

DOC-1235251

Internal Document - Requests for Comments – Ecosystems and Species
3 July 2013

Request for Comments Form - Area Office/Science & Technical

Applicant: Hawke's Bay Regional Investment Company Limited

Permission Database Number: 36801-OTH

File Number: PAC 09 04 178

Application Type and Concession Process: Notified Easement

Hawke's Bay Regional Investment Company Limited (HBRIC Ltd) has applied for an easement to inundate 5 pieces of land, totalling 22.2ha (approx.) of the Ruahine Forest Park. The purpose of this inundation is to allow for the Ruataniwha Irrigation Dam to be constructed.

No dam infrastructure would be on Public Conservation Land; it would simply be inundated with water.

The land is situated on the edge of the Park and the applicant has stated that aside from the Ruahine Ranges, there are no outstanding features or landscapes (refer page 61 of the Application.) The Applicant also refers to the adjacent farm land described as having "modified working rural character". All of the pieces of land are deemed to be Conservation Park, as defined by section 61(2) of the Conservation Act 1987 (the Act).

Date Sent: 3 July 2013

From: Arna Litchfield

Comment sought from: Science & Technical – Terrestrial Ecosystems and Species

Specific issues to consider:

Under the concessions process, the considerations are limited to the effects on the land itself, and any positive effects or mitigation that is undertaken on other areas is not relevant in this instance. Also note that under the terms of the Act, we cannot take into account any economic benefit of this activity. Bearing this in mind, please consider the following:

Section 17U of the Act states that:

- (1) In considering any application for a concession, the Minister shall have regard to the following matters:
 - (a) the nature of the activity and the type of structure or facility (if any) proposed to be constructed;
 - (b) the effects of the activity, structure, or facility;
 - (c) any measures that can reasonably and practicably be undertaken to avoid, remedy, or mitigate any adverse effects of the activity;
 - (d) any information received by the Minister under section 17S or section 17T;
 - (e) any relevant environmental impact assessment, including any audit or review;
 - (f) any relevant oral or written submissions received as a result of any relevant public notice issued under section 49;
 - (g) any relevant information which may be withheld from any person in accordance with the Official Information Act 1982 or the Privacy Act 1993.
- (2) The Minister may decline any application if the Minister considers that—
 - (a) the information available is insufficient or inadequate to enable him or her to assess the effects (including the effects of any proposed methods to avoid, remedy, or mitigate the adverse effects) of any activity, structure, or facility; or
 - (b) there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility.

- (3) The Minister shall not grant an application for a concession if the proposed activity is contrary to the provisions of this Act or the purposes for which the land concerned is held.
- (4) The Minister shall not grant any application for a concession to build a structure or facility, or to extend or add to an existing structure or facility, where he or she is satisfied that the activity—
- (a) could reasonably be undertaken in another location that—
 - (i) is outside the conservation area to which the application relates; or
 - (ii) is in another conservation area or in another part of the conservation area to which the application relates, where the potential adverse effects would be significantly less; or
 - (b) could reasonably use an existing structure or facility or the existing structure or facility without the addition.
- (5) The Minister may grant a lease or a licence (other than a *profit à prendre*) granting an interest in land only if—
- (a) the lease or licence relates to 1 or more fixed structures and facilities (which structures and facilities do not include any track or road except where the track or road is an integral part of a larger facility); and
 - (b) in any case where the application includes an area or areas around the structure or facility,—
 - (i) either—
 - (A) it is necessary for the purposes of safety or security of the site, structure, or facility to include any area or areas (including any security fence) around the structure or facility; or
 - (B) it is necessary to include any clearly defined area or areas that are an integral part of the activity on the land; and
 - (ii) the grant of a lease or licence granting an interest in land is essential to enable the activity to be carried on.
- (6) No lease may be granted unless the applicant satisfies the Minister that exclusive possession is necessary for—
- (a) the protection of public safety; or
 - (b) the protection of the physical security of the activity concerned; or
 - (c) the competent operation of the activity concerned.
- (7) For the purposes of subsection (6), the competent operation of an activity includes the necessity for the activity to achieve adequate investment and maintenance.

