

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

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER applications from NZTA to alter a designation and for
resource consents for the Mt Messenger Bypass Project
(SH 3 between Uruti and Ahititi).

BEN MAXWELL INGER

**SUPPLEMENTARY EVIDENCE ON BEHALF OF THE DIRECTOR-GENERAL
OF CONSERVATION
(Planning)**

Dated: 5 October 2018

COUNSEL:
SARAH ONGLEY
Barrister
Phone: (06) 7699400
Fax: (06) 7699425
Email: sarah@ongley.co.nz
PO Box 8213
New Plymouth 4342

1. INTRODUCTION

- 1.1. My full name is Ben Maxwell Inger.
- 1.2. I provided a Statement of Evidence in relation to this matter dated 24 July 2018 (Evidence in Chief or EIC).
- 1.3. This Supplementary Statement of Evidence responds to the second Supplementary Statements of Evidence of Simon Chapman, Roger MacGibbon and Peter Roan for the NZ Transport Agency.
- 1.4. I have the qualifications and experience set out in my EIC.
- 1.5. 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 it.

2. REMAINING ISSUES DOC/NZTA

- 2.1. In reliance on the Supplementary Statements of Evidence of Dr O'Donnell, Dr Barea, and Ms Adams and on the EIC for those and other witnesses for the Director-General of Conservation, I have 'track changed' the amended set of designation and resource consent conditions (NZTA versions dated 28 September 2018). I attach those track changes. Leaving aside specific wording changes, I identify some key remaining issues as follows:

2.2. Designation Conditions

Conditions Related to Effects on Long-Tailed Bats and Pest Management

- 2.2.1 Dr O'Donnell's evidence sets out his opinion on the proposed compensation approach and NZTA's suggested conditions. He has explained the key point of contention which relates to a sufficient number of identified roosts to be located within at least 1km of the edge of the Pest Management Area, or more stringent pest control over the entire PMA area (including the perimeter). The need for maternity roost trees to be located away from the boundaries of a pest management area relates to the need to

buffer sensitive nesting sites against invasion by pests from surrounding land, a matter explained at the earlier hearing.¹

- 2.2.2 NZTA's suggested bat condition establishes the basis for selecting the Pest Management Area, which is proposed to be subject to pest management in perpetuity. I support NZTA's proposed approach of having an identified alternative site (the Alternative PMA) in the Waitaanga Conservation Area in the event that the land in and around Mt Messenger is proven not to be suitable for pest management. Based on Dr O'Donnell's evidence, if the Study Area around Mt Messenger is found to be unsuitable then that would be due to the absence of confirmed long-tailed bat maternity roosts or the inability to buffer any maternity roosts that may be identified within 1km of the edge of the Intended PMA. It may also be due to the inability to secure the land for pest management in perpetuity.
- 2.2.3 Some of the land within the 'Intended PMA', 'Wider PMA' and 'Study Area' (from which NZTA proposes the 'Confirmed PMA' may be selected) is owned by parties other than NZTA and DOC. Other landowners include Ngati Tama and the Pascoes, both of whom own land within the 'Intended PMA'. I consider it important that certainty is provided that the Pest Management Area will be available for the purpose intended, in perpetuity, prior to confirming its location and prior to Project construction works commencing. I have suggested amendments in condition 32 attached to address this matter.
- 2.2.4 NZTA's suggested conditions relating to a Bat Monitoring Report set out that the bat expert engaged by the Requiring Authority must prepare a report that confirms the location of the Pest Management Area. As I explain further, I do not consider it appropriate for a bat expert engaged by the Requiring Authority to confirm the location of pest management.
- 2.2.5 NZTA's suggested condition is based on four scenarios which attempt to foresee a range of possible outcomes. However, as explained in Dr O'Donnell's Supplementary Evidence, it is

¹ E.g. Legal Submissions for Director-General of Conservation at [43].

uncertain at this stage without the radio-tracking data whether the Applicant's desire to locate the PMA in the Intended (first preference), Wider (second preference) or Study (third preference) areas will result in an effective outcome for long-tailed bats. Dr O'Donnell states that determining the location of the PMA depends on factors including the number of maternity roosts found, their locations in the greater Mt Messenger area, and their locations relative to the edge of the PMA.² On the basis of Dr O'Donnell's evidence I recommend a less prescriptive approach for 'Scenarios' 2, 3 and 4.

