

**BEFORE THE TARANAKI REGIONAL COUNCIL AND NEW PLYMOUTH
DISTRICT COUNCIL**

MT MESSENGER BYPASS PROJECT

In the matter of the Resource Management Act 1991

and

In the matter of applications for resource consents, and a notice of requirement by the NZ Transport Agency for an alteration to the State Highway 3 designation in the New Plymouth District Plan, to carry out the Mt Messenger Bypass Project

**SECOND SUPPLEMENTARY STATEMENT OF EVIDENCE OF PETER ROAN
(CONDITIONS AND MANAGEMENT PLANS) ON BEHALF OF THE NZ
TRANSPORT AGENCY**

28 September 2018

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INTRODUCTION

1. My full name is Peter Anthony Roan.
2. This second supplementary statement of evidence is given in relation to applications for resource consents, and a notice of requirement by the NZ Transport Agency ("the **Transport Agency**") for an alteration to the State Highway 3 designation in the New Plymouth District Plan, to carry out the Mt Messenger Bypass Project ("the **Project**").
3. It is my fourth statement of evidence, following:
 - (a) My statement of evidence in chief ("**EIC**") dated 25 May 2018;
 - (b) My (first) supplementary statement of evidence dated 17 July 2018; and
 - (c) My statement of rebuttal evidence dated 30 July 2018.
4. I have the qualifications and experience set out in my EIC.
5. I repeat the confirmation given in my EIC that I have read the 'Code of Conduct' for expert witnesses and that my evidence has been prepared in compliance with that Code.
6. In this evidence I use the same defined terms as in my EIC.

SCOPE OF EVIDENCE

7. The purpose of this second supplementary statement of evidence is to present and explain the updated proposed set of conditions, focussing on amendments made since the hearing was adjourned on 16 August 2018. Those amendments mainly relate to ecological matters, including the updates to the ecological Restoration Package outlined by Mr Chapman and Mr MacGibbon in their evidence.
8. My evidence also provides comment on other amendments made to the proposed set of conditions following:
 - (a) my discussions with the NPDC and TRC Planning Officers both during and since adjourning the hearing; and
 - (b) my review of the track changes version of the conditions provided to the hearing by the Department of Conservation (the "**DOC conditions**").

BACKGROUND AND OVERVIEW

9. The Transport Agency has proposed a set of designation and resource consent conditions. I have outlined the structure of the conditions in paragraphs 175 to 188 of my EIC.

10. In summary, the proposed conditions require the Project to be built in general accordance with the plans and documentation submitted as part of the Application, including a suite of comprehensive and fulsome management plans completed for the Project. The proposed conditions also set out various standards, controls, and requirements to manage actual or potential adverse effects during construction works. As I have previously stated, it is my opinion that the proposed conditions and the suite of management plans will ensure that:
 - (a) the inherent benefits of the Project will be realised; and
 - (b) the actual and potential adverse effects of the Project will be appropriately managed during construction and operation.
11. Prior to the preparation of this evidence, the latest version of conditions proposed by the Transport Agency is the set I presented at the hearing, dated 6 August 2018 (the "**6 August version**"). Since that date, the conditions have continued to evolve, in response to developments at the hearing and following further discussions with the Councils and with DOC and Te Runanga o Ngati Tama ("**TRoNT**"). In my opinion this evolution further strengthens the framework for managing the actual and potential adverse effects from the Project.

Updated conditions and management plans

12. I have attached to my evidence the updated proposed set of designation and resource consent conditions, dated 28 September 2018 (**Annexure A**). This set of conditions uses the 6 August 2018 version as a 'base', with all changes made to that version shown as tracked. I will outline the key changes to the conditions later in this supplementary evidence.
13. The conditions envisage that through the hearing, the management plans, which are all complete, will be approved, enabling construction to proceed without further management plan review. If amendment to the management plans is required, the conditions allow for this, with a process for certification by the Council where the amendment is of substance (designation condition 11 and resource consent condition GEN.14).
14. As explained in my previous evidence, the framework of the management plans is that the overarching management plan is the Construction Environment Management Plan ("**CEMP**"). All the other management plans are appendices to the CEMP. Prior to the preparation of this evidence, the latest set of management plans was attached to my supplementary evidence (dated 17 July 2018). The exception is that the latest version of the Ecology and Landscape Management Plan ("**ELMP**") is dated 6 August 2018.

