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Event: New Plymouth District Council Hearing -
Mount Messenger Bypass

Date: 9 October 2018

Before: Mr S Daysh - Hearings Commissioner

Witnesses: Mr H Milliken - Speaking to additional
evidence
Mr S Chapman - 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: Thank you very much. Welcome back to the reconvened hearing for the Mt Messenger Bypass project. It goes without saying we are in a much cosier environment today, which, yes, feels good in a way because I think everyone is right here and I'm really looking forward to a good day's hearing again. I do have some introductory comments to make before we get going with the hearing. So, I've got seven items to cover. Sorry, and the first item is Mr McKay needs to do some housekeeping.

MR MCKAY: Kia ora koutou. Just with the new venue here, so there's continuous tea and coffee there on the table. For toilets, just through these double doors immediately to the right is the women's toilet and then just around the corner and to the right is the men's. In the event of an emergency, the exit is through the restaurant and then down the external stairs. Thank you.

THE COMMISSIONER: Thank you. Actually, that's eight items I've got now. So, thank you very much.

Before I start with my introduction, can I just have some appearances today, just to confirm who is in the room and who is representing who today? Starting with Mr Allen, thank you.

MR ALLEN: Mr Allen and Mr Ryan representing the Transport Agency. Then we've got well, not quite the entire cast and crew of Fraggle Rock but we have Mr Chapman, Mr Milliken, Mr Roan and also Mr MacGibbon in the crew, and also the project manager is present as well. So, that is the Agency crew.

THE COMMISSIONER: Thank you, Mr Allen.

MS ONGLEY: Ms Ongley for the Director General of Conservation.

THE COMMISSIONER: Thank you.

MS ONGLEY: Would you like the list of my witnesses?

THE COMMISSIONER: No, I think I recognise most of them so, that's good. Thank you.

MR HOVELL: Yes, Mr Hovell for Te Runanga o Ngāti Tama.

THE COMMISSIONER: Thank you, Mr Hovell.

MR WALDEN: Walden on behalf of Enright for Te Korowai.

MS MCBETH: New Plymouth District Council, Rachelle McBeth
and --

THE COMMISSIONER: Yes, Ms McBeth, thank you.

MS MCBETH: -- Mr Harwood and Rod Lansing(?).

KATHRYN HOOPER: Taranaki Regional Council, Kathryn Hooper.

THE COMMISSIONER: Thank you very much, Kathryn.

Right. So, the first thing I'd like to say is a big welcome back to the reconvened hearing. It's very clear to me that there's been a lot of hard work going on behind the scenes and verifying some of the key issues more and more as we go along. So I'd just like to thank everyone for their efforts, and, as I said, we're looking forward to a good positive day today.

Just before I carry on. Mr McKay, is the recording actually happening, do you know?

MR MCKAY: We understand it is. The technical people just came in before.

THE COMMISSIONER: Okay, all right. So we will just assume it is. Just on the matter of the recording of the hearing, to let all parties know I have actually asked Ms Straka, the Hearing Administrator, to prepare a transcript for me based on the recordings. The reason for that is as a sole commissioner it's pretty difficult for me to be asking questions and taking really solid notes all the way through, and while Mr McKay is taking some good notes, that transcript is going to really help me in my decision making and writing. So I just thought I'd let the parties know that that will occur; there will be a written transcript which I will have. I don't propose to issue it to the other parties, I think you are all taking good notes. It's just a separate matter I would like to let you know.

One more matter is I think everyone is aware that on 17 August, after the last stage of the hearing was adjourned, Mr McKay and I did a site visit with Mr Pascoe over the Pascoe property. It was a reasonably fine afternoon but there was a fair bit of water lying around. So, for those of you that have been in that valley, you will be pleased to know that we got pretty muddy boots and it was a big afternoon. By the end of the day I was trailing about 300 m behind the fitter Mr McKay

and Mr Pascoe. We certainly saw a lot to give us an appreciation of that particular part of the project.

I do have a note from Ms Straka about Mr Stirling's report which he gave in evidence. Ms McBeth, you might be able to help me with this. Apparently there has been another version lodged with the Council, an updated version which I have not seen and whether anyone else has seen. Perhaps I will ask around how we should deal with that.

MS MCBETH: Ms Straka has provided some copies for you. They have come through an unusual means so I would suggest that we would use what was presented at the hearing. So there is another version with a later date, I just (several inaudible words) yesterday.

THE COMMISSIONER: Is there a copy up in the table, is there?

MS MCBETH: There should be, yes.

THE COMMISSIONER: So this has a date of 31 August. I will take just some comments around the room on this. My initial indication is that we had expert evidence from Mr Stirling on the basis of what he presented and I am not minded to accept an

updated version. I am not sure, because it is not tracked, what might have changed or not. So, just perhaps starting with you, Mr Allen, do you have a view on that?

MR ALLEN: In the same camp, sir, in terms of haven't seen it obviously but equally Mr Stirling would not then be present. He's given his evidence so he's had his turn and to the degree there was anything substantive it's probably more an issue for my friend, Mr Hovell. But the issue with that is just one of fairness and timing of the process and what response, if any, may be required to it. So, given that he's presented his evidence and had extra time; you may remember the applicant allowed extra time for that to happen, my position at present is in the same camp, that it should not be allowed.

THE COMMISSIONER: Mr Hovell.

MR HOVELL: Yes, a similar position for myself, Commissioner. So, haven't seen the document, was not aware it was being lodged. I think the other point is that anyone who has already gone to the effort of engaging an expert witness to respond to a report, that was produced by Mr Stirling at the early hearing and presented by him then, and that report is due to be

presented today from that expert. So, I would proceed on the basis that that is the evidence before the Commissioner.

THE COMMISSIONER: Any other comments from anyone else? Okay. So, look, the record will show that there is another version, which has been lodged with the Council, dated 31 August 2018. While it may be helpful for future processes, that will be disregarded for the purposes of my decision making. Thank you.

So, just looking at the -- no. I think I'll turn to the minute 5 I issued on Sunday evening. So, a few of us had a busy weekend, including me and Ms Straka, just looking at the various submissions which we have received. Thank you very much to counsel who have taken the opportunity to provide me a submission on that minute. I wanted to provide that opportunity because we are at the end of the process. It has been, from my point of view anyway, very respectfully undertaken so I just want to make sure I have not missed anything and we do have an opportunity to get the very best information in front of me.

So I set out some directions. Perhaps we should go through each of those and just check them off. The first one relates to the supplementary evidence of Mr Milliken. Just so everyone is aware, I was very aware of the importance of that meeting with

the various parties, the fact that some people had turned up that weren't expected, from the Agency's perspective. There wasn't any good, fair, accepted record of the meeting, and certainly when I had evidence on that I was not intending to give any particular weight to that meeting or the outcomes; I saw it as being a property negotiation meeting primarily. Therefore, I think just for fairness to everyone, while, you know, I understand why Mr Milliken would want to set the record straight I just don't think that adds anything to my decision making so my proposal is that we strike that out.

I think with that proviso, Mr Allen, that is acceptable to the Agency?

MR RYAN: Yes. Sir, you would have seen we filed a short memorandum in response to your minute yesterday and in simple terms, sir, yes, that's correct. If you are inclined not to have particular regard to what might or might not have happened at that meeting then the Agency and Mr Milliken are happy for that portion of his evidence to be disregarded.

THE COMMISSIONER: Thank you Mr Ryan. I can certainly provide that assurance; I will have no particular regard to any evidence regarding that meeting. Thank you.

So, Ngāti Poutama had asked to present today. I have made a decision, again based on my own thinking but also an email Mr Roan gave me that there really isn't an opportunity for submitters to enter the hearing again and make further submissions, other than on evidence presented in relation to the further information that NZTA has supplied associated with conditions and the management plans. So, I have declined that request to appear. I don't think anyone has made any submissions on that. Thank you.

Third point was a request to adjourn our hearing again due to a bereavement in Mr Gibbs' family and, again, I have made a decision that, on the basis of fairness and reasonableness, we obviously are proceeding today and I have received no submissions on that.

Ms Ongley, Dr Drinan, is he here today?

MS ONGLEY: No, sir, that was simply an offer for him to answer any questions. We weren't attempting to put new evidence forward. The conditions that he has commented on are on the basis of the evidence he earlier filed. So he isn't attending today and we will accept your decision on that.

THE COMMISSIONER: Thank you very much. Mr Hovell, Mr Thomas, we have his evidence and he is on standby to talk to us later in the day. He is Tel Aviv, I understand.

MR HOVELL: He is. So he's scheduled to teleconference in and I understand from Ms McBeth that there are arrangements for some sort of computer facility to conference him in. That is scheduled for 2.30 our time, which works out to be 4.30 in the morning for him.

THE COMMISSIONER: Okay. I hope he's an early riser.

MR HOVELL: That's essentially should you have any questions for him.

THE COMMISSIONER: I have read that and I think it would be useful to have a brief discussion. Thank you.

Mr Silich, again, no leave had been requested for the late filing of evidence but I see you have filed a statement.

MR SILICH: I have subsequently sought leave for a memorandum and attached that statement to that application for leave. So it is in your hands.

THE COMMISSIONER: I have read that brief statement and it is helpful. I think I can certainly justify the late receipt of that on the basis that other parties have provided evidence the day before hearing. So, on balance, I will amend that direction to allow Mr Silich to present that statement.

MR SILICH: It had been noted that in the minute you've noted that you could seek leave so I'm just taking that opportunity.

THE COMMISSIONER: Thank you very much. All right, any other comments about the directions on minute 5? Very good.

MR ALLEN: Did I hear you had a transcript of Mr Thomas's?

THE COMMISSIONER: No.

MR ALLEN: I did not find anything on the web.

THE COMMISSIONER: I have received an eight-page statement of evidence. Is that on the web?

MR MCKAY: It went up on to the website, I think yesterday evening.

MR ALLEN: We have not found it.

THE COMMISSIONER: Yes. So what we are hearing, I think, in the afternoon, just by the programme so if someone can provide a copy that would be good.

MR ALLEN: I do have copies of those.

MR MCKAY: Thank you.

THE COMMISSIONER: Again, the last matter I want to talk about is, having read all the evidence and the refinements that have been going on around conditions in the management plans, I'd like to provide an indication of how I'd like to proceed with that and, again, seek some views around the table about this proposal. I'm not 100 per cent fixed on it but I think it would certainly help me and the parties move the issue forward another step.

I am proposing that at a suitable time over today, it will be today, but using the reserve day tomorrow as well, that the four planners should convene and prepare a joint witness statement formally relating to the sets of conditions and the management plans. Again, it's not 100 per cent decision for me yet but I am inclined to want to, if the applications are to be granted by me, to grant them with approved management plans. They have been prepared on that basis and I see it as my role as a decision maker to assess all the information. I think I've got enough information, if I do grant the applications and the notice for requirement, to do so on the basis of approved management plans.

So my proposal would be for the four planners, so that's Mr Roan for NZTA, Mr Inger for DOC, Ms McBeth for New Plymouth District Council and Ms Hooper for the Taranaki Regional Council, to convene a session as expert planners and provide to me a joint witness statement with another updated version, I suppose, of the conditions of management plans. My thinking is that I would like to have any disagreement clearly recorded as to differences on particular conditions or management plan wording, and in doing that - and if this is agreed after my proposal - if the four planners could look at reasons for why they are choosing a particular difference of conditions or

wording, but using the Newbury principles of what sets full and fair conditions as a reference point for why they may prefer, either individually or collectively, differences in wording.

So that is my proposal. I just would quite like to, again, go around the room and see whether that might be acceptable, and, if so, we should probably think about when that might be able to be done seeing that everyone is around about at the moment. So starting with you again, Mr Allen.

MR ALLEN: Thank you, sir. In terms of that: totally open to it. There are, as you'll be aware from having read it, fundamental technical differences between DOC and the Agency on the conditions and the various red line sets you've got. A lot of those come down to management plans and certification, etc, and some of those come down to the role of DOC throughout and the Ecological Review Panel as well. So, to the degree those could be done, certainly. Mr Roan is available and is available tomorrow morning as well.

Potentially what it could be is, I think it would assist all the planners for us to get through the other non-planning material today and to potentially hear each other talk still; but in your hands as to whether we set the planners aside until

tomorrow but potentially have them heard today as well. That way they can hear each other's but equally it might be more efficient, thinking off the top of my head, if they sat down and did that together. But certainly hear all the evidence first and --

MR RYAN: At least the technical evidence.

MR ALLEN: -- I think it would assist, too, to hear the Council's technical evidence as well, to the degree there may be any technical evidence. I'm not sure quite where the Councils will be with that. Then could adjourn, have the planners' conference and that would be this afternoon and tomorrow morning potentially. They could then report back just before lunchtime or after lunch and then we could close.

THE COMMISSIONER: The other thought I had was to run a hot tub this afternoon with the planners. Does everyone know what a "hot tub" is? It is not really a spa bath that everyone jumps into. It's a funny term but it's a technique that the Environment Court and other decision makers quite often use where there are questions of experts from decision makers relating to the same subject. It's really just putting them in

a group together and then I would ask a question and then seek clarification from each of those experts.

But the reason I would quite like the joint witness statement process is it gives me a bit more security that I've got something written down and gives final positions. The planners, to me, are used to writing conditions and looking at the positions from a -- you know, bringing technical matters to hand. So that certainly would be very helpful. Thank you, Mr Allen.

MR ALLEN: Just with that empanelment type idea, something you may wish to consider, sir, is whether there's guidance you could give or extra assistance you could get from doing that before the planners go off in conference, and then potentially you could do it again when they come back. It depends on where things get to and that is another option, is you could hot tub, conference, hot tub.

THE COMMISSIONER: I think, again, from my own reading, that the positions are pretty clear and with good reasons. I certainly appreciate the various expert positions from the various technical experts and they are very clearly written down. So, my preference would be probably to make the most use of the time

and get the planners going with the joint witness statement process. So, look, thank you. Ms Ongley.

MS ONGLEY: Yes, sir. With the conditions, that seems like a good idea. I understand, from Ms McBeth, that the New Plymouth District Council at least might be red lining the conditions for DOC exchange, which was the NZTA conditions DOC comments. So then we might have NPDC comments on top of that, which would be very useful to start with. But I have strong reservations about doing that with the management plans without technical people here because the management plans are so technical. For example, the biosecurity part of the management plans received at the end of last week, I don't think Mr Inger should be put in a position where he goes through the wording of things like biosecurity without the technical with him here. But I understand where you are trying to get to.

THE COMMISSIONER: Well, is it potentially that the ecological experts could, in parallel to the joint witness statement, in relation to the ELMP on the same basis that all the planners are looking at the conditions, and then that would -- certainly I know Mr Shaw is here and other experts. So I would certainly appreciate the advice in writing, in that sort of format, and where there are differences and contests between different

approaches or wording, it would really give me the benefit of that experience. So, that is an additional option.

MS ONGLEY: Yes, that would be an additional option but of course they are not all here today.

THE COMMISSIONER: Okay, but do you need to have every flavour of ecological person here? I thought Dr Barea, Mr Shaw, certainly NZTA's experts; there might be enough of a quorum to do justice to that.

MS ONGLEY: Yes, possibly. I suppose what they could do is they could say where they have reservations in terms of where they don't feel that they can comment on some particular detail (inaudible).

THE COMMISSIONER: Sure, okay. Well, that would be helpful. So, thank you, Ms Ongley. Mr Hovell, any comments?

MR HOVELL: No objection to the process in that the Rūnanga does not have a planner as such. Again, as to the comment on the technical experts, they have had the assistance of Mr Shapiro from the Ecological Society. So, it might be a case of seeing if there's anything he wishes to comment on here that would meet

the process. He's not here or available and we'd need to check that.

THE COMMISSIONER: Even if it could be moved forward that there was a document that had been subject to a joint witness process with the ecological experts, whoever can be made available, and if it does have reservations in it, that there are still some things that might need to be checked or should refer me to particular evidence that I've already heard. As a roadmap that would be very helpful, I think.

MR HOVELL: It would be useful if there is some sort of document that comes out just to run it by Mr Shapiro and see if he has any comments on it. I will.

THE COMMISSIONER: Yes. Okay, thank you. Any other comments on that proposal before I make some suggestions? All right. Well, look, I would like to proceed and the timing is open because I know people are busy and may not have expected to be around tomorrow but tomorrow was a reserve day. So I wonder after - do we have a morning tea break? I think we do - after morning tea whether various parties could convene and suggest a timing timeframe. If it can be done this afternoon and tomorrow and with a report back tomorrow afternoon, you know, that would be

my preference. So that would be a planners' conference looking at the particular conditions and an ecologists' conference producing a joint witness statement relating to the ELMP wording particularly. All right, I will hear back after morning tea.

Right, I think we're ready to start and the order of the hearing, we start with NZTA. So, Mr Allen.

MR ALLEN: Excellent. Mr Milliken is the first witness. I do not think we have got any more admin matters to deal with.

MR RYAN: Sir, we have summaries for the other Transport Agency witnesses but obviously Mr Milliken's evidence is now only a couple of paragraphs long so we didn't prepare a summary for him. Starting at section 16.

THE COMMISSIONER: Thank you.

MR RYAN: My intention was just to read four paragraphs. The AE for the project and Mr Boam's evidence state that the car parking provision at the entrance to the Mt Messenger and Kiwi Road tracks along the existing State Highway 3 will be improved as part of the construction of the project. The previous version of the designation conditions proposed by the Transport

Agency provided for the design of that improved car parking situation to be detailed as it confirms through the outlined plan of works process.

In an effort to avoid any future misunderstandings about what should be provided, I note that the intention is that the existing informal pull-off area at the entrance to the Kiwi Road track will be upgraded. In particular this area will be levelled and appropriately surfaced and five formally marked out car parking spaces will be provided. I attach a plan showing the proposed upgrade to this car parking area that was in Appendix 2. You'll see five car parks in the pull-off area.

This upgrade will provide improved car parking access for the entrance to the Kiwi Road track. The rest area parking which provides car parking for the Mt Messenger track will remain unchanged. The Mt Messenger track is further up the road and people come from the rest area at the top of the hill.

As explained by Mr Napier in his evidence-in-chief, the existing State Highway 3, where the entrance to both tracks and the car parking area that we are proposing to upgrade is located, will be subject to a formal revocation process. I understand the revocation process is likely to address,

including through consultation with New Plymouth District Council, access to the tracks. Depending on the outcome of the revocation process it's possible there will ultimately be an alternative or additional arrangement for access to the tracks, including car parking access. In my view it's a matter best addressed through the revocation process.

THE COMMISSIONER: Thanks, Mr Milliken. Am I correct in reading that a proposal is indicative but will be finalised as part of the revocation process rather than having this plan attached and referred to as the condition of consents?

MR RYAN: Yes, to my understanding that is the work we will do for the project, is the five car parks which is really only get in there and put some gravel down and maybe an all weather surface and put some line marking down. The revocation process might look at that and how the whole thing works.

THE COMMISSIONER: My memory of that area is that you could probably squeeze five car parks in there but they would be all over the place at this stage. So you'd be looking to formalise that. This road will not be busy, will it, it will just be a little access road?

MR RYAN: Exactly.

THE COMMISSIONER: So, is the Agency happy for that to be locked in by way of conditions, you're suggesting it's not an outline plan process? Is that a condition matter?

MR RYAN: Perhaps you could speak to Mr Roan about that, sir. But my understanding is yes, it is going to be conditioned that that arrangement as per that plan will be provided as part of the project, and then there's a revocation process which might come up with an alternative down the line, so to speak.

THE COMMISSIONER: Thank you. Well, I will talk to Mr Roan about that when he is on. So, thank you very much, Mr Milliken.

MR RYAN: Thank you.

MR ALLEN: Okay. Sir, the next witness is Mr Chapman.

MR RYAN: Sir, Mr Chapman has prepared a summary of his latest evidence, which we will hand up.

MR CHAPMAN: Sir, I have a four-page summary.

THE COMMISSIONER: If you could read that, that would be useful.

MR CHAPMAN: Yes, so I will read that out.

Proposed long-tailed bat monitoring programme and condition. During the adjournment I have worked with Mr MacGibbon and the project team to develop a programme for long-tailed bat monitoring over the coming summer season. The purpose of the programme is to confirm the intended PMA contains long-tailed bat maternity roosts, and to therefore confirm that the pest management programme will benefit long-tailed bats.

A detailed condition provides for the monitoring programme and the subsequent confirmation of the final PMA. The condition, (a) sets out the purpose of the monitoring programme; (b) provides for the methodology and parameters of the monitoring programme; (c) provides for four possible scenarios depending on how many maternity roosts are identified and where they are located for confirming the location of the final PMA; and (d) requires increased intensity of pest control to be provided at up to five maternity roosts which, in practice, will reflect the five most important roosting areas that are located within 500 m of the edge of the PMA.

Methodology. Long-tailed bat trapping and radio tracking methodologies are well-established with best practice methodologies described in DOC's best practice manual of conservation techniques for bats. The proposed monitoring programme combined with the ELMP, which includes a detailed methodology, provides for 30 nights of trapping during suitable conditions and the use of trapping and tracking techniques designed to maximise the effectiveness of the programme. The ELMP has also been updated so that the information gathered through the monitoring programme will be utilised during implementation of the vegetation removal protocols during construction.

For the reasons set out in my latest evidence I consider that the methodologies, trapping approach and effort proposed for the programme are appropriate given the objective of determining whether the PMA provides important roosting habitat for bats. The proposed trapping and tracking programme is highly likely to resolve the present uncertainty as to the presence of bat roosts within the PMA.

The four scenarios are explained in my latest evidence. In simple terms they are, (a) automatic confirmation of the intent of the PMA as the final PMA where a clear indication that the

intended PMA provides roosting habitat that has a high degree of relative importance in the wider area, that is scenario 1; (b) a process of considering and adjusting the boundaries of the final PMA within the wider PMA or study area where the thresholds for automatic confirmation of the intended PMA are met but at least two maternity roosts are located in the study area, scenarios 2 and 3; and (c) a fall-back position of shifting the final PMA to the alternative PMA, being the DOC land located at Waitaanga Valley, and that is scenario 4.

THE COMMISSIONER: Can we just pause there? So, you've got four figures with your evidence that outline the geographic extent of these areas; that's correct, isn't it?

MR CHAPMAN: Yes, they are actually in Mr MacGibbon's evidence.

THE COMMISSIONER: Oh, they're in Mr MacGibbon's evidence. That's right. So, look, I'm probably better to talk to Mr MacGibbon about that so you just carry on. I have got the gist of it.

MR CHAPMAN: I do have an understanding of it if you --

THE COMMISSIONER: Yes. I think I will save those for Mr MacGibbon. Thank you.

MR CHAPMAN: Yes. So, scenarios 2, 3 and 4 require careful consideration of the factors relevant to confirming the final location of the PMA by the project bat expert, in consultation with DOC's bat expert and other project ecologists, in the case of scenario 4. That consideration will be set out in a report that will be subject to review by an independent bat expert, further comment by DOC, as well as by the Kaitiaki Forum Group, and certification by NPDC. In my view the scenarios are an appropriate basis for confirming the location of the final PMA, and the condition provides for a robust process for that confirmation.

With respect to scenario 4 the Waitaanga Valley is a known area of long-tailed bat activity and DOC has identified existing short-tailed bat roosts at this location. In the hearing DOC raised this area as an appropriate location for the PMA. Protecting the known bat habitat at Waitaanga Conservation Area would provide a meaningful benefit for bats, however my strong preference is for a like-for-like approach in which benefits for long-tailed bats, as well as other fauna and vegetation, are achieved as close as possible to the location of the adverse

effects. In terms of the remaining issues with DOC, DOC accepts that the bat monitoring programme is based upon an appropriate method for identifying maternity roosts and confirming the final location of the 3,650 ha PMA. However, DOC considers that ten maternity roosts located by radio tracking should occur at least 1 km within the PMA edge, ie within a core beyond a 1 km buffer to substantiate the PMA as suitable roost habitat for bats.

