

MT MESSENGER BYPASS

Minute Five

Various Matters Pertaining to the Reconvened Hearing Starting 9 October 2018

As set out in my Minute 4 dated 17 August 2018 the Mt Messenger Bypass hearing has been set down to reconvene on 9 October 2018. This was by agreement of all the parties who were present when the hearing resumed on the morning of 16 August 2018.

Minute 4 set timetabling directions for the reconvened hearing, and these were reconfirmed in the Notice of Rescheduled hearing dated 17 September 2018.

On 28 September 2018 NZTA lodged a set of updated (track change) conditions including updated Management Plans, along with four statements of supplementary evidence.

On 5 October 2018 the Department of Conservation filed four statements of supplementary evidence, including their response to the NZTA revised conditions and management plans filed on 28 September 2018.

No evidence has been filed by the 5 October due date by any other submitter.

I have received a range of correspondence relating to the reconvened hearing since Friday 5 October 2018 as follows:

1. On 5 October 2018 the Hearing Administrator, Ms Straka, emailed me with separate procedural requests from three parties being the applicant (NZTA), DoC, and Te Runanga o Ngāti Tama. This email communication is appended to this Minute as ***“Attachment A”***.
2. Also, on 5 October 2018, Ms Straka forwarded me a copy of a draft hearing timetable and covering email. This draft timetable is attached to this Minute as ***“Attachment B”***.
3. The final correspondence I received on 5 October 2018 is an email that Ms Straka passed on to me from Mr Ryan, counsel for the applicant. This email sought clarification on whether Mr Gibbs, Mr White and Mr and Mrs Pascoe representing Nga Hapu o Poutama could present further submissions at the reconvened hearing, given that they had not filed any evidence responding to the documentation filed by NZTA on 28 September 2018, by the due date of 5 October 2018. This email is attached to this Minute as ***“Attachment C”***.
4. On 6 October 2018, Ms Straka forwarded me an email from Mrs Gibbs advising that Mr Gibbs father had passed away on 5 October 2018 and requesting an adjournment to the hearing until the tangihanga is finished. This email and is attached to this Minute as ***“Attachment D”***.

I have read all the evidence filed by the parties and have carefully considered each of the matters raised in points 1 to 4 above. Pursuant to section 41B of the Resource Management Act 1991 I make the following directions:

1. Paragraph’s 7 to 15 of the supplementary evidence of Mr Milliken for NZTA is to be struck out, on the basis that this matter is not within the scope of the matters that NZTA was requested to provide in Minute 4, and is hearsay relating to a discussion on property acquisition and negotiation which is not a resource management matter.

2. The request made to Ms Straka by Nga Hapu o Poutama for Mr Gibbs, Mr White and Mr and Mrs Pascoe to present further representations or submissions at the reconvened hearing (as set out in the draft hearing timetable in "**Attachment B**") is declined. This is on the basis that Nga Hapu o Poutama has not filed any evidence by the 5 October 2018 due date in response to the documentation provided by NZTA on 28 September 2018 relating to updated conditions and the ELMP. As a matter of natural justice there is no further opportunity for submitters to make further submissions at this stage of the hearing, other than in relation to the specific matters set out in my Minute 4 dated 17 August 2018.
3. In response to the request by Mrs Gibbs, after due consideration and while acknowledging and respecting the difficult position of Mr Gibbs and his family, I have decided that the reconvened hearing will proceed at 9.00 a.m. on Tuesday 9 October 2018 as planned. This is because all parties and their representatives have made arrangements to attend at this time and cancellation of the hearing at short notice would, on balance of the considerations, not be a fair and reasonable outcome.
4. I have reconsidered whether Dr Drinan may answer questions on behalf of DoC in relation to freshwater matters and I decline this opportunity, on the basis that he has not filed any expert evidence on this matter by the due date of 5 October 2018.
5. Leave is granted to the request by Te Runanga o Ngāti Tama for Mr Thomas to file his evidence by 4.00p.m. on Monday 8 October 2018, on the basis that as a matter of comparison and fairness, the report and expert evidence of Mr Stirling was only received the day before he presented his evidence.
6. Counsel for Te Runanga o Ngāti Tama is to liaise with Ms Straka regarding arrangements for Mr Thomas to join a video conference to answer questions covering his area of expertise. No other person will be granted leave to answer questions on behalf of Mr Thomas, as it is understood he is providing evidence as an expert witness.
7. The request by Counsel by Te Runanga o Ngāti Tama for Mr Silich to provide evidence is declined on the basis that he has not provided any written evidence by the due date (5 October) and no request for late filing of that evidence has been made.

