

HUTT CITY COUNCIL
NOTICE OF REQUIREMENT FOR DESIGNATION
EASTERN HILLS RESERVOIR – SUMMIT ROAD, FAIRFIELD
MINUTE 2 OF THE INDEPENDENT HEARINGS COMMISSIONER

Introduction

1. This is the second procedural minute regarding the hearing for the proposed Eastern Hills Reservoir notice of requirement.
2. Since issuing Minute 1 last month, I have:
 - (a) read the notice of requirement and the submissions received;
 - (b) conducted an initial site visit;
 - (c) read the 'Section 42A' report prepared by Hutt City Council's consultant planner – Mr Kellow – and the amended conditions and expert evidence attached to that report; and
 - (d) read the expert evidence provided by the Requiring Authority, including the further condition amendments attached to the planning evidence of Ms Crooks.
3. I understand from the hearing advisor, Ms Shetty, that no expert evidence will be provided by any of the parties who made a submission on the proposal.
4. In reading the evidence provided to date and the various iterations of the proposed conditions, I have identified some issues with the latter that require further attention in advance of the hearing.
5. The general purpose of this minute is to clarify the issues I have identified to the parties and to set out a procedure for those issues to be addressed.
6. Before turning to that substantive focus of the minute, I provide some brief points of clarification about the process I have adopted.

Rationale for process

7. Firstly, it is important to note that I have not formed a view on the proposal at this stage. Parties should not read into my focus on conditions here as an indication that I have concluded that the requirement should be confirmed.
8. Rather, the principal driver for the process I have adopted here is efficiency. There is a limited window of opportunity to address questions I have on conditions prior to proceedings commencing. This will, I hope, allow more time on the day of the hearing to hear from the submitters and experts on substantive matters. It should also make for a shorter hearing duration overall – noting that there is currently only one day set down for the hearing and a reasonably high number of speakers to hear from in that time.

Summary of issues identified

9. With the above clarity provided, the issues I have identified are detailed in **Appendix 1**. In summary, the issues can be distilled within the following themes:
- (a) matters where experts have reached conclusions based on detail which is not *expressly* stated in the conditions; and
 - (b) matters of consistency, syntax or clarity.
10. Relevant to those detailed matters, I note that Condition 1 requires the project to be conducted in general accordance with the information provided in the notice of requirement and supporting documents. The matters in Appendix 1 are not raised in ignorance of that requirement or the broad application Condition 1 might have at face value.

Process from here

11. The questions and comments expressed in Appendix 1 are primarily for the Requiring Authority's consideration in the first instance. If achievable, my preference is that the Requiring Authority addresses those matters and provides any further amendments to the conditions it considers appropriate prior to the commencement of the hearing. To give sufficient time for others to review, I ask that the Requiring Authority provides its response and any revised conditions to Ms Shetty for circulation to all parties by **3pm on 26 November 2024** (or sooner if possible).
12. Any amendments should be annotated differently to the colour coding used in the s42A report and the Requiring Authority's primary evidence for the sake of legibility.
13. Ms Shetty's email address is Saritha.Shetty@huttcity.govt.nz.
14. I acknowledge that time available is limited, so if this timeframe is not achievable an alternative would be for the Requiring Authority to address this matter in its opening presentations.
15. To be clear, all parties will be able to speak to the need for, and substance of, conditions at the hearing. This minute is simply an attempt to reduce the time needed at the hearing for that purpose.
16. If any party has any questions regarding the above in the meantime, please contact Ms Shetty in the first instance.



J C Jones
Independent Hearings Commissioner

19 November 2024

APPENDIX 1

Comments / Questions on proposed conditions

1. This appendix takes a topic-based approach for organisational purposes, as follows:
 - a. ecology;
 - b. landscape;
 - c. noise & vibration;
 - d. geotechnical stability;
 - e. other matters.

