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Event: New Plymouth District Council Hearing -
Mount Messenger Bypass

Date: 24 October 2018

Before: Mr S Daysh - Hearings Commissioner

Witnesses: Mr H Martin - Speaking to additional
evidence
Dr L Barea - Speaking to additional
evidence
Mr R MacGibbon - Speaking to additional
evidence

Counsel: Mr D Allen - NZ Transport Agency
Mr T Ryan - NZ Transport Agency
MS S Ongley - Department of
Conservation
Mr T Hovell - Te Rūnanga o Ngāti Tama
Mr R Walden - Te Korowai Tiaki o te
Hauāuru

Also present: Mr P McKay - Hearing Manager
Ms R McBeth - Reporting Officer, New
Plymouth District
Council

THE COMMISSIONER: Kia ora tatau and welcome everyone to what I think is going to be last day of our hearing. We will see how we go. Firstly, a bit of an apology for a slightly late start. I had an evening meeting in Hawkes Bay so I have driven through to the sunny Whanganui last night and stayed there and been on the road early so bear with me while I gather my thoughts. The other thing I would like to say in opening this morning is again it is very clear to me that there has been a massive amount of work going on since we last were in the hearing together. I would like to say thank you to everyone that has been involved in the witness conferencing and the counsel for moving things along on what looks to me to be on the matters in contention between those parties and have made a good progress so thank you very much.

I think we do not have a hearing schedule set out today so I would like to just talk around the room and get an order of the way it would be most efficient to go through today but before I do that I should probably just take a roundup of appearances just to make sure we know exactly who everyone is here today. So perhaps, Mr Allen, starting with you.

MR ALLEN: Thank you, sir. So Mr Allen and Mr Ryan for the applicant, the Transport Agency.

MS ONGLEY: Ms Ongley for DOC.

THE COMMISSIONER: Morning, Ms Ongley.

MR HOVELL: Good morning, sir, Hovell for Te Rūnanga o Ngāti Tama.

THE COMMISSIONER: Thank you, Mr Hovell.

MS MCBETH: We don't have Simpson Grierson here today but available by phone if you need to.

THE COMMISSIONER: Thank you. So New Plymouth District Council and Taranaki Regional Council planners are here so thank you very much.

Mr Allen, do you have any thoughts on the process for today and what would be the most efficient from your point of view?

MR ALLEN: Yes, sir, and I am not sure whether my friend, Mr Hovell, would like to talk at all to the memo that was filed but if he would like to talk about that then we could start with that. I am not sure if Mr Doherty is appearing in terms of his

further evidence so there is that matter but then we have the ecologists and the proposal would be that they just step through for you at a high level the ELMP that was filed yesterday. I suspect, especially given your travelling but also the bulk of the documents, that you probably have not looked through it so a high level summary will just help you understand the changes and then specific questions you can ask off that. Then potentially do the planners after that: same approach, a high level discussion, have them and we have got an extra table there so they can all be seated there and talk directly with you.

THE COMMISSIONER: That would be really good.

MR ALLEN: Then after that obviously counsels again for any comments from them beyond the planning and then in terms of brief oral closing probably more a discussion with you just going through the key points and just seeing if there are any particular questions you have that we could address in more detail and written closings.

THE COMMISSIONER: Sure. That sounds good.

MR ALLEN: On that basis, and depending on how long the questions are, I think it will probably be a morning type

hearing and unless there is extensive questions I envisage it would be around lunchtime that we will be through if not before.

THE COMMISSIONER: Look, I am not anticipating going past lunchtime. As I requested with the joint witness statement process there seems to be good reasons why there are differences on the narrow range of issues that are still in contention so I am not expecting to be here past midday if we can keep that in mind and we will see how we go.

I think just on reflection, and probably for good order, I should go through minute 6 just to check off the various actions and I do have some queries about some of these matters. Just back to minute 6, the updated version that I issued on 15 October, those two joint witness statements have been produced under one so thank you very much. I understand that both code of conduct, the Environment Court note was circulated, and that the first parties had opportunity to look at those notes from Judge Newhook and the one from Auckland Council so that is my understanding. Any comment on that?

In terms of further legal submissions I have asked for a specific piece of advice from counsel for New Plymouth District

Council relating to Ngā Hapū o Poutama and the status as an iwi authority. Is there any update on that, Ms McBeth?

MS MCBETH: Mr Winchester is going to try and get back to you this afternoon.

THE COMMISSIONER: Okay. Thank you because it is quite important that comes in before Mr Allen has to do his closing because while it is going to be informative for me it will also need to be addressed in closing by Mr Allen's team as well.

MS MCBETH: Do you mean in a written closing?

THE COMMISSIONER: In the written closing, yes - not today - so that is what I am anticipating so thank you for that.

In terms of the suggestion that NZTA and DOC - I think that was your suggestion, Mr Allen - that you might be able to do something together but as it has transpired it is more proper I think that Ms Ongley is given her submissions, which I have had a chance to read. Thank you very much they are very helpful. When we do get to that I would like for you to take me through those at the appropriate time.

MR ALLEN: Sorry, sir, I forgot about Ms Ongley's submissions and she will need to be in the batting order for today.

THE COMMISSIONER: Yes. Should we do that towards the end, Ms Ongley? Is that ...

MS ONGLEY: I thought that that would be preferable because it may be that the planners can take you through the relevant conditions during the hot-tubbing and set out what they have agreed and then I could set out what has not been agreed after that.

THE COMMISSIONER: Great.

MS ONGLEY: Just in relation to the joint witness statement planning I have not been fully across what has been happening in the witness conferencing but Mr Inger was given an opportunity to set out any corrections to the set of conditions that were filed today.

THE COMMISSIONER: Yes.

MS ONGLEY: So he has got a couple of pages with some corrections, last minute corrections. Perhaps he could hand that out before the hot-tubbing ...

THE COMMISSIONER: Yes, that was signalled by the planners in their joint witness statement that there was a final check to be done so that is all good. Thank you.

The next request was from Mr Hovell to just update me on the status of the current trustees for Te Rūnanga o Ngāti Tama, and thank you for your note on that, Mr Hovell. I do note, probably for the record, that Mr Walden, when he was here on the last day we met - I cannot even remember the date when that was - did reserve the right to make any further submission on that status so I did grant that but he is not here - that is on the website - so that is the opportunity. Do you want to address me now on that, Mr Hovell, or should we --

MR HOVELL: I am happy to address you now.

THE COMMISSIONER: Thank you.

MR HOVELL: A memorandum that I have lodged addressed the status of the trustees so that is confirmed that the seven trustees are

all now full trustees of Te Rūnanga o Ngāti Tama have been reinstated.

I put a request through to Mr Enright to see if he could advise on the status of Te Korowai. I have not heard back from him before lodging that memorandum and we still have not heard back so I cannot address that. So for my part it was just addressing the status of the trustees themselves which is now verified.

THE COMMISSIONER: Thank you.

MR HOVELL: That is what the memorandum addresses.

THE COMMISSIONER: Yes. I should have actually clarified. Mr Walden was sitting in for Mr Enright in that last day for Te Korowai so, yes.

MR HOVELL: Yes, I realise that. My correspondence I had sent to Mr Enright because I had (several inaudible words).

THE COMMISSIONER: It is on the website. I did give him that opportunity - he is not here today - if he wanted to say anything before the hearing closes that is his opportunity.

Could I just ask you two questions about the status, Mr Hovell? The letter listing the trustees - I just need to find a copy of it in my papers from a firm - is that an accounting firm or is that a firm that administers the --

MR HOVELL: It is a law firm with various areas of specialty but they have been assisting the trust in relation to the trust matters that we have been dealing with.

THE COMMISSIONER: So this is Anthony Harper, so they are a law firm. Yes.

MR HOVELL: They have been advising the trust and been assisting the trust in relation to the dispute around the trustees themselves. So they have that specific knowledge of the trustees and the effect of the (several inaudible words) process.

THE COMMISSIONER: Okay. That is very helpful. Has the reinstated trust - the trustees here - have they met since they have come back together, for the want of a better word?

MR HOVELL: Yeah. My instructions are they have called meetings in which they have invited all of the trustees to and the trustees have had a meeting. As to whether all the trustees have turned up I cannot comment on that but at least there has been invitations to all the trustees to attend meetings and have a trust meeting.

MALE SPEAKER: One of them has attended the other two have forwarded their apologies due to work commitments.

THE COMMISSIONER: Yes, as will be the normal course in a trust with meetings. All right, thank you for that. That is helpful.

All right, back to minute 6. Mr Doherty's evidence; I have received that. I do have two or three questions. I would like to talk to Mr Doherty if arrangements can be made just on the phone or some other way. We should schedule that for a suitable time.

MS MCBETH: Yes. He's in Nelson and he's facilitating a workshop in Nelson today. He is available between 12.30 and 1.30, which is a bit later.

THE COMMISSIONER: What I think might be better, I will set out some written questions for Mr Doherty I think and if counsel are happy for that there are just two matters towards the end of his statement that I am still unclear what he is saying to me but I would need to tease those out with some specific questions. I think it is probably better if I do those questions in writing. I will issue those through Ms Straka, Mr McKay and, given the written closing by the applicant, what was the date you were proposing, Mr Allen?

MR ALLEN: The 30th, which is next Tuesday.

THE COMMISSIONER: Okay.

MR ALLEN: If it is by Friday ...

THE COMMISSIONER: By the end of Friday if he gives me a written response to those questions. If you could let him know that is the arrangement. Thank you.

I think we are down to the options for the resumed hearing, which we have heard that it would be useful to -- hot-tub might be a bit of a grand term for what we are using here but if we do

have those joint discussions with the ecologists and the planners ... should we start the ecologists? Is that ...

MR ALLEN: Yes, sir, that would be my suggestion only because the planning then picks up the threads and applies it in the conditions. So very happy to start with the ecologists unless Ms Ongley has just ...

Sir, it has just been pointed out to me that Wildlands is not actually -- there is no one from Wildlands here.

MS MCBETH: So Tim Martin's also available by phone.

THE COMMISSIONER: All right. So can he be hooked in to the system through the phone so people can hear him? I think it is quite important that Mr Martin is here.

MR ALLEN: Sorry, sir, I just assumed that they would be here but ...

THE COMMISSIONER: Let us take a break for ten minutes and get that organised but just to summarise the order of batting this morning we will organise Mr Martin to come in and we will go through the ecology matters first. Then we will deal with the

planning matters and then, Ms Ongley, if you can address me on that specific point associated with the securing of offsets and then, Mr Allen, we will perhaps just have a brief discussion about closing submissions and any particular issues that we might need to deal with as a fourth item. Have I missed anything? No. I have already talked about Mr Doherty so that is good.

All right, let us break until about -- I will just go and sit outside for a while and you can organise that and that would be good.

MS MCBETH: So are you happy to talk - should be a bit more quiet in here - into the laptop as we did in waterfront?

THE COMMISSIONER: Yes. If that is better that is fine. The only thing is that other people could not hear, that is all, so it might be a bit flash to try and hook them into the system here but I think if you can set up a laptop if that is the best option we will ...

MS MCBETH: (overspeaking) quickly.

THE COMMISSIONER: I will come back in about ten minutes I think.

(A short adjournment)

THE COMMISSIONER: Tim, can you hear me there okay?

MR MARTIN: I can, thank you.

THE COMMISSIONER: It is Stephen here, Stephen Daysh.

MR MARTIN: Hi.

THE COMMISSIONER: So we are just getting ourselves set up here and you are on a laptop talking to me and there is a speaker hanging over the screen. I am not sure whether people can hear you but can you just speak up loudly and we will see whether we can?

MR MARTIN: Sure. Tim Martin here from Wildlands. Can you hear me?

THE COMMISSIONER: Yes, that works pretty well. Thumbs up. That is good.

I am just going to get my paperwork sorted out so I have got everything I should have in front of me. We do have two joint witness statements and a new ELMP - I think version H - is that right?

MALE SPEAKER: That's it, yes.

THE COMMISSIONER: The version number is that -- make sure I have got the right one. Is that somewhere through past the table of contents?

MALE SPEAKER: I just can't see where the H is?

MR ALLEN: The date is 19 October.

THE COMMISSIONER: Okay, got it, yes. I have got the second witness statement and I am just looking for the first one. So I have got a joint witness statement ecology, 15 October, and that has been signed by Dr O'Donnell, Dr Barea, Dr Martin; so they are three people in the hot-tub, as I understand it, and also Mr MacGibbon in the hot-tub. Dr Barea is here with us today and we have got Dr Martin on the phone. Other participants were Dr O'Donnell, Mr Shaw, Mr Chapman and Dr Ogilvie facilitated the

sessions so I think that is that statement. The second statement dated 23 October was signed by the same seven ecologists and I have that in front of me as well along with the updated ecology landscape management plan dated 19 October.

Gentlemen, I am really in your hands. I think the process is probably for you to take me through where you have ended up with the various matters and I will listen to that just as a briefing and then with questions I will work those out as we go along and if I do have a question I will want some feedback or some discussion from me to you in terms of your positions. I am also reasonably comfortable with cross-discussions as well as we go through this if we are looking to clarify points. I do not think there are any particular rules of the games but those are my rules for today if that suits you all.

MR MACGIBBON: Commissioner, I suggest that I take you through the ELMP, particularly the major changes since we last met. Dr Barea; I was suggesting he could just chip in when he has something to add, if that is all right with you, as we go sequentially through it?

THE COMMISSIONER: Yes, thank you, Mr MacGibbon.

MR MACGIBBON: We have in the joint statement the four areas at the end that are the points of disagreement. I was going to suggest perhaps unless they get raised as we go we come back to those at the end and Dr Martin may wish to contribute too to that discussion.

THE COMMISSIONER: Great, thank you. Dr Martin, are you hearing that okay?

MR MARTIN: I think that was Roger. It's sort of right on it's sort of peripheral of whether I'm hearing correctly or not.

THE COMMISSIONER: I will ask Mr MacGibbon and Dr Barea to speak right into their microphones. Can you have another try and we will have a wee test there.

MR MACGIBBON: Okay. Can you hear me at all now, Tim?

MR MARTIN: Yeah, that's okay. I can make that out.

THE COMMISSIONER: Great, all right, we are underway.

MR MACGIBBON: So I'm assuming you have a copy of the ELMP in front of you, the latest one.

THE COMMISSIONER: Yes.

MR MACGIBBON: All of the changes made since we last met are in the aqua colour, which unfortunately the way ours have printed makes it rather difficult reading. I hope yours is easier than ours is. I won't go through every single change there because some of them are wording changes and don't significantly change the intent but I will go through and highlight the major changes if that's acceptable to you.

THE COMMISSIONER: Thank you.

MR MACGIBBON: If we start with section 1.6 and 1.6.1 and 1.6.2 in relation to the Ecological Review Panel. After quite a bit of discussion with the panel we have come to agreement that the role of the panel will increase proportionately with the various PMA scenarios that we go through so as we move into scenario 3 and 4 - and I will come back to those - where there is less resemblance to our intended PMA site the review role of and recommendation role to the District Council of the Ecological Review Panel increases.

So 1.6.1 and 1.6.2 is particularly around that role increasing. The nature of that role and the things to be considered I will come back to in chapter 9 unless you have questions on that right now.

THE COMMISSIONER: No, I think that is clear, thank you.

MR MACGIBBON: Okay. If we move on just to 1.7 this table 1.1 is just a reinforcement of a message I think you might have already received is a summary of the conditions applicable to the ecological aspects of the project. That is yet to be updated. Obviously we are in a state of flux there so that will be updated to completely reflect the conditions once you've got that all signed off so for the moment there's no major changes to that section.

THE COMMISSIONER: Yes. These tables; that was a key insertion from the original version just to link it in to the conditions in here. To my mind this will become a bit of a bible to the ecology team if the project proceeds and so the key conditions will be in one place. I think it sounds that all the ecologists agree so that is a good thing.

MR MACGIBBON: Yes.

THE COMMISSIONER: When you talk about the aqua colour, is it this red that I am seeing under the heading 1.7?

MR MACGIBBON: No, not the red sorry. It's just the highlighted blue -- might be blue colour, sorry.

THE COMMISSIONER: Blue, all right. So what you call aqua --

MR MACGIBBON: Yeah, it was aqua on the computer but it doesn't seem to have shown. So all the blue highlighted areas are the changes since last time you read this document.

THE COMMISSIONER: All right.

MR MACGIBBON: Okay. If we move on. Laurence, I'm shooting straight through to section 4.5.4. I think that's the next significant change just to do with the riparian offset restoration planting. It's just a point of clarification in the middle of page 45, or that page, 4.5.4. There have been various square metres of restoration, stream restoration, that need to be done.

THE COMMISSIONER: Sorry, to interrupt. I had something on page 20 in blue.

MR MACGIBBON: Okay. Certainly if there are any along the way you want clarification on, Commissioner, please say. I am just picking the main ones out.

THE COMMISSIONER: I think I would. Again, because I am going to have a transcript which will be useful, I would like to have a reasonably clear statement on each of the key changes so back to 3.1, that addition there.

MR MACGIBBON: Yes, I think if I recall it what was requested - I think we all agreed - was a clarification all the way through the document of the primary objectives of the plan and each part of it. If I recall here this is referring back to our objective to try and achieve a no net loss or equivalent, realising it's a compensation approach all the way through. So just because section 3 is about the framework for the work and for the plan this has been introduced there to reemphasise that point and you'll see that in a number of the other chapters we've repeated that with a specific reference to the subject matter of each chapter.