All parties are provided the opportunity to file submissions to me relating to directions 1 to 7 above.

Any such submissions are to be filed in writing with Ms Straka by 4.00p.m on Monday 8 October 2018. Any submissions filed on these procedural matters are to be addressed to me in person at the start of the reconvened hearing at 9.00a.m. on Tuesday 9 October 2018.



Mr Stephen Daysh
Independent Hearing Commissioner
7 October 2018

From: [Julie Straka](#)
To: [Stephen Daysh \(stephen.daysh@mitchelldaysh.co.nz\)](mailto:stephen.daysh@mitchelldaysh.co.nz)
Subject: Timetable for next week
Date: Friday, 5 October 2018 1:13:00 PM

Hi Stephen

-

The requests for speaking time next week have been slow to roll in. Yesterday I extended the previous deadline to lunchtime today. I've had three responses. Each of them have a question for your consideration.

I've put the questions in bold font for ease of reference. Once I have your responses, I can complete the timetable and hope to have that live online this evening.

Applicant

The applicant will have four speakers on the supplementary evidence recently provided (Mr Milliken (15 mins), Mr Chapman, Mr MacGibbon and Mr Roan (30 mins each)). In addition, they are anticipating that you would like to go through the conditions in some detail with Mr Roan. They've suggested that might take 2 hours. **Does 2 hours sound reasonable for the questioning on conditions?**

-

DoC

DoC have requested to immediately follow NZTA. I've accommodated that request.

Because freshwater matters are remaining between DOC and NZTA, Dr Drinan is also able to attend the hearing to answer any questions relating to the differences between the Applicant's and DOC's conditions (DOC's conditions will be sent through with DOC's evidence later today). If that is required, I would need to let Dr Drinan know by Monday afternoon. **Could you please advise if you would like Dr Drinan to be in attendance on Tuesday?**

Te Runanga o Ngati Tama

Ngati Tama will be providing evidence from two experts, Mr Silich and Mr Thomas (replying to the statement of Bruce Stirling). Mr Thomas is currently resides overseas and is unable to present the report in person and it will be a tabled document.

Mr Thomas is not able to provide his draft report to the runanga until Monday 8 October. Mr Hovell has advised that "Te Runanga o Ngati Tama respectfully request leave to provide this report on Monday next week." **Can you please advise of your decision on the request to provide Mr Thomas's report on Monday 8 October?**

Mr Hovell may also seek a small time to address any conditions if necessary.

Regards
Julie

TUESDAY 9 AUGUST 2018 *(Updated 5 October 2018)*

Hearings Commissioner: Mr Stephen Daysh

Hearing Manager: Mr Philip McKay

Venue: Pepper Room, Waterfront Hotel, New Plymouth

Time	Name	Representing	Topic	Documents Submitted/Presented
9am	Mr Milliken	NZTA	Speaking to additional evidence	Excludes question time
9.15	Mr Chapman		Speaking to additional evidence	
9.45	Mr MacGibbon		Speaking to additional evidence	
Morning Team break (10.15-10.30am)				
10.30	Mr Roan		Speaking to additional evidence	
	Mr Roan	NZTA	Proposed Conditions	
Lunch Break (12.00–1pm)				
1pm	Sarah Ongley		Legal submissions	Total time – 1.5 hours
	Dr Colin O’Donnell		Bats	
	Dr Laurence Barea		Compensation	
	Lynn Adams	(tabled document)	Lizards	
	Ben Inger		Planning and Conditions	

2.30pm	Tama Hovell	Runanga o Ngati Tama	Response to conditions	(if required)
	Paul Silich	Chair of Te Runanga o Ngati Tama		10-20 mins
Tabled document	Mr Paul Thomas	Te Runanga o Ngati Tama	Expert reply to statement of Bruce Stirling	Mr Thomas unable to attend. Mr White or a member of Ngati Tama may be able to speak to questions.
	Mr Greg White and other members of the Runanga will be available to answer any questions			
Afternoon tea (2.50pm-2.45pm)				
	Russell Gibbs		15 (estimate)	
	Haumoana White		15 (estimate)	
	Debbie and Tony Pascoe		15 (estimate)	
3pm	Rachelle McBeth	NPDC		45 mins
	Mr Shaw			
	Dr Martin			
	Rachelle McBeth	NPDC		
4pm	Kathryn Hooper	TRC (tbc)		20 mins
Short break				
	David Allen	NZTA	Applicants closing submissions	1 hour

From: [Julie Straka](#)
To: [Stephen Daysh \(stephen.daysh@mitchelldaysh.co.nz\)](mailto:stephen.daysh@mitchelldaysh.co.nz)
Cc: [Phil McKay \(philip.mckay@mitchelldaysh.co.nz\)](mailto:phil.mckay@mitchelldaysh.co.nz)
Subject: FW: Timetable for reconvened hearing - Mt Messenger Bypass [BUD-L.FID558575]
Date: Friday, 5 October 2018 5:16:00 PM

Hi Stephen

As per my phone call, below is the query from Thad.