15. The management plans have again been updated in response to developments in the hearing, discussions with Councils, DOC and TRoNT, and to reflect the revised conditions.
16. A full updated set of management plans (dated 28 September 2018) is attached to my evidence as **Annexure B**. Again, the previous version of each management plan is the 'base', and all changes are shown as tracked.
17. There are relatively significant changes to the ELMP, as discussed below. The changes to the other management plans are minor. In particular:
 - (a) There are minor changes to the following management plans:¹
 - (i) CEMP ;
 - (ii) Construction Noise Management Plan;
 - (iii) Construction Traffic Management Plan;
 - (iv) Contaminated Land Management Plan;
 - (v) Construction Dust Management Plan; and
 - (vi) Construction Water Management Plan (CWMP), including the Construction Water Discharges Programme in Appendix C of the Plan)
18. These changes have been made primarily to reflect changes to the designation and consent conditions, specifically:
 - (a) designation conditions 10 and 11 and resource consent conditions GEN.13 and GEN.14 that relate to the process for making minor or material amendments to the management plans;
 - (b) the updated sediment conditions, in relation to the CWMP and the Construction Water Discharge Management Plans, as outlined below in further detail; and
 - (c) updates to the ELMP, in relation to the CEMP.
19. The ELMP has been updated to reflect changes to the respective ELMP conditions, including the addition of Schedule 1 to the designation and consent conditions as discussed below.

The Ecological Restoration Package and the ELMP

20. The ecological Restoration Package has been described in the evidence of Mr MacGibbon, with the specific provisions of the package addressed in the evidence of the Transport Agency's ecology experts. The Restoration Package and the associated methods proposed to avoid, remedy, mitigate,

¹ There are no changes to the Accidental Discovery Protocol.

offset and compensate for the ecological effects of the Project are set out in the updated ELMP.

21. The ELMP has been updated in order to provide for the changes to the proposed measures to address the potential effects of the Project on bats and herpetofauna, as discussed below. The ELMP has also been subject to a detailed review for consistency and certainty.
22. Based on the evidence presented by the Transport Agency's ecologists it is my opinion that:
 - (a) the measures proposed in the ELMP will avoid, remedy, mitigate, offset and compensate for the ecological effects of the Project; and
 - (b) the enduring pest management measures detailed in the Pest Management Plan chapter of the ELMP, will deliver important positive biodiversity outcomes.
23. As described by Mr MacGibbon, the key area that will benefit from these positive biodiversity outcomes is the area where pest management will occur; the Pest Management Area ("**PMA**"). The Transport Agency has proposed to undertake pest management, in accordance with the ELMP, over a 3,560ha PMA, in perpetuity.

UPDATES IN RESPECT OF BATS AND LIZARDS

24. Since the hearing was adjourned on 16 August, the Transport Agency has been working in consultation with DOC, the Councils and TRoNT to resolve the differences between the Transport Agency and DOC in respect of the proposed measures to address the potential effects of the Project on bats, and herpetofauna.
25. New conditions, and associated sections in the ELMP, have subsequently been developed, as described below.

Condition 30: Offsetting / compensation for the effects of the Project on long-tailed bats.

26. At the hearing, an area of difference between the Transport Agency's and DOC's bat experts was highlighted, regarding whether the proposed PMA and pest management would offset or compensate for effects on the local long-tailed bat population. The issue related to the level of certainty that there are bat roost trees located in the area that had been proposed by Mr MacGibbon as the PMA.
27. Since the hearing was adjourned, I have attended a series of meetings held with DOC officers. Attendees at those meetings included DOC's bat expert, Mr O'Donnell, and ecological offset / compensation expert, Mr Barea; and the

Transport Agency's bat expert, Mr Chapman, and ecological offset / compensation expert, Mr MacGibbon.