THE COMMISSIONER: Thank you.

MR MACGIBBON: Seeing you've got lots of blue I'll take you through them as best I can. 3.5, you'll see two. I think it's, just again, a clarification of objectives, so some of that has been deleted and a reference to scenario 4 again which has become important as we've gone along.

THE COMMISSIONER: Yes, that's clear.

MR MACGIBBON: So it's just clarification I think more than anything.

THE COMMISSIONER: You did take me through to --

MR MACGIBBON: Yes, I think 4.5.4.

THE COMMISSIONER: Yes, I am there now.

MR MACGIBBON: So the main one is that additional chapter, the big blue highlighted area. There's been various references and evidence to the square metres of stream channel that need to be restored. The end figure of 11,536 is in fact what the cumulative total is. To clarify that the offset work, the SEB

offset work, away from the project area will equate to 10,738 square metres plus there is an additional 790 square metres of remediation that will be done on diverted streams within the project area. The sum of the two comes up to the 11,536. So it's really for clarification to link the various figures that have been floating around.

THE COMMISSIONER: To make sure the numbers add up.

MR MACGIBBON: Yeah.

THE COMMISSIONER: Is that one of the matters that is still not agreed?

MR MACGIBBON: No, I think we've ended up - and Dr Barea can comment from the DOC perspective - in a similar position probably from a different route. In other words, the figures are quite similar from what Dr Drinnan I think wanted but, yeah, we've got there differently but I think that's why it's no longer an issue under contention.

THE COMMISSIONER: All right, thank you.

MR MACGIBBON: Are you happy with that, Laurence?

DR BAREA: The doctor is still in China so it was difficult to speak with him. He certainly wanted that as square metres. I'm a little uncertain as to whether the 11,000 plus figure in his mind was the sum of the two or was his view as to what should be in place of the 10,738 figure. I can't confirm that.

THE COMMISSIONER: All right. So when is he back from China? Is he available before the --

DR BAREA: It would be I think the end of this week.

THE COMMISSIONER: All right. It was an issue of some contention and I think we were narrowing down so I would prefer, Ms Ongley, if you could put that question to Dr Drinnan and if he could have that at the end of this week back to the parties - I am thinking Monday lunchtime - just to be fair to Mr Allen and his team. That would be helpful, thank you.

MS ONGLEY: Can I just ask what page ...

MR MACGIBBON: Yes, 45 of the (overspeaking) but just remember it's the tracked change version.

THE COMMISSIONER: Yes, and, Dr Barea, could you help me just with the question, how you would pose that query to Dr Drinnan to be as clear as possible?

DR BAREA: I would want to know from him whether the 11,536 figure is what he intends for the offset restoration fencing offsite or whether he understands that that figure is the combination of the 10,738 and the 798.

THE COMMISSIONER: So if he just clarifies that I have got his opinion and then Mr Allen and his team can bounce off that in the closing if they want to --

MR ALLEN: Just one point, sir. It's not one of the areas that was in dispute in paragraph 11 of the joint witness statement so we had understood, because that set out the points of disagreement, that that was no longer being disagreed which might be why Dr Drinnan hasn't commented any further on it.

THE COMMISSIONER: I think he has been in --

DR BAREA: He hasn't had the opportunity to comment further. At the last hearing it was noted that the joint witness statement

wouldn't or couldn't involve the fresh water so it was kind of out of scope and that's how we treated it during that --

THE COMMISSIONER: Thank you, Mr Allen, but I think this is a discreet issue Dr Drinnan was not involved and if we just get his clarification and that gives you some time to talk with your team and put the agency's position if there is any lack of confirmation there.

All right, so we carry on.

MR MACGIBBON: Just perhaps through to section 4.7, table 4.2 on page 55.

THE COMMISSIONER: Yes, I have seen that.

MR MACGIBBON: This will recur on a number of occasions but there's reference in this table to the herpetofauna management. So just to explain we've agreed, and on the advice of Ms Adams on behalf of DOC, that the only lizards that will be translocated to Rotokare will be striped skink. All other, arboreal geckos in particular that are found along the way will be just moved into the PMA off the project footprint but not

translocated. So that's the change and it repeats again in section 7, which is the relevant section.

THE COMMISSIONER: Is that because of the particular threat status of the striped skink? Is that the reason?

MR MACGIBBON: That's my understanding and also because it is the one species that doesn't have a protection programme, for want of a better term, in mainland New Zealand.

DR BAREA: But it principally involved that those other species were already present at Rotokare so there was no additionality by moving them there.

THE COMMISSIONER: Okay. That is good, thank you.

MR MACGIBBON: Okay. If we go over the page to the top of section 5, the Bat Management Plan. Again, consistent with what I was explaining before. We've just clarified the objectives, put in a more direct objective statement there; that's what the top piece is. There's nothing new. It's just a clarification I think.

I don't believe there are any other majors there. Most of the bat relevant work is picked up in chapter 9, which we'll get to.

THE COMMISSIONER: Thank you.

MR MACGIBBON: Sorry, there is one on page 60, my apologies, in section 5.7.1.4. There was a discussion about when the effort, the trapping effort, could cease with the bat trapping programme rather than when ten roost trees were found. We've agreed that once 30 transmitters are applied to animals then we will stop. We have 30 transmitters available and once they go on we'll have abundant data.

THE COMMISSIONER: That will be the trigger rather than --

MR MACGIBBON: That will be the trigger in a tracking sense, yes.

THE COMMISSIONER: Yes, that makes sense to me. Thank you.

MR MACGIBBON: I think I'll take us straight through to section 6.3. Sorry, actually I will stop you on the way, my apologies. Yes, it is 6.3 on page 72. The main change there at the bottom

of the page is we had a discussion about the management of what would happen if Kokako start nesting along the footprint or adjacent to it and this is simply putting in place, I guess, an information process to the Department of Conservation and to Ngati Tama and then a collective, I guess, hui to discuss what to do next. So it's difficult to anticipate all the scenarios that might arise where those animals are nesting if they are and whether they're nesting or whether they're just solitary animals that happen to have been seen but the best course of action was to stop at that point, inform DOC and Ngati Tama and then have a discussion about what the most appropriate management to safeguard those animals really. There's a whole range of, I guess, possibilities that might be there including waiting until the young have fledged and then leaving those trees or that group of trees until they're fledged and then knocking down those trees afterwards.

THE COMMISSIONER: Okay, thank you.

DR BAREA: And for any work to continue at that point while nesting continues would involve a Wildlife Act Authority which have discussions around that, if that was the course of action, would occur through DOC being notified immediately.

THE COMMISSIONER: Yes, and the Ecology Peer Review Panel would be in session around this or will they be advising?

DR BAREA: I don't think there is a direct link to that but by -
- I am comfortable with that because by immediately notifying the DOC operations manager who will then talk with the Kokako Recovery Group.

THE COMMISSIONER: Yes.

DR BAREA: That is where that expertise sits. I am comfortable with that.

THE COMMISSIONER: Thank you. Just a bit of a side comment, you mentioned Ngati Tama who are involved in the kokako work, they have an ecologist advising, have they been involved or consulted through these latest changes? They clearly have not been on the witness statement but has there been any interaction? Maybe Mr Hovell might want to respond but that is just an open question from me, out of interest.

MR MACGIBBON: Yes, there has, it has been rather informal but certainly between myself and Conrad O'Carroll, who I think represents the Ngati Tama ecological side of it. The input of

the Ngati Tama name there and the need to inform them as soon as something happens was at their request.

THE COMMISSIONER: I think that is where we left it, Mr Hovell, that he would not be available for the whole process but just keeping in touch with Mr O'Connell, can you confirm that? You might not know.

MR HOVELL: All I can say is I have not had any involvement myself. There has been nothing through me.

THE COMMISSIONER: Yes, so we can just take Mr MacGibbon's provision that there has been some consultation. I think that is helpful.

MR HOVELL: Informally.

THE COMMISSIONER: Informally, yes. Thank you.

MR MACGIBBON: I think if we move through to chapter 7, page 79. Once again that highlighted piece there - in the table on page 79, at 7.1 - is just reinforcement of the fact that only striped skink will be translocated through the Rotokare Reserve.

THE COMMISSIONER: Thank you.

MR MACGIBBON: If you move across 7.4.4.1, at the top of page 82, what -- we are obviously only doing a limited amount of salvage and inspection for lizards as the trees are felled but it was requested by our wildlands team that - including the big trees and those with epiphytes on them - that the manuka communities be added to the places to be inspected because there can be a high prevalence of some lizards in those plant communities. So that has been added there.

THE COMMISSIONER: Thank you.

MR MACGIBBON: I don't believe there is anything major in either sections 7 or 8 but I will just quickly flick through the pages. There's not so we will go right through to page 103, section 9, Pest Management Plan.

What I would like to do is just talk you through what we have done here, rather than specifically to the words and come back to those if we can.

Effectively we have not rewritten this plan but reorganised it. You will see probably some blue highlighted areas that you

have read before but they are in some different places with some wording changes. What I will do is just clarify that we have moved, I think, collectively - all three parties - some substantial distance to come to what I believe is a good outcome. The major changes there now are first of all that we have re-emphasised or increased the emphasis on an adaptive management approach, which means really having to constantly monitor feedback information to both the agency's project manager who looks after pest management and the ecological review panel who will provide comments, advice, recommendations to counsel. The feeling was that by increasing that amount of monitoring of data or information going back into the system all parties doing this work can react more positively and more immediately to lower hot spots of pests that are above target densities.

So that management programme was emphasised. We have abandoned - and I'm speaking on behalf of the Department of Conservation, and Dr Barea will correct me here if I get it wrong - any reference to a buffer now in terms of the need for one for bat management, but what we have agreed to is an increased amount of effort around the perimeter of the PMA in terms of pest management and with the feedback loop increase monitoring, a more responsive, if you like, approach to

increasing the pest management effort in key areas which might be maternity roost trees, for example, which might see patches of high pest numbers but increasing that reactivity is important.

Prior to that we have got three monitoring samples, if you like, per annum that will persist right through the full duration of this programme. So in the past we had two monitorings that would persist to five years and then after that only one. So it will now be three and that information immediately feeds back again to the pest management contractors and the manager, and the ecological review panel, so there can be an immediate reaction to, as I said, a better picture of what is going on in terms of pest management.

The agency have agreed to the pest management targets applying right to the edge of the PMA, so the targets haven't changed but now rather than having our own buffer there, which we had for a 10 per cent threshold for rates, for example, we accept the 5 per cent now to the edge but with the adaptive management and that approach of hot spot treatments intensification of pest management, we consider that we can manage to those targets now.

THE COMMISSIONER: So that is a target to be carefully monitored and adapted --

MR MACGIBBON: That's right, yes.

THE COMMISSIONER: -- if it the target is not being met then you can move to some other management method, is that the point?

MR MACGIBBON: It is not quite as black and white as that. I think the key here is there will never blanket excess of target or pursuit of a target across the whole area, there will be pockets and areas that are and the feeling is by having three monitoring per season and multiple monitoring spots that information will come back and it will say these three areas, for example, are high, this has gone down, rather than the blanket approach which might have seen a whole methodology change across the whole area rather we will go to the specific sites that need it and apply either different techniques or more intensive techniques. I think it's a better use of effort and resources and a more responsive one as well in terms of being able to achieve the targets that we want to achieve.

THE COMMISSIONER: Dr Barea, do you have a comment?

DR BAREA: I think it's worth noting two things. First of all, DOC hasn't changed its position around the importance of having external buffers. What it has done is reached a level of increased comfort above previous and in an effort to be pragmatic around the whole thing, reached a point of acceptable level of comfort around that proposal. It is worth noting though that the adaptive management -- at the moment we are second guessing the spatial scale and intensity that might involve but we do know it is topographically a very difficult area to manage. The current grid layout is perhaps overly optimistic in my view in terms of meeting those targets. However, with an adaptive response the ability to tighten that up is there, but it is just worth noting that it may be more than hotspots. So the spatial extent of the adaptive management it needs to apply to is unknown but it may be more than hotspots.

THE COMMISSIONER: You might have a focus area that is broader than just a small spot --

DR BAREA: Possibly, yes.

THE COMMISSIONER: But the adaptive management approach that you are suggesting gives a mechanism for focusing on that and targeting different management --

DR BAREA: It does give a mechanism for that. If it happened to be at a scale of the PMA or half the PMA, it has large scales, then that would need to be obviously resourced but the mechanisms are there to do that.

THE COMMISSIONER: Thank you. Dr Martin, do you have any comments on this subject?

DR MARTIN: No, I'm broadly happy with the direction that it has gone.

THE COMMISSIONER: Thank you. So, just reading through this, my read of the changes to chapter 9 are you have developed a clear objective under 9.1, which you have these four scenarios now, which I would like you to take me through just to clarify next. Then you have really put a lot of thought into the adaptive management approach and have got to a pragmatic but agreed position. Is that a fair summary?

MR MACGIBBON: I certainly believe it is.

DR BAREA: Yes, for me it is, yes.

THE COMMISSIONER: Dr Martin, you are in the same camp, I think?

DR MARTIN: Yes, I am. The only area that I have a different view is on loss control, which is --

THE COMMISSIONER: Yes.

DR MARTIN: -- a smaller components of the issue.

THE COMMISSIONER: Yes, and we will get to that next, I think. I will hand back to Mr MacGibbon, I think.

MR MACGIBBON: Certainly, what I will do now is I will take you through those four scenarios because while I think they are essentially the same, scenario 4 certainly has some extra elements to it now.

Scenario 1 is still what we have termed the intended PMA and the way we have constructed the ELMP now if we find ten maternity roosts within this area in this backtracking work we are doing this summer, or if we find ten across the wider study

area but 70 per cent of them are sitting in the intended PMA, as we have outlined it, then that will become the pest management area. So that side of things has not changed.

THE COMMISSIONER: Just a question probably for Mr Allen. The Pascoes land, is that the blue area on that --

MR MACGIBBON: No, it is the purple hatched piece.

THE COMMISSIONER: The purple hatched piece?

MR MACGIBBON: Yes, it is.

THE COMMISSIONER: Will the agency have access to that for the monitoring in terms of agreements with the Pascoes?

MR ALLEN: Sir, that is still to be developed with the Pascoes. That is why it is - and Mr MacGibbon can explain this more - in the purple hatch.

THE COMMISSIONER: Yes, I understand that.

MR ALLEN: Is there is discussions ongoing.

MR MACGIBBON: Are you just asking about for monitoring this summer?

MR ALLEN: Oh, monitoring this summer for the bats, yes, it is, sir, is my understanding.

MALE SPEAKER: I think Mr MacGibbon actually might be best to address that.

THE COMMISSIONER: So my question was, the purple area now, which is Mr and Mrs Pascoe's land, is that land going to be available as part of your bat monitoring effort this coming summer?

MR MACGIBBON: At this stage we are not trapping on it, partly because we probably don't need to, it's not a formal trapping area. We have access agreed with Mr Pascoe until the end of October at this stage. If we wish to track bats across or to roost trees that might be on his place, that will have to be renegotiated with him. So at this stage I am not sure what the answer to that is for tracking.

THE COMMISSIONER: So it is not -- do you think that is an issue? It is not mission critical?

MR MACGIBBON: No, it's not, no. I think the core areas for us are, you know, the big red and the big green areas on this map and areas of tracking tend to focus more in the Parininihi and to the south of the Pascoe land. So it's quite possible there are roost trees on Pascoe's land but we do not believe that once we get on to the number of bats the majority will be there. If we find they are all heading in that direction, we will have to reassess that one but at this stage is not critical.

THE COMMISSIONER: That you for that clarification. Mr Allen?

MR ALLEN: Sir, the access agreement expires at the end of this month but is being renegotiated at the moment to carry for the bat and various monitoring mechanisms over this summer. So we have the ability in terms of access until the end of this month and then after that renegotiating now.

THE COMMISSIONER: Right, I have heard from Mr MacGibbon that it is not necessarily mission critical, which is just the point I wanted to understand. Dr Barea, I think you are nodding our head in agreement with that?

DR BAREA: Yes, I am comfortable with what he said.

THE COMMISSIONER: All right. Thank you.

MR MACGIBBON: Just to clarify again, Commissioner, depending on the outcome of the negotiations with the Pascoes, if that land is not available to be part of the PMA then the green hatched piece, which is not very clear on your small map but is in the one appended at the back of the ELMP, will be added on.

THE COMMISSIONER: Yes.

MR MACGIBBON: So it is that same area.

THE COMMISSIONER: Got you, thank you.

MR MACGIBBON: Okay, so moving through to scenario 2. Again, it hasn't changed in terms of quantum and nature, so if scenario 1 is not possible but we do find roost sites in what we are calling the wider PMA then that wider area will be -- the PMA will be reconfigured still to 3650 hectares, including where those roost sites turn up. We will have a discussion and look at how we can best accommodate all of the ecological values, including bats, and reconfigure the area to include two green areas on the map.

You will notice we have re-emphasised or emphasised some of the aspects to be considered when doing that reconfiguration. I think the key thing here, and with contribution from Dr Martin and the Wildlands Team, was to make sure that we do not lose track of the fact we have more than just bats to accommodate. When we are drawing this, we obviously look where maternity roost sites are but we need to also consider the other aspects. As I think is written in point 6, we need to consider those other ecological values.

