

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

IN THE MATTER of the Resource Management Act 1991

AND

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

MEMORANDUM OF COUNSEL

**ON BEHALF OF
DIRECTOR-GENERAL OF CONSERVATION**

Dated: 25 May 2018

COUNSEL:
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May it please the Commissioner:

1. This Memorandum:
 - 1.1. responds to the Commissioner's Minute of 16 May 2018 regarding the site visit; and
 - 1.2. outlines the Director-General of Conservation's ("DOC's") position.

Site visit

2. DOC requests additional observation points for the site visit planned for 5 June 2018. This Memorandum attaches a map setting out the additional locations sought for the site visit (orange circles marked A and B). These are explained as follows:

A: Located partly on a pest control line off the Mt Messenger track, accessing this viewpoint would enable a better understanding of the values of the Waipingao catchment. It would also enable an appreciation of the steepness of the terrain within the project footprint (Site 5 is only at the edge of that catchment).

B: Downstream of the major stream fork of the Mangapepeke Valley (Mangapepeke Valley section of the alignment), this site would provide an example of the location for a substantial culvert¹ and potential adverse effects on upstream freshwater values. Epiphyte habitat can also be observed in the branches of large emergent trees in this area.

3. It is noted that the location of the Mt Messenger look-out appears to have been incorrectly identified on the Council's map. The second map attached to this Memorandum shows DOC's understanding of the location of the look-out (yellow triangle).

Position of Director-General of Conservation

4. DOC's submissions on the Applications state:

"A comprehensive management approach commensurate to the level of the adverse effects should be taken, prioritising measures to avoid, remedy and mitigate effects. Any residual effects should be dealt with through offset, or

¹ Ea13, culvert 12, 74 m length; Table 2.1 page 5 Technical Report 7b (Freshwater Ecology) AEE.

if offset is not attainable, through environmental compensation. Appropriate consent conditions must be imposed, to provide for this management approach.”

5. DOC sought that the applications be declined if the Applicant could not provide, through further information, adequate certainty that the adverse effects of the proposed activities would be avoided, remedied, mitigated, offset or compensated for. DOC noted that the Applicant's Supplementary Reports had only recently been received, so the submissions had not been informed by a review of those Supplementary Reports.
6. DOC has since reviewed the Applicant's Supplementary Reports. DOC's technical experts have also had a series of discussions with the Applicant's experts.
7. The New Plymouth District Council section 42A Report states:²

“I am aware that NZTA continues to liaise with DoC and Council ecological experts in an attempt to reach agreement on the approach to achieve positive ecological and biodiversity outcomes, and anticipate hearing evidence will address this. Recent discussions indicate that adverse effects on bats and herpetofauna are not able to be fully offset, and compensation may be appropriate.”

8. DOC continues to give priority to working on these matters with NZTA. However significant issues remain unresolved. At this stage, DOC's evidence is likely to raise many of the matters also raised by Council Officers. In relation to the biodiversity offset³, a key issue is that the Applicant's proposed offset only accounts for a measure of ecological integrity of vegetation removed. That is one aspect of the biodiversity that would be lost through the proposal. There are vegetation elements that will not benefit from pest management, and these have (appropriately) not been included in the biodiversity offset. Dr Barea's evidence will comment on that matter. Evidence for DOC will also comment on significant fauna values that cannot be offset, and for which the compensation proposed is currently inadequate.

² At [384].

³ Technical Report 7h (Ecological mitigation and Offsets), AEE.

9. In this context, recommendations in the section 42A Reports contain large caveats around section 6(c) matters. The New Plymouth District Council Officer's Report states:⁴

"...at the time of finalising this report, the mitigation and offsetting approach does not go far enough in the view of Council's expert ecologists Wildlands. There is also uncertainty as to NZTA's legal ability to implement offsetting on third part [sic] land."

10. That Report recommends that if adverse effects on ecology and biodiversity cannot be sufficiently addressed in evidence, the NOR should be withdrawn.⁵
11. The section 42A Report of the Taranaki Regional Council emphasises⁶ that the offset package proposed by NZTA is critical to the granting of the consent and "[t]here is a need for a very high degree of certainty around the proposed offsets to ensure sustainable management." That Report also states:⁷

"A review of the ecological affects assessment has been carried out by Wildlands on behalf of the NPDC and TRC. This review questions whether the area proposed for offsetting is sufficient to achieve the outcomes NZTA have identified. We anticipate there will be more discussion on this matter at the hearing."

12. Given all of the above, DOC has encouraged NZTA to seek an adjournment to allow sufficient time to resolve, or substantially narrow, the issues. DOC does not go so far as to seek an adjournment itself. Counsel will provide an update on these matters at the hearing.
13. DOC intends to call the following witnesses, and will proceed to make the necessary arrangements with the Hearings Administrator:

- 13.1. Rhys Burns – avifauna.
- 13.2. Lynn Adams – herpetofauna.
- 13.3. Eric Edwards – invertebrates.
- 13.4. Colin O'Donnell – bats.
- 13.5. Tom Drinan – freshwater ecology.

⁴ At [357], page 107.

⁵ At [385].

⁶ Page 7.

⁷ At [187].

- 13.6. Richard Duirs – erosion and sediment control.
- 13.7. Laurence Barea – biodiversity offsets and effects management.
- 13.8. Ben Inger – planning.

DATED at New Plymouth this 25th day of May 2018

A handwritten signature in black ink, appearing to read 'S. Ongley', written over a horizontal dotted line.

Sarah Ongley

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

