

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

MT MESSENGER BYPASS PROJECT

In the matter of the Resource Management Act 1991

and

In the matter of applications for resource consents, and a notice of requirement by the NZ Transport Agency for an alteration to the State Highway 3 designation in the New Plymouth District Plan, to carry out the Mt Messenger Bypass Project

**STATEMENT OF REBUTTAL EVIDENCE OF PETER ROAN (CONDITIONS AND
MANAGEMENT PLANS) ON BEHALF OF THE NZ TRANSPORT AGENCY**

30 July 2018

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TABLE OF CONTENTS

INTRODUCTION	2
RESPONSE TO THE EVIDENCE OF MR INGER	2
RESPONSE TO THE EVIDENCE OF MR CARLYON	5

INTRODUCTION

1. My name is Peter Anthony Roan.
2. This rebuttal evidence is given in relation to applications for resource consents, and a notice of requirement by the NZ Transport Agency ("the **Transport Agency**") for an alteration to the State Highway 3 designation in the New Plymouth District Plan, to carry out the Mt Messenger Bypass Project ("the **Project**"). It is my third statement of evidence for the Project, following my evidence in chief ("**EIC**") dated 25 May 2018 and my supplementary statement of evidence ("**Supplementary Evidence**") dated 17 July 2018.
3. I have the qualifications and experience set out in my EIC.
4. I repeat the confirmation given in my EIC that I have read the 'Code of Conduct' for expert witnesses and that my evidence has been prepared in compliance with that Code.
5. In this evidence I use the same defined terms as in my EIC and Supplementary Evidence.
6. This evidence responds to the evidence of Mr Inger on behalf of DOC and to the evidence of Mr Carlyon filed on behalf of Te Korowai.

RESPONSE TO THE EVIDENCE OF MR INGER

Conditions - Performance Standards

7. Mr Inger notes in paragraph 8.7 c, his concerns around whether the Conditions set adequately captures performance measures. He believes that the Conditions rely on important performance standards being contained within the Management Plans.
8. In this regard it is my opinion that the Conditions clearly articulate the key performance targets required to 'lock in' and ensure the delivery of the outcomes that are central to avoiding, remedying, mitigating, offsetting and compensating for the effects of the Project. In this respect the conditions set the key parameters and the management plans set out the methods that will be used to achieve those parameters. I consider this both appropriate and normal practice in relation to conditions and management plans.
9. In terms of the biodiversity and offset aspects of the Project, the proposed Designation Conditions identify the following key performance standards:
 - (a) In Condition 29(a)(vii), the specific areas of restoration planting required;
 - (b) In Condition 29B, the specific performance target for avifauna increases within the PMA, and for the survival of the restoration plantings; and
 - (c) In Condition 32(a), the specific area of pest management required.

10. These Conditions are based on the recommendations of the Transport Agency's ecology experts.
11. The Conditions require the Transport Agency to re-assess the restoration planting provisions once the full extent of vegetation removal and stream works is known (i.e. after these activities have occurred), and if necessary, to undertake additional plantings if that is required (Condition 29(a)(vii)).
12. The Conditions require the Transport Agency to undertake monitoring (Condition 30), to report on the outcomes of monitoring and if necessary, to report on the actions to be undertaken to achieve compliance with the performance measures (Condition 31).¹
13. In this regard, the Conditions set out key performance targets, a process for monitoring, and a process to address performance, if targets are not met.
14. I agree with Mr Inger that the Conditions do reference out to the Management Plans and that the matters of detail around implementation and compliance with the Conditions are contained in the Plans. In my experience this is quite usual for a project of this nature and provides flexibility to the constructor as to how best to ensure compliance with the conditions.
15. However, where this project is different to many other major infrastructure projects is that the detailed Management Plans have been available for review as a part of this RMA process (and approval by the decision-maker). The review process undertaken by the Councils, and with input from stakeholders, including DOC and Ngāti Tama, has enabled the plans to be updated and revised. The Plans have been available for review by members of the public and to all submitters (via the Transport Agency and Council websites).
16. The Plans are now essentially finalised and are ready to be approved through the hearing process. There are some (fairly minor) updates to the ELMP recommended in the rebuttal evidence of the Transport Agency witnesses. Those updates will be carried out and captured in an updated version that will be provided as part of the hearing process.
17. Condition 1 makes it clear that the Management Plans form part of the applications and that the Project shall be undertaken in general accordance with the Management Plans (and the other matters). This is further reinforced in Condition 8. If material changes to the Plans are required, there is a process set down whereby the Council certifies the changes (Condition 11). Annual review and reporting on the Plans is required under Conditions 15 and 31, including on compliance (Condition 15(a)) and any changes needed to the Plans.

¹ I note that there is a cross referencing error in the Conditions attached to my Supplementary Evidence; Condition 31(c) should cross reference to Condition 29B, rather than to Condition 29A.

18. In this regard, and in addition to there being key performance targets and a process for monitoring and compliance set out in Conditions, the Management Plans will be a key part of the Designation and Resource Consents. The Transport Agency will be obliged to demonstrate that the Project complies with the provisions of the Management Plans, along with the Conditions attached to the Designation and Resource Consent Conditions.
19. As I note in my EIC, the Conditions have evolved as details of the Project have developed, and through discussions and input from the Councils and submitters (including DOC). I have maintained an open mind to the need for additional elements of detail to be set out in the Condition set, and remain of that view, should the Commissioner determine that to be necessary. It is my view, however, that the Conditions do contain the key performance targets needed to ensure delivery of the outcomes that are central to avoiding, remedying, mitigating, offsetting and compensating for the effects of the Project.