THE COMMISSIONER: I see the ecological review panel has that value role for these processes.

MR MACGIBBON: Yes.

THE COMMISSIONER: Through the certification by the council, so they are advising the council in their certification role.

MR MACGIBBON: Yes. Still as a reviewer, obviously because otherwise their independence would not function but as you go through, particularly into scenario 3 and especially into scenario 4, the range of aspects to be considered and the need,

I guess, for the input increases. Simply because of the complexity of what we have to face increases as well.

THE COMMISSIONER: Yes, thank you.

MR MACGIBBON: So on to scenario 3. Again, it hasn't changed in material effect except that this now includes the wider study area, as we have always said, it is recognition of the fact we cannot control where bats are flying to and could be found. With the constraints that will come with whatever land may be available, but if we detect bat roosts in the wider study area and that land is available then we will look to see if we can reconfigure a PLA that includes bat roosts plus the other ecological values. The complexity obviously increases because we are spreading out across a much wider landscape and trying to get areas that are going to be effective for all these ecological values will be more challenging. You can see the list of things to consider there, from number 1 through to 6 is substantial as well.

THE COMMISSIONER: I do have a couple of questions about that wider area. Generally in terms of land ownership, are there any other Department of Conservation areas within that wider area, Dr Barea?

DR BAREA: Yes, there are. To the south within the wider area.

MR MACGIBBON: I think, too, Commissioner, there is a little bit to the north from my recollection above the Parininihi as well that is DOC land.

DR BAREA: There is too.

MR MACGIBBON: The majority of the bigger forestry areas are shown there are in fact DOC land.

THE COMMISSIONER: Okay, and does that circle go up as far as the Mokau River area or is just --

MR MACGIBBON: No, not quite. All that is, it is a 10 kilometre radius and it was an attempt to try and anticipate where the majority of the bats that we may track might go to. They may go further than that but that is what that represents really, a radius around --

THE COMMISSIONER: I read a fascinating book by Dr Jeff Park about that area and the history of the ecology and those sorts

of things so I was just interested in getting my geography right. Thank you.

MR MACGIBBON: Then on to scenario 4. So once again if scenarios 1, 2 and 3 do not pass the tests then we are looking at the alternative area, which is across the Waitaanga plateau area. You will notice immediately that the shape of the brown part has changed. That was in response to Dr O'Donnell's comment and my error that apparently the way I had it drawn before didn't include the location of the known short tailed roost sites. So we have widened it not only too include them but to allow them to be more central to the area. That area is substantially greater than 10,000 hectares and the view is that if we are faced with a scenario we would locate the 365 a hectare PMA within that -- somewhere within that zone to best represent the ecological values that we need to compensate and offset for.

Realising at the moment we don't have all of that information available I think there's more to get from within the Department of Conservation and some fairly, I think, vigorous conversations will be had, which the Ecological Review Panel will be part, and we propose a conferencing type approach to that if need so that all the expertise is contributed.

Clearly, if we are having to move to that site it is a lot more complex thing to consider.

THE COMMISSIONER: I will ask each of the ecologists involved a question and am interested in your response. So, you first, Mr MacGibbon, do you see scenario 4 a real fall back position? Do you think that in your experience it is likely to be needed?

MR MACGIBBON: I do see it very much as a fall back and I think because of the agreements we have with the Department and with Wildlands on the other three scenarios now I think the likelihood of the intended PMA, for example, being the actual PMA is significantly greater now than it would have been. As you are aware, I think, trying to find bat roosts in that current form incentive that accepted the Department's 1 kilometre buffer would have been near impossible. So it is very much a fall back to my mind, we obviously need one because we cannot have --

THE COMMISSIONER: Uncertainty, yes.

MR MACGIBBON: Yes, but it is a low likelihood and simply there to make sure we have a back-up in case the other three do not work.

THE COMMISSIONER: The conditions are clear that this is a hierarchy? You go from 1 to 2 to 3 and then you have a certain outcome as a fall back?

MR MACGIBBON: There are some issues related to it and I think Dr Martin, when he gets his turn to raise it will do so. I think in terms of forest birds and bats the alternative site is fine. There are some elements of vegetation, flora that are not as well represented. This isn't lowland forest so there are some components missing and while it will require further investigation I think some of the small forest plants may be missing as well.

THE COMMISSIONER: That is a point there is some debate around still?

MR MACGIBBON: Yes, there is, correct.

THE COMMISSIONER: So, Dr Martin, I will come to you next but I would be interested in Dr Barea's answer to that same question, around is this a fall back and likelihood of perhaps being needed.

DR BAREA: Yes, it was intended as a fall back when it was first proposed. As to the likelihood of it being needed, I would have to second guess the outcome of the current bat tracking. I think they have been tracked for maybe a week, maybe they have caught some already, I'm not sure. It is really dependent on how well that goes.

THE COMMISSIONER: So you are being cautious just because you do not have that study still to be concluded?

DR BAREA: Yes, that is right.

THE COMMISSIONER: Dr Martin, are you clear on that question I asked?

DR MARTIN: Regarding whether it is a fall back position?

THE COMMISSIONER: And the likelihood it might be needed in the future. Just some general observations would be helpful.

DR MARTIN: I believe it is framed in the ELMP as a fall back position. It is still a possibility, a low possibility, but there is still concern there around the level of desirability

for us. So that is why it's very strong it has to be a fall back.

THE COMMISSIONER: We will deal with, I think, at end of the four points, which include this point -- I will come back to that. Thank you for that. Mr MacGibbon.

MR MACGIBBON: So in terms of the pest management areas and the scenarios, Commissioner, I think unless you have more questions on that, that is pretty much covered. My overview at the start covers the other changes in those initial sections, so if you are happy with that. I will just quickly go through to 9.5.4, the wasp management area, just to raise - and we will come back to it - that the duration of the wasp management proposal on the project footprint is a point of disagreement. So we can come back and discuss that when it is relevant.

What else have we got? Can I just go through to page 118, 9.6.3.2, some of the outcome monitoring. Really more a point of clarification. You can see in the middle, near the top of that page reference to "statistically significant", this is around sample sizes, so having enough samples done to make sure that you can generate a significant result. It was intended but we have added the words just to avoid any doubt.

THE COMMISSIONER: So that would be done through what I call the ecological statisticians, the maths of it?

MR MACGIBBON: Correct.

THE COMMISSIONER: It is quite a speciality, is it not?

MR MACGIBBON: Yes, it is. Yes, so number of random plots or locations as to -- the statisticians will tell us how many we need to do just to make sure that the result will be significant.

Most of the rest of these in here, there is no significant changes, they are simply probably clarification of wording, so unless you have specific questions on pages 118 and 119?

THE COMMISSIONER: No, thank you. That is clear to me.

MR MACGIBBON: We have taken out, at Dr Barea's suggestion, reference to some of those ecological integrity measures that came from using the model. In some respects the aspects of the vegetation that are required to achieve the equivalent of a no net loss situation still apply but the measures now, because of

the quantum of the area we are offering becomes somewhat irrelevant. We have accepted that's the case.

The outcome monitoring, which is in terms of canopy damage and regeneration of palatable species is a suitable outcome monitoring tool for the effectiveness of the pest management on vegetation.

THE COMMISSIONER: Thank you.

MR MACGIBBON: Okay, I think that's all for section 9. Just a small thing at page 124 with the peripatus. Again, a point of clarification. There were questions about why it is -- the way the original wording was it sounded like we were just translocating habitat and not peripatus. Just for your clarification too, we know from past experience that you cannot destructively search for animals and then relocate individual animals without the habitat.

Our experience of the Haversham project down in Dunedin found that they abandon either the habitat they are in when they are destructively disturbed or don't occupy the new habitat when you take individual animals. So the best method, the one that

has a greater likelihood of them staying put is to pick up stumps and logs as a whole and translocate them.

What we will simply be doing is going through the footprint and identifying that habitat, that material that is in a certain state of decay, that could be a peripatus habitat, and pick up whole and translocate it, it won't disrupt the searches, and if they're there they deal with it, if they're not then at least we haven't caused any harm. That is just a point of clarification.

THE COMMISSIONER: Thank you. Right, so we are down to our points of disagreement now?

MR MACGIBBON: I think we are. I don't think there is anything major in the biosecurity plan so as you will see in the joint witness statement, there are four areas. I'm not sure how you would like to go through those. On page 5 of the joint witness statement --

THE COMMISSIONER: I think we will just start at the top and I think probably the best way of dealing with this is if I just read into the transcript the point and then I will ask you to enter your commentary one by one about the positions you hold on this. Then I might ask some questions specifically on that. So

the first area of disagreement in the ecologists' joint witness statement dated 15 October 2018 is that:

"NZTA experts do you not agree with DOC or Wildlands experts' positions that should the Waitaanga site be selected as a PMA and some taxa do no directly benefit from pest management at that site, additional PMA site or sites should be found and managed. The reason for disagreement is that NZTA experts consider that a single PMA would have surrogate benefits to all ecological values."

That is the point. I think we will start in order with you, and then move on to Dr Barea and then Dr Martin, but just the words "surrogate benefits" in the last paragraph, if you could perhaps enlighten me on what you mean by that first and then just put your position?

MR MACGIBBON: Yes, certainly. As I explained before, I think the only concern with the Waitaanga site will be around vegetation and the replication of vegetation type stocks. The two parts to that are the coastal element, which is not present, and at this stage we are unsure about the swamp forest element and I certainly haven't done recognisance around the perimeter of that to know whether we have swamp maire forest, for example, in there, in that zone. There are swampy areas but probably not likely to have swamp maire in them. So those are two components

that could be missing from the vegetation that is being affected.

My view, though, is that there are sufficient vegetation values there for us to look to offset those and my particular reason for saying it is that if scenario 4 should occur, the agency is not reneging from its intention to plant swamp forests, 6 hectares, it is already in the plan, and at that this stage that planting of swamp forest can still occur on the Ngati Tama land and in the Mangapapeke Valley area. That is the main, if you like, offset for the swamp forest component that is affected by the project and we are doing that planting because the kahikatea element of that particularly does not benefit from pest management.

My belief is that while there will be a change to some degree to the forest composition, there will still be substantial benefit from pest management both in terms of plant rejuvenation within the Waitaanga PMA site and to forest, bird and bats and therefore my argument is that we can certainly find or develop or generate a suitable surrogate recovery ecology to compensate for the effects happening along the project area.

On the flip side, the problem that comes with multiple PMA sites is that you have got a multiplication of the end effect, if you are going out finding little pieces that might represent the type of ecology needed and so the replication of it. The agency does not have a wish to have the so called volume of pest management that might be required so in areas you are effectively doing the same pest management over each one of those to achieve the same result. So it is problematic and it is open-ended. It is very hard from an ecology perspective to see how you could make that work without scouring the whole landscape.

I believe that within that Waitaanga site we could find I think a suitable replacement for the vegetation.

THE COMMISSIONER: Thank you. Dr Barea, your position on this?

DR BAREA: I would just like to add that there are some other vegetation differences between Waitaanga and the intended PMA and that is the coastal vegetation. So that just needs to be acknowledged.

What I'm saying here -- my view here is the conditions provide for the increased role of the ERP if this scenario is

selected. In their consideration of Waitaanga in terms of the like for like concept if their advice and recommendation to council was that the vegetation types that are not represented in Waitaanga need to be addressed then the only way to do it would be to address that at another site, which, in other words, would be an additional PMA. So I'm not saying now that NZTA should go and look for another PMA but in the event that that is the recommendation to council and council wants to see that addressed, then the only way to do that would be somewhere else because it can't be done at Waitaanga.

THE COMMISSIONER: Okay, thank you. Dr Martin.

DR MARTIN: My view of it is it more broadly recognised amongst us that there are some significant ecological differences between the intended PMA or the wider PMA and Waitaanga. I think what I am mindful of is that the roads going through lowland forest are actually coastal and that lowland forest is of much of the extent compared to the taxa forest of Waitaanga. So whereas the forest at Waitaanga would have an extension across the borderlands -- we are not addressing adequately the effect on forest type if we shift it to Waitaanga. Secondly, there is the question mark around the condition of that and its

existing management compared to fairly degraded state in (several inaudible words) area.

So I think, yes, target benefits, very broadly that you are targeting forest in a general sense but when it comes down the detail and the selection of species present, it is not an accessible target in our mind, it is not like for like and therefore, going back to the original mitigation package which ascribes pest management for the vegetation component, that component at least should in a lowland environment close to the road footprint.

THE COMMISSIONER: A question probably for all of you is are there clear and obvious lowland forest locations within the general area that could be added or replaced if the Waitaanga area was -- the fall back did occur? Is this again one of those achievable points that I talked about last time?

MR MACGIBBON: Yes, those areas occur obviously (overspeaking) and from a vegetation perspective what you would have is -- conceptually you could have it. You would end up with a bat and forest bird fitting either way in one location and the vegetation management in another, but what you have is two sets of pest management and you either -- the additional edge element

that you are still trying to manage. For vegetation protection possums and goats are our target and the trouble with goats is small PMAs to look after that, we have got a margin of penetration in the landscape through the forest and some of the issues discussed with the existing PMA or the extended PMAs we are looking at now. So to set up a small area, 230, 250 hectares of vegetation separate from where we are managing bats and pests for birds will probably require a substantially larger area than that 230 hectares to be feasible. There would be a substantial increase if you start to split it up.

THE COMMISSIONER: Increase of effort and two areas that are geographically quite distinct. I will come back to the other colleagues with the same question but could you fence an area of 250 hectares effectively to keep goats out, for example.

MR MACGIBBON: Conceptually, yes. The problem in this landscape is that we are faced with a rural location sanctuary, short of having a nice, appropriately sized area that has a bush edge that you can put a fence around, you are faced with having to knock down forest to build a fence that will --

THE COMMISSIONER: Be effective.

MR MACGIBBON: Yes. A goat fence unfortunately needs to be quite substantial because of their jumping abilities and possums too. So it is effectively the full 2 metre high fence that you are seeing --

THE COMMISSIONER: So it will be --

MR MACGIBBON: But you need a 4 metre clearance for vegetation, which is effectively a six metre fence on the ground to achieving that so I do not think the industry want to bulldoze down forest to protect forest. So unless we found a suitable area that was roughly the area that we wanted it would be problematic.

THE COMMISSIONER: Thank you, Mr MacGibbon. Dr Barea, just on that topic, any other thoughts?

DR BAREA: Yes, I think there is -- obviously that component is within the intended PMA but there are other area along the coast. I can't speak to privately owned land but there is public conservation land along the coast that would have that component in it. I am sure that will be the case for the privately owned land as well but as to whether that is accessible or available that is another matter.

Yes, I don't think there will be an issue in identifying alternative sites and it is just a simple mathematical thing that will obviously increase the costs. I don't see the -- you know, if another site was used for the vegetation it wouldn't be of the size needed for bats, so it would be a smaller -- probably in the range of what was mentioned, 230, 250 hectares.

THE COMMISSIONER: Just an observation, it is not a question, that in that Jeff Parks' book I read about this particular part of Taranaki and those lowland forest areas that were -- had been retained maybe more out of good luck than good management but they are there, they seem to be particularly valuable. Is that a fair observation?

DR BAREA: Yes, not just in that district but lowland forest ecosystems tend to be underrepresented because of exactly what you have said. Most of it has been developed. So I agree with Wildlands in that relative to higher elevation, more common forest types the coastal forests are less represented.

THE COMMISSIONER: Thank you. Dr Martin, can you just give us your thoughts on this discussion?

DR MARTIN: Well, I think there needs to be meaningful negotiation to identify the forest that somehow can be established. I think that is achievable somewhere. It may need to maximise the value of a small area by perhaps being adjacent to a (several inaudible words) but I am loath to shift to the inland, particularly because of that lowland forest and its relative rate of loss compared to the inland.

I thought a while back about what are the scenarios that the increase from around the 500 hectares to 1,000-odd was for the benefit of bats. Which would imply that the vegetation component buffer was around 1,000 hectares not 250, but I cannot find that this morning so Roger have that.

THE COMMISSIONER: Mr MacGibbon, did you understand that?

MR MACGIBBON: Talking about the area --

THE COMMISSIONER: Maybe bring out -- sorry.

MR MACGIBBON: -- we determined is necessary to offset the vegetation --

THE COMMISSIONER: Sorry, start again. So, Dr Martin, my understanding is -- Dr Martin, can you just repeat that last point and then I will ask Mr MacGibbon to respond.

DR MARTIN: Yes, sure. My understanding was the increase in proposed PMA from around that 1,000 hectare mark to more like the 3,000 mark was in order for the benefit of improving bats and therefore if you stripped bats, hypothetically, out of the equation the area negation or vegetation loss, including the buffers, was sort of in the order of 1,000 hectares, not 250. But I could be corrected on that. So, Roger, can you comment on that.

MR MACGIBBON: Yes, there are two components to that sort of roughly 1,000 hectare thing. Both forest birds and vegetation were included in that. So without taking any account of bats and how we have shifted to accommodate those, that increase was more to do with the forest bird kiwi and forest bird element than it was to vegetation. The direct offset, as we have done through the offset calculator is 230 hectares. The challenge was how we would protect that 230 hectares. So the increase to 1,000, yes, it provided a buffer that was necessary to achieve the gains in 230 hectares but that increase was largely driven by the need to look after forest birds and kiwi.

