

**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 ("the Project")

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**LEGAL SUBMISSIONS ON BEHALF OF THE DIRECTOR-GENERAL OF  
CONSERVATION**

**(Conditions)**

Dated: 15 August 2018

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1. Sections 104(1)(ab) and 171(1B) of the Act require the decision maker to have regard to:<sup>1</sup>

*“Any measure proposed or agreed to by the Applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.”*

2. In my submissions of 7 August I set out the Director-General’s (DOC’s) position that there are significant adverse effects that cannot be avoided, remedied or mitigated. However, in this case, DOC considers that offset or compensation is an option. DOC has suggested that the package be called “compensation”.
3. Because compensation for potential adverse effects on the long-tailed bat is considered to be insufficient (3650 ha pest management area without radio tracking to confirm the location of bat roost trees), DOC cannot support the granting of regional consents or a recommendation to confirm the requirement.
4. That is, these conditions are put forward on the basis that the Applicant would be required to offer further in the way of compensation prior to consent being granted or a recommendation to confirm.

### **Key issues**

5. DOC suggests that the ‘bottom line’ requirements for the ELMP be placed in a Schedule to the conditions. Two different Schedules have been prepared that reflect the differing functions of the regional and district councils.
6. DOC does not consider that the ELMP (including PMP) is at a state where it can be confirmed through this hearing. Therefore DOC recommends a certification process for the ELMP following comments by the Ecological Review Panel. Because the ELMP is such an important part of dealing with the potential adverse effects of the proposal, DOC has put further detail around the process by which the Ecological Review Panel would have this opportunity to comment prior to certification.
7. DOC does not consider that a “mediator” should have the final say on certification.

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<sup>1</sup> This wording from s104.

8. DOC does not consider that there should be a streamlined approval process for changes to the management plans based on an interpretation of what is "minor". Rather, DOC suggests that certification and further comment from the Ecological Review Panel must occur for changes to the ELMP that involve:

8.1. Substantial changes to pest management methods - which would include changes to pest management methods due to one or more of the performance measures in the Schedule not being met;

8.2. changes to the methodologies for monitoring.

#### **Monitoring and response**

9. The NZTA conditions require that the requiring authority undertake an annual review of all monitoring carried out under the ELMP, up until the completion of construction works. Condition 29 of DOC's suggested conditions (designation) would provide that this would occur on a continuing basis. Pest management and outcome monitoring must be compiled annually, and a report prepared by a suitably qualified ecologist. Following receiving the monitoring report, the Ecological Review Panel could make recommendations to the Council(s) regarding changes to the pest management or monitoring methodologies. (This may or may not be in circumstances where performance outcomes are not being achieved.)

10. DOC has set out monitoring requirements under topic headings in the Schedules (e.g. Landscape and Vegetation Management, Bat Management etc.) which reflect the sub-management plans contained in the ELMP. It is understood NPDC Officers may require a closer connection between the monitoring conditions and the main body of the consent conditions. DOC would likely support that clarification.

#### **Compensation areas – certainty of property rights**

11. DOC rejects NZTA's draft conditions that "*the exact location of the PMA may change over time*", for the reasons set out in DOC's evidence.

12. DOC's proposal contains the following as an essential requirement of any ELMP:

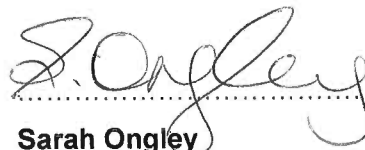
*“Legal agreements and/or other authorisations necessary to allow, in perpetuity, the requiring authority to enter onto land outside the boundaries of the designation to carry out, continue and maintain all the measures set out in [the] ELMP, including the restoration, riparian planting, pest management and fenced lizard enclosure measures. Such evidence will also include appropriate access to such sites, for the purposes of undertaking those measures.”*

13. Apart from preparatory works, the intention is that no works could be undertaken except in accordance with certified management plans, including the ELMP. Effectively, this would mean that works cannot be undertaken until legal agreements have been resolved and evidence provided to Council in the ELMP.
14. Again, I understand NPDC Officers may recommend that this requirement be more closely connected with the main body of the consent conditions (i.e. not just in the Schedule of ELMP requirements). DOC would likely support that clarification.

#### **CWMP**

15. DOC considers that updates to the CWMP are required before it can be certified to improve the provisions for sediment management and monitoring and to include a feedback loop to the ELMP requiring a suitable ecological response if an adverse sediment event occurs.
16. DOC looks forward to discussing these conditions with other parties during the adjournment.

**DATED** at New Plymouth this 15<sup>th</sup> day of August 2018



**Sarah Ongley**

**Counsel for the Director-General of  
Conservation**