I think this is an unnecessarily conservative approach and note that (a) most bat roosts are located within 500 m of a forest edge. It would be very unlikely for the intended PMA to be confirmed if only roosts more than 1 km inside the PMA edge count towards the tally of ten required; and (b) achieving a tally of ten roosts within DOC's proposed small core area of the intended PMA would likely require more than 200 roosts would need to be found around the perimeter. It is an enormous number of roosts and shows the exacting level of certainty in bat population levels being sought by DOC before they are willing to support the PMA.

If I can just clarify there, that is based on published research that shows 95 per cent of bat roosts occur within 500 m of the forest edge. They are essentially a forest edge species. If 95 per cent are around the edge that only leaves 5 per cent

to occur further than 500 m into the PMA. DOC's alternative position is that if any of the ten identified roosts are within a 1 km buffer, a rat RTI or trapping index below 1 per cent and mustelid detections of zero detections must be sustained for them to count towards verification of the PMA.

Mr MacGibbon, in his second supplementary evidence, explains why he does not accept that position. I note that (a) applying a less than 1 per cent rat RTI in determining the suitability of protecting areas with pest management would rule out the protection of long-tailed bat populations across large areas of New Zealand especially the North Island. The ELMP has been updated to provide for increased intensity of pest control at up to five maternity roosts which will reflect five of the most important roosting areas that are located within 500 m of the edge of the PMA, as described by Mr MacGibbon.

The increased pest control intensity at the PMA edge and around important maternity roosts, which also increases protection for important roosting areas, is appropriate to address the risk that the effectiveness of pest control may be compromised for roosts near the PMA's outer margins. As explained by Dr O'Donnell at 2.11 of his most recent evidence, bat roosts typically occur in clusters, and this is in line with

my own observations. On that basis I expect that the additional pest control at up to five important maternity roosts will benefit substantially more roosts than just those identified during the single season of radio tracking. Adopting DOC's approach would, in my view, carry a very high risk of leading to the intended PMA and even the wider PMA and study area being rejected, even if it would protect important bat roosting habitat near to the location where the project's assumed adverse effects on bats will occur.

The bat management chapter of the ELMP has been updated to take into account DOC's feedback and Dr O'Donnell's supplementary evidence that the VRPs should be able to be applied to trees in the range of 15 cm to 80 cm diameter, at breast height, at the discretion of the project bat ecologist. That amendment is highlighted in the ELMP version being provided to the hearing. I support that amendment.

Now, in terms of the benefits of the PMA for bats: the proposed pest control, in perpetuity, will provide benefits for long-tailed bats if maternity roosts are present in the final PMA. If the PMA is important long-tailed bat roosting habitat, then a 3,650 ha pest control programme, in perpetuity, with provision for additional intensity near the PMA edges and at

important roosting areas carries a very low risk of failure to halt or reverse the local population decline predicted to occur over the next ten years. At the very least, the existing population decline will be slowed sufficiently to provide benefits commensurate with the project's adverse effects.

I have prepared a graph to illustrate this point, as explained in my evidence. This is appendix 1. If you turn to the back, Commissioner, you'll see the graph that I'm referring to there. I think this is at the crux really of the difference in opinion between myself and DOC's expert. So, a lot of the discussion seems to be around that population stable line, the one that goes horizontal. The other solid line there - all the others are conceptual - but the other solid line is the existing predicted decline. So that forms the basis of the latest update in the threat status of the long-tailed bat. Where pest control isn't occurring we're getting a massive decline in these creatures' populations and it is driven by predator abundance, and the only way of reversing it is predator control.

So a lot of the technical debate that you've been having to get your head around is around that line, that population stable line, and you're hearing arguments about are we at or above or below that population stable line. But against a backdrop of a

70 per cent decline in ten years, I guess the question is do we actually need to get to that population stable line to offset, mitigate, compensate for the effects of the project; because we are talking about benefits over thousands of hectares and an effect over a couple of dozen hectares. So I hope that graph has helped summarise my view on the bigger picture.

THE COMMISSIONER: Thank you, that is helpful and obviously Ms Ongley and her team would have seen that for the first time just now so I'll be asking them some questions about that too.

Can I just ask a question about the - I'm never quite sure - is it the X axis that goes up?

MR CHAPMAN: Sorry?

THE COMMISSIONER: The X axis, is that the one that goes up?

MR CHAPMAN: Yeah. That is just the size of the population in 2017. So, the latest update of that long-tailed bat threat status applies from 2017, okay, and that document predicts a 70 per cent decline in the coming ten years. So, you're looking at the population in 2017 is at 100 and the 30, that's where we're predicted to end up in ten years from 2017.

THE COMMISSIONER: So that's nationwide that's not just in our area?

MR CHAPMAN: That is nationwide, yeah. So this is conceptual but this is what we are seeing where there is no pest control. So we've got no reason to think that there is anything different going on with this population because there's no large-scale pest control except for within the Paraninihi.

THE COMMISSIONER: There are other pest control programmes around New Zealand though, aren't there?

MR CHAPMAN: Yes, there are. Do you mean for bats?

THE COMMISSIONER: Yes.

MR CHAPMAN: Yes. As far as I know there are at least a couple by DOC. So there's one in Fiordland and there's one in Pureora.

THE COMMISSIONER: Yes. Okay. So just to be 100 per cent clear, we have heard that the threat status of long-tailed bats has moved from critically threatened, or what's the measurement?

MR CHAPMAN: It's moved to now nationally critical so that's pretty much as high as it can go.

THE COMMISSIONER: So it is really important that we do really give good consideration to this issue. Obviously it's the key issue that's still before me.

MR CHAPMAN: Yes, absolutely. I think large-scale predator control is the only tool that we have in the kit really to reverse these declines and we can muck around with vegetation removal protocols but all that's doing is really just mucking around. You can see those two lower dashed lines there, and they are just conceptual and indicative but, at the end of the day the only thing that we've got that we know works is large-scale predator control.

THE COMMISSIONER: Right. Well, I'll certainly be asking Dr O'Donnell about this as well but that's a helpful schematic to me anyway. Thank you.

MR CHAPMAN: Yes, and just to clarify, the project objective is not to seek a decline, we would ideally like to be above that population stable.

THE COMMISSIONER: Is the project objective written clearly in the ELMP in an objective way? Because I did have some questions about that.

MR CHAPMAN: I actually don't know but it's certainly been -- the project team's approach throughout has been a no net loss and a conservative approach to assessing effects and we've done that through the process, I believe. We've certainly assumed significant adverse effects within the footprint and we've proceeded on that basis. I guess the question for you, Commissioner, is whether you think the benchmark needs to be an increasing bat population or a substantial slowing of the decline and whether a substantial slowing of the decline represents enough of a benefit to offset the project's effects. I would argue that it would; that the project is not solely responsible for a massive decline, it's predators, and to ask the project to then reverse the effects of a predator issue, rather than just the effects of the project, I think that's a bit unfair.

THE COMMISSIONER: Yes. Dr Barea has got some very helpful evidence for me about that particular point too. So, I can carry on the discussion with him.

MR CHAPMAN: Yeah.

THE COMMISSIONER: Mr Roan, just for your reference, you know, key objective, is that clearly enough enunciated in the management plan? Because you'd either be looking to achieve something in a management plan that needs to be pretty crystal clear, I think, for me to have that clear in my mind anyway.

So, thank you. Carry on.

MR CHAPMAN: Yeah, okay. So, in my mind it's always been no net loss is the outcome I've been seeking but that still may leave you with a decline.

In contrast to Dr O'Donnell's opinion that achieving a stable or increasing bat population is a required outcome of the project, 2.2 of his supplementary evidence, my view is that the required outcome is a net improvement for bats above the current situation. The recent threat status update for long-tailed bats is based on a 70 per cent population decline in the ten years from 2017. On that basis a substantial improvement that more than mitigates or compensates for the effects of the project may not necessarily achieve a stable or increasing long-tailed bat population. Large-scale pest control is the only method known

to halt or reverse long-tailed bat population declines. I'm not aware of any other existing or proposed project to protect a long-tailed bat population with intensive pest control, in perpetuity, across such a large area in north Taranaki.

THE COMMISSIONER: Can I just stop you there? So are you saying the context is just north Taranaki or is that a national context you are talking to me about there?

MR CHAPMAN: Yes, that is just north Taranaki that I'm looking at there. So, I guess the question I'm weighing up is: is the bat population in north Taranaki better with or without the project. Without the project no one is stepping up to say, "Hey we're going to do 3,500 ha of pest control". Here we've got a project. Yes, it's going to have some adverse effects but they're the only proposal, or this project is the only proposal that will come close to benefiting long-tailed bats in a substantial way in this part of the country. So it is north Taranaki specific.

THE COMMISSIONER: Thank you.

MR CHAPMAN: It is impossible to completely eliminate uncertainty but very reasonable steps to appropriately reduce

uncertainty have been incorporated into the revised consent conditions and ELMP. In my opinion the local long-tailed bat population will likely be significantly better off with the project than without it.

On to lizards: following discussions with Ms Adams, and in order to provide guaranteed benefits for lizards, the Transport Agency now proposes to compensate for the assumed adverse effects on lizards through the provision of \$200,000 of funding to be administered by DOC towards lizard research. This funding will likely go towards an existing research programme aimed at developing methodologies and strategies for controlling mice to benefit native lizard populations. Some, but not all, of the changes to the proposal sought by Ms Adams in her supplementary evidence, in terms of salvage during construction, have been adopted in the updated ELMP being provided at the hearing.

The proposal is now that striped skinks not green gecko, as previously proposed, will be salvaged from the project footprint and translocated into suitable habitat within the pest-free Rotokare Scenic Reserve and released under closed-cell foam covers. All other lizard species will be translocated to suitable habitat within the PMA. While Ms Adams seeks that post-release monitoring is carried out, no monitoring is

proposed. It is highly likely that few lizards will be translocated and the available monitoring methodologies lack the precision required to generate meaningful population trend data.

Soft release pens are no longer proposed because they are not proven to be effective for striped skink and their construction is unlikely to be feasible within the older taller forest preferred for striped skink release habitat. For all other lizard species to be released into the PMA, pens are not required because dispersing lizards will still encounter resident lizards within the PMA, as stated by Ms Adams at 2.2 of her evidence. Overall, with the proposed herpetofauna monetary contribution, translocation and vegetation removal protocols, I consider that the effects of the project on herpetofauna are appropriately addressed.

THE COMMISSIONER: Thank you very much. I do have a few questions for you based on your main statement of supplementary evidence that I have read and marked up. So I will take you to that. My first question is at paragraph 11 of your supplementary evidence where you provide an opinion that the risk of the PMA failing to protect important roosting habitat for long-tailed bats is negligible. That's your position?

MR CHAPMAN: Yes.

THE COMMISSIONER: I think you would accept that that's a professional judgement?

MR CHAPMAN: Yes, it is, and backed up by the monitoring that we did as part of the assessment of effects.

THE COMMISSIONER: I would like you to think about, on a scale of one to ten in your professional judgement, where you sit when you use the term "negligible", with one being negligible and ten being highly adverse. If you could give me a number and then explain why you think that is.

MR CHAPMAN: I would say less than one, so it would be a fraction. So, I base that on the fact that we have recorded good levels of long-tailed bat activity throughout the area, wherever we have looked. It isn't just the footprint, our surveys right from the start have been looking at a number of possible alignments and the further we go out we're going to keep finding that. So, as I have mentioned in my evidence-in-chief, previously in the hearing, these animals do seek out the bigger older trees.

Now, this patch of forest where the PMA is proposed is a great patch of forest. It's got to have a substantial amount of roosting habitat in it. It is substantially better -- I mean there's always a small chance but I would put that chance at less than 10 per cent chance, hence my less than one in terms of negligible; I think it's a very low risk and the process we've got in place for confirming whether or not that is the case is robust. It is only based on one season but if we get a few roosts, even if they're in the outer 500 m of the PMA, that is an indication that it is an important roosting area and over several years, if we were to continue that radio tracking, we would likely find dozens and dozens more roosts there.

So we're dealing with indications, but based on my professional judgement I would say negligible risk of it not being an important bat roosting area.

THE COMMISSIONER: Thank you. So when Mr McKay and I walked up the valley with Mr Pascoe, he pointed out a number of trees, large tree specimens. So those are the sorts of bat roosting -- I think he was aware that those were the sorts of areas that you'd been looking at. So it's the big -- they don't have to be big, I know, but it's those sorts of trees which you would be focusing on or is it a whole range of different trees?

MR CHAPMAN: It's a whole range of different trees, different sizes. In my experience they tend to seek out the biggest oldest trees in the landscape and so the trees that come down on to Mr Pascoe's property, they are often parts of clusters that extend up out of that valley and beyond the alignment. So it's typically only one or two of those trees in the clusters that are impacted and so we're talking, you know, a couple of dozen hectares of impacted forest versus 3,000 to 4,000 ha of great forest in the Waipaanga Valley, the Paraninihi project, again, fantastic bat activity through there, giant old trees through there; really, really good. But, yes, those big old trees in there we would look to target with the vegetation removal protocols.

THE COMMISSIONER: Yes. Right. I initially had a question about the different levels of bat experts but I think there's an appendix in one of the management plans or something I've seen from Mr Roan which sets out the different training levels. So that's answered that one. Acoustic lures: can you just explain what they are and how they work?

MR CHAPMAN: Well, in the simplest terms they are much like a bird squeaker for attracting in fantails, for example, but they

just operate at a higher frequency so we can't hear them. Essentially you use a high frequency speaker to play back social calls of the species concerned; and they are intelligent curious creatures and if they are flying along and they hear a member of their own kind calling them in, that can be used to attract them into traps. Widely used in America and the UK for attracting bats.

THE COMMISSIONER: So, they're not like a fish lure with a hook in it?

MR CHAPMAN: No.

THE COMMISSIONER: So the term "lure" is to lure them in rather than --

MR CHAPMAN: Yeah, correct. Yeah, acoustic lure.

THE COMMISSIONER: I'm pleased to hear that. All right, paragraph 9 again. You say that you are going to be using drone technology, which is being used more and more all over the place. Can you just explain how drones might help you?

MR CHAPMAN: Okay. So, when we trap bats we attach small transmitters to them and then we let them go and the next day they'll be hiding in a tree somewhere. But they could have flown in any direction so it's very difficult to move through this landscape. And so to send people on the ground into the forest when they don't necessarily know which direction to go, you will have seen on documentaries people holding up those aerials listening for the beeps. So that just gives them the direction.

The idea with the drone technology is that we can at least determine which sub-catchment they're in so we can fly the drone out from a high point, hover over a valley and listen for a beep. So there will be a receiver unit attached to the drone - and this is already up and running - transmitting a signal back to the operator, so we will at least know which catchment to start in to send in the ground teams, so it will just give us head start. It can take half a day to move a few hundred metres in this environment, so any little head start will help us make the most of the programme.

THE COMMISSIONER: Okay. Is there a monitoring protocol that has been agreed for this upcoming survey of bats this current

season or has it been prepared and agreed with the people involved?

MR CHAPMAN: Yes. It has been incorporated into the ELMP now.

THE COMMISSIONER: So that method is now pretty well agreed in terms of --

MR CHAPMAN: Yes.

THE COMMISSIONER: When you are going to be there, how many people, what you are going to do, that type of thing? That is in the ELMP?

MR CHAPMAN: Yes, so given the fact that the last attempt was not successful, the Agency is throwing everything at it this time, so we are looking at having a fulltime field bat expert.

THE COMMISSIONER: Yes, I have read all that, but is that protocol, is that ELMP method written in there, rather than any separate written protocol?

MR CHAPMAN: No, it went the other way around, so we tabled a standalone methodology for discussions with DOC and with the

NPDC bat experts. After we had discussed and refined and I believe got some agreement on that, then it went back into the ELMP. So the ELMP now reflects that, plus the updates.

THE COMMISSIONER: Reflects that. Okay, thank you. I am really looking at page 8 of your evidence, where you outlined the disagreements between yourself and the department around the 1 per cent RTI trapping in paragraph 25. At the bottom of paragraph 25 you use a term "sustained for them to count". What do you mean by the term "sustained" in that context?

MR CHAPMAN: The feedback we received from DOC indicated that they wanted the ten roosts to be in the course and further than a kilometre in.

THE COMMISSIONER: Yes, I understand that.

MR CHAPMAN: And that we could count roosts, so ten being the threshold to essentially accept that the PMA provides important roosting habitat. DOC's feedback was that, "Okay. If you want to count roosts in the outer edge as contributing towards that tally, you need a plan that achieves and sustains a 1 per cent trapping index". But to put that in context, usually trapping lines are done with 10 or 20 trapping units, so any particular

triggering, one rodent footprint or one rat footprint or trapped in any trap or tracking tunnel triggers that, so it is really difficult.

But sustaining that as well I think would be pretty much impossible. I guess I do not want to presume what DOC meant by that, but "sustaining" means that bats move around a lot and that that level of pest control would need to be achieved the whole time, because bats could be using that roost at any time.

THE COMMISSIONER: You have used the term "pretty much impossible", that if the Agency accepted the Department of Conservation's proposal, your evidence is that it would be impossible to sustain that in the PMA.

MR CHAPMAN: I guess if DOC are accepting the 5 per cent in the core as being capable of sustaining bat populations then that should be the benchmark for the edge as well. I would defer to Mr MacGibbon on pest control methodologies and monitoring indices, but certainly I think it would be incredibly difficult. I guess the way I see it is that it is setting the PMA up to fail, because achieving the 1 per cent RTI would be very difficult, yes, if not impossible.

THE COMMISSIONER: Okay. So I asked that question very specifically because you have heard me talk about the Newbury principles, which you may or may not have heard about. This is an old English case, I think, where a judge in England sort of looked at what was appropriate, how conditions on these sort of consents should be framed. I think one of the principles, from recollection, is that the condition has to be achievable, so if there are conditions for a management plan that is not achievable, that is not an appropriate condition. I will get other expert evidence on this point as well, but I just wanted to get your opinion.

MR CHAPMAN: Yes. I am comfortable with it as an aspirational target, but if it is a threshold at which the project succeeds or fails, I would be very concerned about that, and let us take into account here this is a forest edge species. If we cannot control pests and protect these roosts in the forest edge environment, then there is no point even trying.

THE COMMISSIONER: All right, thank you for that. That is all I had. Thank you very much for your evidence.

MR RYAN: Commissioner, before we move to Mr MacGibbon, you may have noticed in Mr Chapman's summary there that he did make

reference to a couple of updates to the ELMP. Those are actually following the receipt of the DOC evidence on Friday. Without wanting to over-complicate things, in the time available the project team has been working to refine documentation, including the response to that evidence, so what we propose to do is hand up and hand out some documents now. I just want to explain what those documents are and what the changes are, if that is appropriate.

THE COMMISSIONER: They will probably change again following the conferencing that is now going to occur.

MR RYAN: Of course, yes.

MS ONGLEY: I have to raise a concern, because in the break Dr Barea spoke to me about the process with the conferencing on the ELMP. We are getting another version of the ELMP now that has been updated following some points that DOC raised in its supplementary evidence. Our technical experts are not here. Dr Barea is saying he cannot really go over the whole ELMP without those people here. If it is a further period of time after tomorrow, which could be one week or two weeks, I think that would be fairer than having Dr Barea try to comment on something that has been approved through the hearing.

THE COMMISSIONER: Sure. Look, I think that is why I left it for counsel to discuss in the break about timing. Look, this needs to be done. If we are going to do these joint witness statements, they need to be fair and done well. I am very minded to make good progress because of the momentum, without spinning it out into the future, but look, I have been in the position myself - as I am sure many of you have - of conditions like this, which are detailed and complex, moving through a hearing like this.

When new evidence comes and new versions come along and there is good ideas and wording, the applicant will try and pick those up and then accept them and then move on, but I think where we are at, I think the general concept is agreed that we should be having these joint witness statements and expert conferencing. I would prefer not to receive any other versions at this stage because I almost --

MR RYAN: The key part of that is the witnesses will allude to where things DOC have raised in their evidence on Friday are being picked up.

THE COMMISSIONER: Yes.

MR RYAN: So the changes through the conditions are largely picking up those bits in the ELMP, doing the same (overspeaking)

THE COMMISSIONER: I will give Mr Ryan a chance. Again, I think because this is the first instance of hearing the fact that your witnesses are now sort of rebutting or commenting on evidence that they have received from the Department of Conservation last Friday, it is just where does it end? I think it is useful with the progress being made to actually record the position of the experts in their updated statements. With the process that I am proposing, there will be a chance for all the experts relevant to look at those positions through the joint witness statements.

MR RYAN: Certainly, sir, I think it is fair to say if we had anticipated a discussion as part of the next couple of days, it probably would not have been necessary to try and respond to DOC's evidence with updated versions. Obviously we understand that DOC has not seen these updated versions. I would stress that they are pretty minor changes, primarily attempting to accept some of the things that DOC have suggested, but if the consensus is it is best just to focus on the previous versions, as per ten days ago, I think it is fair to say the Transport Agency is comfortable doing that.

MS ONGLEY: My understanding is the updated version will accurately reflect the discussions that Mr Chapman has had with Ms Adams, which had not been reflected, so it is better to have the updated versions, of course.

THE COMMISSIONER: So do you think Mr Ryan should hand these updated versions up now?

MS ONGLEY: Yes, thank you.

THE COMMISSIONER: All right, okay. Yes. This is just the ELMP, as I understand it.

MR RYAN: Yes. We will leave the conditions, I think, otherwise we can just hand out to DOC the conditions, but I do not think we will pass them around. Since we are handing them out, sir, I will just explain for Ms Ongley's benefit and her team - and for everyone else - that the tracking in there has been left in from the version that was filed on 28 September, so all the tracked changes there that were in the 28 September version are still showing tracked. The only differences are that there are a relatively small number of additional changes tracked in, and

those are highlighted yellow for ease of reference, so you will see those there.

So yes, they are a combination of the inevitable tidy-ups that occur to a several hundred page document. There was the one issue in terms of a table in the biosecurity management plan that was flagged to the councils and to DOC last Friday, which is shown highlighted in chapter 11, I think. Yes, so DOC and the councils received that table last Friday and then there are some minor changes -- well, there is one very minor change in the bat chapter to accept Dr O'Donnell's proposal in respect of the VRPs in the DBH size for trees and Mr Chapman's attempt at amending the lizard chapter to address some of the issues raised by Ms Adams in her evidence, which he has explained in her summary.

THE COMMISSIONER: All right. Look, I think this is helpful and it has certainly provided a next iteration for the ecologists to look at this document. You say that there is only minor yellow highlighting still on this?

MR ALLEN: Sir, what you find and what DOC asked for was linking the conditions to the ELMP. I think, sir, you might have asked for that as well.

THE COMMISSIONER: That is right.

MR ALLEN: So a lot of that yellow sets out specific objectives and performance measures.

THE COMMISSIONER: That is coming from the conditions?

MR ALLEN: Taken from the conditions, cut and pasted, so although it is yellow, it is absolutely nothing new to anyone.

THE COMMISSIONER: Yes, okay. Thank you very much. Let us carry on then.

MR RYAN: So with that, the next witness is Mr MacGibbon.

THE COMMISSIONER: Sorry, it is 10.15 am. I had made an arrangement to make a quick phone call at 10.15 am on another matter, so before Mr MacGibbon gets going, could we just break for quarter of an hour?

MR RYAN: Certainly.

THE COMMISSIONER: In that time, could you all confer? I am open to any agreement on who participates in the two conferences and produces the witness statements and also on timing, recognising that it has been sprung on you this morning, everyone, so I will hear back from the parties after morning tea. We will adjourn until 10.30 am. Thank you.

MR RYAN: Perfect, thank you.

(A short adjournment)

THE COMMISSIONER: I am struggling for room here, sorry. I am just trying to organise my bits of paper.

MR RYAN: Mr Lister will be pleased that his model makes it still on to the front part of the desk.

