

Commissioner Minute 2 Response

COMMISSIONER COMMENT	RESPONSE	PROPOSED AMENDMENTS
Ecology		
<p><i>Avifauna</i></p> <p>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.</p> <p>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.</p> <p>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?</p>	<p>Mr Hansen has reviewed these comments and is generally satisfied that the proposed conditions provide certainty around protecting active nests of protected species, whilst still allowing work to take place on site.</p> <p>He notes that there will be active nesting year-round, due to the presence of kererū, and that if works were to be avoided during the active nesting season, no vegetation clearance and associated construction would be possible.</p> <p>Condition 34 d) provides for exclusion zones around any confirmed active nests. The Bird Management Plan will define the scope of these exclusion zones – these will vary depending on the species.</p> <p>We have amended the wording of condition 34 d) to emphasise that exclusion zones are included in the management actions that will be implemented should active nests of <i>protected</i> species be discovered.</p>	<p>Amend the wording of condition 34 d) to read: 34. The BMP must include, as a minimum; ...</p> <p style="padding-left: 40px;">d) <i>The management actions, including exclusion zones, that must be implemented should active nests of indigenous protected species be discovered during checks (i.e. exclusion zones).</i></p>
<p><i>Herpetofauna</i></p> <p>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).</p> <p>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.</p> <p>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?</p>	<p>Mr Hansen considers that lizard management is sufficiently managed by the parallel process administered under the Wildlife Act. This permit requires the Lizard Management Plan to be approved by the Department of Conservation (unlike the other management plans), meaning the conditions in the designation can be less detailed as effects are being appropriately managed by a separate legislative process.</p>	<p>No amendments to the conditions are proposed.</p>
<p>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.</p> <p>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?</p>	<p>The requirements of remediation to create skink habitat will be outlined in the Lizard Management Plan and approved by the Department of Conservation.</p> <p>I have proposed amendments to condition 36 d) and 31 h) to ensure that the Vegetation Management Plan, and Landscape Concept Plan more clearly specify this.</p>	<p>Amend the wording of condition 36 d) to read:</p> <p>36. The VMP must, as a minimum... d) <i>Identify those areas on site where remediation of with eco-sourced indigenous vegetation (where practicable) will occur, including remediation of mānuka/kānuka around the reservoir and remediated firebreak track to form suitable skink habitat, with input from the Project herpetologist/ecologist; and</i></p>

<p>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.</p>	<p>With regard to paragraph 10, I note that detailed design of the reservoir and associated pipework is yet to take place, and not all vegetation within the designation may be impacted or removed. As such some areas may not require remediation following completion of the detailed design. A degree of flexibility is required in the landscape concept plans to accommodate this.</p>	<p>Amend the wording of conditions 31h) to read: 31. The LCP must, as a minimum, include... h) Identification of proposed planting including <u>eco-sourced (where practicable) plant species, plant/grass mixes, spacing/densities, sites (at time of planting) and layout and planting methods, with input from the Project ecologist, including remediation of mānuka/kānuka around the reservoir and remediated firebreak track to form suitable skink habitat, with input from the Project herpetologist/ecologist; and</u></p>
<p><i>Staging</i></p> <p>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.</p> <p>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?</p>	<p>Mr Hansen notes that while staging vegetation clearance is a preference, it is not essential and not always practicable. Whilst staging of vegetation clearance can minimise impacts on habitat and reduce sedimentation and erosion risk it may create disadvantages; for example prolonging the construction phase where seasonal constraints prohibit vegetation impacts or having to repeat wildlife management should relocated fauna such as lizards recolonise the site and need to be relocated again when the next stage of vegetation clearance occurs.</p> <p>I note that as the detailed design of the reservoir has not yet commenced, a contractor has not been appointed and that construction practicalities, such as staging, are best determined by them rather than imposed through designation conditions. Condition 10 a) requires that the Construction Environmental Management Plan, which will be certified by Hutt City Council, to provide methodologies and timeframes for any staging proposed which I consider adequately addresses this.</p>	<p>No amendments to the conditions are proposed.</p>
<p><i>Eco-sourcing, minimum % coverage and timing</i></p> <p>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.</p> <p>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.</p> <p>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?</p>	<p>I have proposed amendments to condition 36 d) and 31 h) to ensure that the Vegetation Management Plan, and Landscape Concept Plan more clearly specify that eco-sourced vegetation should be used where it is practicable to do so.</p> <p>Condition 31 l) has also been amended to clarify minimum canopy cover within a specified timeframe.</p>	<p>Amend the wording of condition 31h) and l) to read:</p> <p>31. The LCP must, as a minimum, include... h) Identification of proposed planting including <u>eco-sourced (where practicable) plant species, plant/grass mixes, spacing/densities, sites (at time of planting) and layout and planting methods, with input from the Project ecologist, including remediation of mānuka/kānuka around the reservoir and remediated firebreak track to form suitable skink habitat, with input from the Project herpetologist/ecologist; and</u></p> <p><u>l) The proposed maintenance and management of plantings; (including the replacement of unsuccessful plantings, pest plant control and pest animal control) for a minimum of 5 years or until canopy closure density of 80% is achieved, whichever is the longer.</u></p> <p>Amend the wording of conditions 36d) to read: 36. The VMP must, as a minimum... d) Identify those areas on site where remediation of <u>with eco-sourced indigenous vegetation (where practicable) will occur, including remediation of mānuka/kānuka around the reservoir and remediated firebreak track to form suitable skink habitat, with input from the Project herpetologist/ecologist; and</u></p>

