

## MT MESSENGER BYPASS

### Minute Three: Request from Nga Hapu o Poutama to furnish a Cultural Impact Assessment after the scheduled hearing timetable

#### Background

I have received a request from Nga Hapu o Poutama ("Poutama") to delay the completion of the scheduled hearing until after 24<sup>th</sup> August 2018, being their expected completion date for a Cultural Impact Assessment (CIA) they are working on.

As background, the hearings were initially scheduled for the period 11 June to 22 June 2018. At the request of the applicant and the Director General of Conservation, the hearing has been delayed and as advised in a notice of rescheduled hearing dated 13 June 2018, it will now be held in the period 1 to 3 August and 8 to 10 August, with reserve days set for 15-17 August 2018.

To enable a fair consideration of the Poutama request I forwarded it to the New Zealand Transport Agency (NZTA), as the Applicant and Requiring Authority, and asked them to respond to me regarding two potential process options for accommodating the receipt of the Poutama CIA in a manner that retained the scheduled 1 August 2018 commencement of the hearing.

I have received a Memorandum of Counsel for the NZTA on 25<sup>th</sup> June 2018 and this is attached to this minute. That memorandum sets out the request from Poutama in full and also the options that I asked NZTA to consider, so there is no need for me to repeat those in this minute.

#### Decision

After considering the request from Poutama and the background information and response in the Memorandum of Counsel from NZTA, I concur with the NZTA proposal to accommodate some additional time for the receipt of the CIA within the hearing timeframe which has already been set.

In summary:

- I decline the request for Poutama to delay the provision of the CIA until 24 August 2018.
- Poutama are to provide hard and soft copies of the CIA and that its author be allowed to present it at the hearing as expert evidence on either 8<sup>th</sup> or 9<sup>th</sup> of August 2018 (depending on when Poutama are scheduled within the hearing programme).
- NZTA will be given the opportunity to call witnesses to respond to the Poutama CIA the following hearing day (i.e. 9<sup>th</sup> or 10<sup>th</sup> August).

The reasons for this decision are:

- That there has been on going dialogue between NZTA and Poutama since November 2016;
- That budget provision has been made by NZTA to assist with completion of the CIA and this was agreed by Poutama on 4 May; and
- The period from budget approval on 11 May 2018 to presentation as evidence on the 8 or 9 August 2018 is 3 months which I consider to be a fair and reasonable timeframe for completion of the CIA.



Mr Stephen Daysh  
Independent Hearing Commissioner  
27 June 2018

**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

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**MEMORANDUM OF COUNSEL FOR THE NZ TRANSPORT AGENCY:  
DEFERRAL OF HEARING REQUESTED BY NGĀ HAPŪ O POUTAMA**

25 May 2018

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## Introduction

1. This memorandum is filed on behalf of the NZ Transport Agency ("**Transport Agency**"). It responds to the request made by Ngā Hapū o Poutama ("**Poutama**") that the hearing be deferred "*to accommodate the expected completion date of our [cultural impact assessment] report being 24 August 2018.*"

## Background to this memorandum

2. On 22 June 2018 counsel received an email from the Hearing Manager recording that the Commissioner had received the following request from Poutama:

*"Poutama have engaged Bruce Stirling to compile a cultural impact assessment for Poutama. The expected completion date is 24 August 2018.*

*This is a substantive report given the significance of the effects on Poutama. As a result we have engaged professional assistance to compile the assessment.*

*There were delays in NZTA providing project information including copies of the application and supplementary reports, and further delays in NZTA agreeing reimbursement of costs for the report.*

*We had expected that NZTA would have requested that the timing of this report be accommodated in the hearing schedule. We request a hearing date to accommodate the expected completion date of our report being 24 August 2018. NZTA have indicated they would need time to consider the report. We will be overseas from 2 September to 19 September inclusive."*

3. The Hearing Manager's email noted that the Commissioner is considering two options for dealing with this request:
  - (a) Ask that Poutama present this request at the start of the hearing (ie on 1 August 2018), then hear from the parties with their views on the request before making any determination; or
  - (b) Issue a minute in advance of the hearing providing for:
    - (i) Poutama to provide its cultural impact assessment after the hearing (ie on 24 August 2018);
    - (ii) Other parties to provide rebuttal evidence and / or further submissions in response to the cultural impact assessment ("**CIA**"); and

- (iii) The hearing to be reconvened (after 19 September 2018 in light of the availability issue flagged by Poutama) to address that material.
- 4. The Commissioner has asked the Transport Agency to provide:
  - (a) Details on the commissioning of a CIA from Poutama, including the timing of any agreement; and
  - (b) An indication as to whether the Transport Agency considers it would be prejudiced by either of the two options set out in paragraph 3 above.
- 5. Counsel address these points in turn below, along with the Transport Agency's position on the request to defer the hearing, and a proposed way forward.