While I do not refer to all of the above subsections, I have included the section in its entirety for your reference.

With reference to section 171 of the Act:

1. What are the effects of the activity, ie what effect will flooding those five pieces of land have? Are there any particular qualities/characteristics of this land, or species which would be affected or lost as a result of the flooding?

Qualities and Characteristics for this land – Terrestrial Ecology

The ecological values in the affected areas of the Ruahine Conservation Park have not been assessed in isolation from the total area affected by the proposed dam in the applicants EIA. The supporting material (Kessels & Associates, May 2013)¹ provides a comprehensive in-depth analysis of ecological values and effects of the proposal. However for the purposes of this concession application these values need to be revisited so they apply solely to the areas within the conservation park which are directly and indirectly affected by the proposal. This will include the use of standard national, regional or local context and assessment criteria.

The four 'National Priorities for Protecting Rare and Threatened Biodiversity on Private Land'² (MfE and DOC, 2007) are currently used widely as national assessment criteria

¹ Kessels & Associates Ltd, May 2013. *Hawkes Bay Regional Investment Ltd. Ruataniwha Water Storage Scheme. Terrestrial Ecology Study. Assessment of Ecological Effects (Final)*.120p + appendices

² <http://www.biodiversity.govt.nz/pdfs/protecting-our-places-detail.pdf>
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and are consistent with the Proposed Draft National Policy Statement for Biodiversity³. Applying these criteria to the affected 22.2ha of Ruahine Forest Park:

1. **Threatened Land Environments of New Zealand** – the entire area in the proposal falls under either B2.1c (the overwhelming majority) or B2.1d. Environment B contains land areas grouped as 'Central Dry Lowlands'. B2.1c is classified⁴ as Acutely Threatened (i.e. <10% of the national land area remains in indigenous vegetation) and B2.1d is classified as Chronically Threatened (i.e. ,20% of the national land area remains in indigenous vegetation). In broad terms, this is a reflection that indigenous alluvial forest has been substantially reduced from its pre-human extent in this land environment and reinforces the significance of remaining stands. Priority 1 is therefore triggered.
2. **Wetlands and Dunes** – this criteria recognises that both wetland and dune ecosystems have been subject to an extensive amount of loss and degradation nationally. The presence of the oxbow wetland on the true right of Dutch Creek triggers Priority 2.
3. **Naturally Rare Ecosystems** – A small portion of the disjunct area of Conservation Park on the true left of Makaroro River (Area A in the EIA) lies adjacent to and includes braided river gravels. Braided rivers are identified as nationally rare ecosystems. Given the very limited extent of braided river within the conservation park which would be affected, it is a moot point as to whether Priority 3 is triggered.
4. **Habitats of Threatened and Declining Species** – The presence of habitat which contains North island long tail bat (Nationally Vulnerable), North Island fernbird (Declining), and red mistletoe (Declining) means that this criteria is triggered.

There is no doubt, therefore, that the areas of indigenous habitat which are subject to the proposal contain significant ecological values within a national context.

What Effects will the Proposed Activity have?

In simple terms, the flooding of all of the areas under the proposal will mean the loss of all ecological values present within the proposed footprint of the dam water. There are also likely to be secondary adverse effects to the remaining forest which become situated at the edge of the dam water because of the raised water table, recreational use and the creation of edge effects.

1. Can the effects of flooding these sections of land be avoided, remedied or mitigated? If so, how? Please remember, that under the terms of the Act, we are only able to consider what can be done on the subject pieces of land, nowhere else.

Can the effects of flooding these sections of land be avoided, remedied or mitigated?

Avoided – as far as the flooding itself goes, this is unknown but it is assumed, given how far advanced the EPA application process is, that there is now little chance of revisiting the dam design which could examine the possibility of avoiding the flooding of the areas in Ruahine Conservation Park.

Remedied – the effects of the flooding will constitute the complete loss of the ecosystems and habitats, so remediation is not possible.