THE COMMISSIONER: Do I get to take that home? Mr McGibbon, I think we are going to have a chat about the conferencing first, so if you can sit there and we will hear from different parties on that.

MR ALLEN: Thank you, sir. We have had a chat over the break. The proposal is first up that we carry on today going through

all the witnesses. That way when people go off and conference, they have heard everything and have full knowledge, so the conferencing hits the ground running in effect; rather than, "Where are we? What are we at?" everyone will now.

In terms of the conferencing, that can start for both planning and ecology this afternoon - depending on what time we finish - and tomorrow morning, and then for planning, hopefully that can be wrapped up by lunchtime tomorrow. For ecology, because of availability of some of the experts for DOC, what we are proposing is there is conferencing using the next two days, which we have got, and then on Thursday and Friday the ecology can carry on with a report back to the Commissioner and the parties on Friday. That still allows us to provide a written closing next Wednesday, so therefore the timetable stays the same, so depending on what my friends have to say about that.

MS ONGLEY: We had a brief discussion about whether the schedule which is attached to the conditions sits better within the technical conferencing or the planning conferencing because it relates to the yearly fee, but that is a matter of detail. But other than that, that is agreeable.

THE COMMISSIONER: Yes. Just work it out between the experts how best to -- there is a bit of interface there, so I am happy for the experts to organise themselves. Look, let us make that decision then. We will proceed on that basis. Just because of that, while I will hear the evidence and ask probably a few questions of the planners, I will not dwell on the conditions set that you have provided me at this stage. I have certainly read it and I will provide any direction I can around your evidence. Certainly very appreciative too, Ms Ongley, of your team's efforts to tease out the areas that are currently in disagreement, but I am not going to dig down into the conditions pending this process.

Now, in terms of organising the joint witness conferencing, that is really over to the experts to organise themselves. If they would like to get some help with recording and writing stuff up from another planner or another ecologist, because quite often I find this useful. If you are an expert in the conference, but you are also doing the record, that is a big ask, so just leave that with the parties to organise resources.

MR RYAN: Thank you, sir. Ms Purdie(?) is available too for -- am I being laughed at? You are pleased to be available?

MS PURDIE: Yes, okay.

MR RYAN: Sorry, sir. I should have talked to her first. In terms of the assisting with the planning conferencing and then with the planners, I am sure Mr MacGibbon can type, but we can talk about getting assistance for Mr MacGibbon on the experts as well.

MALE SPEAKER: We will use Mr Ogilvie here.

MR RYAN: Mr Ogilvie is here, perfect. So we do have a note-taker for the ELMP.

MR ALLEN: Sir, just on that, look, obviously Ms Purdie and Mr Ogilvie are part of the project team, so I think we just want to be clear it would purely be a note-taking recording exercise.

THE COMMISSIONER: All right. I think that sounds sensible, if the parties are agreeable.

MS ONGLEY: That is fine.

THE COMMISSIONER: Just two other brief matters on this. Just to be clear, I am looking for clean conditions and management

plan wording where there is agreement through the conferencing; where there is disagreement, alternative wording with reasons. I talked about for the planners the Newbury principles, but I have looked in the break. Actually, there are a couple of quite useful guides for the planners which I have forwarded to Mr McKay, who can circulate. One is a guide from the Auckland Council for condition writing, which starts with the Newbury principles and then talks about some other useful tips for good condition writing.

The other one is a document prepared by Principal Judge Newhook at the conditions roadshow the RMLA ran a couple of years ago again. So he looks at the Newbury principles in the context of New Zealand's RMA law and then expands on them, based on case law in New Zealand. That is where those principles of certainty and achievability and things come through, so Mr McKay can circulate those to the parties. If there is any help to the co-ordination, Mr McKay will be available.

The last thing is of course I would expect the conferencing and joint witness statement to follow the minute of the court around these sorts of matters, so if everyone involved in the conferencing and preparation of the joint witness statement has

a copy of those guidelines from the court, that would be good.
Thank you.

MR HARWOOD: Sir, just briefly on the ecological conferencing, the council's team has some availability constraints the later part of this week. They will do everything they can to get it done tomorrow, but if there are some sort of residual matters that require specialist input the later part of the week, that may be difficult, so I just foreshadow that now, but at this stage we are working as hard as we can to achieve that.

THE COMMISSIONER: Okay. Mr Harwood, if you can just keep in touch with Mr McKay on that, that would be good. Thank you. Mr MacGibbon.

MR MACGIBBON: Okay. So we have these circulated, have we? Commissioner, you were asked a question before about ELMP objectives. Section 3.5 in the ELMP I think probably provides what you want, if you do refer to that at a later time. It just sets out what the targets for the ecological mitigation and the compensation work would be.

THE COMMISSIONER: Okay, thank you.

MR MACGIBBON: This is a summary statement of my secondary supplementary evidence. I will start with herpetofauna, paragraph 2:

"Following discussions during the hearing adjournment with DOC and also with Wildlands, it is proposed that the compensation for the effects of the project on lizards consists of payment of \$200,000 to DOC, to be utilised on research that will benefit indigenous herpetofauna. That sum is approximately the cost of construction of a pest-proof fence, lizard enclosure and eradication of all pests from within the enclosure. This replaces the previously proposed pest-free enclosure for lizards that we presented at the last session of the hearing.

The Transport Agency also proposes to release striped skink salvaged from the project footprint into the pest-free Rotokare Scenic Reserve inland from Eltham. Approval in principle from the reserve has been obtained. Once formal approval is obtained, Ngati Tama and the iwi local to the Rotokare area will be consulted."

Commissioner, I will just point out too there seems to be some rather strange highlightings turning up through this. It is a pdf issue. It is not meant to have occurred and I do not know why it did, but please disregard those highlighted sections.

THE COMMISSIONER: Yes. So while you pause, can I just ask you about the herpetofauna offset arrangement you have made with DOC? Is that intended to be focused on any geographic areas, like is it a Taranaki-focused stipend or is it more general than that?

MR MACGIBBON: I am not quite sure what you mean by that. The release point being at Eltham obviously does keep it within the Taranaki.

THE COMMISSIONER: No, it is the \$200,000.

MR MACGIBBON: Oh, I see what you mean. No, not necessarily at all. Look, while we are not pre-empting where and what this money is spent on, there has been talk with the department about doing some work on being more effective with mouse control for the benefit of lizards. It is certainly an issue that the whole country would benefit from. It is one that has prevented us really from having an active programme to directly benefit lizards on this project. No, there is no constraint on that, but it is certainly to be targeted at herpetofauna though and the benefits to conservation of those.

THE COMMISSIONER: All right. Could I signal that I would be much more comfortable if it was targeted and subject to focus, so it was not a general amount? Whether that is a geographical focus or a research focus that was relevant to maybe the particular animals that we are dealing with here or something

else that was perhaps Taranaki-focused, but I will leave that for you to consider in your closing, Mr Allen, thank you.

MR MACGIBBON: Moving on to bats, paragraph 4:

"The Transport Agency now proposes to carry out a programme of long-tailed bat monitoring in the form of radio tracking from October 2018 to March 2019, which will then inform the final location of the proposed 3,650-hectare pest management area. Thresholds have been determined which, if met, will result in the intended PMA being verified as the confirmed PMA [and this is scenario 1 in the new bat condition]. If those automatic thresholds are not met, the bat condition sets out a process that will be followed to evaluate the suitability of the intended PMA, the wider PMA or study area as compensation for long-tailed bats."

These are scenarios 2 and 3. Commissioner, I am sure you will want to refer to the maps as we go or we can talk about that later, but happy to field questions.

THE COMMISSIONER: Helpfully these are in A3 at the back of the revised ELMP that Mr Ryan handed up. The version I printed out had A4. I could not even read --

MR MACGIBBON: No, I noticed that in my printed copy too.

THE COMMISSIONER: I would appreciate it if you could just take me through each of those figures and explain to me --

MR MACGIBBON: Certainly.

THE COMMISSIONER: -- just in a few minutes what we are seeing.

MR MACGIBBON: No, that is fine. I will do that now and then we can refer back to them as I read through my evidence. If you look at figure 1, this is the area we have called the intended PMA. The coloured area, as you see - and I will give some explanation - the solid colour represents 3,650-hectares when either the purple area, which is Mr Pascoe's property to the north, the purple crossed area, or the green crossed areas sitting at the very south on DOC land, if one or other of those is added, then the total area would be 3,650 hectares. That is our preferred or what we call the intended PMA.

The two properties, the Pascoe property and the additional DOC area, have not been coloured out solidly because the negotiations for the procurement of the Pascoe land have not been concluded. It would be our preference to have that land included if it was available, but if not, we would append an extra area of DOC land to the bottom.

THE COMMISSIONER: So is it your opinion that there is better ecological value if the Pascoe land could be added in or is that --

MR MACGIBBON: There is better ecological gains to be had, plus the benefit of having a large part of the planning programme that we are talking about, the mitigation planting and the swamp forest planting, included within that area that we manage for pests.

THE COMMISSIONER: I just had a question about the hard lines on the various edges of this PMA, the straight lines. They are not following any cadastral line or anything, they are just --

MR MACGIBBON: Mostly in this case they are property boundaries. The green, for example, is DOC boundary entirely. The red of Ngati Tama land is also the Ngati Tama boundary.

THE COMMISSIONER: Okay, so they do follow --

MR MACGIBBON: They do. In some cases there is a reasonable percentage of those that are literally bush edge; in other places, there is contiguous bush. For instance, looking at this to the east or to the right on your map, you will see a straight

line in the DOC land, the green land. That is an arbitrary line or one that I put across a ridge line, actually, to create the 3,650 hectares, so you can see there is a large block of DOC land to the right that is not included in this map.

THE COMMISSIONER: Yes. So in the future, that land to the right could be added to a programme by someone?

MR MACGIBBON: Could do, and as you will see in the next one, that makes up in fact what we now call the wider PMA, if you look at figure 2. What we recognise with bats and consideration is that when we trap and put transmitters on these bats, they will track across the landscape. As Mr Chapman has said, where they land and the roosts that they are currently occupying, they could be anywhere in the wider landscape. So as a provision, particularly for bats, that we do not find the ten roost sites within our intended PMA, we have added the light-green coloured areas, which are all DOC land, to what we have called the wider PMA. In that eventuality that more roosts are in that location, we would look to reconfigure the PMA still at 3,650 hectares, but to include all or part of those light-green areas.

THE COMMISSIONER: Thank you.

MR MACGIBBON: Shoot across to figure 3. Again, picking up on the fact that these bats will fly in all kinds of directions and could fly up to 5 to 10 km away from where we track them, the red circle is what we call the study area. It is somewhat arbitrary, but it is with a radius of 10 km and it is simply there to say that if we can find these bats when we are using the drone technology particularly, that is the study area.

It is also though the area that if we find there is a proliferation of roosts found outside of the green areas, outside of the intended or wider PMA, but in this, we would consider whether it was possible to reconfigure the PMA to include some or all of those, just because we will be finding those roost sites and clearly that is a population that is using the whole area.

THE COMMISSIONER: This one also shows the (overspeaking)

MR MACGIBBON: Yes, it does. The brown area or the orange area out to the right is the Waitaanga Conservation Area and I will refer to it more in the detail and you have read it in my evidence, but that is the fall-back option, option 4, so should none of the intended wider or study area be suitable, then this is the area to which all of the pest management would be taken

to. That area highlighted in orange is over 8,000 hectares, so we would find a suitable 3,650-hectare area within that.

Just the last one I will explain now, but I will be coming back to it in my evidence. It is back showing the intended PMA, but the blue dotted lines represent the core areas that are left if a 1 km buffer was provided. Sorry, it is in the evidence. It may not be in there, I am not sure.

THE COMMISSIONER: I cannot see any blue dotted lines on this.

MR ALLEN: Sir, it is on his evidence.

MR MACGIBBON: It is in my supplementary evidence.

MR ALLEN: It is the last figure.

THE COMMISSIONER: All right, yes.

MR ALLEN: My understanding, sir, it is deliberately not in the ELMP.

THE COMMISSIONER: Okay, got that. Thank you.

MR MACGIBBON: Great, thank you. Okay, I will go back and carry on where I was at. I will just, yes, finish paragraph 5:

"As a fall-back, provision has been made for relocation of the pest management programme to an alternative PMA scenario 4 [and I will come back to that shortly]. During the adjournment, refinements have been made to the precise location of the intended PMA. It now includes all of the Parininihi, about 1,335 hectares, the Ngati Tama land east of State Highway 3 [and that is through which the new road will go, that is 255 hectares], 56 hectares of road reserve and 2,004 hectares of DOC conservation area. It will also include either the forest and valley land owned by the Pascoes if land procurement negotiations are successful or an equivalent area of DOC land if they are not [and I showed you those on the map].

For the reasons set out in my evidence, I consider the intended PMA to be the best option in terms of overall ecological benefit and likely pest management outcomes. A larger possible pest management area, the wider PMA, has been identified to cater for scenarios where sufficient bat roost habitat is not identified entirely within the intended PMA, but suitable bat roosting habitat is located in adjacent forest. The PMA would remain at 3,650 hectares, but would be reconfigured within the wider PMA to include as many roost sites as possible, taking into account the need to also incorporate benefits for ecological values other than bats within the PMA.

The study area is larger again in the wider PMA. It is essentially the area across which it is anticipated bats will be tracked. The option of giving consideration to locating the PMA on land that is beyond that adjacent to the intended PMA and wider PMA is to address the ecological principles of proximity to the area of effects and like for like mitigation offset or compensation.

In the event that the majority of bat maternity roosts are found within the study area, but outside both the intended PMA and the wider PMA, consideration will be given to reconfiguring the boundaries of the PMA within the study area to include as many maternity roosts as reasonably possible. The PMA boundary reconfiguration will be

undertaken by the project's bat ecologist in consultation with the project avifauna and vegetation ecologists and DOC's bat expert, again taking into account the full range of ecological values that require mitigation offset or compensation.

In the event that the bat tracking results indicate that the intended PMA, the wider PMA and the study area are not suitable as bat roosting habitat, an alternative PMA site has been identified in the Waitaanga Conservation Area to the north-east. This is an area known for long-tailed bat activity and contains nine short-tailed bat roost sites as well. It is known by DOC field staff to be an area occupied by kiwi and likely to be inhabited by most of the forest bird species present in areas adjacent to the project area.

The forest is at a higher altitude and further inland than the intended PMA or wider PMA and lacks the coastal vegetation elements that are present in the intended PMA. I understand from discussions with DOC, including clarification from Dr Barea, that it has not received regular intensive pest management, although it does receive three-yearly 1080 aerial drops and some goat control.

Indigenous flora and fauna would likely benefit from an intensive and enduring pest management programme, as proposed."

This has been supported in the supplementary evidence of Dr Barea and Dr O'Donnell:

"The precise boundaries of the PMA within the alternative PMA would be set taking into account a range of ecological values, of which long-tailed bats are but one. Careful consideration will need to be given to whether all vegetation and avifauna effects can be fully compensated for at the Waitaanga site and therefore whether the post-construction outcome monitoring as proposed is relevant at this site.

Again, the alternative PMA site is proposed as a fall-back only and in the event that all other options are shown to be unsuitable."

Returning back to maternity roost trees and pest management in the intended PMA:

"If less than ten roosts are found 500 m or more away from the edge of the final PMA, intensified pest management is proposed around up to five known and utilised maternity roosts that are located inside the PMA and within 500 m of the PMA edge. If more than five of the identified maternity roost trees are within 500 m of the PMA edge, five of those roosts located in areas of greatest predation risk will be selected for intensive management. The measure: in addition to the proposed intensification of pest management along PMA edges where pest reinvasion risk is highest addresses the risk of increased predation of roosts located near the edge of the PMA."

And Mr Chapman referred to a bit of this in his evidence:

"The trapping density around these roost sites will be between 12 and 25 times that used over the rest of the PMA"

This "ring of steel" approach, as it is sometimes referred, is now being used more commonly to keep predators out of known nesting trees of the threatened bird species, especially for kōkako. Ngāti Tama is successfully using the technique in the Parininihi to protect kōkako nests during the breeding season, and other conservation projects including Waitakere and the

Hunua Ranges have recorded success with intensified pest management around known nesting trees.

Dr Barea suggests in his supplementary evidence that this approach does not guarantee the nests will avoid predation. But feedback that I've received from those involved in this work is that the method, once refined to suit each site, is effective often enough to improve recruitment. I'll just highlight there there's never any guarantee with pest management, but the evidence seems to suggest, at least, there is some improvement gained from this technique.

THE COMMISSIONER: Dr MacGibbon, just on that point: you are not giving your own evidence or experience here, you are relying on others' experience?

MR MACGIBBON: I am replying on others in one instance and on my own in another, and I was just going to go on to my experiences in Maungatautari, which I have been involved in the use of this technique for the control of invading animals. That's certainly been my involvement in it.

THE COMMISSIONER: Right, so you are one of those involved in this work?

MR MACGIBBON: Not on the kōkako work, but in the use of this technique, yes, I am. Yes.

THE COMMISSIONER: And who are the people involved that you are referring to there?

MR MACGIBBON: My people I've communicated with, you mean?

THE COMMISSIONER: Yes.

MR MACGIBBON: Yes, so Geoff Churchill is my predominant contact, so he is currently Maungatautari Operations Manager, and also been involved with the Hunua kōkako program as well. But I've also had comments with Conrad O'Carroll from Ngāti Tama as well, communications from him.

THE COMMISSIONER: Thank you.

MR MACGIBBON: So carrying on on paragraph 16. In addition, intensified pest management around target areas is a recommended and successful method used for capture of predators that breach pest-proof fence sanctuaries. This approach has been used for nearly ten years at the Maungatautari Ecological Island

sanctuary in Waikato, with all invading rats and mustelids having been exterminated by the network of traps and bait stations installed. As I said, I have been involved in that work.

I consider that application of this method around known roost trees within 500 m of the edge of the PMA has a high likelihood of reducing the rate of predation at these roost sites. Long-tailed bats are known to reuse maternity roost trees over many years, so the benefit of protection of those trees from predators will endure.

DOC considers that there would need to be ten identified maternity roosts within the PMA and at least 1 km away from the PMA to substantiate the PMA suitable roost habitat for bats. For any roosts to occur within the 1 km buffer, DOC considers that a rat RTI of 1 per cent and mustelid densities of zero detections should be sustained for those roosts to count towards the verification of the PMA. Application of a 1 km buffer within the intended PMA would leave an area of just 458 ha, amounting to 12.5 per cent of the intended PMA land area, within which the ten roosts would need to be located. On the other hand, addition of a 1 km buffer extending out from the PMA edge,

as Dr Barea has proposed, would increase the size of the area under pest management to over 60,000 ha.

For the reasons I explained in my evidence, I consider that the DOC position, especially with regard to the 1 km buffer and the 1 per cent rat RTI, to be overly stringent application of existing research findings and knowledge. It would have a high likelihood of all of the offered PMA options having to be abandoned because of the heavy and disproportionate focus on bats for a less-suitable offset compensation site.

THE COMMISSIONER: Dr MacGibbon, can I just ask the same question of you I did of Chapman? First question is: does your paragraph 20 stand if the PMA was moved to the Waitonga area as well?

MR MACGIBBON: With regard to the 1 per cent, you're talking about specifically?

THE COMMISSIONER: Yes, if you had to achieve that.

MR MACGIBBON: Absolutely, yes.

THE COMMISSIONER: I will ask you another question. Is your opinion that it would be impossible to achieve, given your experience?

MR MACGIBBON: Yes, it is. In any hill country or heavy forest, and particularly mixed (several inaudible words) North Island forests away from the beach environment, I don't believe a 1 per cent RTI is sustainable, achievable. You might, on occasions, achieve it but achieving it in successive years or over a long period is impossible at this stage, from the knowledge that I've achieved or been involved in.

It's a very, very low index and you are virtually at the point of eradication when you do that, and I'm just not aware at all of any non-fenced enclosures in this sort of environment where levels anywhere near that have been sustained. 5 per cent is set, you know, as the target across the country and I think is accepted to get really good wildlife recovery gains. 5 per cent for rats, that is. But it also is a practical level below which, I think, at this stage technology doesn't allow us to confidently issue or achieve.

THE COMMISSIONER: Might be there a middle ground between 1 per cent and 5 per cent that might be appropriate?

MR MACGIBBON: On occasions in other projects I've been asked, you know, we've talked about whether 3 per cent is an achievable target. I think because of all the variables that contribute to this, including just a bad season, an (inaudible) season with weather that prevents or damages baits, for example, or prevents a 1080 drop being done at optimum times, any of those things can, in fact, make 5 per cent a difficult thing to achieve. I think if we're setting a target that there is some confidence or ability to achieve based on past experience, then, at this stage, 5 per cent is that figure. Anything less than that and I think we're going into the realm of asking more than evidence would support. In other words, the practicality of it, I think, would be questionable.

THE COMMISSIONER: You can also help me about the technique around RTI. I understand it as residual track index?

MR MACGIBBON: It's a tracking tunnel index for rats.

THE COMMISSIONER: So RTI stands for?

MR MACGIBBON: Residual tracking index, I believe.

THE COMMISSIONER: So this is where you put some sticky paper down and (inaudible) record footprints of rats --

MR MACGIBBON: That's correct, yes.

THE COMMISSIONER: -- through a tunnel.

MR MACGIBBON: That's right. And on that, too, you know, answering your question a little bit further: the precision of that, you know, there is some variability. You know, what we're doing is sampling a subset of the population by doing that, and so the difference between 5 per cent and 3 per cent, I would suggest, is in the realms of, probably, statistical error when you're down to that lower number. So, again, to creep below 5 per cent and have that as some performance measure is also a difficult target to set, I would suggest.

THE COMMISSIONER: Thank you.

MR MACGIBBON: Right, where did I get up to? 21, am I? Yes, okay, 21. So, equally, by the extension of the PMA to over 6,000 ha, if it were possible, would provide ecological benefits that would be in no relationship to the effects being caused by the project. The intensive enduring multi-species pest

management proposed over the 3650 ha PMA at Mount Messenger has been designed to provide sufficient long-term ecological benefit to long-tailed bats to compensate for the residual effects of the project on bats.

Compensation for the effects of the project on bats will be achieved if the existing rate of population decline of long-tailed bats is slowed. If the pest management program is particularly successful, the outcome will be a long-term halt to the current decline in long-tailed bat population or an increase in the local bat population, as has been achieved in Fiordland. As Mr Chapman has explained, either outcome provides ecological benefits considerably in excess of the project's effects.

Now, I'll just, if I can, now refer to comments made by Dr Barea in relation to the ELMP. Dr Barea has raised several issues in his supplementary evidence related to the content of the ELMP that appear to be misinterpretations. In paragraph 4.12 of his evidence, Dr Barea states the 5 per cent rat RTI target is weakened to allow for 10 per cent to be considered successful. As stated in the ELMP and in my rebuttal statement, the intent is to manage the entire PMA, including the PMA edges, to achieve a 5 per cent rat RTI. The 10 per cent threshold for rats is not a measure of success, but rather the threshold above

which a change of or modification to the pest management methodology should be considered. It would be counter-productive to consider a change of method every time the rat RTI fell into that 5 - 10 per cent range.

Dr Barea refers in paragraph 4.1, 3 and 4 to the pest monitoring frequency reverting to once-yearly after five years and describes this as inadequate. However, the ELMP states clearly that should the once-yearly monitoring results exceed performance thresholds in two successive years, then the monitoring will return to a three sample point per year or per breeding season routine. In other words, if targets aren't being met then three times a year would be brought back in again until those targets are met.

Monitoring immediately before the breeding season commences is the best time to inform the pest management team of the density of pests, as it provides time for adaptive management, if necessary. If pest densities are already at or below performance targets, then the single monitoring result provides suitable verification of the success of the program.