In the absence of a timetable online, I had advise Thad and David of the names of the parties who had requested to speak at next week's hearing.

I am available to pop in to work over the weekend if necessary.

J

From: Thaddeus Ryan [mailto:Thaddeus.Ryan@buddlefindlay.com]
Sent: Friday, 5 October 2018 4:42 PM
To: Julie Straka <julie.straka@npdc.govt.nz>
Cc: David Allen <David.Allen@buddlefindlay.com>
Subject: RE: Timetable for reconvened hearing - Mt Messenger Bypass [BUD-L.FID558575]

Hi Julie

Thank you for this.

As discussed, our understanding of the Commissioner's Minute 4 is that the opportunity for submitters to speak again at the hearing is limited to those who file evidence by today, in response to the Transport Agency's updated evidence / conditions / management plans (filed last Friday). In particular, we do not understand next week's hearing days to provide a general, second opportunity for submitters to present their views on the Project.

If Mr Gibbs, Mr White and Mr and Mrs Pascoe do not file evidence today, our understanding is that Commissioner's directions do not provide for them to speak at the hearing again.

We would be grateful if you would please clarify this with the Commissioner when you speak with him.

Kind regards

Thad

THADDEUS RYAN | SENIOR ASSOCIATE | BUDDLE FINDLAY

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From: karuu.poutama
To: [Julie Straka](mailto:julie.straka)
Subject: RE: Timetable for reconvened hearing - Mt Messenger Bypass
Date: Saturday, 6 October 2018 7:55:38 AM

Kia ora Julie, Russells father Victor passed away last night. We are taking him to the marae today.

We wish to request an adjournment till the tangihanga is finished. Thank you.

Parani Gibbs

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: Julie Straka <julie.straka@npdc.govt.nz>
Date: 5/10/18 3:23 PM (GMT+12:00)
To: Nga Hapu o Poutama <karuu.poutama@xtra.co.nz>
Subject: RE: Timetable for reconvened hearing - Mt Messenger Bypass

Kia ora Parani

Thank you for that advice. I will put each down as 15 minutes speaking time. Please let me know if that is not a correct estimate.

Regards

Julie

From: Nga Hapu o Poutama [<mailto:karuu.poutama@xtra.co.nz>]
Sent: Friday, 5 October 2018 2:12 PM
To: Julie Straka <julie.straka@npdc.govt.nz>
Subject: Re: Timetable for reconvened hearing - Mt Messenger Bypass

Kia ora Julie,

Apologies for the delay, Russell and Haumoana are supervising works with First Gas on our property and emails are not being regularly checked.

Confirming we would like to present at the hearing;

Russell Gibbs

Haumoana White

Debbie and Tony Pascoe

Regards

Parani Gibbs

From: [Julie Straka](#)

Sent: Thursday, October 04, 2018 2:10 PM

To: [Julie Straka](#)

Subject: Timetable for reconvened hearing - Mt Messenger Bypass

Dear submitters

The Notice of Rescheduled Hearing for the Mt Messenger Bypass was distributed on 17 September.

The hearing notice requested that any applicant or submitter wishing to present evidence must advise of the presenters' names and the time required to present evidence by Wednesday 3 October (yesterday). This was to enable a hearings timetable to be posted online tomorrow.

If you intend presenting evidence/speaking at next week's hearing, please advise me by 12 noon tomorrow (Friday 5 October). I require the name(s) of speakers and the speaking time required.

Please note that DOC, Ngati Tama and any other submitter wishing to file expert evidence in response the updated documentation provided by NZTA (available on the Council's website) must file that evidence tomorrow. Similarly, any expert evidence from Ngati Tama in response to the cultural impact evidence provided by Nga Hapu o Poutama on 9 August 2018 must also be filed tomorrow. Expert evidence includes evidence from cultural experts and kaumatua.

Regards

Julie Straka

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