

20th December 2018

**New Plymouth District Council
84 Liardet Street
New Plymouth**

Attn: Rachelle McBeth

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Mt Messenger Bypass Project: Notice of Decision of the NZ Transport Agency under section 172 of the Resource Management Act 1991

1. Pursuant to section 168 and 181 of the Resource Management Act 1991 ("RMA"), the NZ Transport Agency ("**Transport Agency**") gave notice to New Plymouth District Council ("**Council**") of its requirement for an alteration to the existing State Highway 3 ("**SH3**") designation in the New Plymouth District Plan (through a "**Notice of Requirement**"). The alteration to the designation is to provide for the construction of the Mt Messenger Bypass Project (the "**Project**").
2. At the same time as lodging its Notice of Requirement, the Transport Agency applied to both the Council and Taranaki Regional Council ("**Regional Council**") for resource consents necessary to provide for the Project.
3. The Council, jointly with the Regional Council, appointed a Hearing Commissioner to consider the Project and to:
 - (a) make a recommendation under section 171(2) of the RMA as to whether the Notice of Requirement should be withdrawn, or confirmed with or without modification and subject to conditions;
 - (b) make a decision on the resource consents.
4. In a report dated 10 December 2018, the Hearing Commissioner recommended that the Notice of Requirement be confirmed, subject to conditions. The Hearing Commissioner also granted all the resource consents applied for by the Transport Agency, subject to conditions
5. In respect of the Notice of Requirement for an alteration to the SH3 designation, the Transport Agency's decision is to **confirm the requirement**. The Transport Agency makes two changes to the conditions recommended by the Hearing Commissioner, addressed below. On that basis, **the Transport Agency accepts the Council's recommendation in part**.
6. A complete set of the final conditions, including changes to the version recommended by the Commissioner, is attached as **Annexure A**.

Changes made to the conditions by the Transport Agency, and the reasons for those changes

7. The Transport Agency makes two changes to the conditions recommended by the Commissioner:
 - (a) The Transport Agency does not accept the Commissioner's recommendation to include a lapse period on the alteration to the designation (Condition 3 in the Commissioner's version of the conditions); and
 - (b) The Transport Agency has decided to reinstate words in Condition 25(d) relating to the use of mesh drape associated with cut batters.

Lapse condition

8. The Commissioner recommended the inclusion of a condition providing for the lapse of the alteration to the designation, as follows:

"The designation shall lapse if not given effect to within 10 years from the date on which it is included in the New Plymouth District Plan under section 175 of the RMA."
9. The Transport Agency does not accept this recommended condition, and has decided not to include any condition providing for a lapse period in respect of the alteration to the designation.
10. The Transport Agency's position is that no lapse period may be imposed on an alteration to a designation. That position is based on the operation of section 181 of the RMA, which provides for alterations to designations. In particular, section 181(2) provides:

"Subject to subsection (3), sections 168 to 179 and 198AA to 198AD shall, with all necessary modifications, apply to a requirement referred to in subsection (1) as if it were a requirement for a new designation."
11. Section 184 provides for lapse periods for "*designations that have not been given effect to*". Section 184 is not applied to alterations to designations by section 181(2), and therefore there is no ability to impose a lapse period on an alteration to an existing designation. The designation itself (for SH3 in the vicinity of Mt Messenger) was "*given effect to*" long ago.
12. Additional detail and reasoning on this point can be found in the closing legal submissions for the Transport Agency (dated 30 October 2018) at paragraphs 170 – 175.

Condition wording on the use of mesh drape

13. The Transport Agency is reinstating the following words into Condition 25(d), which addresses considerations for the Transport Agency in ensuring the Project is constructed in general accordance with the Landscape and Environmental Design Framework:

"Minimising the visual impact of the mesh drape by avoiding drape in the lower 8m of cut faces, unless the Requiring Authority determines it is required for engineering or safety purposes, and exploring opportunities to configure the highway cross-section that might obviate the need for the mesh drape."
14. The reasons for this change to the conditions are that:

- (a) there was no discussion in the Commissioner's report about the omission of these words, and the Transport Agency considers it likely they were removed accidentally; and
- (b) in any event (and even if the words were removed deliberately), these words were agreed between the Transport Agency and NPDC, reflect the requirements of the Landscape and Environmental Design Framework, and provide appropriate guidance on the design of mesh drape¹.

Comment on Kaitiaki and Stewardship Forum Group

- 15. The Commissioner recommended amendments to the conditions relating to the establishment and operation of the Kaitiaki (and Stewardship) Forum Group ("KFG").
- 16. The Transport Agency has decided to accept these conditions as recommended by the Commissioner. In doing so the Transport Agency notes that it argued for an alternative form of KFG conditions during the hearing. However, the Transport Agency accepts that the Commissioner, having heard all the relevant evidence and representations, has recommended KFG conditions that he considers to be appropriate in the specific circumstances of the Project.

Yours faithfully



Kevin Reid
Acting Senior Manager System Design
NZ Transport Agency

¹ This wording was also included in the final Designation Conditions filed by the Transport Agency in closing submissions.

ANNEXURE A
Final set of Conditions