

# Notification / non-notification decision report

For applications lodged from 30 September 2020 onwards.

Applicant: Tasman District Council

Application number: RM240327, RM240328, RM240329

Description of activity: Notice of Requirement for the Richmond South 'water supply purposes' designation to be shown in the TRMP The designation is for the provision of a new water supply reservoir for the for the purposes of providing reticulated water supply to existing and developing residential zones, including the deferred residential zones.

Discharge consent from reservoir integrity testing/commissioning of reservoir. Incidental discharges during installation of the outfall structure. Discharges during reservoir maintenance and from overflow (emergency) events.

Land use consent for the installation of a new outfall/discharge structure in upper Borck Creek that is >2m<sup>2</sup> in area.

## 1. Complete eight step notification decision making process

*Complete Appendix A.*

## 2. Activity status

Discretionary activity

Notes for the following (click ▶ to open)

- (a) Identify why / how it breaches a lesser status or permitted activity performance standard.
- (b) Identify any rules requiring / precluding notification and / or re relevant matters of discretion / control, and
- (c) Identify any other statutory documents that are relevant for your assessment (e.g., NPS, WCOs etc)
- (d) It's assumed you do not have proposed plan and operative plan provisions with legal effect at the same time - but if so you must include both.

The following summarises the reasons for consent, activity status, rules or regulations

### Notice of Requirement

Tasman District Council (the Applicant) has submitted a Notice of Requirement for a designation for "Water Supply Purposes" at 520 Hill Street South, Hope. Tasman District Council (TDC) is a "Requiring Authority" pursuant to section 166 of the RMA. TDC owns the land parcel over which the designation is sought.

The primary public work proposed for the site is a new water reservoir, which will form part of the wider Richmond reticulated water supply network and will service existing and developing residential areas of Richmond.

The Notice of Requirement provides sufficient detail regarding the reservoir, such that an Outline Plan will not be required.

### Request for Public Notification

The applicant has requested that the Notice of Requirement and resource consent applications are publicly notified (this is provided for under section 149ZCB(2)(a) of the RMA which applies with all necessary modifications as per section 168A(1A) of the RMA), primarily because the Landscape and Visual Assessment indicates that visual effects are "moderate" before plantings establish.

## Rules Assessment - TRMP

The application contains an assessment of the Tasman Resource Management Plan Rules in section 4.4 of the application. The Notice of Requirement will mean that section 9 land use consents will not be required, however the applicant has identified the following rules which would otherwise apply to the activity:

Network Utilities and Public works	s9	16.6.2.1	Discretionary (16.6.2.4)	<p>The proposal does not meet permitted standards:</p> <p>16.6.2.1 b) it is an above ground network utility on an identified ridgeline</p> <p>16.6.2.1. e) The screen planting will not totally screen the reservoir from all roads and public places</p> <p>16.6.2.1. g) i) The reservoir has a 'ground floor area' greater than 50m<sup>2</sup>.</p> <p>16.6.2.1 g) ii) The reservoir will exceed the permitted building height of 7.5m in the Rural 1 Zone.</p> <p><b>Note:</b> As Council is applying for a NOR to designate the site, this overrides the relevant district plan requirements. This is discussed further below.</p>
Land Disturbance	s9	18.5.2.1	Restricted Discretionary (18.5.2.5)	<p>The duration of disturbance may slightly exceed 12 months; however, erosion and sediment control measures will be implemented throughout. No earthworks will be undertaken within 10 m of upper Borck Creek. Trenches are likely to be greater than 0.6m wide and open for longer than 24hrs. Land recontouring also exceeds 1m in height or depth.</p> <p><b>Note:</b> As Council is applying for a NOR to designate the site, this overrides the relevant district plan requirements. This is discussed further below.</p>

The proposal would, be a discretionary activity with respect to the section 9 land use consent requirements in the TRMP, however a notice of requirement is sought which negates the need for section 9 land use consents.