Mitigation – there is no chance of any mitigation measures within the proposed footprint of the dam water.

Other Questions:

2. Sections 17T(2) and 17T(3) of the Act state:
 - (2) If the Minister is satisfied that the complete application does not comply with or is inconsistent with the provisions of this Act or any relevant conservation management strategy or conservation management plan, he or she shall, within 20 working days after receipt of the application, decline the application and inform the applicant that he or she has declined the application and the reasons for declining the application.
 - (3) Nothing in this Act or any other Act shall require the Minister to grant any concession if he or she considers that the grant of a concession is

³ <http://www.mfe.govt.nz/publications/biodiversity/indigenous-biodiversity/proposed-national-policy-statement/statement.pdf>

⁴ http://www.landcareresearch.co.nz/_data/assets/excel_doc/0008/21797/ThreatCategoriesVer3.xls
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inappropriate in the circumstances of the particular application having regard to the matters set out in section 17U.

Bearing these sections in mind, are there any reasons to decline this application?

The legal/planning consistencies with the application are outside the brief for the ecological assessment by Science and Capability staff.

However under S17U(2) b (i.e. 'there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility.') it is apparent that the proposal is unable to meet this requirement.

3. The land is deemed to be a Conservation Park. Section s19(1) of the Act states:
Every conservation park shall so be managed—
(a) that its natural and historic resources are protected; and
(b) subject to paragraph (a), to facilitate public recreation and enjoyment.

Is flooding this land contrary to this purpose?

It is clear that the proposal is in direct conflict with the conservation park being managed so "...that its natural and historic resources are **protected**".

5. Are there any terrestrial ecosystem or species concerns in relation to this site, particularly given the designation of the land as Conservation Park?

Yes. See the breakdown of values in (1) above. Of particular concern are alluvial communities, the oxbow wetland and habitat of rare and threatened species. These are the values that trigger national significance. Regional of local context is analysed and discussed in Kessels & Associates (May, 2013) for the project as a whole but these values are not isolated for the affected areas within the Ruahine Conservation Park.

6. If a concession is appropriate, what special conditions are required in order to avoid, remedy or mitigate and adverse effects of the activity?

Within the terms of reference for comment in this paper, the concession is not appropriate. As stated above there are no practical options to avoid, remedy or mitigate within the footprint of the proposed dam within Ruahine Conservation Park.

If this situation changes in the future, so that offsite mitigation or compensation was considered, then a detailed breakdown of biodiversity values would be required over the 22.2ha e.g. Xha of lowland alluvial mixed broadleaved forest, X ha of lowland swamp, Xha of red mistletoe habitat. Appropriate measures to either mitigate or compensate for each of these values would then be needed from the applicant in order for qualified staff within the Department to conduct an assessment.

If a concession is appropriate, please outline any areas of the application where you feel further information is required from the applicant; we only have one opportunity to request further information, so we need to make sure that we have everything covered. If you do require additional information, please provide an estimate of the time you believe it will take you to evaluate this information once received; this will form part of any cost estimate provided to the Applicant.

As stated above, within the terms of reference for comment in this paper, the concession is not appropriate. However, the following is a breakdown of what further information would be required to complete an assessment of the ecological values.

While there are excellent maps of the vegetation types within the conservation park which would be affected by the proposal, much of the assessment of values and effects applies to the wider dam area subject to RMA consents and are therefore not specific to the protected land. Given that the frame of reference for the Department is focussed on the protected land under the Conservation Act this needs to be addressed so that more detailed assessments are made specific to the affected areas in the conservation park.

In particular this applies to the description of terrestrial vegetation and habitat as the EIA (P3 of Appendix 8) does not place any national, regional or local context around the vegetation types in terms of their bioclimatic zone, the landform/substrate upon which they occur, and consequently the relative

abundance of these at the three scales. For example, there needs to be an assessment of the degree of loss of lowland wetlands and alluvial forest within the context of Ruahine Ecological Region/District.