In 4.15, Dr Barea states that acknowledgement of the likelihood of increased pest densities within 200 m of the PMA

edge is a fundamental flaw for the management of long-tailed bat roosts found in the perimeter. In fact, it is a practical reality wherever pest management occurs, and justification for the proposed increase in pest management intensity around up to five maternity roosts found near the PMA perimeter, as we've proposed.

In response to Dr Barea's paragraph 4.16, there will be little or no difficulty placing devices at the target density of one per hectare, for example, but very steep terrain may prevent a perfect 100 m by 100 m grid occurring in every location. Mobile predator species like stoats invariably choose ridges and spurs that are easy to negotiate, just as we humans do, so placement of devices more intensively in these locations rather than on steep faces is practical and is unlikely to diminish effectiveness.

I'm just going to go through, briefly, some of the changes made to the ELMP to draw your attention to them. Chapter 7 of the ELMP, the (inaudible) Management Plan, has been substantially altered to reflect the new compensation package outlined in paragraphs above and as described by Mr Chapman. I think all that has been discussed with the department is now incorporated into that plan. The Bat Management Plan, chapter 5

of the ELMP, has been updated to include the methodology and performance targets for the bat radio tracking program, also as discussed by Mr Chapman.

The Pest Management Plan chapter 9 has been amended to incorporate the Parininihi into the intended PMA and to provide for the process that will be followed to select the final PMA when the bat radio tracking data and recommendations are received.

Now, the Biosecurity Management Plan, chapter 11 of the ELMP, has been updated just recently. I think the Department of Conservation and the council were informed of this on Friday. And in particular, changes were made to table 11.1, and I'll read through or describe what those changes are now just because they've freshly been released. And when there are inverted commas in my statement here, that refers to the headings or the row headings in that table.

The wording for vehicles and machinery and personnel and equipment have been clarified to require that vehicles, machinery, equipment and people arriving at the project area from another project site or leaving to travel to another site are cleaned of all soil and plant material. And there is an

extra provision that should an incursion of significant pest plant species occur, then location-specific access restrictions and/or (inaudible) requirements can be imposed. So that's on the third row of that table. So the key there is table 11.1; all the changes are within that table --

THE COMMISSIONER: Okay, great. Thank you.

MR MACGIBBON: -- that I'm referring to. So just to clarify it again: so the wording in the second and third rows of that table, I think, now clarified to apply to vehicles and equipment and people leaving the project site to go to another or are coming from another project site. The third or the fourth row in that is a provision for, should there be any significant plant species, weed species incursions or detections, that then a specific site-related set of conditions controlling access or restricting it can and will be imposed.

Now, as I said, this change has been made during the last week and flagged to both councils and DOC on Friday, and is highlighted in the version of the ELMP being provided at the hearing today. Additional corrections and amendments have been made throughout the rest of the ELMP, including to correct errors and to incorporate suggestions made by NPDC and DOC staff

and ecologists, and you obviously see those by the tracked changes through that document.

In my evidence I again set out the elements of the proposed restoration package to mitigate, offset and compensate for all residual effects on the project. The package is largely unchanged, apart from the matters discussed in my updated evidence. I remain of the opinion that the restoration package as summarised above will provide substantial biodiversity gains by year 15, including a reduction or better in the rate of decline of long-tailed bats, well in excess of the effects caused by the project. Therefore, the restoration package appropriately addresses the ecological effects of the project and will provide substantial biodiversity gains in perpetuity. Thank you.

THE COMMISSIONER: Thank you very much, Dr MacGibbon. Again, I have made a few comments on your supplementary statement dated 28 September. So your paragraph 30, bottom of page 5, this is a specific question where you are saying that, towards the bottom of that paragraph, I'll read out the sentence:

"If more than five of the identified maternity roost trees are within 500 m of the PMA edge, five of those roosts located in the areas of greatest predation risk close to

the unmanaged mature forest or other areas of known high pest densities will be selected for intensive management."

So my question is: who selects those?

MR MACGIBBON: Well, that's a good point. I think it's the project bat ecologists that obviously determine those roost trees and those that perhaps warrant more attention. But I think the pest management expertise as well, you know, could come into that. But I think, in the first case, our bat ecologists would be the ones who pick those out. I think if, you know, we were to ask Mr Chapman, he's told me in a number of occasions that some trees have large numbers of bats going into them, whereas others don't, so we'd clearly pick those that would get the greatest benefit from pest management, but also those that are exposed to the greatest risk, so there'd be a toss up between the benefits to be gained and the risks that they face.

THE COMMISSIONER: So this really triggers a more general point for the planners to think about. I think you are all aware that delegating sort of functions of decision-making to third parties and consent commissions is not really appropriate. So I think you have to think really clearly about these subsequent decision points that come along. You know, is it just over to one

individual employed by the applicant to make those calls? Or is there a role for the review panel? Or is that something that should be delegated for certain occasion on a performance measure to the council team? So, yes, I have noticed a few of these coming through that, you know, there is statements that so-and-so will make a decision further along. So that is just a general principle which relates to some of those conditions (inaudible).

MR MACGIBBON: I think we recognise that, too, Commissioner, and certainly as we look to change the configuration of the PMA, incorporating and involving other parties to at least provide their expertise into that as recognising the importance of it.

THE COMMISSIONER: Yes.

MR MACGIBBON: In this case, whether that's necessary or not, you know --

THE COMMISSIONER: Yes, there is a practicality (inaudible) here, too.

MR MACGIBBON: There is, yes.

THE COMMISSIONER: But it is an issue of balance between the appropriate delegation to individuals.

MR MACGIBBON: Yeah.

THE COMMISSIONER: Okay, thank you. I had a question about Conrad O'Carroll, but he is an ecological advisor for Ngāti Tama, that is what you have told me before.

MR MACGIBBON: Correct, yes. Conrad leads their pest management work they do in the Parininihi.

THE COMMISSIONER: Thank you. I have asked the other questions on the way through except for one last one relating to your figure 4 and 5 in your supplementary evidence. This is the one where you do have the blue dotted lines. I think I understand what you are saying here but you are better just to explain exactly what these blue dotted lines mean.

MR MACGIBBON: Okay. So the Department of Conservation's proposed that the maternity roosts - the ten that we need to find to confirm that the PMA is suitable - need to be 1 km away from the edges of the Pest Management Area. Those blue dotted lines reflect that, so those are the core areas in -- I can't

remember the exact -- I think it's about 458 ha only of the 3650 ha sits in that core area. So you can see the two major areas: one in the Parininihi and one in the green DOC area. So the core area as defined by the Department of Conservation would be inside those blue dotted lines.

THE COMMISSIONER: And is your evidence that it is unlikely you would find ten roost trees in there, or is it a bit of a lottery?

MR MACGIBBON: I'd refer to Mr Chapman's statement which is, as he said, 95 per cent or bat roosts are found in the edge 500 m of an area (inaudible) species. I think that the issue here is there may well be considerably more than ten maternity roost trees within that core area, but within one season of trapping and tracking, the odds of us finding those ten in the centre are -- well, it's totally chance. So we'll track bats and they'll fly in whichever direction they wish. They may or may not be using trees in that core but there may be suitable trees. The ones we track may not choose to fly in that direction but there may be bats occupying maternity roosts in those trees.

What the risk is here is that rather than making an objective decision on the value of the PMA based on good science

and information, chance could determine that we abandon this PMA and go somewhere else, simply because we weren't fortunate enough to catch the right bats or they weren't occupying the right trees. And that, I think, is the, you know, issue here, is we have a lot of other values to be managed for which we do consider this PMA to be absolutely suitable, being close to the site, absolutely ultimate, the right representation of vegetation and all the forest bird and wetland bird species present, but if we're to abandon that because we didn't catch bats and it was a chance thing, then I think we're not doing ourselves ecological justice, if you like.

THE COMMISSIONER: How important is it, in your opinion, that your intended PMA has forest types and habitat ranging from the coastal edge through to more inland forest habitats?

MR MACGIBBON: Look, I consider it's important. Obviously we've got to mitigate the vegetation effects that we have, and this area represents a complete forest transition, if you like, from coast to ridgetop, you know, through from absolutely coastal forest types through to mid-upland forest types. It has certain elements like kawakawa(?) and nikau in it that are not represented further inland.

It also has the really important swamp maire(?) component in it that is also not represented, you know, inland and in other locations. You have heard through Mr Singers earlier, in the original submissions, the importance of those swamp maire wetland-rendered areas. The important one in the upper (inaudible) side of the project area which would get the benefit of pest management, you know, is a rarity. You know, it's not a common vegetation (inaudible) anymore. So in that respect, I think it's important.

Also even from a habitat perspective, you know, sort of the coastline sea to ridge element, the full catchment inclusion creates a seasonal variation of habitat for all mobile animals. And if, you know, we confine that or cut that off, it's simply restricting, I guess, the benefits or return we'll get from pest management.

THE COMMISSIONER: Thank you, Dr MacGibbon.

MR MCKAY: Thank you, sir. And the next witness is Mr Roan, and I am just handing out his summary statement at the moment. And then after he is done his summary statement, Mr Roan is available for, to the degree you want, to give him conferencing questions on conditions, et cetera.

THE COMMISSIONER: Thank you.

MR MCKAY: But it may be, given the plans now, that that is shorter than we had intended and more (inaudible) questions will occur tomorrow.

THE COMMISSIONER: Okay. No, I think let us just crack into it. Thank you.

MR ROAN: Thank you, sir. So this is a summary of my second supplementary statement of evidence which described the updates to the proposed designation and consent conditions and management plans since the hearing was adjourned. An updated set of proposed conditions and management plans has been filed with my evidence, with changes since the adjournment shown as tracked. The amendments relate primarily but not solely to the ecological matters, including updates to the ecological restoration packaged outlined by Mr Chapman and Mr MacGibbon. The conditions have, of course, continued to evolve in response to the developments at the hearing and following further discussions with the councils and with the Department of Conservation and with the Te Rūnanga o Ngāti Tama.

This includes changes that have been made since filing of my second supplementary statement on the 28th, reflecting the ongoing nature of the discussions with the councils and also the supplementary evidence filed by DOC. Sir, just there I'd note that there is another set of conditions that you don't have in front of you, I don't believe; Mr Ryan has those available to distribute if you would like that. I believe there's some advantage in that, in that my discussion here refers to the additional changes that have been made, but I'm in your hands. I'm happy just to talk to them and you can come back to them.

THE COMMISSIONER: Any objection to those being handed out? No. Okay, thank you.

MR ROAN: So, sir, you can see that I have physically aged in the process of trying to keep track of the changes. But to try and make it easy for yourself and others, we have highlighted those additional changes in yellow. So there's the track that reflected the version filed on the 28th and then the yellow, as you'll see.

THE COMMISSIONER: That is really excellent, thank you. And the big format helps as well. Thank you.

MR ROAN: And, of course, it's my opinion that this further evolution strengthens the framework for managing the actual and potential effects of the project. Since the hearing was adjourned, the Transport Agency has been working in consultation with DOC, the councils and Te Rūnanga o Ngāti Tama to resolve the differences between the Transport Agency and DOC, with respect to the proposed measures to address the potential effects of the project on bats and on herpetofauna. New conditions and associated sections in the ELMP have been subsequently developed.

Informed by those discussions with DOC and Wildlands, a framework for trapping and radio tracking long-tailed bats over one season and confirming the location of the final PMA in light of those results has been developed. I have worked with Mr Chapman and Mr MacGibbon in developing a condition, and that's condition 30. It sets out the process for applying the trapping and tracking methodology in establishing the PMA boundaries based on the location of maternity roost trees.

The key elements of the condition are: a period of at least 30 days of bat tracking plus an allowance for an extra ten days of trapping if insufficient maternity roosts have been located; appointment of a bat expert and an independent peer reviewer who

shall review the monitoring program, and also there is specification of the skill level required by those involved in the program; a reporting process whereby the bat expert assesses the findings of the monitoring program and maternity roost locations.

At this stage, one of four scenarios would apply, each with different process for confirming the location of the PMA, and Mr Chapman has explained those scenarios. And unless the intended PMA is automatically confirmed on the basis of the monitoring results - and that's via scenario 1 - DOC and the Kaitiaki Forum Group will have the opportunity to provide input to the process of determining the final location of the PMA. Independent review of the reporting process by the bat peer reviewer is provided for, who will confirm that the process set down in condition 30 for establishing the PMA has been followed. Certification by the council that PMA has been confirmed in accordance with condition 30, and provision now that the above steps must be complete and the final PMA identified before construction work can commence.

Now, sir, you asked a question of Mr MacGibbon about who determines the location of the maternity roosts. I would just point you to condition 30(n)(?) which is just over the page,

where there is some process there set down by which those roosts are located. That condition may be a specific area where either the ecologists or the planners, later today or tomorrow, can make some progress in addressing whether that goes specifically to your point, sir.

THE COMMISSIONER: I think it does. Those are the sorts of things just to check on. Look, I would have to say to everyone involved in these sort of conditions, there is a huge amount of work that has gone in here and, I suspect, various versions. There is a lot of detail here and it is a difficult area, so I certainly appreciate all the hard work that has gone into developing (inaudible). So I am not surprised you have aged a bit (several inaudible words).

MR ROAN: I think I certainly know an awful lot more about bats, sir.

THE COMMISSIONER: Yes. Thank you.

MR ROAN: So at 7, based on the evidence of Mr Chapman, it is my view that this condition provides certainty that any effects of the project on bats will be appropriately offset or compensated. In respect of lizards, Mr Chapman and Mr MacGibbon explain that

the previously proposed predator-free enclosure has been replaced with a condition, and that's 29(b)(ii), and I'm just going to check that's correct referencing there because we've got a double-up. So it is 29(b)(ii) and (iii) are the specific conditions, so the double-up of the roman numeral two is incorrect there, sir.

Require that the Transport Agency provide \$200,000 plus GST towards funding a research project or projects that will benefit lizards. And you'll see from the conditions - just going to your previous question, sir - that there is some direction provided there about what that funding would be used for. It may be, sir, that you're looking for some further specification and --

THE COMMISSIONER: Well, I am just thinking about the (inaudible) principles and we need to have -- you know, whether it is compensation and offset close to home and I like to think that, if there was some research done, it could be undertaken in the Taranaki, for example. Just some general guidance like that would be a preference of mine.

MR ROAN: Yes. You'll certainly see there that towards the tail end of (ii), there's reference to that discussion occurring

between the requiring authority and the local DOC operations manager.

THE COMMISSIONER: Yes, so that is a hint but that could be timelined(?).

MR ROAN: Yes, indeed, I accept that.

THE COMMISSIONER: Thank you.

MR ROAN: So to other amendments to the conditions and through the discussions with the councils, other amendments to the proposed conditions have been made or considered and I'll just work my way through this. Provisions for preparatory works have been removed to address the District Council's concerns, and the provision has also been deleted from the Regional Council consent. The distinction between minor and material amendments to the managements plans and the process for finalising amendments has been changed to address concerns expressed to me by the councils, and those are captured now in the designation conditions 10 and 11, and in gen(?) 13 and 14 in the resource consent conditions.

I do not propose any changes to the timeframe for certification of the material amendments, as I consider the 20 working day figure to be reasonable. And I'd note also that there is a provision there for some flexibility around that in terms of best endeavours and an opportunity for the council to in fact record and confirm to the requiring authority whether they do need some more time to work their way through the amendment process, so I think that flexibility is already captured there.

THE COMMISSIONER: I did have a question about that in your main evidence; I might as well ask it now on the way through. Just a couple of, I suppose, practitioner questions. Given your experience, would you see from a council perspective would there be a dedicated team or staff member assigned to be involved with this project through the whole phase? Is it that scale of job?

MR ROAN: Well, certainly, sir, my experience in other parts of the country, particularly the larger urban centres where councils are well-resourced, that would be my expectation. I would have to acknowledge that I don't have that working-level experience here with the district or region. Through the conversations that I've had with Ms Macbeth and with Ms Hooper,

I know that their compliance teams have been involved in the process of reviewing conditions.

My expectation is that there would be a need for appropriate resourcing of a dedicated staff member; the conditions, as we all know, are complex and there would be significant benefit achieved by that approach. The other observation, of course, is that the project stretches over some four years, so changing people through that process, through that timeframe could lead to inconsistency. So, yes.

THE COMMISSIONER: Okay. Look, I think that is probably enough. I will ask Ms Hooper and Ms Macbeth about that when they are up. But my second question: the 20 working days, I know when councils receive things and they have to process in statute timeframes, it can add a lot of pressure. Are there other similar timeframes in the act you are aware of for the scale of job that you would anticipate would be needed with this process? Is 20 working days out of the ordinary?

MR ROAN: I don't believe it's out of the ordinary, sir. I think you'll find, as you're all aware, it's a statutory timeframe. In terms of some of the processes in the act, we of course have spent time with other consent conditions that have

been established for similar projects; the 20 days occurs frequently in those consent sets, as does shorter timeframes.

THE COMMISSIONER: Would you anticipate that the best(?) endeavours causes a bit of a pressure-release valve if, by agreement, you are just not going to get there?

MR ROAN: That's why it's there, sir. Yes.

THE COMMISSIONER: Thank you. Carry on.

MR ROAN: So I think I'm at (d). Minor changes have been made to the conditions that relate to the ELMP, and that's designation conditions 29, 32 and 33. But there are, of course, more substantive changes, and I'll refer to those in relation to the DOC condition set later in my statement.

The condition providing for the Ecological Review Panel - that's condition 33 - has been updated. That's just simply to reflect the previous discussions that happened through the hearing. A new condition has been added: condition 41(a) which provides for a safety audit to be completed and provided to the District Council for specific matters relating to the tunnel design and operation. And you'll recall that discussion, sir,

with the engineering experts earlier in the hearing, and so that's how that condition has appeared.

New conditions require the Transport Agency to notify both councils on completion of construction and provide maps showing all completed works, landscaping, reinstatement and completed planting, and those are designation conditions 43 and gen 28 in the resource consents. I think there, as I understand it, the council had been concerned about a question of when the highway is actually complete because, of course, you would expect that the road will be open, there could be traffic flowing over it, but the alliance is still undertaking work: the planting work in particular, the landscaping work, et cetera. So from a public perspective there might a sense that, in fact, the ribbon might have been cut, that the project has been complete, but it is not. So we've provided some additional certainty for confirming to the council when construction has been or will be completed, and if there is additional work occurring, what that work is and where it's occurring.

THE COMMISSIONER: So are those sort of in the old (several inaudible words) plans that are locked away once the project is finished? So maps showing what you have done, or are they something different to that?

MR ROAN: No, I don't know that they'd be quite of that nature, sir. I think that they would be plans that are based, certainly, on the project as built, but the intent of providing the plans and highlighting the areas of landscaping is so that the council specifically knows the difference between the landscape planting and the mitigation planting, and where that is located.

THE COMMISSIONER: Thank you, that is good.

MR ROAN: So I'm at (h), sir. A number of amendments have been made to the conditions attached to the TRC resource consents for stormwater and sediment discharge during construction. These changes follow discussions between myself, Mr Ridley and the Regional Council officers, and they're captured in set 7 and set 11. Sir, I'm going to disappoint you, I think, at this stage because I'm going to have to point you to set 7 in the resource consents and acknowledge that there are some changes in set 7 that have not been tracked. I don't know how that happened but I picked it up as I was reviewing the document over the weekend. So are you happy for me to point you to those changes now, sir?

THE COMMISSIONER: Yes.

MR ROAN: So if you've got set 7 in front of you and if you happen to have your pen handy.

THE COMMISSIONER: Yes.

MR ROAN: In (a), directing including pumping.

THE COMMISSIONER: Is "including pumping" new?

MR ROAN: "Including pumping" is new.

THE COMMISSIONER: Yes.

MR ROAN: And then it's a little bit easier: (e), (f), (g) and (h) are all new.

THE COMMISSIONER: Okay. Thank you.

MR ROAN: I apologise for that. At (i), the Regional Council has raised the prospect of an overarching condition requiring the BPO be adopted for addressing possible environmental effects. I do not consider that's necessarily appropriate. The

BPO is, in effect, detailed in the conditions and in the various detailed management plans. Now, there, sir, I'm --

THE COMMISSIONER: Did we discuss this when you first gave evidence?

MR ROAN: We did to a small degree, sir, I think; but it was more in relation to how the specific Construction Water Management Plans would be developed. Because, of course, at the moment there are only the three plans that have gone to the council, those specific plans. But the process for developing those plans effectively requires the requiring authority - the construction team - to adopt the BPO for whatever the scenario is in each of those locations as they relate to the specific construction management plans. So I think we talked about it in that context.

THE COMMISSIONER: Yes.

MR ROAN: But I guess the other point that I'm acknowledging here, too, sir, is that there is of course provision in gen 4 in the resource consent conditions for a 128 review and through that process, of course, if the council felt a need for the BPO process to be incorporated into amended conditions. So, in my

mind, it's there already through the management plans, whether it's the Construction Water Management Plan process and the specific plans, or whether it's the Dust Management Plan which also deals with discharges, of course, or if there's a more substantive concern for the council to undertake a review via 128.

THE COMMISSIONER: Yes, those are all good points. The reason I have got a bit of a furrowed brow is my understanding of BPO is that it is specifically targeted at noise effects and discharges (overspeaking), and it's not a general resource consent condition construct. Is that your understanding?

MR ROAN: Yes, indeed.

THE COMMISSIONER: So I think we should leave it at that and perhaps, Ms Hooper, when we talk later in the afternoon, if you could have a look at section 2 and the definition of BPO and how it applies. I think it is reasonably limited to certain matters rather than a more general approach. But if you could look at that and we can have a discussion about that this afternoon.

MR ROAN: Yes. And, sir, all of those plans that I referred to, of course, are dealing with discharges, whether it's air --

THE COMMISSIONER: Of course they are, yes.

MR ROAN: -- or water discharges.

THE COMMISSIONER: So they might be applicable to some of those management plans --

MR ROAN: Indeed.

THE COMMISSIONER: -- for the water ones. But, again, is your experience that BPO conditions are put in place when something is not defined or certain that there is more work to do? You know, the condition says the consent (several inaudible words), and you are suggesting that those decisions have largely been taken.

MR ROAN: That's right, and in the process of developing. And if I go to the specific examples of the specific Construction Water Management Plans, of course the council will be certifying those.

THE COMMISSIONER: Okay, that is enough of that. Thank you.

MR ROAN: And then lastly here, sir, (j) in relation to the council discussions. The District Council has raised the prospect of a condition relating to the revocation process for the existing section of State Highway 3, and it's simply my view, sir, that those are matters that should be left to the formal revocation process under the Land Transport Management Act.

THE COMMISSIONER: Is that process started in any preliminary way or ...?

MR ROAN: Sir, I'd have to acknowledge that I haven't been involved in those discussions. Mr Napier's evidence spoke to the process. I know that it most definitely has been started and that there has been some discussion between the council and the requiring authority on how the process would work. There's been some discussions about the consultation that will be undertaken but I don't believe it's got past that point. We're simply acknowledging that there is a period of time that will stretch out that's available for the revocation process to be undertaken.

THE COMMISSIONER: But my understanding is that there will be a separate negotiated agreement between the agency and the council on that.

MR ROAN: Indeed.

THE COMMISSIONER: And your opinion is that, because of that, it is not necessary to cross reference that (overspeaking) resource consent submissions?

MR ROAN: Absolutely. That's absolutely it, sir.

THE COMMISSIONER: Okay, thank you.

MR ROAN: Yes. This has some relevance also in relation to the carparking and the figure that Mr Milliken provided, and I'm going to come to that point as well.

THE COMMISSIONER: Okay, thank you.

MR ROAN: So at 10, and in relation to the DOC-proposed conditions, I've reviewed those conditions prior to the hearing being adjourned in August and now also the additional changes proposed in attachments 1 and 2 to Mr Inger's supplementary

evidence. Following my review, changes to the requiring authority's proposed conditions have been made as follows. The annual review of management plans will be provided to the department, and it's provided for in conditions 15 and gen 18.