### **RM240328 – Discharge consent**

The applicant has applied for a discharge consent for the following:

- (a) Discharge from the reservoir during commissioning.
- (b) Discharge for maintenance purposes.
- (c) Overflow from the reservoir in the event of system failure.

The proposed discharges will be into upper Borck Creek which is a narrow (1-2 metre wide) waterway with a clay-based streambed. The maximum proposed rate of discharge is 40 L/s, this discharge would last up to 19 hours while the tank is drained during commissioning. The applicant has stated that sodium thiosulphate (or a similar product) will be used to reduce the chlorine content to 3µg/L prior to discharge.

During ongoing operations, the reservoir may require internal maintenance.

The internal surface of the reservoir will be mechanically cleaned through water blasting, the water and debris from this part of the process will be removed by truck to an authorised disposal point and as such, does not form part of this proposal.

### Request for public notification

The applicant has requested public notification under section 95A(3)(a) of the Resource Management Act 1991. The applicant notes that while the NOR and resource consent applications have been bundled for notification purposes, the sole reason for requesting notification is the short-term visual and landscape effect in terms of the NOR.

## Rule Assessment – TRMP

The applicant has stated that incidental discharges during installation of the outfall structure requires resource consent under Rule 36.2.3.1 as a **discretionary activity** as there may be temporary changes to the visual clarity of Upper Borck Creek and as such, the proposal cannot meet condition (b) of Rule 36.2.2.4 of the TRMP.

The proposed discharge of water from the reservoir during testing/commissioning, maintenance and emergency overflow is assessed as a **discretionary activity** under Rule 36.2.3.1 of the TRMP as the proposed discharge cannot meet:

- (a) Condition (b) of Rule 36.2.2.8 as there may be more than 0.5 g/m<sup>3</sup> of free or residual chlorine during emergency events;
- (b) Condition (c) of Rule 36.2.2.8 as there are likely to be contaminants other than heat in the discharge from the maintenance and commissioning of the reservoir; and
- (c) Condition (e) of Rule 36.2.2.8 as the discharge rate will be greater than 5 L/s during commissioning and the discharge rate may exceed 40 L/s during an emergency overflow event.

## **RM240329 – land use consent (s13, RMA)**

The applicant has sought resource consent to install a proposed overflow pipe/scour line from the proposed reservoir to upper Borck Creek, and an associated outfall structure (Figure 1). There is the potential that the scour pipe will be shortened, and a natural swale will be provided which would aid with the energy dissipation, filtering and infiltration of the discharged water prior to discharging into Borck Creek. A swale option would require additional rock riprap and geofabric due to discharge velocity. Details of the scour line and route will be developed during the detailed design phase.



Figure 1 - Conceptual piped stormwater outfall option(L) and conceptual channelled stormwater outfall option (R).

The overflow will be used during reservoir commissioning and emergency situations.

The applicant has indicated that any consenting requirements for the piped network will be addressed separately and as such, do not form part of this proposal.

## Request for public notification

The applicant has requested public notification under section 95A(3)(a) of the Resource Management Act 1991. The applicant notes that while the NOR and resource consent applications

have been bundled for notification purposes, the sole reason for requesting notification is the short-term visual and landscape effect in terms of the NOR.

### Rule Assessment – TRMP

The proposed installation of the outfall structure is assessed as a **discretionary activity** under TRMP Rule 28.1.8.1 as the outfall structure will be more than 2m<sup>2</sup> in size. The general conditions of Rule 28.1.2.1 of the TRMP can be met.

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### 3. Adverse effects on the environment

Assessment must follow section 95D: (click ▶ to open)

- (a) must disregard any effects on persons who own or occupy: (i) the land in, on or over which the activity will occur, or (ii) any land adjacent to that land; *[identify adjacent properties if needed, e.g., complex – aerial map is an easy way];*
- (b) may disregard an adverse effect of the activity if a rule or NES permits an activity with that effect *[non-fanciful permitted baseline, avoid cherry picking; give reason if you choose not to apply];*
- (c) in the case of a restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or NES restricts discretion; *[for bundled consents likely that overall activity status applies];*
- (d) must disregard trade competition and the effects of trade competition;
- (e) must disregard any effect on a person who has given written approval to the application.