Landscape		
<p><i>Mitigation measures during construction</i></p> <p>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:</p> <ul style="list-style-type: none"> 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. <p>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'.</p> <p>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?</p> <p>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.</p>	<p>Dr Hoddinott has reviewed these comments and notes that her assessment of the landscape and visual effects of the project do not rely on these measures to reduce the visual effects of construction: they are measures that will be in place for other reasons and may incidentally improve landscape and visual amenity impacts during construction but are not recommended in her assessment.</p> <p>With regard to point b) she notes that hoardings would be of limited benefit in some project areas such as the construction of the pipeline toward Balgownie Grove where, due to the topography of the hill and alignment of the pipeline, the works will still be able to be viewed from open spaces and by adjacent landowners.</p> <p>With regard to point c) nighttime works are proposed for a very limited duration of approximately 4 nights during the expected 2 -3-year construction period.</p> <p>As noted below, condition 19(o) has been converted to a standalone requirement in new condition 19A.</p>	<p>No amendments to the conditions are proposed.</p>
Noise and Vibration		
<p><i>Fencing</i></p> <p>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'.</p> <p>21. The same question and observation raised above in the context of Ms Hoddinott's evidence are transferable here.</p>	<p>Mr Terry has reviewed this comment and agrees that condition 19 o) would sit better as a separate condition which we have numbered as 19A.</p> <p>He notes that due to the steep terrain on site it may not always be possible to construct a 3-metre high site hoarding. I have amended the wording slightly to emphasise that this only applies to noise generating activities. As discussed in Mr Terry's assessment, not all activities on site (geotechnical testing and ecological surveys for example) will generate noise that requires mitigation via a 3-metre high site hoarding. With activities such as landscape planting for example, the hoarding may impede works taking place.</p>	<p>Amend the wording of condition 19 to remove clause o): 19. ...<i>The CNVMP must include, as a minimum:...</i></p> <p style="text-align: center;"><i>o) Where practicable, based on the phasing of works, a 3 metre high site hoarding shall be constructed around the boundary of the construction site. The site hoarding shall be designed and constructed to act as a noise barrier and be maintained for the duration of the project.</i></p> <p>And insert a new condition 19A to read</p> <p><i>19A. Where practicable, based on the phasing of noise-generating works, a 3 metre high site hoarding shall be constructed around the boundary of the construction site. The site hoarding shall be designed and constructed to act as a noise barrier and be maintained for the duration of the project noise generating activities.</i></p>