THE COMMISSIONER: I think Dr Barea has another point.

DR BAREA: Just related to that, my comments around the 230 to 250 did not include the need for a buffer. I'll just confirm that. Roger said the same thing in other ways. Correct me if I am wrong. But to protect that 230 to 250 hectares from goats and possums would require a buffer around that of an adequate size to do that. That is really no different in terms of a positional view that DOC has had on the current proposal, where we have advocated for a buffer around the 3650 PMA and we have reached a pragmatic resolution over that. I am essentially agreeing with Dr Martin, it would need to be a larger area, whether or not it is 1,000, there were other factors. Kiwi was a factor in that number but it would need to be included above the 230 to 250.

THE COMMISSIONER: Would that area be taken off the 3,650 in Waitaanga, is that the way the ecologists would --

MR BAREA: Sorry, can you --

THE COMMISSIONER: So if you had an area of lowland forest that was a separate mini PMA plus Waitaanga, would that area

including the buffer be taken off the wider pest management area if Waitaanga was chosen?

MR BAREA: No, it wouldn't make sense to do that based on the bat. That 3,650 is based on bat research and an agreed position around that. So, yeah, unfortunately it would be additional.

THE COMMISSIONER: So, I think I understand the issue and the positions now so thank you for that. One last question: do we have alternative conditions for these two scenarios developed by the planners?

MS MCBETH: The conditions reflect what's in the ELMP. They've been updated.

THE COMMISSIONER: But if I accepted Dr Martin and Dr Barea's view for that scenario we'd have to tweak the conditions to recognise that or the ELMP or something; am I correct?

MS MCBETH: I think the matters for consideration on determining where the PMA is located includes consideration of whether those other values are applied.

THE COMMISSIONER: Okay, so the current condition is the Council could look at this issue under the current wording of the conditions in the ELMP, is that your understanding?

MS MCBETH: That's my understanding.

THE COMMISSIONER: Right. We'll come back to that. Sorry, I'm interspersing another expert into this hot-tub, which I think is helpful if everyone's comfortable with that.

MS MCBETH: I think Dr Martin might have some comments about that. He's given a lot of thought to that.

THE COMMISSIONER: Yes. Dr Martin, I'm just talking to Ms McBeth about the link between this issue and how the conditions might or might not work. Do you have any comments on that?

DR MARTIN: I think there is some degree of direction there in the existing conditions but it doesn't go as far as essentially giving very strong consideration to an additional PMA in lowland forests, it says that additional mitigation actions may be required. So it kind of doesn't go quite far enough as I would draft it. I would be more comfortable if, under the Waitaanga

scenario, there was some greater acknowledgement that an additional PMA may be required.

THE COMMISSIONER: Right. I've got the issues clearly in my mind in terms of the two different positions. It sounds like I need to make a call on this, and certainly any other direction or advice that the planners might give me, I think I've got that clear, Mr Allen, in your closing.

MR ALLEN: Yes, sir, and I will address it orally as well in terms of your ability to potentially make a ruling given it's compensation.

THE COMMISSIONER: Given it's compensation, which is a legal point.

MR ALLEN: We'll discuss that later.

THE COMMISSIONER: Okay. So you'll make a note to discuss that later? You've already got it. All right, shall we move on to point number 2? I'll just read that out:

"The second point of disagreement is that DOC experts consider that kiwi fencing must be provided at all locations where kiwi may be able to access the road

corridor. Dr McLellan was unavailable to discuss this matter, however his previously stated position on kiwi fencing, which is in disagreement, is reflected in the ELMP."

MR ALLEN: Sir, I'm not entirely sure whether these witnesses can comment on it. This was a dispute from the very first days of the hearing and that dispute hasn't changed, and, unfortunately, as it says here, Dr McLennan is overseas.

THE COMMISSIONER: Okay. I think the reason that we do have Mr MacGibbon and Dr Barea and Mr Martin here, is that they've been, what I call, perhaps the co-ordinating ecologists, there's lots of specialists. I will ask each of them to give me whatever evidence they can on this point, or observation. So, starting with you, Mr MacGibbon.

MR MACGIBBON: Yes. Thank you, and look I am going to be paraphrasing, I think, what Dr McLennan said and, I do believe, under questioning as well he addressed this issue.

To add a point that I think is not in that summary that you're reading. Dr McLennan's view is that the fencing only needs to be present where there is a high risk of kiwi entering or crossing on to the road corridor. His view is that the full length of the project footprint, when the road is constructed,

will not be of that nature, and that there is some inherent natural risk no matter where a road is. But there are some sites where they will be channelled to, which will be those areas particularly where culverts, I think, are put in.

So, depressions that draw animals down from high bluffs, logical points of easy crossing that would be managed. I believe in his evidence and in questioning he talked about that. But, again, to paraphrase him, his view is that there are not high risk areas right along the full length. He referred to some of the high bluffs that will be where the cuts go through, and he said that kiwi face those bluffs naturally. On occasions, he did say that they are sufficiently clumsy to actually fall over those themselves but that's nothing to do with the road that is just their natural predisposition, if you like.

So, look, I think fundamentally there are high risk places that Dr MacLennan has identified and will continue to, I think, through the construction phase, and on that basis, he believes that's sufficient to reduce risk beyond what is natural.

THE COMMISSIONER: Yes. I remember that discussion quite clearly and we now have the transcript which is really helpful for that. So, Dr Barea, anything else to add from you?

DR BAREA: Just to confirm that I talked to Dr Burns about this matter and his view was that -- there are two points here. First of all, with the pest management, the kiwi population is expected to increase which means that the high risk areas that are currently thought to be just parallel or adjacent to existing territories would increase. So there'll be more movement on to the road from other areas just simply because there are more kiwi within the PMA, and the fence is needed for that reason.

The wording around where kiwi may be able to access the road incorporates the context that Mr MacGibbon just talked about where there are cliffs and other topographical features that will prevent kiwi accessing the road anyway, in that contextual sense there.

THE COMMISSIONER: Is it fair to say there will be an element of judgement in what's fenced anyway?

DR BAREA: Well, there certainly would be with respect to can a kiwi access the road from here. Some of those areas will be quite obvious and others less so. But the point there being made relates to there being more kiwi within the PMA simply due to the management.

THE COMMISSIONER: So it's a numbers thing.

DR BAREA: Yeah.

THE COMMISSIONER: Yes, all right. Dr Martin, any other comment from you on this point?

DR MARTIN: I think Dr Brea just gave a nice summary of my viewpoint on that matter.

THE COMMISSIONER: All right, thank you. Shall we move on to the third point? Again, these are two experts that aren't here. I do have some pretty thorough evidence on this and also I asked quite a lot of questions, as you recall, around this area. So I will read it out:

"NZTA's freshwater expert, Mr Hamill, disagrees with the opinion of DOC's freshwater expert, Dr Drinan, with regard

to fish recovery, the macroinvertebrate and fish monitoring for the reasons stated in Mr Hamill's rebuttal evidence."

So, this is freshwater ecology and on the basis that this is an expert area, as discussed before, I'd just value any additional comments from the three ecologists we have available to us. So, Mr MacGibbon, starting with you.

MR MACGIBBON: Yes, and I'm not going to pretend to be any kind of expert in this area. I think what we've got here is a disagreement, a professional one, on the amount of monitoring required really. In my discussions with Mr Hamill, I think he feels what he's advocated is best practice. I guess I would add the comment that he said to me that anything more than is necessary is just unnecessary disturbance, if you like, of freshwater environments.

I think beyond that I don't pretend to be an expert and I'll just leave it at that. There is, as you say, plenty of evidence from the two of them, which I think, unfortunately, you're going to have to contemplate.

THE COMMISSIONER: I am very - not happy - but comfortable looking at that evidence under the rules of assessing different expert evidence and making a decision on that. If that's one of

the few things, if we do grant the applications under this process, that I need to determine, I'll happily go through that.

So, Dr Barea, anything else you can add?

DR BAREA: Just really to confirm that position. I'm not aware that Dr Drinan has changed his view on that. He's retained his views and I think we have two professional different points of view here that you will consider.

THE COMMISSIONER: I think the process of looking at this again as supplementary evidence has been helpful as well, just teasing out the issue for me. So, that's about all we can take from you. Thank you, Dr Barea. Dr Martin, anything to add from you?

DR MARTIN: No further comment from me, thank you.

THE COMMISSIONER: Thank you. All right, so the fourth point of disagreement in the ecologists joint witness statement, I'll read out, is:

"NZTA experts disagree with the opinion of Wildlands experts who seek wasp control for extended periods and possibly in perpetuity. This is because the majority of effects will occur during the construction phase, which is when wasp management will be undertaken."

I'm not sure what the right order should be. Should Dr Martin pitch his view first or shall we start with you, Mr MacGibbon; what's the feeling?

MR MACGIBBON: I'm happy to give my perspective first, if you like.

THE COMMISSIONER: All right. So Dr MacGibbon will give his perspective first.

MR MACGIBBON: Yes, look, in this case, we believe that wasp management for the duration of the construction period is all that's required simply because that's the period when additional suitable habitat for wasps is being created. So disturbed edges are where wasps move into and our feeling is that once those edges are planted and the road is sealed, and the vegetation that's been planted starts to establish then the likelihood of additional effects or additional habitat suitable for wasps will fall away and therefore the obligation to continue to manage them falls away as well.

I think we need to emphasise that wasps are an inherent part of our forest environments now anyway so we've got to focus

simply on what is accelerated or additional habitat or additional likelihood of wasps turning up in this environment. So, as I said, it's that edge or that disturbance, habitat disturbance that creates that. So, as I said, I think our stance on that being managed through the construction phase is appropriate.

THE COMMISSIONER: Thank you. I will move to Dr Martin because I think this is your particular point.

DR MARTIN: It is, acknowledging that I've had input on this from our invertebrate specialist, Brian Patrick, but I'm the one that's taken it up and, you know, bringing it into discussion.

I think there's broad agreement that wasp control is needed during construction and that's because of that opening up of the forest edge to higher light conditions, which favour wasps foraging, so we're in agreement on that. It's about how long that wasp control is undertaken for. In the ELMP, issued 19 October, it does say that the control will be throughout the construction and plant maintenance periods. So it's around agreeing on that and also defining what that length of time is.

If it's for the purposes of controlling wasps during that initial disturbance period with higher light until edges are sealed, then it's not just during construction it's until we've got some significant height growth on those plantings adjacent to forest edges.

So, you know, as a conservative measure I would say probably a ten-year period post-vegetation clearance for that maintenance because that will just bring through that wasp control until we've got some degree of sealing of the forest edge.

THE COMMISSIONER: Dr Martin, I'm trying to get a gauge on the significance of this particular ecological issue. Is this a very serious issue or is this just, you know, adding the last bit of cream to a project which the Agency is really putting a lot of effort into, thinking about all these different ecological issues? So, I didn't want to be pejorative with that comment but just if you could give me a sense of how critical or how important this is from an ecological point of view.

DR MARTIN: I think it's probably precautionary because we don't have a really good understanding of the vertebrate communities along this route. We do know that, in the past at least, there

have been threatened Lepidoptera species in the area which are threatened by wasps. We think that species is probably absent but we're not sure. We do know - and it's quite established in literature - we do have increased wasps on forest edges. So we know we have that issue but I think it's around consistency of the ecology issue and therefore what do we do about it.

So I would like to see it in there. It's not the biggest issue with this project. The biggest issue is ground we've already traversed in this conferencing discussion.

THE COMMISSIONER: Yes. Thank you for that answer that's helpful. Dr Brea, I don't know whether you want to say anything at all in this because I see it's not a particular DOC issue.

DR BAREA: Yes. No, this is not an issue that we've put any position forward on.

THE COMMISSIONER: Thank you. All right, I think we've finished those points. That's been really very helpful. I will do one more round and see if there's anything else anyone would like to say before we finish this part of the hearing. Mr MacGibbon?

MR MACGIBBON: Yes, probably one thing, just to re-emphasise the aspects to do with the discussion around Waitaanga. I just want to make the point that with the pest management being proposed over 3,650 ha, that there is a substantial amount of additional vegetation gain, flora benefit that will accrue over and above what, if we're only managing vegetation, would need to be achieved to achieve a no net loss or a net gain situation recalling that the calculations said that we only needed 230 ha protected.

So I think because we are dealing in a compensation regime, I guess I'd just emphasise that point that we are going to get substantially larger benefits by a large hectareage, if you like, from pest management, intensive pest management for bats but it'll benefit everything else, vegetation and bird life as well, than would otherwise be required. So I just really wanted to draw your attention to that point.

THE COMMISSIONER: Thank you. Dr Barea, any last comments?

DR BAREA: Well, with respect to that I acknowledge we are working in a compensation framework which does not require no net loss in a strict off-set sense. So, on a principle basis, I think it can be appropriate to have some flexibility around

like-for-like. However, if that approach is taken then it's important to acknowledge what the losses are that are not progressed in this case in Waitaanga and to accept that that's the case. If that's not acceptable and there is a process within the conditions to allow for that, we've already talked about ERP can make recommendations to Council around that and it might lead to an alternative site.

But that's something for consideration in which, due to how it's currently proposed, is to happen at a later date.

THE COMMISSIONER: All right. Yes, thank you. Dr Martin, any last words from you?

DR MARTIN: Yeah, I'd just reiterate what I've said throughout the process in that this Mt Messenger project needs to address widely the ecological effects and not have potentially one species, being bats, to grab the limelight or all the value of the ecological mitigation. So, that would need to be a sort of holistic approach acknowledging the environment the road is going through.

THE COMMISSIONER: Yes, thank you. I'd just like to, again, reiterate my thanks as a decision maker on a large and complex

project that I'm very appreciative of the time and effort put in and the spirit that's obviously gone into getting to where we have with a short-list of matters. To me, this is quite an interesting case given the new parts of the RMA dealing with off-setting compensation and there will be obviously more to say about this as other projects evolve. But thanks from me for that.

So, on that note I think we'll finish this part of the hearing. Let's have ten minutes for a break or let's have a look at the time. Mr Roan, do you have a sense for how long we're going to need with the conditions? We are down to quite a small number of issues again, aren't we? Is it going to be another -- are we thinking about an hour?

MR ROAN: Sir, I think we're in your hands. I'm prepared to absorb all the changes that we made if that's what you want to do or do you want to simply limit the discussion to areas where there was still some disagreement.

THE COMMISSIONER: Yes. Look, I've become very familiar with the conditions now so I think we will just look at the areas of disagreement and we'll take our chances to see how we can get through by midday. But we're not constrained by midday. I

think we've got the Chambers here until 2.00 or 2.30 or something like that.

MR ROAN: (several inaudible words)

THE COMMISSIONER: Short discussion. Right. So let's come back at 11.15 and we'll reconvene then. Thank you.

(A short break)

THE COMMISSIONER: Welcome back everyone. Mr Roan, are we going to have each of the planners up at the table or how are we going to manage this?

MS MCBETH: These two? Sure, we might sit up there.

THE COMMISSIONER: Yes, I think that would be good. Or are you happy just staying where you are with your paperwork? Let's do it that way, yes.

MR ROAN: I'm happy with however you choose, sir.

THE COMMISSIONER: No, on reflection, I think that's more
(overspeaking)

MR ROAN: We did sit very closely together in a small room working through this process. I was about to suggest I come over there but maybe I'll stay here then.

THE COMMISSIONER: So, yes, if you'd like to kick off, Mr Roan, and take me through things.

MR ROAN: Okay, sir. So, first I'm just going to tell you what you're looking at in the joint witness statement, just for clarity. So, the statement itself is very brief of course and it just records that the matters are set out in the table. I think the thing that you should read into the table is that where there are comments setting out differences, then that reflects the areas of difference. Where there's either a record that we're in agreement or there's no record at all against the item, then it's inferred that there is agreement. So I think that's just important.

Some of the rows have no comment against them at all. The other thing that I note, sir, is I do have, if it would help you, a tracked changes version available. It's all coloured up with referencing when the changes were made. But I'm most willing to provide you with that if that would help you.

THE COMMISSIONER: It wouldn't do any harm.

MR ROAN: Okay. Do you want that now, sir, or would you like that just --

THE COMMISSIONER: No, let's go through the clean copy. What I'm thinking is that if Mr Allen could provide that to me as part of his closing, just as a final record of where we got to. Thank you.

MR ROAN: I know Mr Inger also has comments that he has made in relation to condition 29(a) in particular and some other matters so I'll let him do that.

I would also just observe, sir, that there are some still minor cross-referencing issues and typos that people looking over the last day at the conditions, as they've sort of come out of the system quite quickly, have not been addressed. So, there is just a little bit of very minor tidy-up that still needs to happen, and again, I think --

THE COMMISSIONER: I think that confirms to me that it's best if Mr Allen provides that version with his closing, and if there's

another colour that picks up the final, final tidy-ups that the Agency's putting to me in terms of it's (overspeaking) closing that would be useful.

Depending on where we get to, I'm presuming that, Mr Inger, your changes won't be in the tracked version. So there'll be a version from the Agency and then your position here won't be reflected in the tracked version, this will be your additional thoughts, is that the way it works?

MR INGER: The tracked version just sets out all of the matters that were recorded by Ms Purdy during the conferencing, as agreed. I can't recall whether the columns are populated with matters of disagreement but obviously they're included in the version that you've got in front of you.

THE COMMISSIONER: Yes, and we can talk about this today together.

