects WWL's position on conditions remains as set out in Ms Crooks' evidence in chief.

Lapse period

14.4 WWL seeks a lapse period of seven years for the NOR,¹⁴⁰ and has sought the same period in its associated resource consent applications.

14.5 While HCC is committed to progressing with the project (and there is an identified need to do so), it may be necessary for HCC to reprioritise its infrastructure investments, meaning it is a possibility that this project may not be able to progress in the short term. The potential for structural changes in how water services are delivered, in light of 'Local Water Done Well', could also be a complicating factor.

14.6 If the designation were to lapse before construction could begin then this consenting process would need to be repeated, representing a further cost to

¹³⁷ EIC Crooks, at 13.38.

¹³⁸ EIC Crooks, at 13.34 – 13.36.

¹³⁹ Officer's Report, at [180].

¹⁴⁰ The default lapse period for a designation is 5 years under section 184 RMA.

HCC ratepayers. Accordingly, a period of seven years is sought in order to provide a reasonable level of assurance that this will not occur.

- 14.7 While there are number of court decisions where longer than standard lapse periods were not approved, it is submitted that the reasons for that do not apply here. The rationale in case law for shorter (or default) lapse periods is based on the need for land use to not be exclusively reserved for an unduly long time, where that use is not progressed and, as time passes, other uses of the land (other than the use of the land specified in the consent or designation), including by others, may be more appropriate.¹⁴¹
- 14.8 This may be of greater concern when the land subject to a consent or designation is private land capable of many uses¹⁴². However, in this situation the relevant land is owned by HCC – there is no prejudice arising from a longer lapse date, and no reason to suggest the effects of the project would be more severe if they were to occur in (say) six years' time rather than four.

15 Evidence to be presented

- 15.1 The Project team has lodged evidence of eight witnesses to support the NORs. The evidence of WWL is:
- a **Laurence Edwards** – Project need and objectives;
 - b **Paul Carran** – Site Selection;
 - c **Campbell Keepa** – Geotechnical matters;
 - d **Mark Hansen** – Ecology;
 - e **Wendy Hoddinott** – Landscape;
 - f **Hillary Fowler** – Traffic;
 - g **Leonard Terry** – Noise and Vibration; and
 - h **Cathy Crooks** – Planning.

¹⁴¹ See *Katz v Auckland City Council* PT Auckland A68/87, 19 August 1987, page 7 for a summary of the rationale for lapse periods generally.

¹⁴² See for example, *Heron v Vector Gas Ltd* [2010] NZEnvC 203 at [26]-[33], where the concerns of affected landowners were balanced against the interests of the designating authority such that was held that there be no change to the default lapse period, and *Meridian 37 Ltd v Waipa District Council* [2015] NZEnvC 119 at [28]-[32], where the 'planning blight' effect on land owned by others meant that an application to extend a designation's lapse period was not successful.

16 Conclusion

- 16.1 Given the need to address the current water storage shortfall and ensure sufficient storage for future growth in the Lower Hutt Central and Taitā WSA, the region requires a solution that will deliver secure, safe, and reliable water storage in a cost-effective manner. The proposed Eastern Hills Reservoir will achieve these objectives.
- 16.2 WWL therefore asks the Commissioner to confirm the NOR, with the designation conditions as attached to these submissions.¹⁴³



Ezekiel Hudspith / Ben Attwood
Counsel for Wellington Water Limited

¹⁴³ Or with any final refinements as may be put forward by Ms Crooks at or following the hearing.