ECOLOGY

Avifauna

2. At paragraph 8.6 and 9.2 of his evidence, Mr Hansen states that vegetation clearance should be conducted outside active nesting seasons for protected bird species or by imposing a buffer zone around any nest identified during pre-clearance surveys.
3. While the Bird Management Plan required by condition 34 is to include a description of methods to identify active nests and management measures to be adopted where nests are discovered, the conditions do not expressly require works to be avoided during active nesting seasons or that a buffer area be applied where active nests are identified as suggested by Mr Hansen.
4. **Would the conditions be more certain, effective and better aligned with Mr Hansen's recommendations if such requirements sat outside the management plan as enforceable limits with the management plan providing supporting detail on implementation?**

Herpetofauna

5. Similarly, Mr Hansen's evidence in relation to impacts on herpetofauna is that implementation of the Lizard Management Plan *and* conducting vegetation clearance outside certain periods will avoid risk to relevant species (at paras 8.9 and 9.4).
6. While a Lizard Management Plan is required by condition 32, no specific information requirements are stipulated (in contrast to other management plans and as otherwise suggested by Mr Hansen at para 10.16). Moreover, there is no requirement for vegetation clearance to occur outside of the months specified by Mr Hansen.
7. **Would the conditions be more certain and effective if limitations on clearance were specified and/or the management plan requirements were more clearly expressed? Or is the matter sufficiently managed by the parallel process under the Wildlife Act such that the conditions of the designation can be less detailed?**

8. Mr Hansen also states at paragraph 8.10 of his evidence that '[r]emediation of mānuka/kānuka around the reservoir and remediated firebreak track, will be designed as skink habitat.' This outcome does not appear to be expressly specified in any condition currently.
9. **Should this be specified as a standalone requirement in the conditions or is the intent that it will be delivered by the landscape plans?**
10. If the latter, it is noted that the notes to the landscape plans say that the plans are 'indicative only – to be confirmed after vegetation losses have been assessed during the construction phase.' On plain reading, this leaves considerable discretion as to the final content (and efficacy) of the landscape plans.

Staging

11. At paragraph 9.6 of his evidence, Mr Hansen recommends that vegetation clearance is staged if practicable to minimise impacts on habitat and reduce sedimentation and erosion risk. The conditions do not require staging of vegetation clearance in the way suggested by Mr Hansen.
12. **Would the conditions be more certain and effective and better aligned with Mr Hansen's recommendations if staging limitations on clearance are imposed? If so, what limits are appropriate?**

Eco-sourcing, minimum % coverage and timing

13. Mr Hansen's evidence at paragraph 10.13 is that vegetation will be eco-sourced from the local ecological district. No conditions require this, and as noted above the landscape plans – which promote ecosourcing where possible – are 'indicative only' and subject to subsequent finalisation.
14. While the vegetation management plan required by condition 36 must set out detail on annual monitoring and maintenance over a 5-year period to achieve canopy closure and plant survivorship, these measures and outcomes are not expressly required by the conditions.
15. **Should these matters be more clearly articulated in the conditions through measurable requirements as to minimum % canopy cover to be achieved within a specified timeframe, and requirements to replace dead or dying species during a specified maintenance period?**

LANDSCAPE

Mitigation measures during construction

16. At paragraph 9.2(e) of her evidence, Ms Hoddinott identifies mitigation measures during the proposed construction sequence that will reduce the potential landscape effects of the proposal. Among other matters, those measures include:
 - a. locating construction yards, stockpile areas and machine storage away from residential properties as far as practicable;
 - b. providing hoardings around the boundaries of the site facing adjacent landowners and open spaces; and

- c. where possible, mitigation of effects related to lighting during nighttime works using directional lighting to prevent light spill on residential properties.
17. None of the above matters are required by the proposed conditions. An information requirement of the Construction Noise and Vibration Management Plan required under condition 19 relates to a 3-metre-high site hoarding 'where practicable'.
18. **Would the conditions be more certain and effective and better aligned with Mr Hoddinott's assessment if the above were expressed as standalone limits/requirements?**
19. As currently drafted, clause o) under condition 19 reads more as a standalone requirement rather than an information requirement, though the inclusion of the qualifier 'where practicable' also raises questions of discretion/uncertainty.

NOISE & VIBRATION

Fencing

20. Related to the previous matter above, Mr Terry's evidence (at multiple junctures) relies upon the placement of a 3-metre-high fence around the site boundary during works as providing noise mitigation. He also notes 'specific noise barriers around equipment near Balgownie Grove'.
21. **The same question and observation raised above in the context of Ms Hoddinott's evidence are transferable here.**

Causal nexus – vibration and noise exceedances preceded by notification

22. At paragraph 5.10, Mr Terry outlines his prediction that relevant amenity-based limits for vibration may be exceeded for some properties at times. He notes that, in such instances, prior notification of affected parties will be required per the Construction Noise and Vibration Management Plan. Mr Terry provides similar analysis in relation to night-time noise exceedances at paragraph 8.17.
23. While clause j) of the management plan requirements indexed under Condition 19 stipulates that alternative mitigation strategies are to be described where exceedances occur, it does not *require* prior notice or any other specific measures as indicated by Mr Terry.
24. **Would the conditions be more certain and effective and better aligned with Mr Terry's assessment if the above were expressed as standalone limits/requirements?**

Management Plan and the Best Practicable Option

25. At paragraph 10.3 of his evidence, Mr Terry states that the Construction Noise and Vibration Management Plan will determine the best practicable mitigation measures for the site.
26. That statement bears resemblance to the objective of the management plan as set out under condition 18, being 'to provide a framework for the development and implementation of the Best Practicable Option...'