The description of the affected ecosystems in the conservation park, as described above, could then be translated to regional/local assessments of biodiversity value using standard assessment criteria such as:

- a. Representativeness
- b. Rarity (ecosystems and species)
- c. Diversity and Pattern (ecosystems and species)
- d. Ecological Context (e.g. the role that the areas play in ecological sequences; any buffering role that an area may perform)

A full description of each vegetation type (including bioclimatic zone and landform), detailing their condition, and species lists for each of the vegetation types is required to assess species which are regionally or locally uncommon (or, for example at the edge of their distributional limits). It would also help illustrate species diversity within these vegetation types

The EIA (and Kessels and Associates, May, 2013) do not appear to include any survey or analysis of non-vascular flora. This information would be expected to form part of an assessment given scale of effects

This analysis would then allow a thorough assessment of the relative ecological values of the affected areas in the conservation park. If the proposal gets to a point where mitigation measures are considered outside of areas directly affected by the dam, then any level of appropriate measures can be more accurately identified

Deadline for request for additional information: Friday 12 July 2013

Deadline for comments: Friday 12 July 2013

Please refer to the following documents:

Forms 1a and 3b – docdm 1234948

Environmental Impact Assessment – docdm 1234982

Please record staff time in the box provided. This is required for accurate cost recovery.

Staff member name, role and group	Time spent (in minutes)	AM/S&T Manager Signoff (if required by S&T or Ops)	Date
Simon Moore	1800		12/7/13

1.0 Effects of activity applied for

Are there any effects (adverse or positive including cumulative) other than those identified by the applicant that need to be managed?

- Environmental (landform, flora, fauna, freshwater, biodiversity, historic, other, including impacts on such)
- Social (noise, visual, recreational, other users of PCL, other)
- Cultural (iwi concerns)

None that are known of, though this analysis is a preliminary appraisal without the benefit of a site visit.

Are there any operational management issues such as access/status, condition of site/facilities and/or local limitations that the concessionaire needs to manage?

At this point it appears that the applicant is not including road/track access around the dam edge as part of this concession application, although it is flagged in the EIA that this may happen at a later date. It is acknowledged in the EIA that, if the proposal was to proceed, there will also be indirect effects on residual lakeside habitat through the raised water table (adversely impacting forest species which aren't able to cope with this) and increased recreational use. It is unknown how these effects would/could be managed.

2.0 Measures to manage adverse effects identified

Where you have noted adverse effects above can you suggest a way the applicant can avoid, remedy or mitigate that effect. If this not already mentioned in the standard conditions of the concession contract it may be used to develop a special condition – *please check the standard contract conditions with the permissions advisor if necessary.*

As stated above, within the terms of reference for this brief, there is no possible means to avoid, remedy or mitigate within the areas affected by the proposal, because they would be permanently lost.

3.0 Treaty Settlement Implications

Are you aware of any specific Treaty Settlement implications related to this application in the way of:

- Is the site subject to the application due to be transferred to Iwi? (*Note particular negotiations and any other DOC staff who should be consulted*):
- Any specific post-settlement implementation obligations that relate to the site or proposed activity:

Unknown and outside the brief for advice.

4.0 Applicant Experience

Do you have any comment to make about the applicant's suitability to undertake the concession activity and be a responsible concessionaire?

Unknown.

5.0 Other comments/recommendations

Do you have any other comments/recommendations in regard to this concession application?
Any future consideration of assessments regarding appropriate mitigation/compensation should be directed to the Technical Advisor, Ecology – Biodiversity Offsets (Laurence Barea).

6.0 Ongoing monitoring requirements

If the concession activity is approved what would you suggest the monitoring requirements be, and why:

- Frequency of monitoring (annual, bi-annual etc):
- Staff time (including travel to and from site, site visit and time to write up appropriate report):
- Mileage:

A comprehensive monitoring plan would be required to cover, for example:

- Indirect effects of the dam e.g. recreational use around the new dam edge;
- Weed incursions resulting from the project;
- The delivery of any mitigation measures.

7.0 Further information required

If further information is required please contact the permissions advisor on the front page to confirm if it should be a formal request to the applicant.

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