2.2.6 The conditions (33 and 36) that are attached to my evidence are based on only two scenarios, as follows:

- Scenario 1 is based on there being a high level of certainty that the Intended PMA is suitable based on the number and location of confirmed maternity roosts identified through the radio-tracking programme.
- Scenario 2 would apply if the maternity roost thresholds in Scenario 1 are not met. It lists a range of matters that would be considered by an Ecology Review Panel comprised of the bat expert engaged by NZTA, an independent peer reviewer selected by NPDC (in consultation with NZTA and DOC) and a DOC bat expert. The final decision would be made by NPDC in consideration of a report from the Ecology Review Panel. These conditions are based on input from Dr O'Donnell.

2.2.7 NZTA has proposed in its condition 29 that implementation of the Pest Management Plan shall commence prior to Completion of Construction Works. The anticipated construction period is four years. I have suggested an amendment in condition 32 (attached) to require that the implementation of the Pest Management Plan should commence as soon as possible following construction works commencing.

² O'Donnell Supplementary Statement of Evidence [2.9].

ELMP Certification

- 2.2.8 The EIC presented by DOC ecological witnesses identified a number of issues that affect the content of the ELMP. There have been a large number of changes suggested by NZTA in the version of the ELMP which was submitted on 28 September 2018 with NZTA's latest supplementary evidence.³ Paragraph 4.1 in Dr Barea's supplementary evidence summarises some of the issues that he considers remain outstanding based on the EIC of DOC's ecological experts.
- 2.2.9 Although I understand the objective that NZTA is seeking through their request for the ELMP to be certified through the hearing process, the difficulty with that approach is that the ELMP has been drafted on the basis of addressing the requirements in NZTA's suggested conditions. Many of the changes suggested by DOC to the designation and resource consent conditions (including Schedule 1) would require updates to be made to the ELMP. It is important that the certified ELMP must address and implement the requirements of the final designation and resource consent conditions. In my opinion, the conditions should be resolved first with the ELMP then finalised to reflect them, rather than the other way around.
- 2.2.10 DOC's suggested conditions (which were tabled at the hearing on 16 August 2018) included a process involving certification of the ELMP by the Councils following the involvement of an Ecology Review Panel. The basis of that approach was that it would provide a robust process for reviewing and resolving the complex ecological issues that the ELMP deals with.
- 2.2.11 There is another option for certification which is a more conventional approach, involving certification by the Councils following a process of formal feedback by DOC. I consider that this approach could be appropriately taken for the ELMP, with the exception of the Pest Management Plan and kiwi fencing and underpasses which should be subject to review by the Ecology Review Panel prior to certification by NPDC. This reflects the

³ There have been further changes to the ELMP since that date which DOC has not had time to review.

greater degree of uncertainty that currently exists regarding those matters and their importance. The attached conditions 8-12 set out a process for reviews of the ELMP by DOC and the Ecology Review Panel.

- 2.2.12 Condition 33 suggested by NZTA relates to the functions of the Ecology Review Panel. The NZTA condition also requires the Ecology Review Panel to be established prior to the Completion of Construction Works. I consider that it should be established earlier so that the Ecology Review Panel can be involved in reviewing the Pest Management Plan at an earlier stage than near the end of construction.

Amendments to Management Plans

- 2.2.13 I am now more comfortable with the approach of minor and material amendments to management plans on the basis that NZTA's new proposed condition 10 provides for the decision on whether an amendment is minor or material to be made by the Councils. Additional wording has also been proposed by NZTA to establish what constitutes a minor amendment.