27. On plain reading of condition 19, which sets out the management plan information requirements, there is no mention of the Best Practicable Option – including where potential exceedances of the criteria in conditions 23 and 24 might occur. In such instances, the management plan must simply provide a description of alternative mitigation strategies.
28. **Would the conditions be more certain and effective and better aligned with Mr Terry’s assessment if there was clearer expression that the Best Practicable Option will be used when construction noise and vibration criteria are not met?**

GEOTECHNICAL STABILITY

Stabilisation measures

29. At paragraph 8.3 of his evidence, Mr Keepa states that '[s]lope stabilisation measures such as soldier piles will be installed as necessary to meet the seismic design and slope stability requirements'.
30. Two questions are arising in this respect:
- a. **would these measures be delivered via the investigations and analysis required under conditions 39 and 40, or is there a need to be more express about specific measures required; and**
 - b. **related to this, are conditions 39 and 40 sufficiently certain as to the quality, scope and analytical rigour required by the investigations, mapping and analysis required or should the conditions be made clearer by reference to known methods, standards, techniques or similar?**

OTHER MATTERS

Management Plan conditions - structure and format

31. In the main, there management plan conditions adopt a consistent format and structure. **There are, however, some discrepancies which should be addressed** – namely:
- a. it is common that the management plan conditions are drafted in pairs, with the first of each pair requiring the relevant plan and the second setting out information requirements for that plan – the phrasing of the respective pairs is not consistent however;
 - b. related to the above:
 - i. some management plan conditions set out a 'purpose', some set out an 'objective' and one sets out both;
 - ii. in some instances, the purpose/objective is set out in the first condition of the relevant pair, whilst other times it is in the second condition of the pair; and
 - iii. clearer administration of the conditions would be achieved if the structure was consistent, including use of a single preferred term (either objective or purpose, but not both) and providing the

objective/purpose consistently in either the first or second condition of each relevant pair;

- c. there is a syntax error between the chapeau of condition 31 and its subclause a);
- d. condition 19e) references the New Zealand construction noise standard and the British code of practice for noise and vibration control – should this also reference the German vibration standard DIN 4150-3 given that the advice note under related condition 24 and Mr Terry’s evidence both make reference to it?;
- e. as noted above, the lizard management plan conditions do not include information requirements or a purpose/objective – do they need to?; and
- f. is it necessary or appropriate for a condition of the Notice of Requirement to require works to be in accordance with permit under the Wildlife Act (per condition 32)?

Reinstatement of firebreak track

- 32. At paragraphs 9.3 and 12.6 of her evidence, Ms Crooks states that the firebreak track will be reinstated post-construction and that seating and signage will be provided to enhance recreational outcomes. On plain reading, the conditions do not expressly require these outcomes.

Erosion and sediment control measures

- 33. At paragraphs 9.11-9.13 of her evidence, Ms Crooks expresses the view that erosion and sedimentation effects will be ‘no more than minor’ and ‘appropriately managed’ as the management measures will be in accordance with relevant regional guidelines administered by Greater Wellington Regional Council and with the core principles and measures in the *draft* erosion and sediment control plan attached to the notice of requirement.
- 34. On plain reading, the conditions do not require management measures to be ‘best practice’, nor in accordance with the regional guidelines, nor in accordance with the draft plan attached to the notice of requirement.
- 35. This is also relevant to section 7 of the assessment of environmental effects in the notice of requirement as relates to engagement with mana whenua and the adoption of ‘robust’ erosion and sediment control measures in accordance with regional guidelines.

Proposed amendment to condition 16

- 36. At paragraphs 16.3 of her evidence, Ms Crooks requests that condition 16 be amended such that ‘any large’ spill occurring on public road shall be cleaned as soon as possible after the spill and within 24 hours.
- 37. At face value, this proposed addition appears to defer a discretion for some future determination as to what distinguishes a large spill from a smaller one.