HDC Consents – S42A Questions

1) Section 9.0(ii) – why does the author consider that the Waikato Regional Plan is relevant in terms of s104D(1)(b)(i) RMA for applications made to the Hauraki District Council?

   The reference to the Waikato Regional Plan in section 9.0 ii is there for completeness. In assessing the "gateway test", s104D (1)(b) refers to the application not being contrary to the objectives and policies of the relevant plan. In this case, the relevant plan is the Hauraki District Plan because a land use consent application is under consideration.

   In regard to the Waikato Regional Plan, Section 9.0 ii does not address whether the application contravenes the objectives and policies of the Waikato Regional Plan but rather notes that the WRC s42A Report addresses this statutory document in relation to the applications for the required "regional consents".

2) Section 10.6.3 – given that effects on individual property values are generally not considered to be an RMA effect, can the Panel impose an amended (from what was offered by the applicant) 'Top Up" programme condition, or would any amended condition need to be offered by the applicant as an *Augier* condition?

   I do not think that the "Top Up" programme can be conditioned other than if offered by the applicant on an Augier basis

3) Section 10.11, last paragraph – the Panel makes decisions based on the evidence presented to it. In that regard, what if any additional and/or amended conditions does the author recommend?
   No additional and/or amended conditions are recommended. Ms Roa did not make a recommendation in her s.42A report concerning the Trust Deed. The consent holder under the Extended Martha Mine Project Consent(EMMA) has sent the consent authorities a draft Escrow Deed to address the matters referred to in condition 3.31 10,15-18 of that consent, that is to formalise the land transfer required by the Martha Mine Extended Project conditions of consent. For its part Hauraki District Council accepts that sufficient progress is being made. Further it accepts that as the conditions relating to the Trust are common to the EMMA consent it would be inappropriate to make changes to the conditions as part of the Project Martha hearing when that other consent is not before you.

4) Section 12.2 – would it not be normal practice for "unauthorised activities" to be dealt with under Part 12 of the RMA rather than by way of an applicant being required to hold "sufficient funds, insurances or other financial instruments" for that purpose?

   It would be normal practice for "unauthorised activities" conducted by a consent holder to be addressed through the enforcement provisions of Part 12 of the RMA. This provision was included in earlier consents for the Martha Mine to allow for a possible scenario where the consent holder exited the site leaving various matters that required addressing and rehabilitation that were outside the consented activities and thus not able to be addressed via the rehabilitation bond conditions. In this case, the possible nature of such "unauthorised activities" and the large scale of the operations conducted by the consent holder are such that the local authority should not be left to carry the financial risk that may result.

5) Section 14 – if a consent duration was to be imposed, what expiry date would the author recommend?

No consent duration has been recommended in the s42A Report. Rather the matter is raised in the report (p33) to invite discussion at the hearing. I also note that no submitter had directly sought that a specific expiry date be included. I am very doubtful whether it is possible to include an enforceable date for the pit operations to cease given that the former Mining Licence provisions are now permitted activity provisions in the District Plan and the EMMA land use consent is to be grandfathered into the District Plan in 2019, on its expiry.

An expiry date could be applied to the Martha Underground Mine component of Project Martha. Such an expiry date (if adopted) would be for a minimum of 15 years from commencement of the consent.

The imposition of a fixed duration for those components of Project Martha that relate to use of consented infrastructure would present issues as much of this infrastructure is consented in its own right. Further, the pit operation also relies on this infrastructure and as noted, it may not be possible to include an enforceable fixed duration on pit operations.

6) Section 16.5.1, last paragraph, page 54 – is it *vires* to provide a discretionary "approval" role for a council officer in a consent condition (for example subdivision consent condition 3)? The condition is not intended to provide a discretionary 'approval' role for the Council's Transportation Manager. It has been recommended that the consent be granted, subject to conditions being met. Condition 3 of the subdivision consent, for example, provides for Council certification that the required works will 'comply' with Council standards and requirements (which includes being in accordance with the Engineering Manual) prior to the works taking place/being completed. In this particular case it may be worth noting the intention that the newly realigned and constructed road be vested in the Council. Early confirmation that the required works are to Council standards is beneficial to all parties concerned.

To clarify matters, Council suggests replacing the word 'approval' with 'certification' where it appears in the context of a Council officer certification role in both the land use consent and the subdivision consent.

General Conditions

7) Appendix 8a - is the base document the conditions offered by the applicant?

Yes, the base document for the Appendix 8a conditions is the conditions offered by the applicant in Appendix O.

8) Condition 31, third item – does this relate to the maximum allowable peak particle velocity?

Yes, that is correct. The condition needs to be amended as follows:

> *"Blasts for safety purposes can occur at any time and shall not exceed 1.0mm/s peak particle velocity (vector sum)"*

Amended conditions will be presented at the hearing

9) Conditions 33 and 36 – advice notes are not enforceable. Should the Advice Notes be recast as conditions?

We agree that the Advice Note at condition 33 should be a condition and will amend the recommended conditions accordingly. We understand that the other Advice Note referred to should be that at condition 63. In this case, we do not think this should be made into a condition but remain as advice only.

HDC is reviewing the recommended conditions to consider if other Advice Notes included should be changed to consent conditions.

10) Conditions 35 to 42 – in the absence of these conditions being offered by the applicant, does the Hauraki District Plan have financial contribution provisions that enable them to be imposed?

While the Hauraki District Plan does include financial contribution provisions, these relate to the provision of infrastructure. At Section 7.10.1(8) the District Plan states:

The Council may require Financial Contributions for the following purposes:

Providing for new or upgrading existing infrastructure such as Council owned roads, walkways, cycleways and utilities-water, stormwater, land drainage and sewerage systems

The Financial Contributions provisions in the District Plan are limited in application to these matters.

In the absence of its being offered by the applicant, the Council would not be in a position to impose this AEP regime

Subdivision consent conditions

11) Would it not be better (in terms of consent administration and the avoidance of duplicate conditions) to include construction noise conditions (8 to 14) in the land use consent (General Conditions 14 to 21), especially as s220 RMA does not refer to noise matters explicitly? The Council has attempted to avoid duplication of conditions between the land use consent and the subdivision consent. In this respect it is noted that the proposed subdivision is a stand-alone application and that a land use consent is not required for earthworks associated with road construction (refer to the definition of 'earthworks' in the District Plan), road construction itself (refer to Rule 7.4.5.1 in the District Plan) or for the demolition or relocation of dwellings associated with the proposed subdivision and realignment of Cambridge/Bulltown Roads (as none of the affected dwellings is scheduled in the District Plan for protection).

With specific reference to the subdivision consent and the recommended construction noise conditions, it is noted that the application seeks to subdivide land to accommodate the realignment of Bulltown/Cambridge Roads. The construction of the realigned road is part and parcel of the recommended approval of the subdivision consent – i.e. road construction conditions need to be met to achieve s.224(c) approval. Those 'Construction Activities' that are specific to the subdivision have been separated out from the construction activities proposed by the applicant as part of the land use consent (condition 14 in Appendix O of the AEE) so that there is no duplication between the land use consent and the subdivision consent. Likewise, the

‘Construction Noise’ conditions have been customised for the subdivision consent. It is anticipated that once the conditions of the subdivision consent have been met, and s224 (c) approval given, the conditions in the subdivision consent will have been implemented and the land use consent will not be unnecessarily cluttered with superfluous conditions.