28. Informed by those discussions, Mr Chapman and Mr MacGibbon have developed a framework for trapping and radio tracking long-tailed bats over one season, so that:
 - (a) roost tree locations in the Mt Messenger area (including the current intended PMA) are identified; and
 - (b) the location of the PMA is finalised so that pest management provides appropriate protection for the local long-tailed bat population.
29. Mr Chapman describes the bat trapping and tracking methodology to be employed in his supplementary evidence. Depending on the results of the trapping and tracking process, there are four identified 'scenarios' for the finalisation of the PMA. Mr Chapman explains the four scenarios and the rationale for each in his supplementary evidence.
30. I have worked with Mr Chapman and Mr MacGibbon to develop a condition that sets out the process for applying the trapping and tracking methodology and establishing the PMA boundaries based on the location of Maternity Roost trees (and that provides for the four scenarios).
31. The condition is Condition 30 in the updated proposed designation conditions (refer Annexure A). The key elements of the condition are:
 - (a) A period of at least 30 calendar days of bat trapping in the active bat season (1 October to 31 March), plus an allowance for an extra 10 calendar days of trapping if an insufficient number of Maternity Roost trees have been located.
 - (b) Appointment of a bat expert and an independent peer reviewer who shall review the monitoring programme, and specification of the skill level required by those involved in the monitoring programme.
 - (c) A reporting process whereby the bat expert assesses the findings of the monitoring programme and the Maternity Roost locations. At this stage, one of four scenarios will apply, each with a different process for confirming the location of the final PMA. Of particular note, one possible outcome (Scenario 4) is that if sufficient roosts are not present in the forested area around Mt Messenger, the PMA would be confirmed at an alternative location, likely being the Waitaanga Forest. The process for confirming the PMA will be in consultation with DOC and other vegetation and avifauna experts in relation to Scenarios 3 (PMA located in the Study Area) and 4 (Alternative PMA).

- (d) Independent review of the reporting process by the bat peer reviewer, who will confirm that the process set down in Condition 30 for establishing the PMA has been followed.
 - (e) Certification by the Council that the PMA has been confirmed in accordance with Condition 30.
 - (f) Provision that the above steps must be completed (and the final PMA identified) before construction work can commence.
32. The bat trapping and tracking proposal has been discussed with DOC, and with NPDC and NPDC's advisors Wildlands. Both DOC and NPDC have reviewed the condition and provided feedback. That feedback has been taken into account in developing the proposed version of Condition 30.
33. Based on the evidence of Mr Chapman and Mr MacGibbon, it is my opinion that the bat trapping and radio tracking programme that has been proposed by the Transport Agency (Condition 30) will enable the PMA to provide enduring protection to the bat roost trees and the local bat population. In this regard, and based on the evidence of Mr Chapman, it is my view that this condition also provides certainty that any effects of the Project on bats will be appropriately offset / compensated.

Condition 29(b)(ii) and (iii): Offsetting / compensation for the effects of the Project on Lizards

34. In his supplementary evidence, Mr Chapman explains how a mechanism for the Transport Agency to provide research funding to benefit lizards has been developed, following consideration of the evidence presented by DOC's lizard expert, Ms Adams. This funding is being offered in place of the pest-proof enclosure that was previously proposed in order to compensate for the potential effects of the Project on herpetofauna.
35. At the meeting with DOC on 4 September in Christchurch, Ms Adams and Mr Chapman reviewed and considered alternative options to compensate for potential effects on lizards. Based on those discussions I have worked with Mr Chapman and Mr MacGibbon to develop a Condition that provides for the funding mechanism (refer Condition 29(b)(ii) and (iii)).
36. The condition has been developed with input from Ms Adams and Mr Barea. Mr Chapman and Mr MacGibbon have also been involved in discussions with NPDC's advisors Wildlands, who have reviewed the condition and provided feedback. The condition will see the Transport Agency providing \$200,000 (plus GST) toward funding a research project (or projects) that will benefit lizards. As explained by Mr Chapman and Mr MacGibbon in their supplementary evidence, the sum is derived from the cost for establishing the previous fenced lizard enclosure proposal.

37. Based on the supplementary evidence of Mr Chapman and Mr MacGibbon, it is my opinion that any effects of the Project on lizards will be compensated for by this proposal.

OTHER AMENDMENTS TO CONDITIONS

38. In the paragraphs below, I briefly explain a number of changes I have made to the proposed conditions following discussions with Council officers and DOC. I also note a number of possible changes to the conditions that have been proposed or flagged during the hearing (or during the current adjournment period), but which I have not adopted.