The conditions relating to the ELMP and Pest Management Plan have been substantially revised. The schedule formatting for restructuring the ELMP conditions proposed by the department has been adopted. Designation condition 29(c)(i)(ii) has been changed so that the vegetation removal protocols shall apply to all trees between 15 cm and 18. You've heard that from Mr Chapman earlier. The PMP shall be implemented as soon as practicable and no later than one year following commencement of the works, so that's an addition made that you'll see in yellow, so a new provision. And that's there in 29(h)(iii). I think it had previously read that -- yes, in fact you can see the ~~strikeout~~ there, sir. So implemented sooner rather than later, effectively.

A new condition - 29(a) in the designation conditions and gen 24(a) in the resource consents - has been included which establishes that the works shall not commence until the requiring authority has notified the councils, that it has secured access to the land required for the restoration and

riparian(?) planting and for the pest management work. So you'll see that here in yellow as well, sir.

THE COMMISSIONER: Yes, I have that. Thank you.

MR ROAN: And that the Ecological Review Panel shall be established as soon as practicable following the commencement of works, as per change to 33(a).

THE COMMISSIONER: So just so I do not have to go checking through, the ERP conditions (inaudible) designation are not carried forward and communicated in the --

MR ROAN: That's correct.

THE COMMISSIONER: Okay, that makes sense. There is always temptation to try and mirror them but if that is -- yes.

MR ROAN: And, sir, they of course relate more directly to the matters that the district is concerned about.

THE COMMISSIONER: Sure. Thank you.

MR ROAN: There are a number of changes that I have not accepted and I comment on some of the more substantial matters below. The department seeks that the management plans be subject to certification rather than approved through the hearing process and, as I've previously explained, I do not agree with that approach. The plans have all been subject to considerable scrutiny and are, in my view, ready to be approved through the hearing process. I consider doing so would represent good RMA practices, opposed to delegating to council officers a post-hearing certification role.

I've not adopted DOC's proposed changes to the conditions setting out the process for amendments to the management plans, specifically providing any proposed minor or material changes to the department prior to submission to the council. In my view, it's simply appropriate that consideration of those minor or material changes is left to the council, simply through fulfilling their regulatory function. And with the amendments I outline above, I understand that both councils are now comfortable with the approach I have proposed.

14. As mentioned above, the conditions have been updated to include a schedule of the requirements to be addressed in the ELMP. The department has suggested that there is now

duplication between the ELMP conditions - that's condition 29 - and the schedule, that that duplication should be removed. Sir, it's my view that condition 29 establishes the performance measures that the Transport Agency needs to meet, and schedule 1 outlines the content to be included in the ELMP. So in that regard, sir, there is necessary duplication between 29 and the schedule, so I have not adopted the department's suggested changes in that regard.

At 15, I have not adopted the department's proposed alternative Ecological Review Panel conditions, and the proposal there had been that the panel would be appointed and their role would be to provide advice to the District Council in relation to the bat monitoring and PMA certification process, the certification of the ELMP, and then to provide advice on future changes to the ELMP. However, in this regard the District Council have undertaken their own review of the ELMP, of course, assisted by their advisors, so that's already happened. Further designation, condition 33 provides for the input of the review panel with respect to future ELMP amendments, and for the ecological monitoring and amendment of pest management methods.

Sir, I would also just note here that in relation to the bat tracking and PMA condition, condition 30, there is of course

a process set out in there for independent review for involvement of the - through consultation with DOC's own bat expert, and ultimately for the independent bat reviewer to confirm that the process that is set down on the conditions has been followed.

THE COMMISSIONER: So that is a consultation obligation, not a certification.

MR ROAN: It is, Sir. With the department's experts, that's right.

THE COMMISSIONER: Yes.

MR ROAN: I guess I would expect that the engagement with the department through the coming bat monitoring process will be extensive, and that by the time there is reporting that goes to the expert peer reviewer, one would hope that there has been significant agreement reached with the department through that engagement process.

Of course the independent reviewer will have access to any comments that the department might make and will be fully informed of that, and that is provided for in the condition.

And of course, that information will go to the council at that point as well.

I can also see that if the council saw the need, through their certification process, to engage additional advice, that of course they could do that themselves. There is nothing precluding that.

THE COMMISSIONER: They have certainly got powers to do that under the Act. So that is fine, thank you for that.

MR ROAN: So turning to the Kaitiaki Forum Group, through the hearing there's been discussion about the opportunity for other Iwi or Māori groups to express their Kaitiakitanga through the project.

The KFG conditions mean that the opportunity to participate in the KFG process would be determined by Te Runanga o Ngati Tama, and in my view this is appropriate. Ngati Tama of course have a special importance in relation to this land and to the project.

THE COMMISSIONER: Mr Roan, there is an issue that is troubling me a little about this condition which you might be able to help

me with. Do you have a copy of this ELMP document that has been handed up by Mr Roan, this one here?

MR ROAN: Yes, I believe so.

THE COMMISSIONER: Could you go to the very last figure of that?

MR ROAN: Yes, yes.

THE COMMISSIONER: And I think just for the record, this is I think the equivalent of figure 4.

MR ROAN: It's the Waitonga site.

THE COMMISSIONER: So what is troubling me is given the hypothetical outcome that the PMA, through the process, ends up in the Waitonga area, the project influence and offsetting moves away - I think someone said some 16 kilometres or a figure like that.

And I will (inaudible) ask Mr Silich about this when he presents some evidence to me, but I am not sure about the rohe boundaries here. On the hypothetical basis, this is someone

else's rohe, the Ngati Tama. Should the KRG then be more broadly constituted?

MR ROAN: More broadly - yes, okay. I understand what you are asking. So this is probably a question that Mr Silich will be able to assist you with.

It's my understanding that the Waitonga land is within the Ngati Tama rohe, but I'm sure Mr Silich will be able to expand on that. I have no sense of whether it is also within Maniapoto rohe.

THE COMMISSIONER: So I will definitely ask Mr Silich, but that is why I asked you the hypothetical question.

MR ROAN: Yes.

THE COMMISSIONER: If it was in another Iwi's rohe, do you think the KRG on that basis should be more broadly constituted?

MR ROAN: Sir, the way that the condition is written, as I've just outlined, is that that decision would be left to Ngati Tama to determine. Of course I can't speak for Ngati Tama what they

might - how they might respond in this scenario, and Mr Silich might like to share his thoughts on that.

THE COMMISSIONER: Yes. I appreciate this is more --

MR ROAN: But there is of course opportunity, there is opportunity there for Ngati Tama to invite Maniapoto into this forum as part of this discussion if that scenario arises.

THE COMMISSIONER: All right. Mr Bell, we'll have a bit of a chat about that later on. But it's just a consequence of -- I think the department has put that on the table as a theory of its PMA, and in my mind that is part of the project.

MR ROAN: Yes, indeed.

THE COMMISSIONER: So is there anything we need to consider there? Thank you.

MR ROAN: So sir, I'm at the car parking area. So the designation conditions previously provided that the final details of the car parking provisions would be subject to an outlined plan process, and Mr Milliken has already explained what is intended and provided a detailed plan meaning that there

is now no need for confirming this matter through an outlined plan process.

So you asked Mr Milliken a question about whether there was a condition. There is not a condition in the set obliging the provision of that particular drawing. So there are a couple of options available to us, we can simply draft some wording.

The matter can be just simply left aside to the revocation process, and perhaps you could also take up - a third view might be simply to assume that under general conditions, under condition one, of course that material has been submitted to you through the hearing process and is part of the material that becomes part of the conditions, so in your hands there, Sir.

THE COMMISSIONER: My initial thinking is that again, prefaced on the fact that I need to make a decision on grant or not, but on the assumption that the applications were granted and we are looking at conditions, I think there has been some submissions about access as an effect.

So I would have thought that given the fact that you are putting this up to avoid having to go through a subsequent RMA

outline procedure, it should be locked in as a condition, would be my preference.

MR ROAN: I accept that, Sir.

THE COMMISSIONER: Thank you.

MR ROAN: So we will come back to you on that one. The ecological constraints maps, so a new condition specifically providing for the certification of a complete set of ecological constraints maps has been added to both the designation and resource consent conditions.

I note that I have now also included, and this is in the condition set that you now have in front of you, the provision for these maps to be prepared in a staged fashion to reflect the staging and construction, rather than them all simply being completed in one go. But no works would commence until certification is complete for any stage or stages, and I guess that is the important part there.

Once the maps are certified they would just simply be included into the LMP. Accidental discovery, so there is now a

project-wide archaeological authority granted by Heritage New Zealand, we've included the reference there.

In line with the ADP conditions, the intention is that the archaeological authority will be adhered to as opposed to the ADP, and so an advice notice simply be added to the conditions at 35 to reflect that.

THE COMMISSIONER: So that has happened since we have adjourned?

MR ROAN: It has, Sir, yes.

THE COMMISSIONER: Mr Allen, could I have a copy of that?

MR ALLEN: Yes, of course.

MR ROAN: We can absolutely provide that to you.

THE COMMISSIONER: Thank you.

MR ROAN: And that is all that I have for you in my summary, Sir.

THE COMMISSIONER: Thank you, Mr Roan. And you have really helpfully taken me through the conditions in a reasonably painless way. I saw a few people nodding off.

MR ROAN: I was surprised the room didn't empty out when I sat down.

THE COMMISSIONER: Yes, our plan to start talking about conditions, I have got a lot of sympathy for people within that circumstance. But I have really covered off all my queries on the way through, so thank you, and I do not have any further questions.

MALE SPEAKER: Thank you, Sir. Well, on that basis then, save for the closing but also any hot tubbing from Mr Roan and/or any feedback from Mr MacGibbon, that is again the agency's evidence for this resumed hearing.

MR ALLEN: Sir, just one last point. You asked for a copy of the archaeological authority, so Ms Purdie has just passed a note explaining that it's in the clean version of this simp(?) that was filed on 28 September, so you'll be able to find it in there. That is the overarching--

THE COMMISSIONER: Okay, thank you. Yes, of course, thank you.

MR ROAN: And I should have known that.

THE COMMISSIONER: All right. Thank you very much, Mr Allen and Mr Roan. Ms Ongley, I am in your hands. Do you want to kick off now or should we have an early break?

MS ONGLEY: Perhaps if we have an early break, and I could have a discussion with (inaudible).

THE COMMISSIONER: Sure. So we are 12:15, should we just convene back at 1:15?

MS ONGLEY: Yes, that's fine.

THE COMMISSIONER: Good, all right. Thank you very much everyone, we will see you back at 1:15.

(A short adjournment)

THE COMMISSIONER: Welcome back, everyone. I hope you all had a pleasant lunch. So, Ms Ongley.

MS ONGLEY: Thank you, Sir. The witnesses for the Director-General of Conservation haven't prepared speaking notes. We will be relying on the evidence that we exchanged. So rather than - would you like me to read through my legal submissions? I was more going to draw attention to some things that have been updated this morning. I can read them if you want.

THE COMMISSIONER: No, I think just go through just the bits you would like to discuss.

MS ONGLEY: Yes. So I'd like to go back to what's occurred during the adjournment. DOC has had very useful discussions with NZTA. So it's evident that NZTA has now agreed to the radio tracker, which is a very positive development from DOC's perspective. And based on that, DOC has agreed that the previously requested 500 hectares of pest management area can be reduced to 3650.

The point of contention now arises as to where that 3650 area should be, depending on what the results of the radio tracker study are. So DOC has said that if 10 bats are found in a core area of the intended PMA, and that is an area further than 1km from the boundary, then the intended PMA could be the

confirmed PMA, and I am using the terminology here that has been proposed by NZTA.

Alternatively, if 70 per cent - if you get at least 10 bat findings and 70 per cent of those are in the core area but the rest are in the wider study area, that could also be the confirmed PMA, and Dr O'Donnell can explain. So those are the two alternatives which might result in the intended PMA becoming the confirmed PMA, and that is being called scenario one. Feel free to stop me if you--

THE COMMISSIONER: No, that is fine.

MS ONGLEY: The 1km is obviously the point of contention, and I understand the NZTA is proposing 500 metres. What has been the subject of discussion this morning, which I think has caused confusion, is this 1 per cent RTI at the perimeter.

So because the need for the roost to be found 1km in meant that it would be less likely the intended PMA would be chosen, DOC had understood that was a key problem for NZTA because the agency had a desire that the intended PMA would be more likely to be chosen. So as an alternative, DOC said, "Well, the bat roost could be outside the core area, but if you're going to do

that you need to do very intensive pest management at the perimeter," and that's where the 1 per cent came from.

It's caused such confusion, and it obviously isn't going to be accepted that it may be better if we just withdraw the offer to do the more intensive pest control at the perimeter as an alternative. It's a side issue. Yes, so DOC's position is - the primary position is that the 10 or at least the 70 per cent of those have to be within 1km of the perimeter.

THE COMMISSIONER: Okay. So, I must admit all the various scenarios and the distances and the various triggers were doing my head in when I was trying to read the various scenarios. And that is why I think perhaps with the help of the wider ecology group looking at this and around, and after hearing the evidence from the experts today, there might be a different way of just capturing then 10. Okay, thank you.

MS ONGLEY: Yes, thank you, Sir. The main point I really just wanted to emphasise there was that I don't believe DOC is being unreasonable in proposing the 1 per cent RTI. It was really another method for NZTA to achieve what they wanted to, but it seems to have been misconstrued.

The second point I wish to make is that I think the point of difference has really raised attention between the need for the PMA to compensate for the adverse affect on bats, as well as other flora and fauna, versus the need for the PMA to be in proximity to the project area. And that is really the key tension between DOC and NZTA.

THE COMMISSIONER: So Ms Ongley, it does not have to be in exact proximity, but offsets can be - if you cannot find a suitable location you can move away sometimes in my experience. So it is not a hard and fast rule, it is a preference.

MS ONGLEY: Yes.

THE COMMISSIONER: And under the principles of offsetting.

MS ONGLEY: Well, that's right, and Dr Baria will cover that. He says that because we are dealing with compensation, proximity isn't as much of an issue, plus the Waitonga site is in quite close proximity to the project area. So the second main issue I wanted to cover is what is the objective of the bat compensation?

The objective for NTZA seems to have developed, as we go through the hearing, to now being one of reducing the rate of decline. The bat management part of the ELMP previously had an objective of no net loss or a net gain. That seems to have been removed from the bat part of the ELMP. It still is in the 3.5, which has been - I think it was 3.5 that was referred to this morning.

THE COMMISSIONER: So that was where I think Mr Roan pointed me, or one of the witnesses. That is 3.5, the ELMP?

MS ONGLEY: Yes.

THE COMMISSIONER: I wonder whether to just take a look at that.

MS ONGLEY: So that is page 21. Where I was reading the net gain and the no net loss is actually on page 22, just above the heading 3.5.1.

THE COMMISSIONER: Yes, I can see that. So it is your submission that in relation to bats is another objective which is now on the table?

MS ONGLEY: I believe there was, but I have understood from the Epcots(?) case this morning that they are now relying on this as the objective for bats, but the applicant may want to clarify that.

THE COMMISSIONER: I think just for everyone's benefit, I think the filing and agreeing the objective is really important to do, everything flows from there. And I think - yes, we have had evidence this morning that - with that graph, I think, that was shown to us, which was quite a helpful way for me to actually visualise the differences on whether you are actually achieving no net loss or arresting the decline and doing better than natural decline. And certainly I know Dr Baria has got some evidence about that particular point.

MS ONGLEY: Yes, yes. Before we get to that, Commissioner, I just remain on the ELMP, page 55. That is where the bat objective seems to have been deleted.

THE COMMISSIONER: All right. So just looking at those yellow words, it is your submission that the words say, "The following table sets out the specific objectives," but there is no objective any more, or was there ever an objective?

MS ONGLEY: Yes. Well, it was under 5.1, purpose and objectives, so that has been deleted at the top of the page there.

THE COMMISSIONER: All right.

MS ONGLEY: Yes. So just on that same thing, Dr Baria will comment on what is the objective, but it's agreed that it is a fundamental issue that remains a difference between the applicant and DOC.

I think Dr Baria is going to explain why the nationally critical 70 per cent decline in bats is not an appropriate line according to Mr MacGibbon's graph to work to. And this also relate to Dr O'Donnell's evidence that we have to remember here that here we are addressing the effects of the project. And so Dr O'Donnell had said in his evidence-in-chief that the effects of the project could be potentially catastrophic for bats.

Even if you had those vegetation removal protocols, if you remove a tree that is an important nesting site along the project route, and the surveys have shown that there could be a number of trees along the project route that meet the criteria, even if the bats aren't in them you could have major effects.

So we are not looking at the background New Zealand rate of decline for the long-tailed bat, we are looking at the potential effects of the project.

THE COMMISSIONER: I think to be fair to him, though, he did say to me this morning that there is a large area in the intended PMA. And maybe if we just look at this figure here, the one that is figure 1 at the back of the ecology management plan that Mr Roan handed up.

MS ONGLEY: Yes.

THE COMMISSIONER: So the proposed route is in the yellow, that is right?

MS ONGLEY: Yes.

THE COMMISSIONER: The yellow, and the PMA is in the other large area. Yes, so is your submission still that the evidence from the NZTA is that this route could cause catastrophic effects on the bat population in this general area?

MS ONGLEY: That is Dr O'Donnell's evidence, yes, and that it could cause a very rapid rate of decline of long-tailed bats and potentially cause the extinction of the local bat population.

THE COMMISSIONER: In this whole area. Is that your submission?

MS ONGLEY: Yes, yes.

THE COMMISSIONER: I will ask the witness about that too.

MS ONGLEY: I understand it is.

THE COMMISSIONER: Yes, all right.

MS ONGLEY: The other point on that is that without actually knowing what the project effect will have, we can't draw lines on the graph that Mr Chapman has produced, and we don't actually know what the rate of decline will be by virtue of the project, because we don't have sufficient information.

So what Dr O'Donnell is referring to there is a worst case scenario, we don't actually know. And I think Dr Baria is going to say without doing that work, it's inappropriate to apply the

green line here which is population increase over the baseline trend. But I'll let Dr Baria talk to that.

THE COMMISSIONER: And I will certainly listen to that with interest. But just in terms of your interpretation of this graph, that left-hand axis, that is what I took to be the New Zealand bat population starting at 100 per cent of bats, projecting down to 30 per cent of the current population, whatever it is, by some time in the late 2020s. So we are not talking about number of bats here in the project area, are we?

MS ONGLEY: Well, my understanding, and the applicant may wish to clarify in closing, but that the applicant's outcome for bat management now is not necessarily maintaining the population or improving the population of bats, it is going above the 70 per cent decline that is the background rate in New Zealand.

THE COMMISSIONER: So that was not really my question. My question was this graph is, what I understood, representing the New Zealand bat population at 100 per cent, projected to reduce by 70 per cent by a certain time, and therefore no one knows how many bats are in any particular location because you can never catch them, or I presume attract them, so it is a more general

graph than relating specifically to the project areas. But the applicant can clarify that.

MS ONGLEY: Yes. I am referring there to - at the end of the green line there, Sir, it says project objective, population.
(inaudible)

THE COMMISSIONER: No, I understand that form. That (several inaudible words)

MS ONGLEY: Yes. I possibly have been slightly unfair there, the graph does relate to the national issue.

THE COMMISSIONER: Okay, thank you.

MS ONGLEY: So in terms of the Newbury(?) tests, what the Director-General is requesting for long-tailed bats in my submission is not unreasonable, and it doesn't go beyond the effects of the project. Ms Adams isn't here today, but I note that Mr Chapman's evidence this morning now reflects the discussions that he's had with Ms Adams.

I understood that the \$200,000 had, according to Ms Adams, been earmarked for research for mice control, which would have

nationally significant effects for lizards. I will have to go back to her and discuss whether there might be something more locally-oriented that she has in mind for that, but that would benefit the local lizard populations as well.

THE COMMISSIONER: Yes. So I think just as long as - and I'm not particularly in favour of a general \$200,000 request for nothing specified, so you have heard my discussion about that.

MS ONGLEY: Yes.

THE COMMISSIONER: I do think if it is going to be used as an offset of compensation, it should be directly related to what we are trying to achieve, and if it's national or locally based at least it should be clear.

MS ONGLEY: Yes. We'll take that on board, Sir. I wanted to make a comment about condition 29A of the designation conditions. That comes some way towards what the Director-General was seeking for certainty for the restoration and riparian planting areas.

No doubt the consent authorities will have comments on this, but just from a legal perspective, I don't believe that

would provide adequate certainty that land ownership or other rights are in place in perpetuity for the PMA and the riparian planting areas. So hopefully the planners can look at that, but it goes some way to what the Director-General has been seeking in terms of having certainty that these areas are in place.

THE COMMISSIONER: Do you have any cases that you could point me and the planners to that has been required in these sorts of projects, Ms Ongley?

MS ONGLEY: I haven't at the moment, but I can have a look. In my submissions at the hearing before we reconvened, I referred to the Buller Coal case.

However, that had quite a different fact scenario to this case, and it included a best endeavours clause so that there had to be best endeavours that land ownership rights had to be sorted out. But in my submissions at that hearing, I said I don't believe that that should apply here, because of the completely different fact scenario involved in that case.

THE COMMISSIONER: Just also maybe have a look at the (inaudible) inquiry decision where offsetting was a major

component, and to see how the (inaudible) affected the issue, because there were submissions along similar lines.

MS ONGLEY: All right. Thank you, Sir. The final issue was that although the technical experts for DOC are going to be involved in the conferencing, DOC's position remains that the conditions should be finalised before the ELMP in terms of a decision or at least an interim decision on the conditions. And I had a slight concern that Dr O'Donnell's available for conferencing tomorrow, but now I understand that Mr Chapman is not going to be at conferencing tomorrow, so I will have to sort that one out. I understood that it should be a thorough technical conferencing.

THE COMMISSIONER: I think the two bat experts are pretty critical for getting effective conferencing.

MR ROAN: We will talk about that before, but I understood Mr O'Donnell's evidence to be the methodology was actually agreed. But if we are unwinding that, then we will need conference. So I will talk to my friend about that.

THE COMMISSIONER: Yes, thank you. So Ms Ongley, are you suggesting that it would be helpful to your client if there

might be an interim decision relating to the conditions and an indication of the decision to grant or not, and then after that some more time to finalise?

MS ONGLEY: Yes.

THE COMMISSIONER: Can you explain the reason you are convinced it is necessary?

MS ONGLEY: Well, first of all there have been very extensive discussions going on between DOC and NZTA. So the difference with the conferencing that may occur over the next couple of days would be actually that Wildlands is in the room, and the NPDC and NTRC planners, because that three-way conferencing hasn't occurred, so that could be valuable.

But other than that, DOC does see that it has effectively thrashed out these issues, to such an extent that it doesn't know whether it can get much further.

THE COMMISSIONER: Okay. So just to be clear, I am very comfortable if the joint witness statements do not align in every single matter, and then I can make a decision based on the rationale between the various experts. And so I am not

suggesting that there has to be total agreement on every document and every condition.

That certainly gets - I think for me we would document the positions finally, and I do agree that having the council teams in a three-way discussion would be useful.

MS ONGLEY: Thank you. Unless you had any other questions on my submissions, which really just set out the points of disagreement, I will move to the witnesses.

THE COMMISSIONER: I do not have any questions, but just an observation, and it is all in the planning quarterly which arrived yesterday. There is an article about the new national guidance on offsetting that has popped out of the government. Have you seen that?

MS ONGLEY: Is that to do with the draft national policy statement?

THE COMMISSIONER: No, it is some guidance which has been released about offsetting and how it should be done according to the powers that be in Wellington. So I just thought there was an observation I had (inaudible).

MS ONGLEY: I haven't seen it myself, but I'm sure Dr Baria will be able to comment on it.

THE COMMISSIONER: Thank you.

MS ONGLEY: So Dr O'Donnell will speak to a few issues in his supplementary evidence.

THE COMMISSIONER: Thank you.