MR INGER: Yes. Sorry, I see what you mean, you're talking about in terms of the statement that's here.

THE COMMISSIONER: So does your statement include different wording?

MR INGER: Yes, it does. So the statement that you've got in front of you is highlighting some changes to the conditions as they're shown in the version that was tabled yesterday with the joint witness statement. It's just, as was noted in that memo and Ms Ongley mentioned, there was just a final check to be done, which I'm happy to talk you through now or as we go.

THE COMMISSIONER: Well, when we get to condition 29(a) let's pick it up from there.

MR INGER: There were some other conditions that are dealt with in here which I can explain.

THE COMMISSIONER: I think I'm in your hands and Mr Roan too.

MR INGER: Perhaps if I do it now if you're happy with that.

THE COMMISSIONER: Yes.

MR INGER: Yes? Okay, so condition 29(a), the red part is the only part that remains in disagreement and there was some slightly different wording that was noted in the version submitted yesterday. So, in actual fact I've accepted some

other parts of what was tabled yesterday that have been reflected in here. So there's, I would say, less disagreement now in the version that you've got in front of you here.

THE COMMISSIONER: This is a point that Ms Ongley's going to address me on in terms of legal submissions?

MR INGER: That's right, yes.

THE COMMISSIONER: So, without jumping ahead too far, the version that you've given me, Mr Allen, will have considered some of this and will highlight anything that's finally in disagreement as between the planners post this discussion.

MR ALLEN: That's correct, sir.

THE COMMISSIONER: Yes, okay. Thank you.

MR INGER: So just moving on to page 2, what I've picked up there is just an inconsistency between a condition where the wording had been changed in the schedule. So the same matter was dealt with in a condition and in the schedule. I've discussed that with Mr Roan this morning and understand that

that's agreed, it's just an inconsistency that needs to be tidied up.

MR ROAN: That's the case, sir.

MR INGER: The same for the schedule 14(c) resource consent conditions, it was just an inconsistency between the condition wording and the schedule. So that, again, I understand has been agreed, Mr Roan.

MR ROAN: Indeed, it has.

MR INGER: Then the Freshwater Management Plan, schedule 16, which is on page 2 going into 3 and 4. Just due to time constraints in the joint witness statement I'd noted in the comments section a reference to my supplementary evidence. But for your benefit I've actually since, with a bit more time last night, gone through and typed that up into a fuller amended version showing the alternative that would address Dr Drinan's evidence. In doing that I also noted that there were some parts in the set that was tabled yesterday that DOC was happy with. So this is a sort of version incorporating those plus --

THE COMMISSIONER: So, Mr Ryan, is everyone clear on that?

MR ROAN: Yes, sir. Those points are still just the areas of technical disagreement between experts.

THE COMMISSIONER: So this Freshwater Management Plan, this is the third item in the ecology joint witness statement where this just highlights a disagreement.

MR ROAN: Yes, it is. That's my understanding.

THE COMMISSIONER: There will be a version that the Agency's comfortable with and this is the version that Dr Drinan would like to see as interpreted with planning assistance on a conditions basis.

MR ROAN: Indeed.

MR INGER: Yes, and Dr Drinan had input into my supplementary evidence conditions so that's what I've brought through into here.

THE COMMISSIONER: Okay, that's helpful.

MR ROAN: If you turn to that part in schedule 1 you'll find that it is recorded against chapter 6, that there is an area of disagreement it's just not recorded what the specific disagreement is. Mr Inger, as he has noted, has helpfully pointed you to that specific area of disagreement.

THE COMMISSIONER: Thank you. Mr Inger, is that the last point?

MR INGER: Yes, otherwise I'm happy with the version that was tabled as an accurate record of what was discussed.

THE COMMISSIONER: Okay, thank you.

MR ROAN: I suspect, sir, just thinking about it, that Mr Inger's comments on condition 29(a) and the designation conditions, those relevant items that are highlighted probably also apply to the relevant condition in the resource consents which is --

MR INGER: Yes, but the resource consent condition, which, I think is GEN 24(a) from memory, already has that captured accurately.

MR ROAN: Right. Okay, thank you. Okay, sir, if you're happy. So clearly the discussion that you've just heard from the ecologists points you to the areas of difference and, not surprisingly, they're the areas of difference that remain in the conditions as well.

THE COMMISSIONER: I'm clear on that. I would like to ask the other planners in the hot tub if they have any other views. I think, Mr Inger, you've got your position. Do the Council planners have any comments or opinions on this difference?

MS HOOPER: Just difference?

THE COMMISSIONER: Yes.

MS MCBETH: I felt comfortable with the condition that the Agency have proposed as 29(a).

THE COMMISSIONER: Okay. Ms Hooper?

MS HOOPER: Yes, in the resource consent conditions it's a slightly different number but, again, we were comfortable with the condition that NZTA had put forward.

THE COMMISSIONER: Mr McLellan, you're the same. All right. So that's good to have that in terms of where the planners have got to. But that's just you, as planners, looking at the conditions in the round and thinking about the overall project in terms of your professional opinion. Thank you. Mr Roan.

MR ROAN: So sorry, I moved on a little bit too fast there. Were there any other issues in Mr Inger's statement that you wanted to turn to?

THE COMMISSIONER: No, I think that really is helpful and thank you, Mr Inger, for putting the time into doing that because we all know keeping track of these things is pretty tricky. So, I think that's really very helpful.

MR ROAN: So, sir, just in the break I've marked up on my set where there are the areas of disagreement and I'm just going to turn to those places and if my colleagues think I've missed anything I'm sure they'll bring us back.

THE COMMISSIONER: So we're looking at the table in your joint witness statement dated 23 October 2018?

MR ROAN: Yes, indeed, sir, and I'm in the designation conditions, which are at the front end.

THE COMMISSIONER: Yes.

MR ROAN: I believe that the first area of disagreement, and as I was saying it comes back to the areas of technical disagreement between experts, are largely in the conditions 29 and 33, I think it is. But let's start with 29(d) which deals with avifauna.

THE COMMISSIONER: Right. So, I'm at 29(d) avifauna and you've got two other columns to the right of that. So are they alternative wording?

MR ROAN: I think you'll find that the alternative wording is there in the -- so, it would have been useful if the table had been produced with the heading rows repeating on it so you could understand exactly whose comments were whose. The Council's comments are in the second column and the DOC comments, or sorry, Ms McBeth's and Mr Inger's comments, and then the last column is just comments.

THE COMMISSIONER: Okay. Noted.

MR ROAN: So you'll see there under column 3 that Mr Inger has recorded the preferred wording for the department.

THE COMMISSIONER: Yes, that's good.

MR ROAN: The main area is just, you'll see, that the condition proposed by the Transport Agency has reference to the high risk and the differences in the DOC condition at all locations.

THE COMMISSIONER: So I'd like to ask each of the planners about this alternative wording. You'll recall I asked Dr Barea, I think, a question about this is a judgement, this will be a judgement call, you know, the words, "may be able to access the road corridor". Are we comfortable that is a condition, Mr Roan? Obviously this is not your condition but Mr Inger, perhaps I'll ask you first.

MR INGER: Yes, absolutely there is a judgement here. I think originally, my recollection is Dr Burns' position was that it should be along the road, the full length of the road, which was obviously a clear cut criteria but it's now as worded there. My understanding of this is that once the work has been done to determine where the kiwi territories are, and Mr Roan can

clarify if I've got this wrong, then there's a provision for a material amendment to the ELMP to take that into account.

So under condition 11, that refers to material amendments and provisions for those, and within that condition it actually specifies some aspects where there are changes to certain criteria that would involve, by default, the Ecological Review Panel in that process. One of those matters relates to kiwi fencing and underpasses, so that's in condition 11(g).

THE COMMISSIONER: Yes. But from a conditions wording point of view the contest is between the words as proposed by the Agency, "where there was a high risk of kiwi being able to enter the road corridor" versus your wording, which says, "where kiwi may be able to access the road corridor". So, again, I'm just interested in perhaps you giving me your reasons for your preference for that. They're both judgement calls. Why do you prefer your wording, Mr Inger?

MR INGER: Well, in part, the wording that you see there is the wording that reflects the wording that came out of the ecology joint witness statement. So, I guess that's the starting point that we had. It reflects, I think, the degree of how precautionary you are around this sort of high risk as opposed

to, "may be able to access the corridor". I think, in exercising that judgement, if there was some doubt over it with the wording that DOC's proposed or that's set out there, you might be more inclined to put fencing in as opposed to high risk. High risk, I would say is quite a high threshold to achieve.

THE COMMISSIONER: You're suggesting the wording is more precautionary in your view.

MR INGER: Yes, I think so.

THE COMMISSIONER: But it will require a judgement call and then certification by MPDC where this goes on the advice of the Ecology Peer Review Panel, is that right?

MR INGER: That's right, and the involvement of the panel, I think, reflects the judgement that is involved and inherent in this. I don't think there's a way around that now, we can't be prescriptive on it so there has to be a judgement. So that's the catch, I guess.

THE COMMISSIONER: But we've got very detailed plans. Could this be something that, again, for the specificity, might that

be able to be decided now so I can make a call rather than leaving it on a MAT(?) basis or is that just too hard? Again, perhaps I'll get your opinion on that first and then we'll go round the rest of the planners.

MR INGER: Yes, my understanding is that it's dependent on, you'll see in D(1), the tracking and monitoring of kiwi that needs to occur.

THE COMMISSIONER: So that happens first as a trigger.

MR INGER: So that happens first and then that informs the fencing. So, in an ideal world if that had happened already we'd be able to be more prescriptive but we can't be. So, I think it just comes down, as I say, to the wording and the level of how precautionary you are around this with the fall back that the Ecology Review Panel will also be involved and will be providing advice.

THE COMMISSIONER: That's helpful. So, I'll probably ask the council planners for any other thoughts on this alternative wording they might have. Mr McLellan, do you have any preference or suggestions?

MR MCLELLAN: I haven't really given a lot of thought to this considering it's not on the resource consent conditions.

THE COMMISSIONER: It's a district council matter, yes.

MR MCLELLAN: It's a district council matter. But as a general comment I don't like seeing the word "may" in consent conditions. But having said that, I also accept that making a judgement about what's high risk also has similar issues.

THE COMMISSIONER: So just an observation: I've been in front of some Environment Court judges, who will remain nameless, who were very unhappy with that type of wording in conditions. There are always different ways of wording things to be as certain as you can or you could perhaps reference the fact that this is a judgement call that will need to be referred to the Ecology Peer Review Panel, just to try and tighten it slightly more. But, again, Ms Hooper, do you have any thoughts in your experience?

MS HOOPER: No, nothing additional to that really. Just the word "may" is a difficult one.

THE COMMISSIONER: Ms McBeth, your thoughts?

MS MCBETH: Just wondering whether it could fit within the ecological constraints process as well, where each stage is scoped at more detail once it's accessible and those areas could be identified perhaps in that process. I mean I can just rely on that Wildlands have advised that they agreed on with DOC that high risk was perhaps too high a bar.

THE COMMISSIONER: All right. Mr Roan, you get the final comment on this one.

MR ROAN: I will just turn to the constraints mapping data and really, sir, that information is a constructor tool to help the constructors understand where high risk or high value ecological areas are. This is a design matter so I don't think they're the same, so I'm not sure that it would be appropriate to identify the areas for the kiwi fencing on the constraints map. I think that's a separate exercise that needs to be gone through.

Mr Inger's right that the conditions allow for this matter to go to the ERP, to the Ecological Review Panel, and for it to be dealt with through that certification process under condition 11. Here, I do have to rely on the discussion that you heard from Mr MacGibbon in relation to simply identifying that not all

of the road corridor is kiwi habitat. In my mind the "may access" could infer that if you took a kiwi out of its habitat and put it at some other part of the corridor it could walk on to the road.

So the proposed approach does reflect or acknowledge that there is some data that's going to come from the tracking exercise, and that data will enable better definition of risk, and that information is the appropriate information that should be used in identifying where the fencing and direction to underpasses is required.

THE COMMISSIONER: Two thoughts I have: the word "high" as an adjective, you know, is that the right test? And could that condition benefit from just a cross-reference to (d)(i) above, that there is a process there that the Agency might just consider a little cross-reference there. Do you think that might help?

MR ROAN: I can see that that would help, sir, yes.

THE COMMISSIONER: Do the other planners have any thoughts on that?

MS HOOPER: Sensible.

THE COMMISSIONER: Yes. Mr Inger? Like, I know we've got your preference but --

MR INGER: I think certainly taking out the word "high" would be an improvement. I think that reflects some of the concern that has come out of the ecology JWS.

THE COMMISSIONER: Okay. Well, I'll leave that with you to think about. Thank you.

MR ROAN: Thank you, sir. So if we just jump across the page to condition (g)(ii). Now, here, you heard -- so this is the matter of what is the appropriate number. Now, I'm clearly not an expert in this area but I can talk you through the difference between the DOC number and the number that is represented here, so that you understand those two numbers and point you to where that material is in evidence as well. If you are happy for me to do that I will --

THE COMMISSIONER: Yes, please.

MR ROAN: Sir, as I understand it, the 10738 number is the figure that comes out of the SEV assessments related to the streambed area that has been disturbed through culverting work.

THE COMMISSIONER: That is from Mr Hamill's evidence.

MR ROAN: It is from Mr Hamill's evidence, indeed, yes. You will find that in Mr Hamill's evidence and, helpfully, set out in his summary as well. His summary refers to another figure, which is 798 square metres and the 798 square metres is additional riparian planting work, which will be undertaken adjacent the stream channels that have been diverted and reinstated, so this is associated within the works footprint, if you like. If you take those two numbers and add them together you come up with the 11536 number.

THE COMMISSIONER: Yes. That is a discussion I had with Dr Barea and I think that Dr Drinan was away and so I think we all just get that little clarification point.

MR ROAN: Yes. If you look at condition g(1), which deals with the diverted streams, that condition could helpfully refer to that specific area of riparian planting that will occur adjacent the diverted streams, which is the 798 number.

THE COMMISSIONER: 798, yes.

MR ROAN: That might then make it clear for everybody but I will leave that for the others to comment on.

THE COMMISSIONER: Yes. Any other comments, Mr Inger? Do you have any thoughts on that?

MR INGER: Yes. Putting the point aside that Dr Barea raised earlier about seeking Dr Drinan's confirmation that the 11536 was what he felt was required all up, my concern here was that the 798 wasn't referred to anywhere in this condition. The set 10738 referred to in (2) could be taken as being the total area of riparian planting, if it was not mentioned.

I think what Mr Roan has talked about in terms of bringing that 798 into the conditions in some way is important. I would have thought in the way that I have approached it is that I do not see why it could not be referenced in g(2) with the total figure because that then flows on to the other conditions, (3), around the recalculation, which I presume is still relevant to that area as well.

Also, the other conditions around riparian planting and successive riparian planting through to (vi). I think that area needs to be picked up and referenced somewhere in the conditions. The column obviously notes my position on that and how I think that should happen.

THE COMMISSIONER: That is a ways and means sort of thing, is general agreement that that would be helpful to put that number in there.

MR ROAN: I think so, sir.

THE COMMISSIONER: Any disagreement from the council planners? No. Okay, thank you.

MR ROAN: I think if we flip the page there is an item recorded against g(5), which Mr Inger and I have just concluded is not actually in -- there is no disagreement there any longer, so if you just strike out that reference.

THE COMMISSIONER: Where are we with that? Sorry.

MR ROAN: If we just move over the page --

THE COMMISSIONER: Yes.

MR ROAN: -- to g(5) and you'll see in the comments column --

THE COMMISSIONER: Yes.

MR ROAN: -- there's a reference there to a technical matter --

THE COMMISSIONER: Okay, got you, yes.

MR ROAN: I do not believe that that is in dispute any longer.

THE COMMISSIONER: Okay, thank you.

MR ROAN: Then I can just flip the page again to h(2)(4) and you will see they recorded in Ms McBeth's comment about the wasp control.

MS MCBETH: Just highlighting in the conditions where the area of --

THE COMMISSIONER: Disagreement is.

MS MCBETH: -- of disagreement sits.

THE COMMISSIONER: Yes.

MS MCBETH: Alternative wording, that Wildlands thought would be more appropriate would be in perpetuity.

THE COMMISSIONER: All right, so 29824, I am just trying to follow that through, h(2)(4), okay, got it. Wildlands would like to have in perpetuity added in there, okay. Thank you. That is quite a technical issue ...

MS MCBETH: Just if you favoured the Wildlands evidence it would just be replacing only during construction onwards with in perpetuity.

THE COMMISSIONER: Okay, thank you.

MR ROAN: Sir, the lawyers might want to pick this up but I do not believe that that is being offered by the Transport Agency in this case, sir.

THE COMMISSIONER: Yes. Now I have got Mr Hamill's put me on notice that that is something he will address.

MR ROAN: Condition 29(a), now I think we might have already just raced through this, as you heard from Mr Inger on his statement that he handed up. I am not sure that there's ...

THE COMMISSIONER: You mean to ...

MR ROAN: I do not believe so.

THE COMMISSIONER: No.

MS MCBETH: I did want to take this opportunity in light of Ms Ongley's evidence and the instruments that -- whether there is an opportunity to discuss that now.

THE COMMISSIONER: Have you read Ms Ongley's ...

