

## MT MESSENGER BYPASS

### Minute Six

#### **Request for Joint Witness Statements, Legal Submissions on specific items, Engineering Evidence from NPDC and associated Timetable Directions**

During the latest two days of hearing on 9 and 10 October 2018 several matters have arisen necessitating a minute to set out matters and actions that remain outstanding.

Pursuant to section 41B of the Resource Management Act 1991 I make the following directions:

#### Planners and Ecologists Joint Witness Statements

1. Two separate Joint Witness Statements are to be produced, one from selected ecology witnesses representing the New Zealand Transport Agency, Department of Conservation and Councils and one from the planning witnesses of those same parties. The statements are to document where agreement has been reached in regard to the proposed conditions and the relevant Management Plans, and where there is no agreement with reasons.
2. The respective Counsel are to forward the Environment Court Code of Conduct Practice Note for witness conferencing to each of their witness involved in preparing the respective Ecology and Planning Joint Witness Statements
3. I record that through Mr McKay condition guidelines have already been provided for reference to those involved in the Ecology and Planning witness conferencing. The condition guidelines are from the Auckland Council; and from Principal Environment Judge L Newhook *'The challenges and Pitfalls seen by the Court in Conditions of Consent'*, for the Resource Management Law Association Roadshow.

#### Further Legal Submissions

4. Counsel for New Plymouth District Council is to provide advice regarding the status of Ngā Hapū o Poutama including legal advice for my decision making associated with Ngā Hapū o Poutama being recorded on the Te Puni Kokiri website as an 'other' Iwi Authority.

In providing this advice counsel is requested to address the recent Environment Court decisions of *Tūwharetoa Māori Trust Board v Waikato Regional Council* (ENV -2016-AKL-000267); and *Panuku Development Auckland Ltd v Auckland Council* (ENV-2018-AKL-000078) along with any other case law considered relevant to the status of iwi authorities.

Advice is also sought on the nature and details of the Te Puni Kokiri process for determining Iwi Authorities under section 35A of the RMA, and any specific advice on the process for considering a request from a group to be an Iwi Authority. It is anticipated this may require an inquiry to be made of the relevant Te Puni Kokiri section who processes these requests.

A composite map showing the geographic areas or rohe of iwi authorities recorded on the Te Puni Kokiri website as relevant to the subject area would also be appreciated.

Finally, on this matter I would appreciate advice on any relevant differences in decision making I should be aware of regarding the status of Iwi Authorities for notice of requirements and resource consents verses plan making under RMA Schedule 1.

It is anticipated that counsel for NZTA will also address this matter in their closing submissions.

5. Counsel for NZTA and DoC are to provide joint legal submissions relating to developments in case law and other precedents regarding applicants or requiring authorities being required by conditions to secure full legal right for land associated with offsetting and compensation proposals offered.

#### Engineering Evidence on Behalf of the New Plymouth District Council

6. Mr Doherty is to prepare and provide a statement of evidence under the Environment Court Code of Conduct for expert witnesses (including his qualifications and experience) focusing on his opinion on the assessment of alternatives that was undertaken by NZTA in its multicriteria options assessment process, along with the subsequent evidence produced by witnesses for NZTA at the hearing.

This statement of evidence is sought as Mr Doherty appears, in his letter dated 14 August 2018, to have an expert opinion contrary to the expert opinion of Ms McBeth, the New Plymouth District Council reporting officer. Ms McBeth's opinion, as provided in her statement presented on 9 October 2018, concludes that sufficient consideration of alternatives has been undertaken to satisfy section 171(1)(b) of the RMA.

After receipt of this expert evidence I will determine whether I need to question Mr Doherty and the arrangements for this to occur.

#### Option for Resumed Hearing

7. Counsel for NZTA and DOC are to advise Mr McKay and Ms Straka, by Joint Memoranda, whether in their opinions a resumed hearing to 'hot tub' the planners and/or ecologists involved in the preparation of the Joint Witness Statements would be of benefit. This advice is to be provided at the time of circulation of the planners Joint Witness Statement on 18 October 2018. If there is considered to be benefit in resuming the hearing Ms Straka will issue a revised hearing notice and timetable.

#### Timeline

Monday 15 October 2018 – Ecologists Joint Witness Statement to be lodged with the Hearings Administrator, Ms Straka;

Thursday 18 October 2018 – Planners Joint Witness Statement and Mr Doherty's statement of evidence to be lodged with Ms Straka;

Wednesday 24 October 2018 – Resumption of hearing if required for further discussion with ecology or planning witnesses and Mr Doherty.

Tuesday 30 October 2018– Closing written submissions from NZTA to be filed with Ms Straka.



Mr Stephen Daysh  
Independent Hearing Commissioner  
14 October 2018