DR O'DONNELL: Yes. I was going to just clarify and explain a few issues in my supplementary evidence, particularly based on what Mr Chapman and Mr MacGibbon said this morning. And firstly, I have said that a pest control program does have the potential to benefit long-tailed bats if the pest control areas
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THE COMMISSIONER: Just before you carry on, can you - I will just find you evidence, and could you reference your comments to the parts to the evidence so I can just make a note as we go through the paragraph?

DR O'DONNELL: Sure. So I am just at paragraph 2.2 in my supplementary evidence, and there I was just reiterating that I think the pest control program can have benefit to long-tailed bats if that pest control area is of sufficient size and quality to have the probability of maintaining or enhancing the breeding success and survival of that species. And to do that, annual survival would need to be greater than 79 per cent to get that benefit.

Now, for all of my evidence I have used the aim of the ELMP to come to that conclusion, so that I have taken from section 1.1 of the ELMP and from the earlier version of section 5.1 of the ELMP that for bats, the ELMP focuses on achieving a net gain in biodiversity in the medium term. So all my evidence is on that basis. And the other side of that is that I have suggested that the effects of the scheme on long-tailed bats could be catastrophic. I have also said there is a lot of uncertainty about that because of the work that wasn't done initially on radio tracking and finding out where the roosts were.

THE COMMISSIONER: Could I just pause you there? So you heard my discussion with Ms Ongley about that first figure and the ELMP, and the word catastrophic is a pretty heavy word. And looking at that plan, is it your evidence that the construction

of this road in the yellow area might be, could be catastrophic on the local long-tailed bat population?

DR O'DONNELL: Yes, and that's if there are breeding roosts that will be filled in part of that road construction. And I base that on the high activity rates that Mr Chapman recorded, and the fact that he said that the activity rates looked like they indicated there were roosts along that alignment. So that is what I've always sort of maintained, that that's the extreme end of that uncertainty. I think I also said that if it's just loss of feeding habitat, then there would be a moderate effect. So in my opinion, there could be something between - from moderate to complete catastrophe for that population, depending on if those trees are cleared along that alignment.

THE COMMISSIONER: So just to be 100 per cent clear, and this is really, really important. Is your opinion relating to the bat population that is living in the yellow alignment, or is that in terms of the whole long-tailed bat population in the general area that is shown on that plan?

DR O'DONNELL: Well, I mean, the worst case scenario is if those bats along the alignment --

THE COMMISSIONER: Are the only bats that are living there.

DR O'DONNELL: -- are the only, yes. And we just don't know that, and that's where the huge uncertainty came in and why we need a radio tracking study to do that, to find that out.

THE COMMISSIONER: As an experienced bat expert, is that a credible position given the nature of the habitat that we are seeing in front of us here?

DR O'DONNELL: It is, potentially it is because quite often bats roost in clusters of trees within quite close proximity, not always. So again, it's that continuum of uncertainty from medium to extreme. So again, based on the bat detection rates that Mr Chapman described in his original reports and evidence, there is evidence that there are bats roosting very close to that alignment, if not on it.

THE COMMISSIONER: I think we might be talking past each other.

DR O'DONNELL: Right.

THE COMMISSIONER: You used the term 'catastrophic effects' on the local bat population. Is your definition of the local bat

population by geography just the area affected by the project, or is it the wider area that shown in this plan?

DR O'DONNELL: I mean, we don't know where that local bat population is centred, and I also raise the possibility it could be the same bats that are living in Waitonga, because it's in the movement ranges of bats. This has been the problem all along to me, has been without having any information on exactly where they are, I don't know where the actual local population is centred.

THE COMMISSIONER: So I will frame the question another way. In your professional experience and expertise, is it likely that there would be long-tailed bats located throughout this general on this plan, or unlikely that they would be located throughout this area?

DR O'DONNELL: I think it's a 50-50 call to be honest, because again, I gave some examples in my evidence-in-chief of how bat roosts were distributed in the landscape and had a couple of maps of those, and you could see from that that there were some big areas of forests, and that the roosts were clustered in certain areas. And in one of those examples, all the bat roosts

were far away from where the bat activity was. So again, it just comes back to that uncertainty.

THE COMMISSIONER: Thank you.

DR O'DONNELL: I think, you know, the important thing is that you do the radio tracking study, you use the radio tracking studies to lead you to where the bats are, and then you can design your PMA around wherever they are, is essentially what I'm saying.

THE COMMISSIONER: Perhaps one more question just to piece it out. The Waitonga area, that's a known area of both long-tailed and short-tailed bats habitat and population?

DR O'DONNELL: Yes.

THE COMMISSIONER: So what might be the differences in habitat quality and availability between that area and the PMA area that is closer to the coast? Is there a fundamental difference in topography, vegetation type, that would lead you to think that there would be less - well, bats might not be in the PMA area as proposed?

DR O'DONNELL: Not necessarily. I think, you know, a lot of the forest types are very similar, a lot of them are tawa broadleaf kamahi forests, and that is the sort of forest that the short-tailed bats are roosting in in Waitonga, and so they are similar forest types.

I don't know about Parininihi, but in the Mount Messenger blocks to the East are certainly similar forest types for some of that country. So it is certainly plausible that there will be or could be bat roosts in one of those versions of the PMA that gets talked about.

THE COMMISSIONER: So it's similar habitat types, not exactly the same?

DR O'DONNELL: Yes. So I think I actually mapped - there's about 80 per cent of the Waitonga area is that podocarp-hardwood forest type, and about 90 per cent of the Mount Messenger block is that forest type, but that's not counting Parininihi which I haven't looked at.

THE COMMISSIONER: But it's slightly higher elevation, I think?

DR O'DONNELL: Yes, yes. And the Waitonga is on more of a plateau. But I mean, I think they are reasonably similar sorts of forest types for the bulk of the forest.

THE COMMISSIONER: All right, thank you.

DR O'DONNELL: So I was saying about how I would use the objective of the ELMP to come up with my decisions, and I just wanted to - I haven't really had time to look at Mr Chapman's graph that he gave this morning, but there is a fundamental error in it and that's his baseline decline rate for long-tailed bats which is incorrect.

The stuff we published is that there will be a a 70 per cent decline over 3 generations of long-tailed bats, which is quite a different time frame. And we have predicted that to be 36 years, so that the rate of decline nationally is not as extreme as what he is suggesting.

THE COMMISSIONER: So if I can just record that. So this is published in a paper?

DR O'DONNELL: Yes.

THE COMMISSIONER: So that's a reference in your evidence?

DR O'DONNELL: I am pretty sure I've referenced it in my evidence-in-chief, I will just check that for you. So that's O'Donnell et al. in 2010, on page 48 of my evidence-in-chief.

THE COMMISSIONER: And that is looking for the decline over 3 generations?

DR O'DONNELL: So it's 70 per cent over 3 generations, and we estimated 3 generations as 36 years.

THE COMMISSIONER: So each generation is 12 years?

DR O'DONNELL: Yes.

THE COMMISSIONER: Is that the average life expectancy?

DR O'DONNELL: That is the average age of breeding females in any one year.

THE COMMISSIONER: So you would think that this graph would need to go out to 2019 plus 36 years?

DR O'DONNELL: Yeah, something like that. 30 years or - say 2050.

THE COMMISSIONER: 2050. So it would be a flatter graph.

DR O'DONNELL: Yes. We've actually - I referred in my evidence-in-chief to a paper, Eglinton predator control experiments, and that's O'Donnell et al. 2017. And that has actually got real curves in it that account for all the other factors that influence annual survivors as well as predators, and so those shapes are kind of longer and different. But I mean, they are still showing a national rate of decline towards extinction over a period of time.

THE COMMISSIONER: Okay, thank you.

DR O'DONNELL: So as we've heard, we had some productive discussions about designing a monitoring program, and I was really happy with that.

The work is going to be done at least to look at a snapshot of where those roosts will be. There was one point that I disagreed with the ELMP, and I described that in paragraph 2.6 of my supplementary evidence. And that's where the ELMP

suggests that radio tracking might cease once 10 or more roosts have been found in the PMA.

THE COMMISSIONER: Yes.

DR O'DONNELL: In a shorter timeframe to what we proposed in our meetings. So I just think that stopping the radio tracking prematurely would be of little benefit to all the parties really, because there are scenarios where, for example, if you found in the first week 10 roosts in a certain area of the PMA, that will tell you bats are roosting in it, which would be great.

But it might not help in deciding where the best design of the PMA is, because if it doesn't kind of encompass a whole lot of the roosts. I mean, we'd like to have the best representation of roosts in that PMA, so you know the PMA is centred on those.

DR O'DONNELL: And that will be a more valuable study, in your opinion?

THE COMMISSIONER: Yes. And for example, earlier this year the Transport Agency published a report on its radio tracking of

Hamilton bats, and that was over a month of radio tracking and they found 28 roosts. But that study they found about 5 different roosting clusters around the landscape over the month, and so that was showing the extent of the roosting ranges, which would have been - if they had just stopped at 10, they would have just said, "This little patch down here is important."

But the other important thing about that NZTA study is that it showed the roosting areas were between 5.7 or 5.6 or 7 kilometres, and 6 or 7 kilometres apart. So again, it showed the scale at which the landscape was being used by that colony of long-tailed bats. And having that sort of information tells me that, you know, here is something to draw your line around that will capture so many of the roosts or a portion of the roosts, and we'll have a better understanding of where they are.

THE COMMISSIONER: So apart from that, my understanding is that your evidence is that the monitoring plan for this current monitoring season is agreed as between you and the NZTA experts?

DR O'DONNELL: Yes.

THE COMMISSIONER: And will DOC have oversight, and will they be involved at all in the study?

DR O'DONNELL: We have got - some of our local staff are really keen to help on the study, which would pass that information onto NZTA. So I am hoping that that has been clarified, but (inaudible) later.

THE COMMISSIONER: Okay, thank you.

DR O'DONNELL: I also had my supplementary evidence and still some slight disagreement over the tree felling protocols in my paragraph 2.8, but I understand those have been corrected in this latest version. I haven't seen it, but hopefully that's good, so I'm pleased by that.

So my paragraph 2.9, I say that deciding on whether - which version of the applicant's proposed intended PMA, the wider PMA in the study area or the alternative PMA, really depends on a number of roosts that are found and how those roosts are spread through the landscape, and what their distribution is relative to the edge of the PMA.

Now, I've maintained that if the applicants find 10 roosts, maternity roosts in the core of the intended PMA, that's that area that is more than a kilometre from the edge, that I would

be comfortable that the intended PMA does contain a significant roosting habitat and that some would be adequately protected. And to me, this is a simple condition that provides certainty that the PMA will indeed protect maternity roosts. And this is the scenario one in DOC's version of the conditions.

And so this a point of difference still, because NZTA are saying that if you find 10 roosts anywhere in the PMA that that confirms it. Whereas I am saying to be certain, the first bar to pass is if they are in the core of it. Now, I am not saying they have to be in the core of it, so that is Mr Chapman has misunderstood me there. I am not saying that, because we then move to our scenario two, which is if the 10 roosts are elsewhere in the PMA, then that's really to me a discussion about what is their location, is it in a good place or a bad place, and so on.

And when I sort of read the NZTA's proposed scenario 2 and 3 in the conditions, I got really confused because there are lots of sort of detailed little bars to set, whereas I kind of think that it's actually - and I mean, Simon Chapman and I have talked about this. It's best to actually sit down and say, "Where are they? Are they in a good place or a bad place?" If

we can agree on that it's a good place, then that would confirm the PMA, and I think that that's a good scenario to me.

Now, the other critical issue is if those roosts are all located right on the edge of the PMA, then they'd be at much higher risk of predation. And that's the bit that has I think got a bit muddled to me, because Mr Chapman said that 95 per cent of roosts in a study which was actually a study (inaudible) in Fiordland were on the forest edge, and that's right. But I did, in my evidence-in-chief, give you two examples of other scenarios where the bat roosts were much further from the edge. So it's not a given that the roosts will be on the edge, and I don't think it's unreasonable to look for them in the centre either.

THE COMMISSIONER: So help me with this question. When I have heard evidence about bats before, my understanding is they tend to hunt along forest edges, or edges of wetlands where there is open flying space. And so if you were to find them in the middle of the PMA, for example, in the little triangle that was shown, would they live in sort of dense forests without any flying space, or would they need to have some sort of open wetlands or grassland or something that they could--

DR O'DONNELL: I mean, they just fly out of their trees up to the canopy and across the canopy to the forest edges to feed, so there is no--

THE COMMISSIONER: So they might roost in the middle but then fly to the edge?

DR O'DONNELL: That's right. And I'm just trying to find these figures in my evidence-in-chief. So on page 34 of my evidence-in-chief, I've got two maps of the distribution of roosting sites. One map of roosting sites at Maruia and another one at the Heaphy track. And if you look at those, you'll see that unfortunately I didn't - because I didn't realise this was going to come up, I didn't put the scale on that at the time, but all the Heaphy track roosts are more than eight kilometres from the forest edge. And in the Maruia example, there are quite a few of the roosts are along in close to the edges, but there is 2 blocks of roosts that are up to 5 kilometres from the forest edge.

So again, I don't think it's unreasonable to expect that bats will roost in the forest interior, and to be honest we don't know for long-tailed bats for this sort of countryside. So I just think that if we do, they should definitely not ignore

the forest interior when they do the radio tracking study. Don't get the 10 easy roosts on the edge, because that will just cause sort of confusions.

So the other point I have made in my supplementary evidence and previously was about buffering, and how I was uncomfortable with a lack of a proper predator control buffer around the proposed PMA. And NZTA haven't accepted my arguments on that, so that's fine. But to me, that means that if those roosts are near the edge, you really have to be sure that you're doing a credible quality job of predator control around those edges. And to do that is to monitor the predators in that edge zone, and to do it regularly enough so that you know what the predator patterns are.

And I understand, and I may be wrong, that there is no monitoring the actual edge zone proposed in the ELMP. But I was more concerned about after five years that they would stop monitoring, they would just do annual monitoring, and then that after it would take two years to respond to that if the predator numbers were high. And that is actually too long a lag period between recognising you've got a predator problem and adapting your management to it, and that's not the approach that DOC uses in these situations. So, we've got these sort of rat population

growth models that are available that predicts sort of three to six months ahead what the rat numbers will be like in the future, and if the trend is for those rat numbers to be going up at a certain rate, then we adapt our management. So we might suddenly go and fill our bait stations to respond to that, or order another 1080 drop or apply some other toxin or something like that.

So, I think it's really important that if the roosts are on the edge, that they monitor the rats along the edge, and that they do that three times a year, and use the predictive models that are available to adjust their management as they go. So, if the rat numbers are low, then you don't have to do anything, but if they're high, then you have to sort of ramp things up. And that's really ... So I haven't said, you know, that the only way we'll accept this PMA is if those ten roosts are in the middle. I've never said that, but I think there are some sort of -- some adjustments to the predator control management along the edges that need to be done to address that possibility.

I'm just checking my notes here to see if there's anything else I wanted to emphasise.

So the other thing that NZTA have proposed is that their ramp-up of predator control around the edge would only be around five bat roosts, maternity roosts, that were found there, and I ... So I talk about this in my paragraphs 2.20, 2.21 onwards, and it's my opinion that just doing a bit of intensive predator control around five bat roosts would be probably not much point in doing that to be honest, because ... for several reasons.

The first is because if you wait for the predator to get to the thing you want to protect, there's every chance it'll eat what you want to protect first before it gets captured. And the reality is that we don't catch -- we don't ever catch all predators in a predator-controlled operation, which is why we want buffers outside that area. And I've been saying that we should use the predator movements as a, you know, to scale that buffering. But if we just do five roosts, then chances are that you've got hundreds of other roosts that are being preyed on if there's high predator numbers.

So, just let me explain. A bat roost colony uses a large number of trees for breeding, that they cycle around in the sequence, and so most colonies have about 150, even more, maternity roosts that they use in a breeding season. So, to me, to sort of emphasise protecting five is just like a drop in the

ocean, especially if those other, you know, 145 roosts are being subjected to higher predator intensities at the time.

So that's why I think protecting five roosts -- and that's why it is a bit pointless and that you should be controlling that whole edge zone if that's where you're finding the roosts to be.

THE COMMISSIONER: Thank you.

DR O'DONNELL: Now, I was just going to -- like the only study I've done on reinvasion of stoats is one in Fiordland, and like we had radio tags on 25 stoats, and in the end we only ever caught -- we never caught 34 per cent of those stoats, so they were still running around in the landscape sort of eating endangered birds and bats and things like that, and that's when we, for the Fiordland study, we set these big trap lines outside the core area to try and catch them before they get there.

THE COMMISSIONER: So that is your paragraph 2.24 we are looking at, is it not?

DR O'DONNELL: Yes. I finish with sort of talking a bit about the alternative PMA, this Waitaanga area from 2.25 onwards. As

I said earlier, I think, you know, they have ... the forest types there are largely quite similar to particularly the Mt Messenger conservation area, but I think the critical thing about whether or not -- I mean, this is offered as a solution to the problems at Mt Messenger where we didn't know where roosts were, that this is a site where we knew some bat roosts were, and which is why we suggested it.

But I think for that alternative area to be selected, it would be critical for the pest control area to be centred on the known short-tailed bat roosts there, and I note that the applicant's alternative area actually doesn't include the short-tailed bat roosts that we've identified, so that's there.

THE COMMISSIONER: So these are the red dots, are they not?

DR O'DONNELL: Yes. I've given two maps, but the first one is where -- map 1 is where short-tailed bats have been recorded generally, but map 2 is actually the roosts that have been found.

Now, the reason why I've suggested that we can use short-tailed bats as a proxy is that in our studies at Pureora in the King Country and in Fiordland that short-tailed bats and long-

tailed bats, where they occur together often roost in the same patches of forest because they have similar roost tree requirements.

And so I've sort of probably finished with my last clause on that, which is paragraph 2,32, in that if the alternative ... if NZTA wanted to go to an alternative site, that if it wasn't based on those short-tailed roosts, then they would need to do a radio tracking study up there as well, just to identify where the roosting areas were.

THE COMMISSIONER: All right. Thank you very much. So I think you really have covered most of the areas that I looked at. My rather intense questioning about this wider habitat area was really sprung off your paragraph 2.28 where you stated that from the perspective of habitat requirements for long-tailed bats, both sites would provide comparable bat habitat. So, back to the RMA habitat.

Would you like to comment on your map 1, just in terms of all those blue dots, which are long-tailed bats from DOC's national database?

DR O'DONNELL: Yes, so all those blue dots are a feeding or they are dots recorded from our automatic -- those automatic recorders that we use that pick up the eco-location calls. So they're basically bats flying through the landscape.

THE COMMISSIONER: But you do not know where they --

DR O'DONNELL: So we don't know where they roost, but we know where they feed. And I just go back to that uncertainty issue about where they are, is that, you know, these bats can fly 5, 10, 15, 20, even up to 30 km from their roosting site so, again, I just -- in an ideal world I would let the bats lead me to where the roosts were and then design my EMA around that from that bat's perspective.

THE COMMISSIONER: Okay. Thank you very much.

MS ONGLEY: Dr Barea is DOC's next witness.

THE COMMISSIONER: Good afternoon, Dr Barea.

DR BAREA: Afternoon.

I suppose that I, given that we don't have a summary statement, that I just pick up on a few key paragraphs, and I'll read you those paragraphs, and then you question me on anything as it suits.

THE COMMISSIONER: Yes.

DR BAREA: Great, thank you. Okay, I just confirm that, you know, from an overall mitigation and compensation perspective, again that we're ... sorry, paragraph 2.2. I'll refer to the paragraphs in that, yes.

NZTA's proposal for managing herpetofauna, and in particular the striped skink, required amending, but these have been achieved and from the department is -- I'll just confirm that we're happy with the current proposal.

With respect to your questions around proximity, and am aware that 200,000 might be expanded, it might be possible that the discussions that we've had to date, we've focused on mouse control research, but where that occurs might be either more efficient for that research to occur outside of Taranaki, or maybe within, but I think what's important is that the results can be applied within Taranaki, and sometimes for a range of

reasons, where the actual research happens, you know, it might be in another location.

THE COMMISSIONER: It might be where the research is based and those sorts of thing.

DR BAREA: Yes, but I think ultimately in terms of outcomes for Taranaki, that those results need to be applied in that area.

So anyway, we take on board what you are saying around being more specific and we will look at that. Thank you.

Okay, in paragraph 2.4, I'm reiterating that we have agreed to a reduced area that we had originally asked for, but based on the location of bat roosts, which Dr O'Donnell's just talked about, but also on the assumption that the pest control is effective in achieving its targets, and that's a key point that I'll refer to again throughout this supplementary evidence.

And relating to that is the key area of buffering, which I address in the first instance in 2.5, and basically what I'm saying here is that it's good practice pest control to buffer ... When you have an explicit management area of interest, the buffer should be outside of that to achieve the

maximum benefits for that specific area. In this case that's 3,650. So ideally a buffer should be outside of that so that, as Dr O'Donnell has said, that predators are removed before they get into the area of interest.

Now, for a range of reasons there is no external buffer to the 3,650, so what's being proposed is ... I mean, we're calling it a buffer, but it's an internal area where some intensive management around known bat roosts would occur if they are found within 500 m. One of the concerns that I have there is that the applicant is still proposing not to monitor pests within a 200 m perimeter of the PMA, which I think is misaligned with the intended outcomes for bat management within a 500 m perimeter of that area. So I think the conditions need to require pest monitoring within that 500 m area if that's how it ends up, and also to apply the residual pest targets evenly across the whole of the PMA and not allow for effective targets to be increased to 10 per cent, even though the goal might be 5 per cent, but it's not until 10 per cent occurs over two consecutive years that something actually happens. It makes it an effective target from a practical --

THE COMMISSIONER: It seems to me, do you agree, that this issue we are talking about now is a key issue to deal with in the next round of conferencing? It is an area that is not resolved.

DR BAREA: It is an area that is not resolved but, like others have said, we've had extensive discussions with NZTA, and I'm not sure we can move much further on, yes, but we could give it a go.

THE COMMISSIONER: And that is why even for the ecologists those new breed principles and, you know, the tests of reasonableness, you cannot really have conditions which frustrate a grant of consent. You have heard evidence that NZTA think some of those RTIs are impossible to achieve in their view. I should ask you the same question in terms of what I asked them. Is your evidence that the proposal around 1 per cent RTI in the way you are thinking of applying, is a reasonable and possible outcome?

DR BAREA: I think it would be extremely challenging and difficult to achieve and maintain, in particular given the topography of this site.

THE COMMISSIONER: Okay, so that is --

DR BAREA: So that's how that's worded and applied.

THE COMMISSIONER: (overspeaking) the practicality, achievability, I do not think I could grant a consent or a notice of requirement where I knew there was a condition or a provision that this was very difficult to ... here is a funny legal term about frustrating consents. If you set up a set of conditions that you know are likely to fail, the consent should never have been granted, so that is the issue I have.

DR BAREA: Yes, I can see that around the 1 per cent. Five per cent's going to be hard enough anyway, but 1 per cent ...

MS ONGLEY: Can I make a comment, Commissioner?

THE COMMISSIONER: Not really, no. I will come back to you at the end.

MS ONGLEY: Thank you.

DR BAREA: But I'll address the 5 per cent and some of the challenges later on.

THE COMMISSIONER: Okay. Thank you.

DR BAREA: Okay, with respect to paragraph 2.7, I don't agree that slowing the decline of the local long-tailed bat population would be sufficient to address the effects of the project on bats. When I say "effects" here, I'm referring to what has to be assumed highly significant effects, and that's the approach that the applicant has taken, given that there is no data around where roosts are located with respect to the impact area. So, it's the approach to compensating for bat effects assumes a significant effect. So that's the context for that.

Based on Dr O'Donnell's evidence, the project is likely to increase the current rates of decline of the long-tailed bat population in Mt Messenger, and also to reduce the opportunities for species recovery efforts for that population.