<input type="checkbox"/> Minor or less than minor	<input checked="" type="checkbox"/> More than minor
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Assessment and reasons:

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#### **Landscape and visual effects**

The principal issue associated with the Notice of Requirement is the potential for visual effects on the surrounding residents associated with the construction of a utility building on an identified ridgeline. The applicant's Landscape and Visual Effects Assessment indicates that before planting establishes, there will be a moderate (more than minor) effect on the landscape and visual amenity of the surrounding environment. The applicant has requested public notification as a result.

Because the applicant has requested that the application be publicly notified in accordance with section 95A (3) (A) of the Act, a full assessment of effects is not required at this point in the processing of the notice of requirement.

#### **RM240328 (discharge)**

The principal issues associated with the proposed activity include the actual and potential effects on the environment. For this application these are:

- (a) Effects on downstream flooding
- (b) Effects of scour and erosion
- (c) Effects on water quality and freshwater values
- (d) Effects on cultural values

The applicant has assessed the above effects to be minor or less than minor however the applicant has requested public notification of the bundled consents.

#### **RM240329 (outfall structure)**

The principal issues associated with the proposed activity include the actual and potential effects on the environment. For this application these were:

- (a) Effects of construction of the outfall
- (b) Effects on water quality and freshwater values
- (c) Effects on cultural values

The applicant has assessed the above effects to be minor or less than minor however the applicant has requested public notification of the bundled consents.

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#### 4. Special circumstances for public notice

Notes: (click ▶ to open)

- 'Special circumstances' are generally those that are unusual, although they may also include objectives and policies of plans or national environmental standards that give clear indications of expected environmental outcomes relevant to the proposed activity.
- If what is proposed is specifically envisaged by the plan, it cannot be described as out of the ordinary.
- The fact that some persons have concerns about a proposal does not of itself give rise to 'special circumstances', but it may be a contributing factor.

Ask yourself what are the particular circumstances that take this out of the ordinary and make public notification desirable?

No special circumstances identified.  Special circumstances apply.

#### 5. Affected persons

Assessment must be made in accordance with section 95E: (click ▶ to open)

- (a) may disregard an adverse effect of the activity on a person if a rule or NES permits an activity with that effect;
- (b) must, if the activity is a controlled or restricted discretionary activity, disregard an adverse effect of the activity that does not relate to a matter for which a rule or NES restricts control/discretion;
- (c) must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11 (Treaty Settlement Legislation);
- (d) must disregard any effect on a person who has given written approval to the application.

If more than one statutory acknowledgement area below, type in the others in the reasons / analysis.

Statutory acknowledgment area  
(for s95E(2)(c))

none

No affected persons.  Affected persons.

*Refer table on page 7 for affected persons.*

#### Reasons / analysis

As noted in section 3 of this report the applicant has requested public notification, however, under the Resource Management (Forms, Fees, and Procedure) Regulations 2003 (New Zealand) Regulation 10 – (Service of applications for resource consents or for review of conditions) the Council is still required to decide who to serve notice of the application.

#### Surrounding residents

The visual effects are largely contained to the area immediately surrounding the proposed reservoir site. This comprises properties along Hill Street South, Sunview Heights, and a small subset of dwellings on Hill Street which are on the top or southern side of the ridgeline extending from the top of Sunview Heights down to Hill Street. Beyond this, the properties have no view of the site because of the ridgeline at the end of Hill Street.

It was not possible to gain access to all of the properties to determine the extent of visual effects that might arise as a result of the activity, but based on topographic information, views obtained from the top of the public road at Sunview Heights, Hill Street, Hill Street South and viewing dwellings from the application site, the following persons are recommended to be served notice of the application because they may experience more than minor visual and landscape effects for the duration described in the applicant's Landscale and Visual Effects Assessment.