- 2.2.14 However, I consider that feedback from DOC should be required to be sought for any proposed 'minor' amendments to pest management methodologies and monitoring. DOC's experts have advised me that they are concerned that what might be perceived to be a minor amendment to pest management methods or monitoring might have significant negative consequences. I have suggested amended wording in condition 13 attached to allow for a short period of feedback by DOC.

- 2.2.15 I also consider that any material amendments to pest management methods or monitoring and kiwi fencing and underpasses should be reviewed by the Ecology Review Panel. The conditions currently only require this *"if such advice is required"* which is presumably at the discretion of NPDC. I consider that greater certainty than this is required for those matters. Other material amendments can be subject to the involvement of the Ecology Review Panel at the discretion of NPDC.

Schedule 1

- 2.2.16 I support the scheduling approach for the ELMP requirements which NZTA has adopted in its suggested conditions. For the Schedule to be effective it should be referenced appropriately within the conditions. I have suggested changes to various conditions to address this, including a specific requirement that the ELMP and all amendments (minor and material) must be required to be certified in terms of the requirements in Schedule 1.
- 2.2.17 NZTA's suggested conditions repeat some of the information from Schedule 1 in their condition 29. I do not consider it necessary to repeat any of the requirements from Schedule 1, provided the schedule is appropriately referenced in the conditions. Condition 29 in NZTA's suggested conditions does contain some additional requirements which could be retained in the condition rather than transferred to Schedule 1. I have suggested amendments to condition 32 in the conditions attached on this basis.
- 2.2.18 NZTA has adopted some matters from the schedule that DOC tabled at the hearing on 15 August. The suggested conditions that are attached to my evidence set out changes to Schedule 1 based on the differences that remain outstanding. The key differences are explained in paragraph 3.2 of Dr Barea's supplementary evidence.

2.3. Resource Consent Conditions

ELMP Certification

- 2.3.1. Dr Drinan has reviewed the freshwater section in the version of the ELMP which was submitted on 28 September 2018 with NZTA's latest supplementary evidence. Dr Drinan's comments on it are attached to my evidence.
- 2.3.2. My comments in relation to the ELMP certification above are equally relevant to the certification of the relevant aspects of the ELMP by TRC. I have not included Ecology Review Panel conditions in the suggested TRC resource consent conditions

attached, on the basis of that the Panel's role would be limited to the Pest Management Plan and kiwi fencing and underpasses (which are both within the jurisdiction of NPDC).

Construction Water Discharges Monitoring Programme (CWDMP)

2.3.3. The Construction Water Discharge Monitoring Programme (CWDMP) is an appendix to the Construction Water Management Plan. Mr Duirs and Dr Drinan identified some deficiencies with the CDWMP in their EIC. Mr Duirs and Dr Drinan have reviewed the latest version of the CWDMP which was submitted on 28 September 2018. Their comments on it are attached to my evidence.

2.3.4. I have amended NZTA's suggested conditions to include a requirement that the CWDMP must be subject to certification by TRC prior to construction works commencing. The certification process would also enable the CWDMP to be finalised consistent with the matters in the ELMP that deal with sediment monitoring and responses.

Riparian Planting

2.3.5. One of the matters that Dr Drinan has identified in his comments on the ELMP is that the riparian planting proposal does not reflect the proposal set out in Mr Hamill's speaking notes from the hearing. I have suggested amendments to Schedule 1 which reflect Dr Drinan's requested changes related to that issue and other freshwater matters.

2.3.6. The latest version of the ELMP identifies potential (but not confirmed) sites for riparian planting. I understand that this is because agreements are still being sought from some landowners. The conditions should require the final ELMP to include confirmed details of the riparian planting for review and certification by TRC. This should include confirmation from the consent holder that the riparian planting will be available for the purpose intended and protected in perpetuity. I have recommended changes in condition GEN.24 and Schedule 1 attached to address this.

Schedule 1

2.3.7. The suggested changes to Schedule 1 are summarised above. The changes that relate to the Overarching Objectives, Landscape and Vegetation Management Plan, Freshwater Management Plan requirements are all relevant to the TRC consents.