MS MCBETH: Yes, and I have talked to Rowan(?) Williams; he is very experienced with subdivisions and bonds and those mechanisms that Ms Ongley has referred to. We did think if an instrument was required there that perhaps an esplanade strip might be used.

THE COMMISSIONER: Take me through how that would work.

MS MCBETH: That would be on the title, that it would be shown on the title that it is an area where certain controls apply, including clearance of vegetation, just as an alternative. We talked about the option of the designation boundaries to include the margins and I thought that would not be so appropriate with the designated purpose being for roading, that that would not be suitable and that bonds, we were not in favour of a bond.

THE COMMISSIONER: You were not in favour of a bond, no. Ms --

MS MCBETH: A consent notice would not work because there is no subdivision.

THE COMMISSIONER: Yes.

MS MCBETH: A covenant or an encumbrance might but an esplanade strip was another tool that --

THE COMMISSIONER: Another tool.

MS MCBETH: Yes.

THE COMMISSIONER: Mr McLennan and Ms Hooper, do you have any experience or thoughts on that?

MR MCLENNAN: Very little, if any experience of esplanades.

THE COMMISSIONER: That is not for the Regional Council, yes.

MR MCLENNAN: But we had a brief chat with Ms McBeth before and there was nothing that rang alarm bells with me in the little discussion we had.

THE COMMISSIONER: Certainly, I thought what Ms Ongley put together was very, very helpful, so ...

MS MCBETH: Certainly, typically we apply then for access but they do have another thing, so if you felt that a mechanism was needed beyond what was included in the conditions, in my view, condition 29(a) clearly states the requirement of the agency that if you look at (c), that they will ensure the restoration and riparian planting is protected on an ongoing basis; that was quite a strong condition to cover it anyway. But if you were looking at a mechanism ...

THE COMMISSIONER: You are generally comfortable with that.

MS MCBETH: Yes.

THE COMMISSIONER: That is a condition obligation which the agency has to meet. But what you are saying to me is that if I was thinking about (several inaudible words) on top of that, the esplanade reserve --

MS MCBETH: Strip.

THE COMMISSIONER: Strip, sorry, esplanade strip was ...

MS MCBETH: We're exploring.

THE COMMISSIONER: Right, I will talk to Ms Ongley about that and Mr Allen will come back as well. But, Mr Inger, do you have any thoughts on that?

MR INGER: Yes, I mean my personal view is the mechanism is probably less relevant. The condition, the way it is worded at the moment, allows the agency to procure and provide the evidence of the legal agreements and authorisations and Ms Ongley might have a different view. But I had not felt the need to define what that legal agreement or authorisation needed to look like. I would have thought that it might be different, depending on which landowners they are dealing with, I guess.

The key point here for me that remains in dispute is just in terms of the condition, the requirement is that the written confirmation is provided that the legal agreements and authorisations necessary are provided. But it is around certainty of the term of that, so in terms of the document that gets supplied, what is being sought through this change is certainty that there is a long term attached to that.

Before the pest management, for instance, starts to be implemented, that everyone is confident that there is a long period that has been committed to with the landowner and Ms Ongley will speak to that. But I had not thought beyond that in terms of the mechanisms or the need to specify that in a condition.

THE COMMISSIONER: It is clearly a property rights legal matter and the conditions need to be reflective of what is achievable, so that is why I think it will come down to some legal help on this one as well. If we are at this stage again I will have to say again if the project is ultimately recommended for approval. Okay.

MS MCBETH: In terms of that 35-year term that Mr Inger's suggesting, I just felt that (d) allows for that change. It requires at least two years prior to the expiry of any term that the process has gone through, so I think that will be satisfactory.

THE COMMISSIONER: That is an active obligation in the conditions; that provides a security, in your view. Okay, thank you. Mr Roan, do you have any other ...

MR ROAN: Sir, I would have to acknowledge that I have not read Ms Ongley's statement, so I am, I guess, perhaps on the back foot in that regard. Just setting that aside, the matter that Ms McBeth has raised regarding esplanade strips, I am sure the lawyers will have some thoughts on that as well. As I understand it, the mechanism that is being worked through with landowners in relation to the riparian planting works relies on an encumbrance attached to a title.

I do not believe that there is a transfer of land occurring. I would have to also acknowledge that it has been some time since I have done work on the esplanade provisions under the Act. But without the transfer of land, I am not sure

how those provisions work. But, again, I would defer to my legal colleagues.

MS MCBETH: An encumbrance was certainly a valid option.

THE COMMISSIONER: Yes. Just so I do not forget it when I talk to Ms Ongley, there was that same RMA roadshow that Judge Newhook spoke to. There was a very detailed paper by Martin Williams on all these different encumbrance and certainly it is not my particular expertise. But he put that together as part of that roadshow and spoke to it up and down the country.

This is a very specific sort of area that merges that properly in RMA expertise and is very much a legal mechanism. Us, looking at conditions, we have just got to make sure that the conditions do not constrain useful tools, is my own view and whether you agree with that or not, as a group of planners.

MR ROAN: Yes, sir, if I may, I think the other things is, when we are talking mechanisms and what they might be and I said before that it will depend very much on who the landowner is that is being dealt with. Obviously if it is DOC the authorisations will be authorisations under the Conservation Act

and so forth. I think starting to specify those, you would end up with, potentially, quite a long list.

THE COMMISSIONER: Certainly if there is Māori land involved --

MR ROAN: Indeed.

THE COMMISSIONER: -- need to be very mindful of any particular issues there as well. Have we done as much as we can on that one?

MR ROAN: Only to observe, sir, that the matter of perpetuity of it is, of course, already addressed in the conditions under 29(h)(1) where the Transport Agency is obliged to provide the PS management on that ongoing basis. In my mind, it is dealt with elsewhere anyway. As Ms McBeth refers, there is a process set out in (d) for starting that in advance of an expiry on a lease, if that is what ends up happening, so that is my view.

THE COMMISSIONER: Thank you.

MR ROAN: I seem to be turning a number of pages here. I have gone through to 33(a), sorry, to condition 33 and I think that the only point really of note here is Ms McBeth's comment on the

panel that she considers that condition 33(c) is no longer needed. I do not really have any particular view on that but I might let her speak to that, sir.

MS MCBETH: With some of the roles of the review panel relating to any amendments to the ELNP, which has not got an end date on it, I did not think it was appropriate to put an end date on the panel.

THE COMMISSIONER: Probably unnecessary and might be unhelpful in your view.

MS MCBETH: There is uncertainty about that ongoing obligation.

THE COMMISSIONER: Maybe the other people have a view.

MR INGER: Yes, this sort of suggestion came in quite late, so I did not really have too much of an opportunity to consider it. But I would agree with that, if the ELNP is being implemented in perpetuity, then logically the panel would continue to have a function as needed.

MR ROAN: I do not disagree with any of that, sir. I just would observe that I think we could remove the condition but (2)

provides for the matters that the panel addresses. If those matters are ongoing, then it is a little bit circular, so that the matters will be ongoing and the panel's life may never end.

THE COMMISSIONER: So, sort of general ambivalence or ...

MR ROAN: Do not have a strong view on it, sir.

THE COMMISSIONER: I think if the council does have a view and if you want we can see where that ends up in the final version from the agency. Thank you.

MR ROAN: I think we are then at operational lighting and here I think the District Council is seeking alternative wording.

MS MCBETH: Which I presented in my statement I think in October. But I would note that the agency can put lighting along that corridor. It is not a big deal.

MR ROAN: Sir, I would just further observe that, as I read 40, it just obliges the lighting to be designed in a particular way. It does not oblige the Transport Agency to actually install the lighting. I wonder whether the wording, as it is proposed, actually already allows for what Ms McBeth is seeking.

THE COMMISSIONER: Yes, and this would be one that would be quite good to get -- again, if this is not a (inaudible) issue and there is a preference from the agency ...

MS MCBETH: I think we would let it go, sir.

THE COMMISSIONER: Let it go. All right. Let us move on.

MR ROAN: Then, sir, I would just point out that there is a new condition 44, which has not been talked about. I do not think there is any disagreement on this. But this 44, I will just give you a chance to read it.

THE COMMISSIONER: Okay.

MR ROAN: It just simply picks up on the matter that Mr Miller can talk to you about in the plan that they --

THE COMMISSIONER: Yes, and I would certainly call reference to that, the specific plan was helpful. Would it actually be attached? I suppose I have to make a decision on this. But the concept would be that plan would be attached with the conditions, so it would not be lost.

MR ROAN: It most certainly could be, sir.

THE COMMISSIONER: On that basis, we might attach to schedule X or Z or whatever to these conditions.

MR ROAN: Indeed.

THE COMMISSIONER: Yes, thank you.

MR ROAN: Then we record under that, the new condition, which Ms McBeth and the District Council are seeking in relation to revocation.

THE COMMISSIONER: Revocation.

MR ROAN: I am sure my legal colleagues will be addressing this further.

THE COMMISSIONER: Is there anything else that the planners can add to this? I understand the issue and am expecting legal submissions on this from Mr Allen. Is there anything else, Ms McBeth, that you could add ...

MS MCBETH: Nothing in addition to my statement, previous statement.

THE COMMISSIONER: Sir, what I have done is I have gone and read the TG Board of Inquiry decision at the relevant point. I am sure that my colleagues will refer to it. With my planners had on, i.e., sir, we are talking about effects but I not sure that there has been any evidence presented on what those effects might actually be. I struggle to understand what the condition is trying to anticipate. To me, there is a process, clearly, that is set down under the Land Transport Act that envisages this occurring and I would just leave it to that process.

THE COMMISSIONER: You have had a legal submission to me that I have not heard evidence --

MR ROAN: No.

THE COMMISSIONER: -- and cannot address this.

MS MCBETH: I could clarify the effect, if it is not clear, sir, that the existing State Highway access is a handful of properties, one dwelling, Ngāti Tama land, walking access

tracks. But just a handful of properties and it is a very expensive piece of road to maintain.

I think, typically, you would revoke the road, it would become a local road but in this case the council was not sure that it would want it to be a local road and it would be a very expensive piece of road to maintain. Being an effect of the designation to be recognised through the conditions of consent and just having that consideration of ongoing maintenance costs.

THE COMMISSIONER: I think this is an issue for you, Mr Inger, or --

MR INGER: No, no comment.

THE COMMISSIONER: -- the Regional Council planners. No, thanks for that clarification, Ms McBeth. We have that on the record now as some evidence from you. Shall we move on to the next one, Mr Roan?

MR ROAN: We are into the schedule, sir, and, again, these matters, I think, would have been Mr Inger's statement, points out some areas of update and clarification that are needed, so we are just happy to move past those. But referenced against

the Avifauna Management Plan 4 is the matter that has been picked up earlier regarding kiwi fencing.

THE COMMISSIONER: Yes. Depending on where that condition ended up, we would not need to make any change to the ...

MR ROAN: Well, depending on where the condition ends up, yes, there could be a need to update the wording in the schedule and, consequently ...

THE COMMISSIONER: Mr Allen could address that, I am supposing.

MR ROAN: Possibly, yes.

THE COMMISSIONER: Sorry, I should be saying Mr Allen and Mr Ryan but ...

MR INGER: Just on that point, sir, it is also worth noting that schedule 1 is replicated between the consent conditions and the designation conditions. Every time there is a change in here that needs to be (inaudible) obviously. Indeed, it has been a bit challenging.

MR ROAN: Indeed. In (6) there again the matters that Mr Inger has helpfully outlined in detail for you.

THE COMMISSIONER: Yes.

MR ROAN: I think that is it on the schedule. On the NES consent, sorry, sir, I am just looking at Ms McBeth and wondered whether there were some comments on the NES conditions that you wanted to talk to.

MS MCBETH: Just one wording thing that I have emailed you about, which is --

MR ROAN: Yes, and I do not know that I picked it up.

MS MCBETH: In (3) supervision costs of this consent, rather than these consents.

MR ROAN: Right, okay, a small matter, sir.

THE COMMISSIONER: Yes, thank you. Now we are into the Regional Council ...

MR ROAN: Now we are into the regional conditions and, again, while there are some changes through the Gen conditions up to Gen 24. I am not going to talk you through those because they are all agreed. The first point, I believe, where there is still that matter of disagreement is Gen 24(c).

THE COMMISSIONER: But we have covered that, have we not, so there will be a --

MR ROAN: Yes, we have, so it is exactly the same issue.

THE COMMISSIONER: I was making sure if there are any changes.

MR ROAN: Indeed, indeed. I think we have probably also covered the areas under Gen 24(a).

THE COMMISSIONER: Yes.

MR ROAN: Then we are at set 11 and, again, I think these matters come from the technical difference between the ecologists on the monitoring plan, the monitoring programme rather. Mr Inger has pointed out the comments that he has there.

THE COMMISSIONER: I would be interested in the planners for the Regional Council. It is very common to have disagreements between civic ecologists in my experience; they just have a different professional opinion on things. But planners, I think, do have a role in looking at condition wording and following Newbury principles and those sorts of things. Is there anything, Mr Allen and Ms Hooper, you will want to add in here from your perspective?

MR ALLEN: Not from me.

MS HOOPER: I was just going to add in relation to this discussion between replacing seam 2 with EA26, that there is some scope in the condition, as worded by the NZTA, that that downstream spot is to be confirmed with the TRC, which gave us the flexibility we were reasonably comfortable with that one.

THE COMMISSIONER: You are generally, as a Regional Council, happy with the agency's version.

MS HOOPER: Yes, yes, we were, yes.

MR ALLEN: Yes, that is correct, yes.

THE COMMISSIONER: Having considered the evidence from the two experts.

MR ALLEN: Yes, yes.

MS HOOPER: That is correct, yes.

THE COMMISSIONER: That is helpful, thank you. Mr Roan, is there any other discussion on this point or ...

MR ROAN: Only to take you back, sir, to discussion that we had last time about BPO and that was something that I did pick up with the Regional Council, Ms Hooper, after that in our last conferencing, sir. The matter that the Regional was concerned about was an ability to amend the site's specific Management Plans after they had been certified, if it was determined that something was not going well.

We have added into condition inset 11 into the very tail end of (g) provision, which seemed to address Ms Hooper's concern there. You will see that there is a comma which could include amending the site specific or the specific Construction Water Management Plans. That amendment, I believe, addressed the region's concerns on that matter of BPO.

THE COMMISSIONER: That seems a practical way of dealing with it.

MS HOOPER: Yes, it was a good practical way to address it, it is good.

THE COMMISSIONER: Thank you.

MR ROAN: I think we are getting very close to the end, sir. If I take you to the stream diversion conditions, div 2(a). There is just a reference there that I can confirm has happened and you can strike that out.

THE COMMISSIONER: Yes.

MR ROAN: I believe they are the same matters in the schedule that we have already talked about in the designation conditions. I believe that is it.

THE COMMISSIONER: Thank you. Again, I will just give from my point of view in terms of decision-making, obviously when I look at all the evidence in the round and make my decision, having a set of conditions that is generally agreed has been very

helpful. I know it is always my experience quite agonising to work through this.

I think with a project of this scale it is certainly worth the effort of getting conditions as clear as possible, particularly with a large project that is model effects, quite complex. Thank you very much for doing this for me and for your respective clients. Any final comments from the planners before we finish this conference? Anyone?

MS MCBETH: I would just have a few comments about scenario 4 and the ...

THE COMMISSIONER: In the ELNP.

MS MCBETH: Scenario 4 for the batch --

THE COMMISSIONER: Yes.

MS MCBETH: -- for determining the PMA.

THE COMMISSIONER: Yes.

MS MCBETH: Since we last met the conditions have now changed to allow for quite a bit more expert input for the council to certify that PMA, rather than being told where it is. Also, there would be more input from Ngāti Tama and an increased list of things to consider in making the decision. Yes, increasability for adaptive management. I would also note that if there was any dispute about whether that scenario 4 was acceptable, we have got the condition 14.

THE COMMISSIONER: Can you just give me the exact condition number so I can ...

MS MCBETH: Condition 11 would be required to establish or certify the PMA, so that is the material amendments to the ELNP.

THE COMMISSIONER: Yes, yes.

MS MCBETH: Then if you go to condition 14, so that is in the event of any dispute about content of the new Management Plan, so that sets out a process which now --

THE COMMISSIONER: That is bringing the independent advisor in for ...

MS MCBETH: Yes, and it previously was that that person would issue a decision and that has now been changed, that they would issue a recommendation and then the planning ...

THE COMMISSIONER: Yes, yes, I am much comfortable with that, yes.

MS MCBETH: In terms of the questioning that you were having --

THE COMMISSIONER: Yes.

MS MCBETH: -- of the ecologist about scenario 4 --

THE COMMISSIONER: Yes.

MS MCBETH: -- I feel that those changes would mean that there is a process and some certainty.

THE COMMISSIONER: Okay, so you are not delegating the third parties --

MS MCBETH: Conditions can be enforced or ...

THE COMMISSIONER: Yes. In your council role, you are more comfortable with that, it seems to me that that clarifies any possibility that there might be delegation of powers to a third party, yes.

MS MCBETH: Yes, if there were any concerns about scenario 4, I think there is actually the process in condition 14 --

THE COMMISSIONER: Yes.

MS MCBETH: -- if we need to look wider.

THE COMMISSIONER: Thank you for that. Any other comments from the planners? Mr Inger.