The visual catchment area is shown in the aerial image below (on next page).

#### Discharge to Upper Borck Creek

As discussed above, the applicant is proposing to discharge chlorinated water (which has been neutralised to contain 3µg/L of chlorine) to Upper Borck Creek. The applicant has provided an assessment which indicates that the effects on the wider environment will be minor or less than minor. I consider that there are no persons on whom notice should be served because of the proposed discharge to Upper Borck Creek.



**Visual Catchment Area**

**Outfall structure adjacent to Upper Borck Creek**

As discussed above, the applicant is proposing to install an outfall structure within and adjacent to Upper Borck Creek. The applicant has provided an assessment which indicates that the effects on the wider environment will be minor or less than minor. I consider that there are no persons on whom notice should be served because of the proposed outfall structure.

**Statutory acknowledgment areas**

The proposed works are not located within a statutory acknowledgment area; however, I note that the discharge from the reservoir will eventually discharge to the coastal environment which is identified as the Te Tau Ihu Coastal Marine Statutory Acknowledgement Area. This SAA is recognised for Ngāti Rārua, Te Ātiawa o Te Waka-a-Māui, Ngāti Toa Rangatira, Ngāti Tama ki Te Tau Ihu, Ngāti Apa ki te Rā Tō, Ngāti Kuia, Ngāti Kōata and Rangitāne o Wairau.

The site is not located within a Cultural Heritage Precinct and there are no finds identified on Tasman Maps within the vicinity of the proposed activity, however I note that there may be unmapped finds. I note that the applicant has undertaken consultation with a number of iwi throughout the process so they are aware of the proposal and have had several opportunities to provide comment.

For the above reasons, I consider that Ngāti Rārua, Te Ātiawa o Te Waka-a-Māui, Ngāti Toa Rangatira, Ngāti Tama ki Te Tau Ihu, Ngāti Apa ki te Rā Tō, Ngāti Kuia, Ngāti Kōata and Rangitāne o Wairau should be advised of the proposal rather than served notice.

Adversely affected persons	How are they affected?	Written approval
<b>Owners/Occupiers 177 White Road, Hope</b>	Landscape and visual amenity effects	No
<b>Owners/occupiers 52 Cupola Crescent, Richmond</b>	Landscape and visual amenity effects	No
<b>Owners/occupiers 475, 479, 481, 485, 487, 489 Hill Street, Hope</b>	Landscape and visual amenity effects	No

Adversely affected persons	How are they affected?	Written approval
<b>Owners/occupiers 491, 493, 495, 497, 499, 500, 511, 511A, 513, 515, 519, 525, 535, 537, 539, 543, 545 Hill Street South, Hope</b>	Landscape and visual amenity effects	No
<b>Owners/occupiers - all properties on Sunview Heights</b>	Landscape and visual amenity effects	No

## 6. Special circumstances for limited notification – complete only if applicable

Notes: (click ► to open / hide)

- A person otherwise not considered adversely affected specifically excludes those weren't considered adversely affected in the assessment above.
- While there is no specific case law as to special circumstances that warrant notification to a person otherwise not considered adversely affected, consider what are the particular circumstances that are unusual or out of the ordinary that make it desirable for a person to have to be notified (for instance, if a rule precluded limited notification; or there may be a special interest group / association that has a 'charter' re some value / issue engaged).
- In that remember the context that the purpose of public participation is to assist in decision-making that better achieves the sustainable management of the purpose of the Act. For instance, which circumstances are 'special' will be those which make notification desirable, despite the general provisions excluding the need for notification.

<input checked="" type="checkbox"/> No special circumstances identified. <input type="checkbox"/> Special circumstances apply.
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## 7. Recommendation

It is recommended that this application be:

- Publicly notified** because the applicant has requested public notification.
- Limited notified**
- Processed on a **non-notified** basis for the reasons identified in this report.