I disagree with Mr Chapman's statement that the adverse effects of the project would, at worst, exacerbate the existing population decline by a small amount, especially given that VRPs will be applied to reduce the project's direct effects on bats. Mr Chapman provides no data or evidence to quantify the rate of decline, or an estimate of adverse effect size. An estimate of both the background rate of decline and the additive effect of the project are necessary to substantiate his statement that

exacerbating the existing population decline would indeed be small. I rely on Dr O'Donnell's evidence-in-chief that significant effects could occur.

THE COMMISSIONER: Dr Barea, this is the issue that Mr Chapman looked to try and represent in his graph, as I understand it, so what is the target, what are we dealing with? Is it arresting decline and an outcome that's better than the natural decline might be predicted to be, or is it keeping the current population stable, or perhaps enhancing it? Is that your understanding of the way Mr Chapman was trying to represent the issue in this graph that he has given us?

DR BAREA: Well, I think so, and I have only just seen that briefly this morning, but what I'm saying here is that it all comes back again to, and I keep I guess restating it, that we don't have any data to go with, so if the local bat population has its maternity roost or has a high proportion of maternity roosts within the impact area, and those are lost, and that can happen because they weren't using them at the time VRPs happened, then the impact can be significant, or large.

So the effect then in terms of the current slope of a graph, which Dr O'Donnell has said is likely to be more shallow

than what's shown there, would be additive, so it would steepen that graph at a local spatial scale, given that that's a national scale. But we don't have that. We don't know what the shape of the slope is locally. We don't know what the size of the true effect, because we have nothing to measure that against, so it makes making these statements around increasing decline by a small amount, I think, unsubstantiated.

The project has taken the approach of accepting that the size in fact would be large and compensating accordingly. So, I think that the ... and, you know, again, you can't quantify this, but the objective, I think, should be, and this is seen in the light of the applicant's intention for no net loss or a net gain, which I think is -- a net gain is appropriate, given an assumed large effect size, would be to manage those populations so that they're enhanced in terms of the population size, which effectively becomes the numbers of bats within that population, and that's done by increasing the survival rate to 79 per cent in maternity roosts, and that would create a larger population size.

In an ideal situation, if you had a quantified effect size, then you'd match the amount of that gain, or enhancement, to be in terms of net gain, a degree more than a quantified effect

size, but we don't have that, so it becomes a matter of how much gain or enhancement should that be, and it then falls on expert evidence and management to create a large gain in the population that's been managed, and Dr O'Donnell has addressed that in terms of the 79 per cent survival, and that also feeds into the number of roosts, which is the 10 roosts that would be in the PMA in preferably a core area.

THE COMMISSIONER: Thank you.

DR BAREA: I've stated some of the points already I was going to talk about, but ...

In paragraph 2.10 I say that I agree with Dr O'Donnell's approach that when managing for species recovery, consideration of the buffer area in which pest invasions can be expected to occur, is very important, and I said that in my EIC and Mr MacGibbon also spent some time talking about the importance of that. But I also agree that an adequate buffer should be based on the behaviour and home ranges of the pests that predate on the relevant species. So, that 1 km area, that's not an ad hoc or a random number. That's based on published home range sizes for stoats, which actually often exceed that, so it's conservative in how that was applied.

So the point here that I'm trying to make is it seems to me that the whole thinking around where and how large the ... well, principally where the PMA is desired, is a little bit about face because, as Dr O'Donnell has said, the best approach is to let the bats lead you to where they are and where the management needs to occur, and let that inform where the PMA is. But what's happening here is that the PMA, the preferred location, has been decided beforehand, and then the management has been squeezed to allow for the PMA to be confirmed, when in reality what's of major importance is can management be applied to a particular area, in this case an intended PMA, can that actually produce the desired outcome of the compensation, and I think that's concerning as to whether that can happen, given what's currently being proposed.

THE COMMISSIONER: Do you think that is really fair, because my read of what the NZTA experts were saying is that they have a preferred PMA because that is coastal through to inland, and includes the Ngāti Tama land and Ngāti Tama want to be involved and it links up predator control, you know, in an integrated way and, correct me if I am wrong, but my interpretation was that after the bat monitoring study, the final location of the PMA was open for refinement, based on where the bats were taking

you. Is that -- so, I am not sure whether your statement there would be fair, but I will let you ...

DR BAREA: Okay. I think there are scenarios where the location of the bats, or the bat roosts, would allow some realignment of the PMA, but there are also a lot of constraints as to how much realignment can actually occur. There's a lot of private land there that may or may not ... so, what I'm saying is it's not an open book as to how much realignment can occur.

The other factors in terms of where ... like the other factors are important, for example, Ngāti Tama's interests, and other ecological considerations about where the PMA would be located, they're all important as well, but they're not all about bats, and where's there's an intended outcome for bat conservation, then it matters where the PMA is, notwithstanding the other factors.

THE COMMISSIONER: You are saying there is a range of objectives of why that PMA might be a good area for the other flora and fauna across the area?

DR BAREA: So my comment related specifically to the long-tailed bats.

THE COMMISSIONER: The bats, I understand that.

DR BAREA: In terms of squeezing it.

THE COMMISSIONER: Yes, but would it be fair to say that while there is not absolute flexibility, there is some room to move to other areas if the bats are taken somewhere else?

DR BAREA: I mean, I can't speak for privately owned land, but there's other DOC managed land there that probably would be available, and if there's private land that landowners are happy to make available, then good.

THE COMMISSIONER: And is it your read of what is proposed that ultimately as, after the study, if the right thing to do would be to actually concentrate on the other area that DOC has proposed, that is still open and a possibility?

DR BAREA: Yes, I'll get to that, and for clarity I'm not opposed to this occurring in the intended PMA if it makes sense based on where the bat roosts are. I just want to make that clear.

In paragraphs 2.12 and 2.13 I'll just briefly -- Dr O'Donnell's already referred to his concern around this, but I have the same with respect to the monitoring is not proposed to occur for pests within that 200 m boundary, however, that's one of the most important places where that needs to occur because the ELMP itself anticipates that pests will increase in those areas. So that's the conflict again with bat roosts located within the perimeter. I think that's a fundamental issue that impacts on the ability to deliver the outcomes for compensation and, again, that's exacerbated by the monitoring proposal whereby after five years monitoring only occurs once annually, and that lag period, again, I think is problematic and risks undoing the benefits that might have accrued over the previous few years with respect to bats.

And, again, there are methods available to allow response within the same season based on rat indices before the breeding season.

THE COMMISSIONER: The thing I should ask you, as I did with Mr Chapman, I asked him about his confidence of achieving what was intended. You say in your 2.12 at the end relating to the scenario you discuss here:

"Under such a scenario I have low confidence that the proposal can deliver its intended outcome."

So, again, on a scale of 1 to 10, if low confidence was 1 and 10 was high confidence, where would you be sitting with your understanding of what's proposed?

DR BAREA: Somewhere between three and five.

THE COMMISSIONER: And that is because ...

DR BAREA: That's because of a combination of the topography that's there, and the actual ability to lay out devices on grids or designs that are known to be best practice elsewhere and effective, and also the lack of a buffer and the intensity of management proposed for that internal buffer and the lack of monitoring for pests within that 200 m ...

THE COMMISSIONER: So that range I have asked you is a different question to what I asked Mr Chapman, so you are talking about the ability for the pest monitoring to be effective I think in that paragraph?

DR BAREA: I was saying it's referring to my confidence and ability of the management to reduce pests to a level that produces the enhancement --

THE COMMISSIONER: Okay, so it is similar. I understand. Thank you.

DR BAREA: I just want to refer in 2.15, just referring to the proposed intensified pest management around known roost trees. In 2.16 I just refer to -- like I lead the Kokako Specialist Group, which is the renamed Recovery Group, and what I did was I sought their views on this approach for Kokako, given that it had been referred to in Mr MacGibbon's evidence, and that I knew that it had been used for Kokako at other sites, and I mean the results have been variable. Sometimes nests do survive, and other times they don't. When they do survive, there have been no experimental designs implemented to show that the ring of steel is the cause of increased survival of nests. You might under some, you know, logic think at times it will, but at times it doesn't, so it's not something that can be relied on to deal with increased predator levels within perimeters of managed areas that don't have an external buffer.

So the Kokako Specialist Group, its main function is to provide advice to the department or external groups around managing Kokako populations, and when we're asked about this technique, our advice isn't to establish rings of steel around nests. The advice is to maintain the target RTIs across the entire management area because that's what's known to result in the increased population.

I'm not aware of anywhere where this has been used for bats, so I'm not, yes, at best I'd say results would be variable, and I don't think it can be relied upon to deal with the buffering issue, and so I would be recommending the maintenance of residual pest level targets across the whole PMA, including those edges.

The other issue with the ring of steel approach is that, as Dr O'Donnell's talked about, the bats are changing their roosts frequently, and that includes maternity roosts, and I understand from him that they carry their young between roosts so, you know, they might be a couple of days in a roost and then they move to another roost, and if they move and there's no ring of steel, you know, assuming that those are effective, then how is the applicant going to know that that's occurred and where have they gone to, because the ring of steel as a management

technique needs to be where it's needed, so that would be a shifting ... and I think it would be incredibly impractical to attempt to do that and, again, I think the better alternative is to maintain those low levels within the whole PMA, including the perimeter.

THE COMMISSIONER: Okay. I understand that is your evidence. Just out of interest, how do the bats pick up their young? Do they put them in their mouth and swing them ...

DR BAREA: It must be the mouth or the young climb on, but I think it's a question for Dr O'Donnell.

DR O'DONNELL: They climb on to the nipple of the bat and the bat flies off with them hanging off the nipples. I should have brought a picture for you because it's pretty whacky.

THE COMMISSIONER: Okay. Sorry, that was a bit of an aside. Thank you. Carry on, Dr Barea.

DR BAREA: I would just like to make some comments now just on the proximity issue like-for-like and then briefly on additionality.

Now, I won't go into all the ins and outs of offsets and compensation and differences and all that, it's been well talked about before, but I just, you know, I think we're all pretty comfortably aware that this is not a biodiversity offset aiming at quantified known as loss. In that context I think the proximity and like-for-like, which is related to proximity, becomes very important.

In this case, for compensation, I think that there's an element of, I guess, social process in -- or expert social process in arriving at outcomes that might be considered suitable, and I think that a degree of relaxation on both proximity and like-for-like can still result in something that's worth considering.

So, in saying that, I do support closer is better, where it makes good sense and you can achieve the outcomes that are needed, but it's not absolutely essential. And I draw attention to ... it's very common in New Zealand for mitigation or compensation to be applied within the same ecological district, and that's quite often the bar that's used for acceptability around proximity, and I've checked on the department's JS systems and both the Waitaanga and the PMA are all within the same ecological district.

THE COMMISSIONER: So they are in that, is it the north Taranaki

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DR BAREA: North Taranaki ecological district.

THE COMMISSIONER: The ecological districts vary in size, do they not, is that a big district or comparatively?

DR BAREA: I think it's probably more the moderate scale. It does extend from the coast somewhat inland, but ecological districts, as you know, they're based on geographic and climatic and ecological similarities, so at that level I'm comfortable that if the Waitaanga site was selected, and I'm not saying that it should be selected over the other, then I'm comfortable that it could still be an appropriate outcome for this project.

THE COMMISSIONER: I do have a question about this proximity issue from a, let us use the term "a noble judgement perspective". It is a judgement call about how much, where it is, where the best bang for buck is essentially across a range of different objectives, so we had, you know, the vegetation type, and we had different animals and birds and things living around, so from an RMA perspective, we have clearly got the

section 6 matters which are relating to ecology, we have got some of the relationship matters with Māori and being interested in ecology, and as part of the relationship with the natural environment and special places so, as a scientist, do you think about the overall sort of judgement, or are you really just focused on that particular ecological issue, if you were choosing a PMA?

DR BAREA: I would look overall, and acknowledge overall the range of interests and perspectives, but when you need to consider achieving certain outcomes, you've got to think about the ecology and the biology that's involved.

THE COMMISSIONER: That is your speciality, yes.

DR BAREA: So when I'm thinking about bats and management and increasing gain, those aren't social issues. They're management issues. You've got to deal with known pests using methods that have been scientifically proven to work. But where that management occurs still has a social and cultural context because there may be several places where you could increase or enhance bat populations, and if you can line those with other values --

THE COMMISSIONER: If they can be lined, that would be a good thing, yes.

DR BAREA: Yes, agreed.

THE COMMISSIONER: Okay, I think it is fair answer to the question. Sorry. Okay, thank you for that.

DR BAREA: I did include something on vegetation with Waitaanga and Mt Messenger, but Dr O'Donnell's spoken about that, so I won't repeat that unless you want me to deal with that.

In terms of like-for-like, if the Waitaanga site is chosen, there are two species of bat there, as you know. Okay, so straight away we don't have like-for-like, but we also don't have like-for-like on conservation value either because we've got one that's nationally critical and the other that's at risk, the short-tailed bat. However, in relying on Dr O'Donnell's evidence that both species select similar habitats for their maternity roosts, and that he is comfortable that basing the PMA, or centring the PMA on the location of known short-tailed bat roosts as a proxy for long-tailed bats, thus not requiring the applicant to radio trap, I'm comfortable that that would still meet a like-for-like outcome for long-tailed bats given

the similarity in habitat preferences and the high detection rate for long-tailed bats within that area.

So, the emphasis there is that the short-tailed bats are working as a proxy for long-tailed bats, but I agree with him, if the short-tailed bats are not the centre of the PMA, then to achieve a like-for-like outcome, you'd need to radio trap again to find long-tailed bat roosts.

THE COMMISSIONER: Thank you.

DR BAREA: And I think I might have just one comment on additionality. Sorry, 2.38 where Mr MacGibbon had stated that the Waitaanga receives no pest management. He updated that today and -- which was good to see, but it does -- it has had three-yearly 1080 and goat control, and the future plans by the department are to continue three-yearly 1080 and goat control and associated monitoring.

I also confirm that the Mt Messenger conservation area also is receiving three-yearly 1080, and that's intended into the future.

THE COMMISSIONER: So that is the area, part of the PMA, just to the south of the project?

DR BAREA: Part of the PMA, yes.

THE COMMISSIONER: Thank you for that.

DR BAREA: Management in perpetuity, so I'll just read out paragraph 2.40:

"The applicant proposes to manage pests in the final PMA in perpetuity and I have commenced that approach in my EIC. The current proposal intends to include the Parininihi pest management area within the PMA but provides no assurance that the requiring authority can implement pest control in perpetuity. The Parininihi area is owned by Ngāti Tama. Mr White's evidence in chief at paragraph 44 stated that they had reservations around a commitment to pest control in perpetuity. Mr White also stated that there had been discussions about a 25-35-year arrangement with rights of renewal and that that detail was still under consideration."

I think, well, in my opinion, I should state there, is that if that area becomes part of the PMA, then there needs to be assurance around the ability to manage that in perpetuity, consistently with the rest of the PMA.

Relating to that, I understand that Ngāti Tama have interests in that area being part of the PMA, and I just want to

refer to a kind of first principles approach around effects management and that the considerations around ecological damage need to be primarily focused on ecological compensation as a concept as opposed to other reasons for compensation, like social or cultural. And not that they aren't important things to address, but there can be a danger in conflating ecological and cultural or social compensation, and I think that's just something that warrants some thought. I'm not fully aware of all the reasoning around why Parininihi is proposed as part of the PMA, but I'm not opposed to it. If the bats are shown to be there, it might make sense, but the ability to manage that long-term is important.

There was some comment made earlier on around with respect to Waitaanga and the Ngāti Tama rohe, and I just mention this to try and be helpful, and Mr Silich might be able to later help with this, but my understanding is that the rohe boundary does go up -- dissect the Waitaanga area, but it also dissects, or bisects, part of the intended PMA, so there may well be other iwi with an interest in the intended PMA, and that's shown on figure 1 of Dr O'Donnell's evidence. There's a rohe boundary line there, but I think Mr Silich might have some -- might be able to confirm that.

THE COMMISSIONER: Yes, I think that would be good to have that confirmed, but I do have one question about your previous comment about the interface between social and cultural values and ecological values.

As a conservation manager, which I think you have got broad conservation management, do you think it makes a difference if the people involved, or landowners involved, have a visionary, like they really want conservation to be successful and are right in behind that from a social and cultural point of view, as just an adjunct to successful conservation management, rather than just, "Oh, you know, you're being paid to do something, and ..."

DR BAREA: Yes, absolutely, and I don't intend to imply anything else. I guess what I'm saying is that there can be a danger when management is proposed in an area where two different drivers are conflated and a management area is decided. That's why I say if the bats are shown to be roosting in that area, then it could well make sense that it's part of the PMA. In that scenario, the social, cultural and ecological align and make some sense, and then it just comes about the long-term.

THE COMMISSIONER: But we know that there is Kokako being managed in there, and there is coastal forest types and things like this, there are broad ecological values --

DR BAREA: Yes, but I guess I'm talking about the bat issue.

THE COMMISSIONER: You are just talking about the bats critically.

DR BAREA: That's what's --

THE COMMISSIONER: So, again, overall we are looking at the PMA to manage a range of effects. Bats are an important, but only one part of the jigsaw, are they not?

DR BAREA: Yes, and there are many other values within Parininihi that have benefited such already at quite a high level and would continue to benefit for sure.

THE COMMISSIONER: Thank you there. That is all I have.

DR BAREA: Okay.

THE COMMISSIONER: So, Ms Ongley, I think the rules of engagement essentially at these sort of hearings there is no cross-examination rights or re-examination, so I am not sure given that --

MS ONGLEY: Are you referring to the comment I was going to make before?

THE COMMISSIONER: Yes.

MS ONGLEY: Yes. I just wanted to clarify that the 1 per cent RTI is not in DOC's conditions. It is not in DOC's set of conditions. That is all I wanted to say.

THE COMMISSIONER: Thank you. Okay, thank you.

MS ONGLEY: Thank you. I am not sure if you want to hear from Mr Inger now or wait until after conferencing.

THE COMMISSIONER: Well, let us have a talk about it. Mr Hovell, you have got your witnesses --

MR HOVELL: Yes. I am just conscious that is after 2.30 pm and you have Mr Paul Thomas who will have to dial in.

THE COMMISSIONER: I have actually left his statement in my room, so I will be about --

MR HOVELL: I wonder if it would be easier if we just take a short adjournment.

THE COMMISSIONER: I think if we take a five-minute break. Can we take a ten-minute break and we will come back then and hopefully Mr Thomas will be on the line and we can go from there.

MR HOVELL: I presume you are taking his statement as read?

THE COMMISSIONER: Yes. Yes, we are.

(A short adjournment)

MR THOMAS: Hello?

MR MCKAY: Kia ora, Paul. Hello? Yeah, kia ora, Paul.

MR THOMAS: Hello, can you hear me?

MR MCKAY: I can hear you. What we're going to do is, once I confirm your statement, we'll move the laptop over to the Commissioner. That way, the Commissioner can hear you because it's quite faint on the system here and he'll ask you the questions. But I'll just confirm your statement, Paul, and then I'll hand the laptop over to the Commissioner. Okay?

MR THOMAS: Okay, sure.

MR MCKAY: So I just wanted to confirm, Paul, your full name is Paul Robert Thomas and you've prepared a statement of evidence dated 8 October 2018 for this hearing?

MR THOMAS: Yes.

MR MCKAY: You confirm that. And you've got that statement in front of you?

MR THOMAS: Yeah, I do.

MR MCKAY: Okay, thank you. I'll hand the laptop over to the Commissioner and he'll ask you some questions.

MR THOMAS: Sure(?).

THE COMMISSIONER: So kia ora, Mr Thomas. Can you hear me?

MR THOMAS: I can. Good morning. Kia ora.

THE COMMISSIONER: Good morning.

MR THOMAS: Or good afternoon.

THE COMMISSIONER: So it is good afternoon here and morning in Tel Aviv, I understand.

MR THOMAS: Yes. Yes, the day is just about to break.

THE COMMISSIONER: Yes, early. Thank you very much for both your statement and for making yourself available. I have read your evidence, Mr Thomas, and I only have two or three questions of clarification because I think what you have written down is very clear as your expert opinion. Do you have the statement in front of you?

MR THOMAS: I do, yes.

THE COMMISSIONER: What I will do is I will ask you some questions and then I will try and relay the best I can your answers to the wider people listening in so they can follow our discussion. I will do my best on that.

My first question relates to your paragraphs 7 and 8 of your evidence. My understanding of what you are saying is you have found no evidence of a group called Ngā Hapū o Poutama in your readings for your research. Is that correct?

MR THOMAS: Yes.

THE COMMISSIONER: The answer was "Yes" to that question. But you also suggest that Poutama was or might have been the name of an ancestor or a reference to a place. Is that again your position?

MR THOMAS: Yes.

THE COMMISSIONER: The answer to that is "Yes" as well. Now I do have a question. I think we heard evidence from people representing this group that there was a marae that they affiliated to. Are you aware of that place or that marae?

MR THOMAS: Am I ...? Excuse me.

THE COMMISSIONER: Are you familiar with that marae or where --

MR THOMAS: I have not been to that marae myself and I am not aware of a Ngā Hapū o Poutama marae in the 19th century. But there may well be a marae connected with that group currently. But no, I am not aware of a ...

THE COMMISSIONER: All right, thank you. The only other question I have because you do set this out very clearly is that your evidence is that as between Ngāti Tama and Ngāti Maniapoto, both of these tribes had influence over the years in the broader area, Mokau, Poutama, this area that we are looking at with our project. I think, looking through your paragraphs 14, 15, 16, that is your evidence; that there was general influence of both tribes in this general area?

MR THOMAS: Yes, I think that as a generalisation, you know(?), tribal affiliations and customary rights in the 19th century were very complex and disputed. But this area was largely seen as a place where Ngāti Tama and Ngāti Maniapoto held rights and then there is very complex relations between those two groups over rights within the area.

THE COMMISSIONER: Okay.

MR THOMAS: They were the -- in my opinion, they were the two dominant players within the -- the evidence suggests they were the two main(?) tribes within the area.

THE COMMISSIONER: Yes. I will just paraphrase what you have said. Mr Thomas has confirmed to me that while the relationships and the history was somewhat complex, his research is that in the general area - we are talking northern Taranaki, as I understand it - Ngāti Tama and Ngāti Maniapoto were the main players or the main tribes. There was some complexity with that obviously, which has been outlined, but that is the general answer to that question.

MR THOMAS: I just wanted to, I guess, reiterate my central point that there is a large amount of evidence to do with tribal relations in the area in the 19th century and that the dominant theme between Ngāti Tama and Ngāti Maniapoto were asserting rights and that a group called Ngā Hapū o Poutama was never mentioned in law(?). I have never seen any reference to that topic whatsoever.

THE COMMISSIONER: Yes, thank you. I will just repeat that the best I can do for the people here. You said there is a large body of evidence around the 19th century, which pointed to the fact that both Ngāti Tama and Ngā Hapū o Poutama were active and dominant in this area, if we use that term. You have found no evidence of a hapū by the name of Poutama in any of the evidence you have read. That is your central point?

MR THOMAS: Yes and, perhaps more importantly, it is quite clear that they are never mentioned by Crown(?) (inaudible) and so on whatsoever. But also certainly there is no mention whatsoever that they are the dominant force within the region either.

THE COMMISSIONER: What Mr Thomas has said is that there is no evidence he has seen of the Crown referring to a hapū with this name. That is the main point. All right, those were my two main questions. Is there anything else you would really like to emphasise to me as I consider this matter and before I make my decision, Mr Thomas?

MR THOMAS: No, I hope that I have set it out clearly. Perhaps I should just reiterate that my original report written for the Waitangi Tribunal was based on a large amount of research. So I have sort of read the 19th century sources very thoroughly. I

did not have time to look at every particular source again before this hearing. But overall I am very confident about my main thoughts(?). I hope I have set them out clearly.