<p><i>Causal nexus – vibration and noise exceedances preceded by notification</i></p> <p>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.</p> <p>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.</p> <p>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?</p>	<p>Mr Terry has reviewed this comment and notes that condition 19 i) already requires procedures for engaging with stakeholders to be detailed in the Construction Noise and Vibration Management Plan. He has proposed amending condition 19 j) to include notification requirements as well.</p>	<p>Amend the wording of condition 19 j) to read: 19. ...The CNVMP must include, as a minimum:...</p> <p>j) <i>Where compliance with the criteria in Conditions 23 and 24 may not be achieved, a description of alternative mitigation strategies that will be used including notification requirements to affected receptors;</i></p>
<p><i>Management Plan and the Best Practicable Option</i></p> <p>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.</p> <p>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...’.</p> <p>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.</p> <p>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?</p>	<p>Mr Terry has reviewed this comment and is satisfied that condition 18 provides sufficient reassurance that the intent of the Construction Noise and Vibration Management Plan (CNVMP) is to determine the Best Practicable Option (BPO).</p> <p>I consider that conditions 18 and 19 will be read in conjunction with each other. I have proposed a minor clarification in condition 18 to clarify the intent of the CNVMP is to provide a framework for development and implementation of the BPO, while condition 19 sets out the methods to deliver this via the CNVMP.</p>	<p>Amend the wording of condition 18 to read:</p> <p>18. The Requiring Authority shall not commence Construction Works until a Construction Noise and Vibration Management Plan (CNVMP) has been certified by HCC, confirming that the CNVMP satisfies the <u>objective intent</u> established in this condition (condition 18) and the requirements of conditions 19 to 24. Certification shall occur in accordance with the process set out in Condition 8. The <u>objective intent</u> of the CNVMP is to provide a framework for the development and implementation of the Best Practicable Option for the management of Construction Works noise and vibration effects, and to set out how compliance with the construction noise and vibration standards set out in Conditions 23 and 24 below will be achieved as far as practicable.</p>
<p>Geotechnical Stability</p>		
<p><i>Stabilisation Measures</i></p> <p>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’.</p> <p>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</p>	<p>Mr Keepa has reviewed this comment and confirmed that these measures will be delivered via the investigation and analyses required. He notes that preliminary design of any stabilisation measures would be carried out before submitting the outline plan. The detailed design would be sufficiently progressed to a level where the size and arrangement of the main structural elements and critical connections required to meet the geotechnical performance requirements are confirmed.</p>	<p>No amendments to the conditions are proposed.</p>

<p>a need to be more express about specific measures required; and</p> <p>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?</p>	<p>With regard to condition 39 and 40 Mr Keepa notes that there are no guidelines or standards that cover this project fully, and that the design philosophy will be part of the peer reviewer’s scope.</p>	
<p>Other Matters</p>		
<p><i>Management Plan conditions - structure and format</i></p> <p>31. In the main, there management plan conditions adopt a consistent format and structure. There are, however, some discrepancies which should be addressed – namely:</p> <p>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;</p> <p>b) related to the above:</p> <p>i. some management plan conditions set out a ‘purpose’, some set out</p> <p>ii. an ‘objective’ and one sets out both;</p> <p>iii. 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</p> <p>iv. 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;</p> <p>c) there is a syntax error between the chapeau of condition 31 and its subclause a);</p> <p>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?;</p> <p>e) as noted above, the lizard management plan conditions do not include information requirements or a purpose/objective – do they need to?; and</p> <p>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)?</p>	<p>All of the relevant management plan conditions have been amended to refer to their purpose not objective so as to provide drafting consistency.</p> <p>Condition 31 a) has been amended to correct the syntax error.</p> <p>Condition 19 e) has been amended to include this standard.</p> <p>Mr Hansen has reviewed comment and is satisfied that the Lizard Management Plan required under Condition 32 will be prepared to satisfy the requirements of the Wildlife Act and will be approved by the Department of Conservation.</p> <p>I consider that the condition serves as a reminder of the Lizard Management Plan and compliance with the Wildlife Act, and have amended the condition to include an advice note referencing this.</p>	<p>Minor changes have been made to conditions 18, 25, 30, 33 and 35e to clarify the purpose of various management plans and remove references to objectives. Minor changes to condition 30 have also been made to include natural character and visual amenity in the purpose of the Landscape Concept Plan.</p> <p>Amend the wording of condition 31a) to read 31. The LCP must, as a minimum, include: a) <i>Ensure that Details of how</i> the Project’s landscape treatments are context-sensitive in terms of acknowledging Taranaki Whānui ki Te Upoko o Te Ika values, land use, sense of place and the viewing audience;</p> <p>Amend the wording of condition 19 e) to read 19. The CNVMP must include e) <i>The construction noise and vibration criteria that apply for the Project, which must be consistent with those standards specified in NZS 6803:1999 ‘Acoustics – Construction Noise’ (Condition 23) and BS 5228-2:2009 Code of practice for noise and vibration control on construction and open sites – Part 2: Vibration and DIN 4150-3 (Condition 24);</i></p>