#### **The commissioning of a Poutama CIA**

- 6. The Transport Agency has been endeavouring to facilitate the preparation by Poutama of a CIA in respect of the Project since November 2016. Discussions to that effect were ongoing through 2017 and into 2018.
- 7. On 19 March 2018, Mr Russell Gibbs on behalf of Poutama confirmed via email to Mr Rob Napier (the Transport Agency's Project manager) that it was in a position to engage Mr Stirling to complete a CIA.
- 8. In response, Mr Napier confirmed via email on 26 March 2018 that the Transport Agency would contribute to the cost of the production of a CIA by Poutama. Mr Napier's email made it clear that the CIA would need to be completed in advance of the hearing (then thought to be likely to occur in May) so that the Transport Agency could provide a meaningful response.
- 9. Mr Gibbs and Mr Napier exchanged further emails about a Poutama CIA, including in respect of the level of financial support the Transport Agency would provide for the production of the CIA. In an email dated 27 April 2018, Mr Napier again linked the delivery of the CIA to the start of the hearing (then scheduled for Monday 11 June).
- 10. The level of financial support the Transport Agency would provide was settled and agreed by 4 May 2018; on 11 May 2018 Mr Napier provided a formal billing code to Mr Gibbs.
- 11. On 5 June 2018, after noting the deferral of the hearing,<sup>1</sup> Mr Napier asked Mr Gibbs to confirm that Poutama still intended to produce a CIA. Mr Gibbs replied on 7 June stating that Poutama expected to complete its CIA on 24 August 2018.

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<sup>1</sup> On 31 May 2018, counsel for the Transport Agency and the Director-General of Conservation filed a joint memorandum seeking that the start of the hearing be deferred, and proposed a hearing start date of 9 July 2018.

12. Mr Napier responded to Mr Gibbs on 12 June 2018, explaining that the Transport Agency had just been informed that the hearing would commence on 1 August 2018. Mr Napier went on to set out the following:

*"What this means is that your cultural report will need to be provided to us well before then. In order to allow the report to be properly considered by the Transport Agency (and subsequently by the hearing commissioner), we would need to have the report by Friday 20 July. In order for us to be able to justify reimbursing the costs of producing the report, we need a commitment that the report will be provided on or before that date."*

### **Prejudice, and the Transport Agency's position on Poutama's request**

13. The Transport Agency does not support the options set out in paragraph 3 above for dealing with Poutama's request for the hearing to be deferred.
14. Both options would prejudice the interests of the Transport Agency. In particular, those options are likely to delay the completion of the hearing on the Project, and subsequently the timeline for delivery of the Project.
15. The NoR and consent applications were publicly notified on 27 January 2018. Like all other submitters, Poutama has since that date had the opportunity to consider the effects of the Project on its cultural interests. All application material was available on the New Plymouth District Council website from that date.
16. Moreover, the Transport Agency's willingness to contribute towards the cost of a Poutama CIA has been clear for some time. The precise amount the Transport Agency would contribute was agreed by 4 May 2018, nearly three months before the hearing is to begin.
17. Given this context, there has been (and still is) ample time for Poutama to consider and provide to the Transport Agency and the Commissioner fulsome information, including a CIA, in respect of the cultural impact of the Project on Poutama.

### **Proposed way forward**

18. Mr Napier's email of 12 June 2018 (as well as earlier emails to Mr Gibbs) emphasised the importance of the Poutama CIA being provided in advance of the hearing, to allow proper consideration by the Transport Agency and the Commissioner.
19. The hearing timetable calls for submitters' expert evidence to be circulated on Tuesday 24 July. The standard position is that the CIA should be finalised and circulated by that date, if it is to be considered as expert evidence. This

timeline is broadly in line with Mr Napier's email to Mr Gibbs of 12 June 2018, in terms of the Transport Agency's expectations.<sup>2</sup>

20. However, as an alternative to the two options set out by the Commissioner, the Transport Agency would not oppose the Poutama CIA being finalised and presented (as expert evidence if prepared and presented by Mr Stirling) when Poutama presents its case, on the understanding that the Transport Agency and any other parties be given the opportunity to call witnesses in response on the following hearing day.
21. Poutama's request correctly notes that the Transport Agency has indicated it would need time to consider the CIA. However, in the circumstances, the Transport Agency would be prepared to consider the Poutama CIA overnight, and respond the following day if necessary through evidence.<sup>3</sup> That would require Poutama being scheduled to present its case, and the CIA, on either 8 or 9 August 2018.
22. This alternative approach gives Poutama an additional two weeks, in comparison to the current hearing timetable, to complete its CIA. Poutama would have just over six weeks from today's date to complete its CIA and broader case.
23. In other words, that would give Poutama over five months since the NoR and consent applications were notified to prepare its case, and over three months since the specific amount of funding the Transport Agency's would provide for the completion of the CIA was settled.
24. Counsel submit that this gives Poutama ample opportunity to present its case to the Commissioner.
25. Counsel therefore request that the Commissioner make the following directions:
  - (a) That hard and soft copies of any CIA prepared for Poutama be provided to the Commissioner, the Transport Agency and the other parties when Poutama presents its case at the hearing;
  - (b) That Poutama be scheduled to present its case at the hearing on either 8 or 9 August; and

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<sup>2</sup> Noting that the updated hearing timetable including evidence exchange dates was provided on 13 June 2018, the day after Mr Napier sent his email to Mr Gibbs.

<sup>3</sup> The Transport Agency would of course also respond to the Poutama CIA as appropriate in closing legal submissions.

- (c) That the Transport Agency and any other parties have the opportunity to call witnesses to respond to the Poutama CIA on the day after Poutama presents its case at the hearing (ie on either 9 or 10 August).

**DATED this 25<sup>th</sup> day of June 2018**



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**D G Allen / T J Ryan**  
Counsel for NZ Transport Agency