Amendments made following discussions with Council Officers

39. Further to discussions with the Council Officers both during the hearing and since adjourning, the following amendments have been made to the proposed conditions:
- (a) *Preparatory works*: NPDC's reporting officer, Ms McBeth, has expressed concerns to me regarding the condition providing for "preparatory works" (Condition 12 in the 6 August 2018 version of the designation conditions), namely that the provision could present compliance monitoring challenges for the Council. Reflecting on Ms McBeth's concerns the condition has been deleted (and the associated definition in the definitions section struck out). The provision has also been deleted from the TRC resource consent conditions.
 - (b) *Amendments to the management plans*: Conditions 10 and 11 in the designation conditions, and Conditions GEN.13 and GEN.14 in the TRC resource consent conditions, set out a process for minor and material amendments to the management plans. These conditions have been updated to: for a minor amendment, better define a 'minor amendment', and provide for the Council to determine whether the amendment is minor or material; and for a material amendment, better define the process for certifying the material amendment. In this regard, all changes must in any event be in accordance with Condition 1 and the objectives and performance measures of the plan, and the Council is required to certify that this is the case.
 - (c) *Material change certification timeframe*: Ms McBeth has expressed concern in regards to the 20 working day timeframe set out in Condition 11 for consideration and certification of any material amendments to the management plans. Ms McBeth has raised the possibility of a longer timeframe (40 working day timeframe). In my opinion, the 20 working day timeframe set out in Condition 11 is fair and reasonable, and I note that there is a "*best endeavours*" proviso built in. A longer timeframe could impact on the construction programme.

- (d) *Ecology and Landscape Management Plan:* Following discussions with Ms McBeth and her review of the ELMP conditions, a number of minor edits have been made to the conditions. These include:
- i) Inclusion of clause (3) in Condition 29(c)(i) to reflect that the Vegetation Removal Protocol shall also apply to all trees within the Project Area that shown through the bat monitoring to be roost trees
 - ii) Change to Condition 33(a)(2) in relation to the Ecological Review Panel reviewing the location and design of kiwi exclusion fencing;
 - iii) Change to Condition 32(c) – (e) to clarify the reporting on monitoring undertaken to confirm the effectiveness of the PMP in achieving compliance with Conditions 29(h)(iv) to (vi).
- (e) *Ecological Review Panel:* Condition 33 has been updated to reflect the amendment that I proposed in Appendix 1 of my rebuttal evidence. In particular the panel will:
- (i) comprise three members, one each nominated by the Requiring Authority, TRoNT and DOC with skills in in terrestrial ecology and pest management. Additional members can be added if additional expertise is required.
 - (ii) Provide advice to NPDC, when that is needed, on amendments to the management plans, the pest management methods, reviewing pest management results and any changes needed to the PMP to achieve the pest density targets, and reviewing ecological outcome monitoring reporting.

Ms McBeth has also raised whether the panel will have a role in determining the PMA so as to ensure consideration of other (non-bat) ecological issues. The updated bat condition (Condition 30) provides for the involvement of key Project ecologists in determining the PMA (specifically Nick Singers and John McLennan as set out in Condition 30) so as to ensure avifauna and vegetation matters are accounted for, in addition to bats, when determining the PMA. Given the central role played by Dr McLennan and particularly Mr Singers in developing and assessing the PMA, I consider this is appropriate.

- (f) *Safety audit of the tunnel:* A new condition, Condition 41A, has been proposed following discussions with Ms McBeth. The condition provides for a safety audit to be completed (and provided to NPDC) of specific matters relating to the tunnel design and operation. My understanding is that the Transport Agency would in any event have this safety audit completed as a matter of course.

- (g) *Completion of construction works:* Completion of Construction Works is defined in the definitions section of the conditions. A new condition, Condition 43, has been proposed following discussions with Ms McBeth. The condition requires the Requiring Authority to notify the Council on completion of construction, including providing maps showing the location of completed works (areas of landscaping/reinstatement along with areas of restoration planting and whether these plantings have been completed). The same condition (Condition GEN.28) has been added to the TRC resource consent conditions.
- (h) *Discharge Stormwater and Sediment:* A number of amendments have been made to the conditions attached to the TRC resource consent for stormwater and sediment discharge during construction. These changes follow discussions between Council officers and their advisor and Mr Ridley (the Transport Agency's construction water management expert), and discussions that I have had with TRC's reporting officer, Ms Hooper. The more substantive changes are to Conditions SED.7, where the Transport Agency has largely accepted the amendments sought by TRC, and to Condition SED.11, which relate to monitoring and to the Construction Water Discharges Monitoring Plan. Condition SED.11 now proposes:
- (i) the establishment of a publicly accessible project website on which monitoring data will be reported;
 - (ii) a process for establishing qualitative and quantitative monitoring alert triggers and actions, including continuous water quality recorders located in both the Mimi River and Mangapepeke Stream upstream and downstream of the Works; and
 - (iii) a process for certifying the triggers; and the reporting of any trigger exceedances to the Council.