Recommendation by  Date: 7-08-2024  
 Name: Kate McKenzie  
 Position: Consultant Planner

Recommendation by  Date: 07/08/2024  
 Name: Saskia Wilson  
 Position: Senior Consent Planner – Natural Resources

## 8. Section 95 decision

Recommendation accepted under delegated authority of the Tasman District Council by:

 Date: 07-08-2024  
 Phil Doole  
 Principal Planner - Resource Consents

## Appendix A – 8 Step Notification Decision Process

Complete steps 1-8.

If public or limited notification is required, record full reasons in the relevant sections of your report.

Public notification decision making flowchart		
<b>Step 1:</b> Mandatory public notification	<ul style="list-style-type: none"> <li>• Has the applicant requested public notification?</li> <li>• Has the applicant failed/refused to supply further information (s95C)?</li> <li>• Is the application made jointly with an application to exchange recreation reserve land under s15AA of the Reserves Act 1971?</li> </ul>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes → must publicly notify
<b>Step 2:</b> Public notification precluded in certain circumstances	<ul style="list-style-type: none"> <li>• Does a relevant plan rule or NES regulation prevent public notification?</li> <li>• Is the application for:               <ul style="list-style-type: none"> <li>○ a controlled activity?</li> <li>○ a 'boundary activity' that is a restricted discretionary, discretionary or non-complying activity?</li> </ul> </li> </ul>	<input type="checkbox"/> No <input type="checkbox"/> Yes → go to step 4: special circumstances (no step 3)
<b>Step 3:</b> Public notification required in certain circumstances	<ul style="list-style-type: none"> <li>• Will the activity have, or be likely to have, adverse effects on the environment that are more than minor?</li> <li>• Does a relevant plan or NES rule require public notification?</li> </ul>	<input type="checkbox"/> No <input type="checkbox"/> Yes → must publicly notify
<b>Step 4:</b> Public notification required in special circumstances	<ul style="list-style-type: none"> <li>• Do special circumstances exist that call for public notification?</li> </ul>	<input type="checkbox"/> No <input type="checkbox"/> Yes → must publicly notify
Limited notification decision making flowchart		
<b>Step 5:</b> Mandatory limited notification to certain groups and persons	<ul style="list-style-type: none"> <li>• Are there affected protected customary rights groups (s95F)?</li> <li>• Are there affected customary marine title groups (applications for an 'accommodated activity')? (s95G)</li> <li>• Is the activity on, adjacent to, or may affect land that is the subject of a statutory acknowledgement made per an Act specified in Schedule 11 of the Act; and the person to whom the statutory acknowledgement is made is affected under s95E?</li> </ul>	<input type="checkbox"/> No <input type="checkbox"/> Yes → must limited notify
<b>Step 6:</b> Limited notification precluded in certain circumstances	<ul style="list-style-type: none"> <li>• Does a relevant plan or NES rule prevent limited notification?</li> <li>• Is the application for a controlled activity that requires consent under a district plan (other than a subdivision)?</li> </ul>	<input type="checkbox"/> No <input type="checkbox"/> Yes → go to step 8: special circumstances (no step 7)
<b>Step 7:</b> Limited notification required to certain other affected persons	<ul style="list-style-type: none"> <li>• Are any of the following eligible persons 'affected' under s95E?               <ul style="list-style-type: none"> <li>• For boundary activities – an owner of an allotment with an infringed boundary?</li> <li>• For other activities, will there be minor or more than minor adverse effects on any 'affected persons'?</li> </ul> </li> </ul>	<input type="checkbox"/> No <input type="checkbox"/> Yes → must limited notify
<b>Step 8:</b> Limited notification required in special circumstances	<ul style="list-style-type: none"> <li>• Do special circumstances exist that warrant notification to any persons not already determined to be eligible for limited notification? (excludes persons assessed under s95E as not being affected)</li> </ul>	<input type="checkbox"/> No <input type="checkbox"/> Yes → must limited notify