Expert review panel

20. Mr Inger notes, in paragraph 8.7f, his view that the role of the expert panel proposed under Condition 31 should be broadened out to ecological matters more generally.
21. Mr MacGibbon and the Transport Agency's ecology experts agree that a panel with broader expertise would provide the Council with access to a wider base of advice, if this is required. Accordingly, I have revised the wording of this expert panel, which I attach as Appendix 1.

Dispute process

22. Mr Inger notes in paragraph 8.7f, his view that the dispute resolution process set out in Designation Condition 14 (and GEN 17 in the TRC Resource Consent Conditions) is inappropriate.
23. My opinion is that this Condition, which establishes a process for resolving disputes, should they arise, is entirely appropriate. Designation and Resource Consents for major infrastructure projects will often contain a condition that sets out a process for dispute resolution. The wording for Condition 14 is modelled on a very similar condition in the Designation Conditions of the Transport Agency's MacKays to Peka Peka Expressway Project (Condition DC 8), and a very similar Condition appears also in the consents for the Peka Peka to North Otaki Expressway Project (Condition 18A), the Waikato Expressway Project (Condition 2.6), and the City Rail Link Resource Consents (Condition 8).

24. The process established by Condition 14 provides a basis for resolving matters on Management Plans, if, for whatever reason, this has not been possible through discussions with the Councils. Given the scale of this Project (and other infrastructure projects), where construction staging is complex and delays can have significant programme and cost implications, it is essential that a process exist to enable disputes to be resolved in a timely fashion.
25. While it is not possible to foresee the specific scenarios in which this Condition could be required, I would note that there is nothing in the Condition that would preclude the appointed mediator seeking independent technical advice on the matter in question.

RESPONSE TO THE EVIDENCE OF MR CARLYON

Cultural effects

26. Mr Dreaver and Mr Dixon address other matters in relation to Mr Carlyon's evidence.
27. I wish to refer briefly to the matter of cultural values and the assessment of cultural effects. In this regard, I refer out to my EIC, paragraphs 74 to 84 (of my 'Conditions and Management Plans' EIC). As I note there, the Transport Agency has recognised the special relationship of Ngāti Tama with their lands, culture and traditions. The Transport Agency has sought and received a Cultural Impact Assessment which addresses the cultural effects of the Project on Ngāti Tama. The CIA is appended to the application material and I have undertaken my assessments on the basis of that CIA. In my view, that is the appropriate source of cultural information which should be relied upon to make my assessments, and no other formal cultural assessments have been provided at this time.
28. The context for consideration of cultural effects throughout the Transport Agency's application material has been based on consideration of effects on Ngāti Tama as a whole. The CIA, as I understand it, sets out an assessment of cultural effects on Ngāti Tama as a whole. While the Transport Agency's consultation with Ngāti Tama has been through the mandated iwi organisation (Te Runanga o Ngāti Tama), the view that I have taken on cultural effects in developing the AEE report and my EIC based on the CIA, has been a consideration of the cultural effects on Ngāti Tama as a whole.
29. Cultural mitigation described by Mr Dreaver, and also in my EIC, also takes this wide view. While the mitigation has been developed in consultation with the Runanga, it is for the benefit of Ngāti Tama as a whole.
30. I note that I attended a hui-a-iwi on the Pukearuhe Marae on 2 June 2018, at which representatives who identified as being part of the Te Korowai group were present. I also attended a hui with Te Korowai representatives on 25

July 2018, at which the Transport Agency provided information on the Project and on the cultural mitigation.

Peter Roan

30 July 2018

APPENDIX 1

ECOLOGY REVIEW PANEL (CONDITION 33)

Ecological Review Panel

- (a) Prior to the Completion of Construction Works the Requiring Authority shall establish an expert ecological review panel. The expert panel shall:
- (i) Comprise three independent, suitably qualified experts with skills in terrestrial ecology and pest management. DOC, TRONT, and the Requiring Authority shall each be invited to provide one member for this panel, whose names shall be agreed with the Planning Lead (or Nominee). From time to time, and as requested by the panel, by agreement of all members, should the panel not have the necessary expert skills or experience, the Planning Lead (or Nominee) may appoint an additional expert in any or all of the following areas of ecology: terrestrial vegetation, terrestrial invertebrates, herpetofauna, avifauna, bats, freshwater ecology, or pest management to assist the panel in its functions. Any such additional expert panel members shall not be employees of either DOC, TRONT or the Requiring Authority.
 - (ii) Provide expert advice to the Planning Lead if such advice is required. This advice shall be limited to:
 - (1) Reviewing any material amendments to the ELMP under Condition 11.
 - (2) Reviewing the pest management methods to be employed in the PMA.
 - (3) Reviewing the results of pest monitoring and any changes to the pest management methods and the PMP needed to achieve the pest densities set out in the ELMP.
 - (4) Reviewing the reporting required under Condition 31.
 - (iii) Before engaging the expert panel to provide advice, the Planning Lead must notify the Requiring Authority.
- (b) On receipt of an itemised invoice the Requiring Authority shall pay all reasonable costs associated with the engagement of the expert panel.