Best Practicable Option

40. Ms Hooper has raised in discussions the possibility of including an overarching condition requiring that the Best Practicable Option (“**BPO**”) be adopted for addressing possible environmental effects. In my opinion, the BPO is in effect detailed in the conditions, which set out the clear and objective performance standards for works, and the specific detail provided in the management plans (particularly the CWMP and the Specific CWMPs). As such, in my opinion, I do not consider that a broad BPO condition is appropriate or necessary.

Revocation

41. Ms McBeth has raised with me the prospect of including a condition dealing with matters that relate to the revocation process for the existing section of

SH3 that will be replaced by the Mt Messenger Bypass. It is my view that this is not an RMA matter and is more appropriately dealt with through the formal process that exists under s103 of the Land Transport Management Act 2003.

Amendments made following review of the DOC conditions

42. I have reviewed the DOC conditions in detail. I do not provide a response to every amendment to the conditions that DOC has proposed, but note below the key amendments I have made in response to the DOC conditions. I also set out my response to DOC's proposed changes in terms of the certification of management plans.
43. Following my review of the DOC conditions the following amendments have been made to the proposed conditions:
- (a) *Annual review of management plans*: provision has been made to provide a copy of the report reviewing the management plans in Condition 15 of the designation conditions to DOC (and the same provision is made in the TRC resource consent conditions at Condition GEN.18).
 - (b) *ELMP conditions*: the conditions relating to the ELMP and Pest Management Plan (Conditions 27 to 32(a) of the 6 August 2018 version of the designation conditions) have been substantially revised. The 'schedule' format for re-structuring the ELMP conditions proposed by DOC has been adopted. The revisions to the designation conditions are summarised as follows:
 - (i) Condition 28 establishes that the matters to be addressed in the ELMP are set out in Schedule 1.
 - (ii) Schedule 1 had been drafted to set out the overarching objectives and matters addressed, and then for each of the chapters / sub-plans,² the relevant specific objectives, performance measures and monitoring requirements.
 - (iii) Condition 29, which sets out the ecological mitigation and biodiversity offset and compensation measures that the Transport Agency must undertake, has been revised to confirm the outcomes and performance measures that must be achieved. This condition now also includes the pest management outcomes and performance measures that had previously been set out in Conditions 32 and 32(a) in the 6 August 2018 version of the designation conditions.

² Landscape and Vegetation Management Plan; Bat Management Plan; Avifauna Management Plan; Herpetofauna Management Plan; Freshwater Management Plan; Pest Management Plan; Peripatus Management Plan; and Biosecurity Management Plan.

The relevant ELMP matters in the TRC resource consent conditions have also been revised to reflect this re-structuring (refer Conditions GEN.23 to GEN.25). Schedule 1 is attached to the Resource Consent conditions, but only Sections 1, 2 and 6 apply.

Management plan certification proposed by DOC

44. DOC have sought that all of the management plans be approved by the Council through a certification process follow the hearing, should the NOR be confirmed and the consents granted. I do not support that approach.
45. As I outline in paragraphs 189 to 195 of my EIC, a fulsome set of completed, construction ready management plans have been prepared for the Project. A deliberate decision was made to prepare and complete the plans so that they could be confirmed through the hearing process.
46. This was done to provide certainty that the various management measures proposed can and will avoid, remedy, mitigate, offset and compensate for the effects. It is not always possible to provide fulsome management plans that are ready to be finalised through the hearing process. However, in this case, because the Transport Agency has engaged an Alliance to deliver the Project, and Project development is well advanced, the management plans fully reflect how the Project will be constructed, and effects managed.
47. This approach has enabled the plans to be reviewed by anybody with an interest in the Project.³ It has also enabled the Councils and their advisors to fully understand how the Project will be constructed and its effects managed. In this regard, the management plans have been updated several times following review and discussions with the Councils and their advisors. As discussed above, the management plans (and in particular the ELMP) have also been updated in response to discussions at the hearing itself, including comments from the Commissioner.
48. It is my opinion that the plans have all been subject to considerable scrutiny and are ready to be approved through the hearing. In my view, approving the management plans through the hearing process would represent good RMA practice. Rather than leave the detailed development plans until later, to be certified by Council officers, the management plans can and in my view should be approved through the hearing process.

