

**RESPONSE TO QUESTIONS OF INDEPENDENT COMMISSIONERS ON THE
PROPOSED CANTERBURY LAND AND WATER REGIONAL PLAN
PREPARED BY AMY KEARSE ON BEHALF OF THE NZ TRANSPORT AGENCY
22 MARCH 2013**

Background

1. At the Proposed Canterbury Land and Water Regional Plan hearing on 15 March 2013, the Independent Commissioners asked the NZ Transport Agency (NZTA) to:
 - (a) Provide a re-wording of condition 3 of Rule 5.79, in order to qualify that the requirement to provide information about bores (including bore logs) within 20 working days does not extend to test pits.
 - (b) Give consideration as to whether it would be useful to amend Rules 5.82 and 5.83 by inserting “or incidental to” after “for the purposes of carrying out”, in relation to geotechnical investigations, bore development or pumping tests.
 - (c) Provide additional wording for Rule 5.86 to address the operational concern of the NZTA about the requirement for bores to not be located within 20 m of a site boundary, but that still enables consideration of relevant effects of the bore; and consider whether Rule 5.86 should apply to infrastructure generally.

Rule 5.79, condition 3¹

Rule 5.79 From the 1st of November 2013, the use of land, including the bed of a lake or river, for the installation, maintenance and use of a bore for geotechnical investigations or monitoring is a permitted activity provided the following conditions are met:

[Conditions 1 and 2]

3. Information on bore ~~or gallery~~ location, bore installation (including bore logs and intended uses), and other relevant information is submitted to the CRC within 20 working days of drilling the bore.

Issue

2. As outlined in the evidence of Amy Kearse on behalf of the NZTA, meeting the 20 working day timeframe in condition 3 of Rule 5.79 is problematic for the NZTA as the NZTA often requires a large number of bores and test pit samples to be sent by NZTA contractors to a laboratory for processing (eg, approximately 10 bores and 30-40 test pits may be sent). These are then

¹ As recommended to be revised by the authors of the s42A Report (refer pages 258-259).

processed as a batch and sent back to the NZTA. The timeframe for this to be completed often takes longer than 20 working days.

3. The NZTA would not therefore be able to meet condition 3 of Rule 5.79 that requires information on bore location, bore installation (including bore logs and intended uses) to be submitted within 20 working days of drilling the bore. The practical implications of being later than 20 working days would mean that the NZTA has to apply for resource consent as a discretionary activity under Rule 5.80. This means additional time and cost for both the NZTA and the Canterbury Regional Council (CRC) for no environmental benefit and no other reason than not meeting the timeframe of 20 working days. Given the breadth of geotechnical testing underway in the Canterbury region at present, it is likely that condition 3 may also create problems for other organisations that need to undertake geotechnical testing.
4. The Commissioners asked the NZTA to provide a re-wording of condition 3 of Rule 5.79, in order to qualify that the requirement to provide information about bores (including bore logs) within 20 working days does not extend to test pits.

Response

5. Geotechnical testing undertaken by the NZTA includes bores and test pits. Both activities are captured under the Proposed Plan's definition of "bore" for investigation or monitoring. The NZTA drills bores to obtain information on deep ground conditions to assist with, for example, understanding the foundation requirements of bridge and overpass structures and to monitor groundwater levels. Bores are drilled with a rig and can range in diameter from 50 to 500 mm and up to 30 m deep. Test pits are typically shallower and dug with an excavator and can be up to 5 m wide by 5 m long and 1-2 m deep.
6. Condition 3 includes the requirement to provide a "bore log". For a bore, the log is provided by the driller, whereas with test pits other information is collected and soils samples are processed by the laboratory, with a single report produced by the laboratory. While the NZTA can comply with the 20 working day limit for bores, it needs longer for test pits because the information is not directly provided by the driller but requires further laboratory analysis. It is inconsistent with the principle of integrated management to require resource consent simply because of this longer period.
7. In considering a solution for this issue further, the NZTA questions whether there is actually a need for information about test pits to be retained by the CRC, given that test pits are temporary and shallow, and are generally backfilled the same or the following day. If there is no need to provide information on test pits (which the NZTA considers is the case), then the following amendment to condition 3 is proposed:

Information on bore location, bore installation (including bore logs and intended uses but excluding information about test pits), and any other relevant information the applicant considers relevant is submitted to the CRC within 20 working days of drilling the bore.

8. Alternatively, if it is necessary for the CRC to receive information about test pits, then the following wording is proposed:

Information on bore location, bore installation (including bore logs and intended uses), and any other relevant information the applicant considers relevant is submitted to the CRC:

(i) within 20 working days of drilling the bore; or

(ii) for test pits, within 40 working days of digging the test pit.