MR INGER: Yes, I guess just picking up on the discussion that was held earlier about Waitonga and what if, which is, as was discussed, a fall-back option. I am still a bit uncertain how far the council would be able to go, given it is a compensation framework and the provisions in the RMA around the applicant agreeing, which I am sure will be addressed later on.

When I was involved in drafting the scenario 4 it was on the understanding that if we were looking at Waitonga as an

option, it might not be like for like but that that would be accepted, essentially that you are not getting like for like on that basis. In my mind scenario 4 would very much still apply to one PMA, that is where I am coming from, I guess, when I am looking at that and I do not know whether that is what you are referring to, Ms McBeth, about having scope to go beyond that. But I think that gets into interesting legal territory, I guess, around this compensation provision and the NZTA having to offer.

THE COMMISSIONER: I think it is food for thought for someone else to address me on but I think that discussion is, again, useful. Thank you.

MS MCBETH: Like I said, despite that there will be the appropriate people want to put input to make the decision for the best PMA.

THE COMMISSIONER: That legal question, we just heard from Mr Inger, can be addressed separately. Okay, thank you. I think we are probably finished. Thank you very much. Ms Ongley, I think I am with you, I am happy to press on if other people are and see if we can finish this and then have a clean break. Yes. I will just get myself organised here a little. Thanks, Ms

Ongley. I have read this but I have not written any questions up. I did not have time to do that.

MS ONGLEY: Yes.

THE COMMISSIONER: I suppose the --

MS ONGLEY: Yes, apologies it was late.

THE COMMISSIONER: That is fine, we are all busy. There has been a lot of thought put into this I see, so I am really appreciative of that. If you can just paraphrase the high points. I do have your casebook here originally, so some of these cases are in here with these additional --

MS ONGLEY: The Buller Coal case is in there and the Handley case is in there.

THE COMMISSIONER: Yes.

MS ONGLEY: But if you would like me to, I can provide the other cases. But, as you will know, the Transmission Gully and the Ruataniwha cases are extremely lengthy.

THE COMMISSIONER: Yes, and I am very familiar with one and pretty familiar with the other. I think if you can just leave those I can track those down as required.

MS ONGLEY: Yes, sir. I suppose before I start I just wanted to talk about the condition itself.

THE COMMISSIONER: Can you just focus me back on that again?

MS ONGLEY: Yes, 29(a), the document does not have page numbers, unfortunately.

THE COMMISSIONER: No. But I can follow it through this with the condition numbering.

MS ONGLEY: Yes.

THE COMMISSIONER: It is quite a long one, is it not? It is not too bad. Okay. Yes, I am with you now.

MS ONGLEY: Okay. I was going to refer to 29(a) sub-clause (c). Yes, that does set out the intent of the requiring authority that the pest management within the PMA will be in perpetuity. I suppose the key issue for DOC and some of the cases talk about

this when they talk about security, is with a resource consent and with a designation there is a process for altering those later down the track. Of course, with a resource consent it is an application for a change to consent conditions and with a designation it is called an alteration to the designation.

THE COMMISSIONER: Of designation, so that is 127 and 128 for the resource consents.

MS ONGLEY: Yes.

THE COMMISSIONER: And 181, is it?

MS ONGLEY: I believe it is 181, I do not have the Act with me, sir.

THE COMMISSIONER: Yes, yes. I am just wanting to be clear that the resource consent change could either be proposed by the consent --

MS ONGLEY: Yes.

THE COMMISSIONER: -- holder or imposed on review --

MS ONGLEY: Yes.

THE COMMISSIONER: -- those two possibilities, yes.

MS ONGLEY: Yes. I am more concerned with a change being proposed by the consent holder or the requiring authority in the event with what I have termed problems occur if you do not secure your land ownership rights upfront. When the cases talk about security and the need for encumbrances and, of course, with subdivisions you have got your section 221 certificates.

It is my submission that that deals with issues, including this particular issue, that a resource consent or a designation is not for ever. That is, essentially, the nub of it for the Department of Conservation, is that although there might be a lot of intention expressed in the consent conditions regarding the in perpetuity and DOC is not challenging that, unless there is advice to the planning lead upfront that those agreements are in place, the alteration application or the change to consent conditions application could be made down the track.

There is, of course, a process around that with further submissions et cetera but DOC would much prefer that it be dealt with now. It is highly undesirable to be in a situation where

we are dealing with a road that may have already been constructed, pest management may have started to be implemented and then have to change to another site, so that is the issue.

THE COMMISSIONER: Do you think the way the cascade of the PMA 1 to 4 with that ultimate -- what did we call it, fall-back position? You do not think that provides enough security of intention that if that was the ultimate -- I suppose you are thinking about PMA not being on the DOC land and then how is that locked in in perpetuity?

MS ONGLEY: Yes. Interestingly, from a reading of the cases, particularly the Buller Coal case, if the land is conservation land it seems to be generally accepted that active pest control over conservation land will be able to continue. I consider that that is a reasonable assumption to make when you look at the legislation under which conservation land is held under. But it is more if the PMA is in options 1, 2 or 3. In those situations a pest management could commence and it is not stated in the condition what the term of the agreement would be.

It may be that NZTA's intention is that it commenced and that it be in perpetuity. But DOC's approach is to create more certainty for DOC, as a submitter around that, that problems

will not arise. Yes, so the concession that DOC has made to that is it has listened to Ngāti Tama's concerns around there should be an intergenerational review. Ngāti Tama might not necessarily accept an in perpetuity agreement. At paragraph 4 I have said that:

"DOC has agreed that if the PMA is over the Parininihi area, agreements, authorisations may be for a more limited term due to their concerns expressed by Ngāti Tama."

So just on that, so (d) in condition 29(a) says that, if there is a limited term, two years before the expiry of that term there would be a process for renewing the relevant authorisations.

That was proposed by DOC on the basis that the term would be not less than 35 years. I think there could be a problem including that if you do not specify a term because it refers to a term that is time-limited. Then that sort of begs the question what sort of time-limited term could you have. So I think it would be a worst-case scenario including that and not having a 35-year specified; I think the two would have to go together.

THE COMMISSIONER: Could the agency tighten that to make it clearer do you think?

MS ONGLEY: That is what Mr Inger has requested in the bold underlined wording there.

THE COMMISSIONER: Yes, I see that. I was just interested in your paragraph 4, in some ways that is analogous with the situation where there was one key project that was locked in and some flexibility on taonga and some of the other projects there. So you are thinking that there could be an exception for the Ngāti Tama land to be treated differently?

MS ONGLEY: Yes. So I suppose that does lead into another issue that you raised at the earlier hearing that I have dealt with in paragraph 9.7, which is the issue about the negotiating leverage that a private landowner could enforce upon the applicant. When I refer to condition precedent there I am referring to the need for any agreements to be in perpetuity or at least for 35 years.

I do believe that is a legitimate issue that has been raised but DOC's position is that, because the restoration package is so important here, that issue has a second priority to the main issue that we need to be certain from day one that

the necessary agreements are in place for the pest management to continue. So there is a tension there and I am sure that NZTA take a different position there.

So I raised the Handley case earlier, I have said the Act does provide for this matter by the ability for a notice of requirement to extend over the compensation site, even following a recommendation for a modification to a notice of requirement for the PMA extending the designation footprint is not available because the location of the PMA is not known. This situation has arisen because radio tracking is occurring now. We are in a very difficult position because we have a PMA proposal but we do not know where it is going to be.

THE COMMISSIONER: I am sensing this is a tricky legal issue.

MS ONGLEY: It is, yes.

THE COMMISSIONER: There is certainly good will on the parties to get to a position and it is all about security around, not necessarily conditions, but property right security guided by the resource consent and designation conditions. That is in a nutshell what we are grappling with?

MS ONGLEY: That is right, sir, and in other cases, I have listened to the issue about esplanade strips earlier. I have not re-familiarised myself with the esplanade strip provisions of the Act but DOC has not gone so far as to say that, in the condition wording that Mr Inger has proposed that the authorisations or agreements must be registered on the title or an encumbrance. So it is recognising that an agreement or other authorisation could be a number of different instruments, whereas in the Transmission Gully case they required the riparian to be registered on the title by an encumbrance or covenant. We are not going that far here.

But it does come down to the level of certainty and so, although DOC feels it has made a little bit of a compromise there, it is not prepared to compromise on the fact that the agreements that get verified to the planning lead have to be in perpetuity or at least for 35 years.

THE COMMISSIONER: Have you turned your mind to the responsible agency position that the Transport Agency is an arm of the Government and just trying to lock down security, the last level of degree, and take away some flexibility given whether it is the Council or whether a Government agency. In legal terms or in pragmatic terms - I think there is some comment in some cases

I have seen about that but I cannot recall where - have you thought about that at all?

MS ONGLEY: I have taken quite detailed instructions on it and that has been one of the primary issues that we have been discussing when I have taken instructions on it.

THE COMMISSIONER: Instructions from Council or department?

MS ONGLEY: The operations team in Hamilton that are dealing with it.

THE COMMISSIONER: So is there anything else you would like to just highlight to me? It is pretty clearly set out from my initial read.

MS ONGLEY: Unless you have any further questions, I do not think there is anything else, sir.

THE COMMISSIONER: Thank you for doing this. I have grappled with that same issue several times myself.

MS ONGLEY: I have not read Martin Williams's paper, I must admit.

THE COMMISSIONER: Certainly in terms of all those encumbrance instruments, mechanisms, he put a lot of thought into that. I know that road show went right around the country and it was not only Judge Newhook, it was I think Judge Kirkpatrick was at some.

MS ONGLEY: Yes, I did attend it.

THE COMMISSIONER: The one here in Taranaki?

MS ONGLEY: Yes.

THE COMMISSIONER: There was quite a lot of discussion and the Environment Court Judges were really interested in that. But what I took from that, being part of that road show, was that it was quite a detailed specific piece of law and some practitioners had a lot of experience and others had none. But that paper seemed to be quite helpful to the discussion at those sessions.

MS ONGLEY: Thank you. I might have a look at that, thank you.

THE COMMISSIONER: Thank you.

So, I think, Mr Allen, we are back with you.

MR ALLEN: Thank you. Maybe if we just respond to that last matter first and then we will go through --

THE COMMISSIONER: Do you want to have five minutes to confer?

MR ALLEN: We are fine. We were just thinking, just while it is fresh in mind, just a brief response to the condition 29A point. Obviously we will address that in our written legal submissions.

Just turning to the dispute in terms of the difference in wording now is - I would submit - relatively straightforward in that there is no shying away by the Transport Agency from the requirement to carry out the pest management in perpetuity and to protect all the planted areas on an ongoing basis. Nor is there any shying away from the fact that, if at any point the Agency lost access to parts of the original pest management areas or planted areas, it would need to replacements for those areas. That is locked in, in detail, in condition 29A.

I think Ms McBeth pretty succinctly summed up why the Council is comfortable with the Agency's version and why the

Agency thinks it is entirely appropriate. So 29(c) clearly specifies the perpetuity requirement. I would suggest it is a bit more than an "intention"; it is a clear obligation of the condition. 29(d) provides for the fact that, if rights are secured on a term-limited basis, there is a process where the Agency must notify the Council two years before that term would expire and then either renew the term or find a replacement area.

THE COMMISSIONER: Is two years enough time do you think?

MR ALLEN: It seems sufficient. I have to confess, I have not put a huge amount of thought into that precise time period. It seems like a reasonably lengthy time period to me. Of course, if the Transport Agency was worried that it might not be able to renew a term, they might start thinking about that more than two years out. The two-year obligation is to formally notify the Council, "This is going to happen and we might have an issue", so it does not mean that the Transport Agency would ignore any issue before that two-year time period.

So what that means is really the only words in dispute are whether Mr Inger and DOC's additional words in the first clause of 29A should be included. That clause specifies that the

requiring authority cannot start construction works until it does confirm in writing to the Council that it has in place the necessary legal agreements, including for access. So DOC's additional words would simply specify that those agreements or authorisations must have in effect a minimum 35-year term. It is the Agency's submission that is not necessary or appropriate.

You made a point, sir, when you were discussing with the planners, so the discussion did go into mechanisms, and helpfully DOC and the Councils are not trying to restrict the mechanism, whether it is a title instrument or Conservation Act mechanism or something else, and you said it is important to ensure that the conditions do not constrain useful mechanisms. That is the potential issues with those words that a constraint on term - that 35 years - is potentially a constraint on the Agency working with DOC or Ngāti Tama or others. That is just an additional limitation on exactly the arrangements that can be reached. In simple terms our submission is it is not a necessary one given how clear the condition is otherwise that the pest management must be carried out in perpetuity.

THE COMMISSIONER: Thank you. The tension, we I understand it, is if the requirement is confirmed by my decision and the

resource consent is granted the Agency and the Alliance just wants to get on with the job.

MR ALLEN: I am not sure there is any tension there. Obviously that is a correct statement but I do not think that goes to this issue here, no. There was discussion between you and Ms Ongley about condition precedent, so first of all the Agency's version is a condition precedent and there is no issue there.

Ms Ongley also mentioned negotiating leverage in her legal submissions. That is not something the Agency has put in issue at all in this hearing.

THE COMMISSIONER: That was my suggestion that sometimes can be an issue. It is good for you to clarify that.

MR ALLEN: All I would say is that is not an issue the Transport Agency has raised in evidence or legal submissions. It is more about giving the Agency and its partners in this project - which DOC obviously is in the long term, Ngāti Tama is, and other private landowners are - the appropriate flexibility to come to suitable and mutually agreeable arrangements in terms of precisely how the pest management and planting programmes will

be secured while still absolutely obliging those obligations to be ongoing.

THE COMMISSIONER: That is clear, thank you. Any other verbal submissions?

MR ALLEN: Just in terms of an overview and how we can go through this. Firstly, on behalf of the Agency, we would like to acknowledge Ngāti Tama and the support they have provided throughout this whole process to date and the ongoing support that the Agency will have with Ngāti Tama should the project proceed.

Also, in terms of DOC and the comments from the Commissioner with the work with the Councils, there has been a huge amount of work that has gone into this. There have been large areas of disagreement over time and those have significantly dwindled down now to the key points we have talked about this morning, so thank you to everyone involved for the efforts that they have put in.

In terms of the high-level summary and where things are at, I do not plan to go through any of it in detail but we will skip through different issues. Just one point to remember and to

reflect on as per the start of the opening is the history of the project. There has been investigation since the 1970s for improving this road, ongoing. This is the proposal now. It is a proposal that - as we will come to in terms of potential compensation - the Agency has gone as far as it can go, so we will come back to that one. It is a proposal with significant benefits, not just for safety for the region, for the road in terms of all the evidence of Mr McCombs and also Mr Copeland, but also in terms of - in the Agency's position - the ecology.

Moving to the ecology and looking at the key points, obviously matters have been agreed on lizards, so herpetofauna is resolved. In terms of the insects and invertebrates, there is the discussion ongoing now about wasps and wasp control. I am not entirely sure - and we will deal with this in written closing - whether there is a disagreement because I certainly took Dr Martin's comments this morning to be looking for the construction period and maintenance, which is agreed in the ELMP, the condition set has a condition saying, "Construction period and the six-year maintenance period." Dr Martin this morning mentioned ten years. The construction period is four years and the condition of six years' maintenance equals ten years, so we will look at that and deal with it in closing but I

am not sure in terms of wasps that there is an issue. So that is the wasp issue.

Turning to the kiwi fencing and the high risk "may" type approach, although it was talked about this morning that DOC's starting position was to have the entire route fenced, it is submitted, using a "may" is a Clayton's fallback from that in that it will still require whether something may have an effect or not is going to be open and will likely require the whole route to still be fenced. So there was discussion about linkage between 29(d)(i) and (i)(i) so we can deal with that in closings, but very much the position of the Agency based on Dr McLennan's evidence is to look for the high risk, those high likelihood areas. Also it is a design factor now.

The existing road - and the only evidence from the hearing is from Dr McLennan - is that there have not been kiwi deaths, yet they know that overlaps with kiwi habitat and their home ranges. So the existing road also has cuttings and as far as we know no kiwi have plummeted off them. So the existing road has kiwi habitat, has the potential there. This shifts it and arguably with the focused fencing will make the existing position better off for kiwi in terms of the road.

Then there is argument over how many kiwi will benefit. DOC's position is it might be around 120-plus because they will all trot off to other areas. Dr McLennan's position is it is 1,200, so there is a huge difference there, but what is not in issue is that kiwi will benefit from the proposal.

So in terms of kiwi fencing we will deal with it in closing and hopefully some wording tweaks, some linkages back, might resolve that matter.

In terms of kiwi benefits, I have mentioned that. Other birds also have been addressed and kokako were mentioned today, so there are mechanisms in place for other species.

Then the next issue in dispute is the freshwater matters between Dr Drinnan and Mr Hamill and Dr Neale. Those have been canvassed. The Agency's position is as per that evidence. Again, we will summarise that in written closing.

Then turning to the PMA and Waitanga and there was discussion about that this morning. Firstly, the Agency's position is the 3,650 hectares is a cap, a total, and my instructions are clear that the Agency will now offer beyond that level. So there was discussion this morning and agree with

Mr Inger's comments and consider that Mr Inger's comments support the evidence of Dr Barea. Here we are dealing with environmental compensation and, as Dr Barea has already said, there is a degree of departure from strict like-for-like exchange. So looking at vegetation, for example, the key thing there is the New Zealand Government offset model is 230 hectares, so that is the 230. We are at 3,650 and it was mentioned I think by Mr MacGibbon this morning that is a significant benefit over and above the 230. Mr Singers's evidence goes into that and says it is a substantial positive for vegetation.