The ecology review panel changes proposed by DOC

49. DOC have proposed alternative ecology review panel conditions (Conditions 8 to 10 of the DOC Conditions). That proposal would see a panel appointed whose role would be to first provide advice to NPDC in relation to certification

³ The management plans have been on the Transport Agency's website since the applications were lodged.

of the ELMP, and then provide advice on future changes to the ELMP. I do not support these conditions.

50. As I have described above, NPDC have undertaken their own review of the ELMP, assisted by their advisors Wildlands.
51. In relation to future changes to the ELMP, the condition that I have proposed (Condition 33) provides for this, as it does for review of ecological monitoring and for amending pest management methods if that is needed.

Kaitiaki Forum Group

52. Through the hearing there has been discussion about the opportunity for other iwi or Māori groups to express their kaitiakitanga through the Project. Having listened to those discussions I remain of the view that the Kaitiaki Forum Group (KFG) conditions as proposed (Conditions 4 and 4(a) of the designation conditions and Conditions GEN 5 and 5(a) of the resource consent conditions) provide opportunity for this wider participation in the Project.
53. I have outlined the KFG conditions in my EIC at paragraphs 80 to 83. In relation to wider participation the conditions allow for TRoNT to “*invite other iwi, iwi representatives or other Ngāti Tama members to attend KFG meetings*”. This is a broad provision and would enable wider participation in the KFG process.
54. I note that the KFG conditions have a focus on Ngāti Tama, both in relation to the stated purpose of the KFG, and in giving TRoNT the role of determining membership of the KFG. Ultimately that means that opportunity to participate in the KFG process would be determined by TRoNT. In my view this is appropriate; Ngāti Tama have a special importance in relation to this land and the Project. Much of the affected land is cultural redress land handed back to Ngāti Tama as part of their Treaty Settlement. Their status has been recognised and acknowledged through the Treaty Settlement Act.

Car parking area to service the Kiwi Road and Mt Messenger Tracks

55. The application material states that the Transport Agency will be upgrading the car parking provision for the Kiwi Road and Mt Messenger Tracks, but does not provide any real detail. As a consequence, the previous version of the designation conditions provided that the final details of that provision would be subject to the outline plan of works process. However, in his supplementary evidence Mr Milliken explains what is intended, and provides a detailed plan. On that basis, there is no need for the details to be confirmed through the outline plan of works process.
56. Mr Milliken also notes that the final position in terms of access and parking for these track entrances will be determined through the revocation process. I

agree that any further provision in that respect is a matter for the separate revocation process.

Ecological Constraints Maps

57. Appendix A of the ELMP includes Ecological Constraints Maps based on three areas of vegetation mapping that have been undertaken already. It is intended that these maps will be added to over the upcoming summer season to create a full set of Maps. The Maps provide a visual representation of the ecological constraints identified through the processes set out in the ELMP.
58. As the full set of Ecological Constraints Maps has not yet been produced, a new condition specifically providing for the certification of the complete set of Ecological Constraints Maps has been added to both the designation and resource consent conditions. No Establishment Works or Construction Works will commence until that certification process is complete. Once the Maps are finalised, the intention is the full and complete set will be automatically inserted into the placeholder appendix in the ELMP.

The Accidental Discovery Protocol conditions

59. A Project-wide Archaeological Authority has now been granted by Heritage New Zealand Pouhere Taonga (reference 2019/057). In line with the ADP conditions, the intention is that the Archaeological Authority will be adhered to, as opposed to the ADP. At this stage, an advice note to that effect has been added to the Condition 35, but it may be that the relevant conditions can be removed entirely.

Peter Roan

28 September 2018

Annexure A: updated proposed designation and resource consent conditions

Annexure B: updated set of management plans