9. The NZTA is happy to provide a further definition for “test pit” should the Commissioners require more certainty as to what type of test pit should receive the benefit of either exclusion from the requirement to provide information, or an extended time for providing information.
10. Note for both options, the proposed wording 'accepts' changes proposed in the Section 42A Report, and includes the amendment sought by NZTA to clarify how relevance should be determined in this context.

Rules 5.82 and 5.83²

Rule 5.82 The taking of water from groundwater for the purposes of carrying out bore development or pumping tests and the associated use and discharge of that water is a permitted activity, provided the following conditions are met: [conditions 1 – 4].

Rule 5.83 The taking of water from groundwater for the purposes of carrying out bore development or pumping tests and the associated use and discharge of that water that does not meet one or more of the conditions in Rule 5.82 is a restricted discretionary activity.

The CRC will restrict discretion to the following matter:

- 1. The effect of not meeting the condition or conditions of Rule 5.82.*

Issue

11. The NZTA is seeking an amendment to Rules 5.82 and 5.83 so that the “taking” of water for the purposes of carrying out geotechnical investigations can be considered as a permitted activity. Amy Kears confirmed in her evidence, in response to a question posed in the Section 42A Report, that the NZTA often hits groundwater when drilling bores for geotechnical investigations (and that water flows out from the bore, which is deemed to be a take under the proposed plan). Consequently, as this is not provided for in Rules 5.82 and 5.83 or elsewhere, the NZTA would need to seek resource consent for this incidental take.

² As notified.

12. The Commissioners asked the NZTA to consider whether it would be useful to insert “or incidental to” after the words “for the purposes of carrying out”, in relation to geotechnical investigations, bore development or pumping tests.

Response

13. The NZTA has considered the suggested wording and agrees that “or incidental to” better captures why the “take” of water occurs. That is, the NZTA does not *decide* to take water in order to carry out geotechnical investigations and bore development, rather the taking of water happens *as a result of* carrying out geotechnical investigations and bore development. Accordingly, the NZTA agrees that Rules 5.82 and 5.83 should be amended to insert the words “or incidental to geotechnical investigations” as set out below.

Rule 5.82 The taking of water from groundwater for the purposes of carrying out bore development or pumping tests, or incidental to geotechnical investigations, and the associated use and discharge of that water is a permitted activity, provided the following conditions are met: [conditions 1 – 4].

Rule 5.83 The taking of water from groundwater for the purposes of carrying out bore development or pumping tests, or incidental to geotechnical investigations, and the associated use and discharge of that water that does not meet one or more of the conditions in Rule 5.82 is a restricted discretionary activity.

Rule 5.86³

Rule 5.86 The taking and use of less than 5 L/s and 10 m³ per day of groundwater is a permitted activity provided the following condition is complied with:

- 1. The bore, other than a sampling or monitoring bore, is located more than 20 m from ~~the~~ a site boundary, where that site is in different ownership, or any surface water body.*

Issue

14. The NZTA explained that condition 1 poses problems for it as bores for NZTA activities are often either:
- (a) near the edge of the road reserve and very likely to be within 20 m of a site boundary (in different ownership); or
 - (b) can be located on private land (ie, in different ownership) where investigations are carried out, for example road widening, meaning they are within 20 m of a site boundary.

³ As recommended to be revised by the authors of the s42A Report (pages 266-267).

15. In all instances where work is carried out on private land, the NZTA seeks access agreements regarding the nature of the work. The NZTA is seeking an exception to condition 1 for State highways and proposed an amendment to insert “(except for State highways)”.
16. The Commissioners requested the NZTA to provide additional wording that may provide for the NZTA’s situation but that still allows the consideration of effects of the activity. The Commissioners also asked that the NZTA consider whether such wording should apply to infrastructure generally.

Response

17. The effect that needs to be considered is the potential for land subsidence due to groundwater drawdown on adjacent property owners. As the Commissioners stated, infrastructure belonging to other network utility operators may also be affected by this Rule (eg, bores for foundation investigation work by KiwiRail for a bridge/overpass could mean a taking of water). Accordingly, there is merit in providing for other infrastructure owned by network utility operators.
18. The NZTA’s proposed wording (accepting changes proposed in the section 42A report) is:

Rule 5.86 The taking and use of less than 5 L/s and 10 m³ per day of groundwater is a permitted activity provided the following conditions are is complied with:

1. *The bore, other than a sampling or monitoring bore or a bore established by a network utility operator, is located more than 20 m from a site boundary, where that site is in different ownership, or any surface water body.*
2. *For network utility operator bores, the taking of water shall not cause ground subsidence on neighbouring properties without landowner agreement.*