<p><i>Reinstatement of firebreak track</i></p> <p>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.</p>	<p>I have proposed to amend conditions 31 c) to require that the landscape concept plan must include details of reinstated pathways and seating</p>	<p>Amend the wording of conditions 31c) to read: 31. <i>The LCP must, as a minimum, include:...</i> c) <i>Details of the replaced <u>and/or reinstated</u> pathways through the site including the location of replacement <u>and/or new seating and signage</u>;</i></p>
<p><i>Erosion and sediment control measures</i></p> <p>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.</p> <p>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.</p> <p>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</p>	<p>I note that the Erosion and Sediment Control Plan (ESCP) required under Condition 13 is to be certified by GWRC and a copy supplied to HCC only once it has been certified. The requirements of our resource consent conditions for bulk earthworks with GWRC will require that the ESCP be prepared in accordance with the Erosion and Sediment Guide for the Wellington Region, which is considered to be best practice for the region. As HCC have no role in certifying this document, there is no need to duplicate this requirement in the designation conditions, and I consider that supplying the certified document to HCC should demonstrate that effects will be appropriately managed through implementation of the plan.</p>	<p>No amendments to the conditions are proposed.</p>
<p><i>Proposed amendment to condition 16</i></p> <p>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.</p> <p>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.</p>	<p>I propose to amend condition 16 to remove reference to large spills and to reference spills rather than deposits from machinery and vehicles.</p>	<p>Amend condition 16 to read <i>16. The Requiring Authority shall ensure that vehicles and machinery leaving the site do not spill earth or other material in or on road reserve, the road surfaces or surrounds. If such <u>any large</u> spills occur, the Requiring Authority shall clean the road surfaces to their original condition as soon as possible after the spill occurs and within 24 hours.</i></p>

Ministry of Education – Letter to be tabled at the Notice of Requirement for the Eastern Hills Reservoir Hearing

MINISTRY OF EDUCATION COMMENT	WELLINGTON WATER REPLY	PROPOSED AMENDMENTS
<p>The Ministry of Education have written to the Commissioner requesting that a condition be included to restrict heavy vehicles movements past schools during peak pick-up and drop-off (PUDO) times, as outlined below (with an accompanying table of proposed restrictions). The condition wording and restrictions sought are identical to those in the Ministry’s original submission.</p> <p><i>“Heavy vehicles will avoid travelling past the schools listed in the following table during peak before and after school travel times, during term time only.</i></p> <p><i>Before any construction works begins where there are heavy vehicle movements are traveling along Daysh Street or Fairway Drive, the four schools listed in the table below must be informed at least 10 working days before the works begin.”</i></p>	<p>As noted in the evidence of Wellington Water’s Traffic and Transport expert Hilary Fowler, Daysh Street is an arterial road used by over 8000 vehicles per day. At its busiest period, the Project would add only an additional 1.3% increase in daily traffic volumes. Ms Fowler considers that this will impose only negligible additional risk relative to the risk that already exists on an arterial road with a 50 kmph speed limit.</p> <p>Wellington Water also have concerns at the practicality of enforcing such a condition and how trucks travelling near schools would be identified as travelling to and from the Project site rather than other construction sites or destinations in the Hutt Valley. If heavy vehicles were unable to travel past schools during PUDO times this may create additional safety hazards if vehicles are required to pull over and wait for this time to pass. This may cause delays to the construction programme, extending the effects on nearby residents as well as the schools, and potentially creating additional costs for ratepayers.</p> <p>Wellington Water knowledge the Ministry’s concerns regarding the Riverlink project and the potential for overlapping construction timeframes and cumulative effects. Ms Fowler notes that the Riverlink project is located further to the south along the Hutt River and does not expect that there would be a large volume of overlapping construction vehicle passing near Belmont School. She doubts that there will be many, if any, construction vehicles associated with Riverlink travelling the same route adjacent to Kimi Ora School or Naenae Intermediate and College on Daysh St.</p> <p>I note that the s42A report and evidence from Hutt City Council’s Transport Planning and Traffic Engineering peer reviewer did not recommend this condition be included.</p>	<p>No amendments to the conditions are proposed.</p>