Now we are shifting vegetation areas and I think it is agreed that it is not exactly the same, Dr Barea's evidence is that it is very similar, talking about kahikatea, rimu, tawa forest. Equally there are some potential benefits. There is yellow and red mistletoe there. So there are different species.

Equally with birds, some of the birds that are extinct at Mount Messenger are still present at Waitanga and those would be the likes of New Zealand Falcon and there is also kakariki and the Waitanga. Is it like for like? No, strictly speaking. Is there environmental benefit? In our submission, without doubt.

THE COMMISSIONER: Just to clarify the point, my understanding from the ecologists if the preferred PMA provides that continuity from coastal forest up into high-country forest. So that in ecological terms would be the gold standard if that can be achieved.

MR ALLEN: That is certainly the Agency's intention is to have the scenario 1, which would be Parininihi and then a portion of DOC estate, depending on the Pascoe land.

THE COMMISSIONER: Just on that question, so the Agency is not suggesting that these other benefits you are talking about at Waitanga would outweigh the fact that the preferred PMA is the ...?

MR ALLEN: It is solely the idea, if we shift to Waitanga, and then the argument is the vegetation is slightly different, for example, or is it like for like, which Dr Martin talked about this morning.

THE COMMISSIONER: One other thing, and I should have asked this to the ecologists, but it is just an observation, is there a marine reserve off Parininihi as well?

MR ALLEN: Yes, there is.

THE COMMISSIONER: So I am thinking in my own mind, linkages between the coastal habitat and sea birds, it just seems like an additional factor perhaps that makes that coast --

MR ALLEN: That is why the Agency, working with Ngāti Tama, has for so long been keen on Parininihi. Initially it was as an extra and now it is has been pulled hopefully within the PMA area. Obviously the exact outcome depends on what occurs with bats going forward, which is there too much focus on bats? Well that is where the hearing has gone, that is where the experts have gone, and that is why bats have been that particular focus.

But just very keen to reflect it is not solely bats that would benefit from the PMA. In terms of the vegetation, 32 hectares are affected. That is one other matter that came up this morning is, if you look solely within the wider project area, there is 3,098 hectares of coastal lowland forest around there, 32 hectares are affected by the project. So we are at a very small effect ratio, recognising lowland volumes, and that is all set out in Mr Singers's evidence and we will refer to that in closing. But in terms of context the lowland vegetation effect is low.

Then if you are looking at the scenario 4 option where you do shift, is it like for like? No. But it is - to use the wording of Dr Barea - similar. So is it perfect in terms of if you are offsetting and wanting to be by the letter offsetting? No. But we are not offsetting, we are compensating. Just to be very clear with that, the Agency, if it is 3,650 hectares at Waitanga, then - you mentioned it this morning - would that be if there was to be an offset somewhere else? The Agency's position is no, it would be one PMA.

But then - and this is my instructions at the moment - even if it went to maybe two areas, which I will have to get instructions on, then it would be 3,650 in total; no increase on the 3,650. But presently my clear instructions are it is one location and it is 3,650 hectares.

THE COMMISSIONER: My clear impression from Ngāti Tama, I remember that impassioned mihi we had at the end of the last hearing about what I took was in their view it is not all about the pekapeka, which I understand is the Māori name for bat, so kaitiakitanga, having the PMA in the area with Ngāti Tama involved and these other values is, would you submit -- no, I will not lead you on this.

MR ALLEN: That is why scenario 1 is drafted in the way it is. It is why scenarios 2 and 3 need to relook at the planning drafting but did have Parininihi referenced at one stage in them and we may need to think about whether that comes back as one of the criteria. Because, just from my quick scan last night and this morning, not sure if that is quite linked in the way it was. But certainly the Agency's position, as I said, is very much to involve and include Parininihi to the degree it can and get consent in its designations.

THE COMMISSIONER: I understand, yes.

MR ALLEN: In terms of other ecological matters, I think I have covered the key ones. So I will pause there and Mr Ryan will carry on with further comments on other matters as well.

MR RYAN: Thank you, sir. Just turning to cultural effects and obviously there is a very close linkage between ecological and cultural matters in this project, so I just wanted to remind you of some of the key points from our opening submissions and how things have developed during the hearing.

So we emphasise the central place Ngāti Tama have in this project and the level of engagement that has taken place with the Rūnanga over the past two years. As you will recall, the Transport Agency has committed to not acquiring the Ngāti Tama land by compulsion under the Public Works Act. So, in simple terms, the project will not proceed without the approval and blessing of Ngāti Tama through the Rūnanga. That is a powerful recognition of Ngāti Tama's relationship with the project in terms of section 6E(7)(a) and section 8. Just flagging, sir, that discussions are continuing to finalise an agreement to that end.

Then we subsequently heard through Mr White and Mr Silich for the Rūnanga that Ngāti Tama, the Rūnanga, supports the grant of consent and confirmation of the Notice of Requirement and that is in reliance on that assurance from the Transport Agency and the ongoing discussions.

We also have proposed conditions and an LEDF, which provide for the involvement of the Kaitiaki Forum Group and the Rūnanga through project implementation and construction. So, for example, there was discussion this morning about the fact that the Kaitiaki Forum Group are going to be involved in the

finalisation of the PMA location following the monitoring programme this summer.

There has been some discussion about the makeup of the Kaitiaki Forum Group in the hearing so Mr Roan has reiterated Ngāti Tama's special place in the project area, including in particular the treaty settlement land in that overall context means it is appropriate for the Rūnanga to have the ability to invite others to participate and Ms McBeth for the District Council has confirmed that she is happy with that approach and I think we probably always have had an agreed condition on that basis at least between the planners, who conference, and obviously there are potentially different views from other submitters on that but that is something for you to consider.

Ms McBeth confirmed her view the Transport Agency has recognised and provided for the cultural values of Te Korowai and other Ngāti Tama members beyond the members of the Rūnanga. I just pause to flag Mr Hovell has confirmed that those Te Korowai members who are trustees are now fully back on board. Obviously we cannot speak to what that means for Te Korowai; you heard from Mr Walden, we may or may not hear further from Mr Enright on that point.

Ms McBeth is also comfortable that the Transport Agency has engaged meaningfully with Poutama.

So we are expecting those submissions from Mr Winchester and Mr Harwood shortly on the Poutama iwi plan and Poutama's status as an iwi authority, so we will respond as necessary in closing submissions, just bearing in mind that the Transport Agency's approach has always been that all submitters are entitled to express their views on the project, including in terms of cultural values and effects. So the Transport Agency's approach to engagement and consultation has always been based on that principle.

THE COMMISSIONER: That does prompt me, Mr Ryan, that in the advice I asked Simpson Grierson I was specifically asking about the iwi authority status that is on the Te Puni Kōkiri website. There is also the plan that has been lodged with the Council as well, which I did not specifically ask for advice on, but I may get some comment about that. But, if it does not come through, could you just address me on your thoughts about that plan, which I think has been tabled through the hearing?

MR RYAN: We can in writing.

THE COMMISSIONER: Yes, just in your closing.

MR RYAN: Can do, just bearing in mind again that the Transport Agency does not necessarily see its position as arbitrating between --

THE COMMISSIONER: That is right; I understand that.

MR RYAN: So turning to construction water, in simple terms the Agency's case is that the consent conditions, the construction water management plan and specific management plans, including the discharges plan, set out a comprehensive approach to construction water management and the Regional Council have confirmed that essentially they are happy with those management plans; that they are ready to go. Of course there will be some of the SCWMPs, as they are called, will be certified later.

THE COMMISSIONER: Is that a word?

MR RYAN: Specific Construction Water Management Plan, SCWMP I think.

So, as you know, sir, there are some areas of disagreement between Mr Ridley and DOC. I think Mr Inger has helpfully in

his statement today specified exactly what those differences are from his red-lining of the conditions and we will address that as required in writing.

The other effects we wanted to touch on in particular were the effects on Mr and Mrs Pascoe. So obviously they are, other than Ngāti Tami, the most directly affected landowner and unusually for a roading project of this size they are really the only homeowners who are affected in any meaningful way by this project. We heard representations from the Pascoes. From I guess a pragmatic sense they highlighted the possibility the Transport Agency may not be able to secure all of the Pascoe land to use for planting and pest management, so Mr MacGibbon has talked you through that alternative approach to the intended PMA where I guess it is kind of two square-bracketed areas depending on how those negotiations go. I would just confirm now those discussions have not concluded.

Ms Turvey acknowledged that the Transport Agency has long recognised the Pascoes home would not be a pleasant living environment during construction so obviously the Agency hopes to acquire that land from the Pascoes, otherwise the conditions do now formally oblige the Agency to offer to rehouse the Pascoes for the duration of the construction as a mitigation measure.

That was always the intention but it is just making that a formal requirement.

THE COMMISSIONER: What condition number is that?

MR RYAN: I do not know off the top of my head. We can point you to that.

THE COMMISSIONER: Just in the closing, yes.

MR RYAN: Certainly, sir, yes.

THE COMMISSIONER: Sorry to put you on the spot. That is fine to just receive that in due course.

MR RYAN: In terms of other affects, I could take you through them briefly but I am not sure there are any other affects that are really in dispute between the parties.

THE COMMISSIONER: If there are any minor things you can write them in your closing.

MR RYAN: Just in terms of those kind of outstanding legal matters, so you have heard submissions on condition 29A. The

only other thing I guess is the revocation condition. So we will address those in writing.

You heard from Mr Roan's point was the pretty simple one that there is a separate statutory process for revocation and the Transport Agency's position is that is entirely appropriate and adequate for addressing the revocation of the existing State Highway but we will flesh that out for you in written submissions.

Just briefly, we have not heard from Mr Doherty today so if we will respond to his responses to your questions as required.

Our opening submissions deal with sections 171(1)(b) and (c) in some detail and importantly there is also quite detailed evidence from the Transport Agency on the relevant processes that were followed. Ms McBeth has reiterated her view that she is comfortable with the alternatives process followed by the Transport Agency in terms of section 171(1)(b) and that the project is reasonably necessary to meet the project objectives in terms of section 171(1)(c).

So I will not go into Mr Doherty's latest statement in any detail, sir, other than just to flag that he does clarify he

does not comment on whether the alternatives process satisfies section 171(1)(b), but Ms McBeth does for the Council. Our submission, to put it simply, is the process clearly does satisfy section 171(1)(b).

Importantly, Mr Doherty also states that he accepts the relative costs of the options Z and E. I would just again point out that the cost difference between those two options, as at the point the Agency made its decision, was in the vicinity of \$180 million.

THE COMMISSIONER: I had the evidence on that because -- I cannot remember exactly which of the witnesses --

MR RYAN: Probably a combination of Mr Milliken, Mr Roan and Mr Symmans.

THE COMMISSIONER: Because there was a little bit of uncertainty in the written evidence and we confirmed that it was \$180 million. So your understanding is that Mr Doherty has accepted that?

MR RYAN: That is my reading of his latest statement that he does accept that now. That was subsequent to him receiving

further advice or confirmation from Mr Symmans. I am not sure there was much new information there; it was just repeating some of the information Mr Symmans had already flagged.

THE COMMISSIONER: Yes, I will signal that will be one of my specific questions. My questions will all be around paragraphs 27 to 32 of Mr Doherty's statement, just to clarify those matters. The other thing I can signal now is I will be asking them about paragraph 32 where, having accepted that he does not have an opinion on 171(1)(b), he seems to imply in his last paragraph that he is suggesting that the Agency review its position. So I am not clear on what he is trying to say to me.

MR RYAN: I think that is a fair point. I do not want to put words in Mr Doherty's mouth and you will ask him the question; there is a possible interpretation that he does not have a view on whether the process was adequate, but, if it was him, he probably would have chosen another option. That may be what he is getting at, but that is something for you to --

THE COMMISSIONER: Again, I will clarify it, but I am not sure that, as a decision maker on the Notice of Requirement, I have the options of confirming the requirement, rejecting it, seeking it be modified with conditions, so that is my role. Mr Doherty

as a witness seems to be suggesting that his role is to suggest that the NZTA should go back to the drawing board. That is my reading of that section 32. So I will want him to clarify that in writing to me.

MR RYAN: Just one last point, sir, you will be well aware that there is a well-established legal principle that it is not for the decision maker to substitute what they consider to be the best choice for the decision reached by the requiring authority in its statutory role. The question is, in getting to the point where it made a choice to proceed with what was then option E, did the Transport Agency follow an adequate process for considering options?

THE COMMISSIONER: I am absolutely aware of that case law and that interpretation. That is why I was puzzled by Mr Doherty's statement that he was suggesting that, as an engineering expert for the Council, he might suggest that position in his last paragraph. So he may have had some other intention but I want to clarify that in my questions.

MR RYAN: In terms of part 2 and also Court of Appeal now in Davidson, I will not go through that today unless there is particular questions you have. My understanding of the plan is

beyond Mr Carlyon, who has a limited retainer, is that the project is consistent with the relevant objectives, policies, et cetera. We will outline that in closing, but happy to discuss Davidson or matters related to part 2 if you would like.

THE COMMISSIONER: Not today please. If you could outline anything I should be aware of post the Court of Appeal decision that would be helpful.

MR RYAN: Thank you. So, beyond that, sir, and our written closing, just any questions that you may have.

THE COMMISSIONER: No, none from me. I do have a question. This is for all the parties in the room. I have now received the transcripts that I asked for from days one to four and they will be very helpful for my decision making. As I said, the reason I requested that be done as a sole Commissioner and, notwithstanding Mr McKay writing as much as he can down, there is nothing like having a transcript, particularly the evidence that comes through questioning. I did say at our last hearing that I thought that should not be published and should not be available, but having read that - and it is a helpful record of the whole process - whether there are any strong views about having those transcripts made available on the website or not.

MR ALLEN: There is no issue from the Agency's position.

THE COMMISSIONER: Ms Ongley, do you have any ...?

MS ONGLEY: No issue. I think that would be a good idea, sir.

THE COMMISSIONER: Yes, and thinking ahead, it is a record of the full evidence, some of it is written and we have had, in my view, very high-quality evidence across the board in written terms and in questions and answers. So I think, for the record of the hearing, that would be appropriate.

Mr Hovell, do you have any ...?

MR HOVELL: No issues, sir, the only thing that occurs to me is if any parties identify any errors or anything like that in the transcript that they want to correct, any process that might be in place for that.

THE COMMISSIONER: I presume that would just be a matter of natural justice anyway that if someone saw something they could, yes. Ms McBeth and Mr McLellan, any thoughts on that?

MS MCBETH: It is a public forum, sir, we are comfortable with that.

THE COMMISSIONER: All right. So, on that basis, and I only have days one to four, and that might help with your closing particularly around the ecological evidence, so I will ask Ms Drake to put those up progressively, but certainly I have received, just a couple of days ago, days one to four. I have lost count of the days we are up to now, is this seven or eight, perhaps nine?

MR ALLEN: I think it is day nine. Day eight was very short.

THE COMMISSIONER: Yes, all right. So I think with that I will just adjourn the hearing pending receipt of the closing submissions from NZTA. I think there was one matter, Ms Ongley, you were going to just check with Dr Drinnan?

MS ONGLEY: I am just taking Dr Barea's word for it that Dr Drinnan is back on Friday so I will commit to getting something by Monday lunchtime anyway.

THE COMMISSIONER: Yes, just let me know - through Ms Drake - if there is any problem.

Now, in terms of decision-making timeframes, I think it is appropriate that I adjourn the hearing today pending the closing submissions. There may or may not be anything else. I suspect not but that gives me that safety net. As I understand that, in terms of decision-making timeframes as a Notice of Requirement the Act is not particularly clear on am I under the gun of a three-week decision timeframe. I do not think I am but I will endeavour - on the assumption that I do not have any further comments after your closing - to write my decision through November and have something out by the end of November as a target, not a promise, as a target. So that is my aim.

All right, so on that basis we will adjourn the hearing and I will formally close it through a minute at some stage after receipt of the closing from NZTA. So thank you very much, everyone.

Could we please have a karakea just to finish? Thank you.

MALE SPEAKER: (Māori spoken) Thanks, Mr Commissioner for your endurance during these proceedings. I would just like to add a small commentary that our decision to support this project was not made lightly. As the process evolved and we learned that

there would be a net environmental gain that was one of the key facts that helped us decide to support the project.

However, during the hearing, there have been numerous frustration that we as Ngāti Tama have encountered, being restricted however by the limitations of procedure so there have been a couple of inaccuracies presented by other submitters that went unchecked.

Another example of our frustration is the wording "in perpetuity". In perpetuity is a long time. In that time, DOC probably will not exist, NZTA probably will not exist, the road may not even exist, but I can assure you that Ngāti Tama still will be around. We in Ngāti Tama do not have the right to impose such an encumbrance on our future generations, no matter how noble the encumbrance may be. Nor, for that matter, do NZTA or DOC have that right.

The attention given to other groups in terms of decisions relating directly to our land seems to have been, to us, excessive at times. The level of attention given to bats has been overwhelming. Other Māori groups who at least claim to represent Māori interests, if you examine one of them there are

two main principals, one of them is not even Māori, so that presents extreme frustration for us as well.

(Māori spoken)

(Hearing concluded)