THE COMMISSIONER: Yes. Mr Thomas has explained he did a lot of research preparing his 2011 report for the Waitangi Tribunal, but he has not had the opportunity to go back and refresh though, but he is confident of his position and his evidence. Is that a fair summary, Mr Thomas?

MR THOMAS: Yes, it is. Thank you, Commissioner. Yes.

THE COMMISSIONER: Thank you very much. That is all the questions I have. Thank you very much and have a good day.

MR THOMAS: You, too. I appreciate all you do(?). Take care.

THE COMMISSIONER: Thank you.

MR MCKAY: Thank you, Mr Thomas. We'll hang up now. Thank you for that.

MR THOMAS: Okay. Goodbye.

MR MCKAY: Goodbye. Thank you, Commissioner. So I think go back to Ms Ongley.

THE COMMISSIONER: I think, Ms Ongley, are you --

MS ONGLEY: Did you have any questions at this stage(?)?

THE COMMISSIONER: No. What do you suggest, Ms Ongley? My feeling is it is getting late in the day. I have read Mr Inger's evidence and his conditions, but I do think we are probably better not to call him and if he focuses with the other planners in the joint witness statement process if you are comfortable with that?

MS ONGLEY: Yes, that is fine. Thank you.

THE COMMISSIONER: Thank you. I think we are back to you.

MR HOVELL: Okay.

THE COMMISSIONER: Please do take your jacket off because it is getting really hot.

MR HOVELL: Yes, thank you, Commissioner. I will call Mr Silich first and then I will just speak briefly to that memorandum I prepared.

THE COMMISSIONER: Thank you.

MR SILICH: Tenā koutou katoa(?). My name is Paul Silich of New Plymouth. I am of Ngāti Tama and the chair of Te Rūnanga o Ngāti Tama and am authorised to provide this statement on behalf of the rūnanga. I do not want to repeat the points that were made previously, presented to the Commissioner by Mr Hovell and Mr Greg White in the August -- in August 2018. I note that the points made during the hearing at that time continue to reflect the position of the rūnanga. The rūnanga is generally supportive of the grant of the RMA approvals provided the financial compensation/mitigation funds are sufficient and effects are addressed. We are continuing discussions with the NZTA on the matters that were set out in Mr Greg White's evidence in the August hearing.

To provide a brief update, the rūnanga has still not reached a final agreement with the NZTA. This statement is to reply to the new evidence that has been lodged by the NZTA. The key point that I want to address is the pest management area.

Our understanding is that the NZTA and DOC propose that the PMA is linked to there being bat maternity roosts found in this area. If no maternity roosts are found, there is a possibility that the PMA could be shifted to other areas such as the Waitaanga Forest.

I am not an ecologist and therefore I do not want to comment on the technical points. I have been asked to relay the view of the rūnanga that it supports the PMA remaining in the Parininihi area. This is the area affected by the project. I understand that there are different effects that need to be considered such as the effects on bats and that the mitigation needs to respond to those effects. An important part of the reason for the PMA in Parininihi is not only because of the bats, but also because of kōkako and kiwi and other taonga in this area. There is also the cultural association of Ngāti Tama to this area.

The rūnanga therefore supports the PMA remaining in this area and the inclusion of the Parininihi block in it. To address this, the rūnanga says that the conditions should state that if the assessments result in Parininihi as not being part of the PMA, there should be consultation with the rūnanga and

experts appointed by the rūnanga to consider how effects in this area and taonga of this area are to be addressed.

Kia ora.

THE COMMISSIONER: Kia ora. Thank you very much, Mr Silich. I do have a few questions. The question is that in your paragraph 4 you talk about the rūnanga now having a full complement of trustees. Has there been a recent election or appointment process to appoint trustees?

MR SILICH: No. There was a -- some of the trustees were suspended. They now -- we've now patched our differences and they are back on board. The reason I did not read out the -- that statement was some legal advice over the agreement. So it's just a point of fact.

THE COMMISSIONER: Mr Hovell, perhaps you can address(?) that?

MR HOVELL: Yes. There is a court process that the trust has been going through to resolve those differences between trustees. That has resolved and there is(?) an order. There is a little bit of uncertainty as to the effect of the order and exactly what it means. I was not the lawyer acting for the

trust in relation to that matter; another lawyer is involved. So I am not entirely certain exactly what the current position is. It was just a case of clarifying that in the first instance. That was the reason we had a discussion and thought maybe it is safer to remove those two sentences for now.

THE COMMISSIONER: So they(?) are likely to be struck out of the evidence at the moment. Is that safer?

MR HOVELL: That is where we had got to in terms of the submission.

THE COMMISSIONER: Okay, so paragraph 4?

MR HOVELL: Paragraph 4 and those two final sentences.

THE COMMISSIONER: So we take those out?

MR HOVELL: Take those out.

THE COMMISSIONER: All right. Because there have been some recent developments there and because Te Korowai are a submitter and Mr Enright is not here but he does have a representative, it would certainly be very helpful to me if between counsel there

was some clarity regarding this before I make my decision. Te Korowai needs to do what it needs to do, but just I am making comment that that position is quite important in my decision-making. Mr Enright went as far as saying that Te Korowai's position was sort of leading to a landmark case to the RMA. So if that is now resolved and things are moving forward, whatever you could give me on that, Mr Hovell, or on behalf of Mr Enright, I would be welcoming of any such submissions.

MR HOVELL: Yes, I imagine we can clarify that pretty quickly. I guess part of the difficulty is, like I said, it was not myself that was involved in that. There was other leading counsel that were representing the trust. So it would be a discussion with them as well(?).

THE COMMISSIONER: Yes, so if I leave that with you to co-ordinate and if you can give me a submission either way before we finally close out the hearing, I would really appreciate that.

MR HOVELL: Yes, we can do that.

THE COMMISSIONER: Thank you. Another question I had is about you have heard my questions of DOC, Mr Silich, saying that there

is more values in ecology. There are cultural values and other values which might piece together to make up a PMA and(?) different animals. I think you are confirming to me that there is a strong preference for your land to be included in the PMA and for you to work with NZTA and DOC on this ongoing conservation. Is that the preference of the trust?

MR SILICH: Yes.

THE COMMISSIONER: If the stars align with where the bats are, that would be a good outcome for you and your trustees?

MR SILICH: Most certainly.

THE COMMISSIONER: Thank you. I do have one final question you might be able to help me with, Mr Silich. I would like to do that - and whether Mr Hovell has a copy of this - with reference to this plan, the second last plan, in the environmental and landscape management plan, the ELMP. It is this one here with the brown(?) circle on it, Mr Hovell. Again, I have watched the conditions evolve both around the way that the PMA is being looked at, but also in relation to the conditions about a kaitiaki review group, which is now linked in to the ecology conditions as a party in a way. I have asked a number of

questions about that kaitiaki review group and its makeup. NZTA are saying the Te Rūnanga o Ngāti Tama should be the focal point and you should appoint the membership and you could also invite others on. Is that a fair summary?

MR SILICH: Yes.

THE COMMISSIONER: Yes, okay. In terms of that area on that plan, this is the area, I think, that Mr Thomas was saying is influenced from Ngāti Tama and there is Maniapoto and they are the primary players probably in this general map area. Would that be correct?

MR SILICH: Ngāti Tama maintain that they're the dominant iwi.

THE COMMISSIONER: In this whole map area?

MR SILICH: Yes.

THE COMMISSIONER: Yes, okay. How many marae would be in this area? I see Uruti, Tongaporutu. Are you aware of how many marae or ...?

MR SILICH: There is none to my knowledge.

THE COMMISSIONER: No marae in this whole map area?

MR SILICH: No. You've got Pukeraruhe marae, Ngāti Tama and then you've got Gibbs' shed up Tongaporutu. That's -- we don't class that as a marae. So --

THE COMMISSIONER: Okay. That is that marae that was referred to in --

MR SILICH: Yes.

THE COMMISSIONER: Okay. So there is a main marae. What was the name again?

MR SILICH: Pukeraruhe.

THE COMMISSIONER: Pukeraruhe, okay, and could you even mark that on my copy? It would be good, just so I can get just a mental map? That would be good.

MR SILICH: What sort of mark would you like(?) on there?

THE COMMISSIONER: Just a circle.

MR SILICH: Where are we?

THE COMMISSIONER: Is that not on a clifftop that sits above the ocean? It is very near the sea, is it not?

MR SILICH: Yes, it's probably a kilometre -- maybe a kilometre back or 600 metres to a kilometre, I guess.

THE COMMISSIONER: There is road access obviously out to that?

MR SILICH: Yes.

THE COMMISSIONER: Yes. As far as you are aware, there are no other marae, even Ngāti Tama marae or Ngāti Maniapoto, in this map area?

MR SILICH: No.

THE COMMISSIONER: Okay. Mr Gibbs' shed, as you say: do you know that site? Has that been there for a long time or ...?

MR SILICH: It's fairly recent.

THE COMMISSIONER: All right.

MR SILICH: It's well documented, I think, that New Plymouth District Council had a -- had permitting issues with Mr Gibbs over that same building.

THE COMMISSIONER: Okay. When you say "recent", in the last 10 years, 20 years, 30 years? Could you hazard a guess?

MR SILICH: Ten to 15 years probably.

THE COMMISSIONER: Okay. Good, thank you. That is very helpful. That is all the questions I have, Mr Silich. Thank you very much for your evidence.

MR SILICH: Thank you.

MR HOVELL: Thank you, sir. I have prepared that briefing (inaudible), which only touched on those three points.

THE COMMISSIONER: Yes.

MR HOVELL: I am not sure if you want me to go through that or not as such, looking at(?) any questions on that?

THE COMMISSIONER: No, just anything that you wanted to highlight, Mr Hovell, in particular.

MR HOVELL: The first point, I think, has already been covered. That was in relation to the kaitiaki forum. I guess it is a matter - my understanding of the record - in terms of group has sought to expressly be included in this part of the kaitiaki forum. But --

THE COMMISSIONER: I did ask Mrs Pascoe, who has in her evidence whakapapa in terms of this local area, and she did say that she would be interested in being on. So that is --

MR HOVELL: That would be a matter for you to determine.

THE COMMISSIONER: Yes.

MR HOVELL: The comment in terms of condition 30: I think that was picked up from Mr Paul Silich's evidence as well, just noting the inclusion of the Carnegie(?) block in the PMA. The last point was just noting that there are other matters and other discussions that occur between the rūnanga and NZTA. So they were very brief points, sir.

THE COMMISSIONER: Yes. I suppose your paragraph 5 is sort of back to the conditions team and the applicant about how they might think about that?

MR HOVELL: Yes and I know that there is something built into the conditions already to include or to consult the rūnanga. I guess the aspect of that would be the level of input into the determination of the location of the PMA, so as part of that process. That was the point(?).

THE COMMISSIONER: That is good. Just reiterating, if you could update me with the position of Te Korowai as best you can and maybe in consultation with Mr Enright, that would be very, very important to me. Thank you.

MR HOVELL: Thank you, sir.

THE COMMISSIONER: All right, I think we are probably at the end. Has anyone else ...? Over to the council now. So the council's Mr Harwood, are you representing?

MS MCBETH(?): (several inaudible words)

THE COMMISSIONER: Yes, sure. Thank you, Ms McBeth.

MS MCBETH: Thank you.

THE COMMISSIONER: I am really in your hands. You have heard the conversations about joint witness statements and submissions. You prepared that witness statement. So would you like to go through it or highlight the key matters?

MS MCBETH: Yeah, I won't read the whole thing. Some of the matters have been addressed today, so we can skip through those.

THE COMMISSIONER: Sure.

MS MCBETH: And yeah, it's probably more detail than you need. I would have liked to have refined it a bit more for you. So sorry, it's a bit long.

THE COMMISSIONER: No, it is helpful and things have evolved here(?) today. I am in your hands.

MS MCBETH: Okay. So just to introduce Mr Harwood, Mr Willie Shaw and Dr Tim Martin from -- two Wildlands ecologists that have -- that are expert witnesses. So I wish to comment on a

number of matters that were identified in my section 42A report dated 18 May, my supplementary report dated 30 July and on evidence provided through the course of hearing and developments to the ELMP and designated conditions while the hearing has been adjourned. My recommendations on the project are informed by a number of technical experts. We've got these three available for questions today. Also, you would have seen expert reports attached to my previous reports and any of those experts are available for a phone call if you have questions for them. Attached to this is a letter from Mr Doherty and he's also available today if you want to question him.

So I just plan to first consider the assessment of alternatives and cultural effects. Then together with Wildlands consider the ecological effects and the package proposed and then, yeah, I did intend to go through issues -- process issues and conditions. That might be a bit briefer, but I would like to highlight those areas where I feel we -- that I will be focusing on in our conferencing. And then at the end, if you're in the position that I can make a recommendation on the notice of requirement, which I still plan to do today.

So in terms of the assessment of alternatives, under sections 171(1)(b) and 171(1)(c), just to comment on the

agency's legal submissions. I think there's a bit of a misunderstanding there. So I wasn't seeking under 171(1)(c) to revisit the adequacy of consideration of alternatives. The matters under (b) and (c) are related but distinct where I see (b) being a process test and (c) a merits test. And being satisfied that there was adequate consideration doesn't automatically satisfy that the work is reasonably necessary under (c).

So my reservations under (c) were on the basis that a number of questions remained unanswered about the online option; that there was an option for an upgrade of the existing route. Therefore, was it necessary to designate alternative land?

However, paragraph 6 in my supplementary report, I did state that further information had been provided and which was reviewed by Mr Russell, the geotechnical engineer. And I now accept the landslide feature to be a strong basis for the selection of an online -- offline route. A number of other matters remained unaddressed, which, sir, you questioned NZTA witnesses over. And so from Mr Doherty's perspective, some of those issues have been resolved. However, he has some unresolved concerns, and I have attached his letter and -- sorry, that's dated 14 August, not the 15th.

THE COMMISSIONER: Can I just ask about that?

MS MCBETH: Sir.

THE COMMISSIONER: Mr Doherty has three pages. Is this like a nutshell of things that --

MS MCBETH: There is a nutshell statement that he has made, which I wish to comment on. So that was -- that's the fifth to bottom line of his last paragraph:

"I think the NZTA should review its decision to adopt Option E rather than Option Z."

So he still felt that it -- the options assessment could be repeated and reach a different outcome.

THE COMMISSIONER: That is a pretty big call at the end of this process.

MS MCBETH: Yeah.

THE COMMISSIONER: Mr Doherty is not here to discuss that.

MS MCBETH: No, but he is available if you wish to -- I could call him now if you wish to -- us -- if you want to consider the points he's made and then ...

THE COMMISSIONER: Is there anything new that he has not presented already --

MS MCBETH: It relates to --

THE COMMISSIONER: -- in terms of his other evidence and statement? Or is it a restatement --

MS MCBETH: No.

THE COMMISSIONER: -- of his position?

MS MCBETH: I think that --

THE COMMISSIONER: Is it safety or ...?

MS MCBETH: It's about -- to do with the comparable aspects of the two groups, so whether one's more resilient, whether one's cheaper. He looks at landslide risk and weightings applied throughout the process.

THE COMMISSIONER: So coming back to, sorry, your 171(b) and 171(c) tests, which I have to consider, where is Mr Doherty sitting with those(?)? Is he suggesting that the applicant has not adequately met one or either of those tests?

MS MCBETH: It's more, I think, the process, so the --

THE COMMISSIONER: The (1)(b)?

MS MCBETH: -- 171(1)(b) and where things -- weightings have been applied just slightly differently between the two, MCA1 and MCA2 and --

THE COMMISSIONER: So is it the outcomes or the process that he is concerned with?

MS MCBETH: Probably best for you to ask him that.

THE COMMISSIONER: Yes, I think I had better ask him because again that is a --

MS MCBETH: Yes. Would you like me to call him now?

THE COMMISSIONER: He is just going come in on the phone, is he, or ...?

MS MCBETH: Yeah. He did mention that he actually has a chest infection and he's at home, but he is absolutely available to discuss with you.

THE COMMISSIONER: I am just thinking that we are going to reconvene tomorrow. Is he not well just today or is he just ...?

MS MCBETH: He just emailed me this morning to say that he's home with a chest infection but available.

THE COMMISSIONER: Okay. Yes, we should talk to him then.

MS MCBETH: Now?

THE COMMISSIONER: Yes.

MS MCBETH: Yeah.

MR HOVELL(?): Sir, one thing just for clarity and I may have missed it because I do not have all my folders here and I have

been trying to look on the website, but has this letter been provided? I am not sure I have seen this letter before.

THE COMMISSIONER: No.

MS MCBETH: No, that was just to -- that --

MR HOVELL: Yet it is dated months ago.

THE COMMISSIONER: 14 August 2018?

MS MCBETH: Yeah, so presenting that in my -- in -- it is one of the many things that I'm considering and making my recommendation.

THE COMMISSIONER: Okay. No, I think on reflection I do not think I should talk to Mr Doherty on the hoof without reading his full statement.

MS MCBETH: Yeah.

THE COMMISSIONER: So I think we should see if he might be available when we reconvene tomorrow. That would be safer, I

think, for both him and me because I'm just glancing at this now.

MS MCBETH: Yeah. Okay.

THE COMMISSIONER: I think he will(?) --

MS MCBETH: So I'll let him know that you'd like to call him?

THE COMMISSIONER: We will need to talk to him tomorrow, yes.

MS MCBETH: Sure.

THE COMMISSIONER: Thank you.

MS MCBETH: So I'll just proceed with paragraph 7 that -- which, you know, having had the benefit of reading his letter and discussing with him, my current view is that the MCA process could have been carried out differently in some aspects and a different decision could have been reached. But no route selected in this area is going to be without challenging environmental effects and without significant costs, including the online option. And notwithstanding Mr Doherty's residual concerns and conclusions as to the outcome of the alternatives assessment, I

concur with paragraph 250 of the legal submissions, which state the test is not whether the selected option is the "best". And having heard from NZTA witnesses during the hearing, I'm now satisfied that the route selected is appropriate in terms of section 171(1)(c). Due to the geotechnical issues and cost/route security issues with the online route, I consider there to be a reasonable basis to seek an alteration to the designation beyond the boundaries. So -- but then we -- there's still the issue of whether the effects of that choice are appropriately addressed for the purposes of section 171, particularly in relation to ecological, cultural and other effects.

So the -- paragraph 9 talks about the evidence provided by Mr Milliken and perhaps that should be included in the conditions section, which follows at the end. But I consider that appendix 2 demonstrates an improved car parking arrangement for users of the Kiwi Road Track, appropriates addresses potential effects of the project on recreational users, and the formation does not give any concerns regarding visual or other effects, being simply a levelling and surfacing of an area which is currently free of vegetation used for car parking and currently uneven ground and it would be a pretty low impact activity. And so in providing that layout, I agree that the

requirement for the car parking area to be included in condition 7 as being subject to an outline plan process can be removed. But we would -- you'd(?) like, as you raised before, want to make sure that somewhere in the conditions that's included --

THE COMMISSIONER: It's referred to(?).

MS MCBETH: -- and I agree that it's an effect of the project and wouldn't just simply leave it to the revocation(?).

THE COMMISSIONER: Quite often, in my experience, attaching a plan referencing that as a schedule to the conditions so that makes it clear then. We could reference a drawing(?) and --

MS MCBETH: Even referencing alongside the landscape LEDF sort of fits with that.

THE COMMISSIONER: Yes. Okay, thank you.

MS MCBETH: Okay, moving on to cultural effects, engagement with Māori. Greg Carlyon for Te Korowai in paragraph 55 of his planning evidence considers that the agency approach to consult primarily with Te Rūnanga o Ngāti Tama, and my acceptance of this approach in my report, assumes singular kaitiaki status for

the area and marginalises Te Korowai. I refer to my earlier comments that I consider NZTA have cast a wide net through the public consultation and sought the views of any person with an interest in the project. However, consultation and engagement are not the same thing and Mr Carlyon identified that consultation with an "iwi authority" is an absolute bottom line whereas engagement with all Māori, including at the hapū and whānau level, is appropriate.

So I agree with Mr Carlyon that part 2 provisions, addressing cultural effects, are not limited to iwi authorities. But it is my view that NZTA have provided opportunities for all Māori to engage. And I am aware that NZTA took measures to be satisfied that Te Korowai were specifically invited to hui-a-iwi, also attended by NZTA, whereby engagement occurred.

And I accept the approach taken by NZTA and, in my view, the agency has recognised and provided for cultural values of members of the iwi beyond Ngāti Tama rūnanga members, who were the main points of contact and do not consider Te Korowai have been marginalised.

And I consider matters raised by Te Korowai in their legal and planning witness submissions are relevant to the

consideration of cultural effects of the project and to the assessment of the NOR under part 2. And whereas Mr Dixon, when questioned by the Commissioner, indicated his view that full weighting should be applied to the Ngāti Tama rūnanga submission, I consider considerable weight can be given to the rūnanga's submission, but some should also be given to submissions of other Māori. I note there are areas of common ground between the rūnanga and Te Korowai submissions such as cultural expression, use of timber, road naming, which is outlined in paragraphs 56 to 58 and 64 of Mr Allen's submission, and these are reflected in the proposed designation condition relating to the kaitiaki forum group.

And I'm also satisfied that NZTA has meaningfully sought to engage with Poutama, having met with them on numerous occasions, provided information in a timely manner, and having contributed financially towards the preparation of the report prepared by Bruce Stirling.

I do wish to make some comments about matters raised during the Poutama presentation, being the Poutama iwi plan and Poutama status as an iwi authority.

So the iwi management document -- Poutama iwi management plan document was considered by the Environment Court in Nga Hapu o Poutama versus Taranaki Regional Council, Environment Court case. That case concerned an appeal against TRC's decision to grant resource consent to remediate an existing length of highway embankment and to construct a further length of this embankment above the Tongaporutu Estuary. The court considered, at paragraph 90 and 91 of their decision, that it was not required to consider the management plan document under 104(1)(b) but that it may be appropriate to consider it under 104(1)(c). And a --

THE COMMISSIONER: So is (c) the other matters (overspeaking)

MS MCBETH: Yes. That's correct, isn't it?

MALE SPEAKER: That's right.

MS MCBETH: Yeah. And a similar approach is appropriate for the NOR while 171(1) does not require you to consider the plan. It's open for you to consider it as another matter under section 101 -- 171(1)(d) if you considered it was relevant and useful to insist -- to assist consideration of the effects on Poutama.

So now Poutama's status as an iwi authority. So the TPK directory of iwi and Māori organisations (Te Kahui Mangai) includes Poutama as an "other iwi authority" and it -- and the website describes other iwi authorities as:

"The term 'iwi authority' is defined in the RMA only for the purposes of that Act. An iwi authority is not, therefore, necessarily the same thing as [in] other representative iwi organisation represented by the Crown."

Actually, I won't read all of that. That -- because the next point. This description is somewhat ambiguous, but assuming Poutama is an iwi authority on the basis of Te Kahui Mangai, the next question is: what is the significance of that position under section 171? Section 171 requires you to assess the "effects on the environment" and your assessment's subject to Part II of the RMA. So cultural effects are an effect on the environment. And additionally, under section -- we need to consider section 6(e) and section 7, recognising and providing for kaitiakitanga.

So paragraph 20: just some definitions that are defined in the RMA, kaitiakitanga, tangata whenua and iwi authority.

And so 21: although it is understood that Poutama's status as an iwi or an iwi authority appears to be disputed by Ngāti

Tama, as well as neighbouring Ngāti Maru and Ngāti Maniapoto, Poutama have asserted that they are tangata whenua. And on the face of it, TPK's recognition as an "other iwi authority" may support that assertion. So again, it's open for you to conclude that, whether they are tangata whenua that could exercise kaitiakitanga over the areas identified on the website in terms of section 7.

THE COMMISSIONER: Ms McBeth, have you turned your mind to the TPK process or do you understand it at all? Is it just on application and if you apply and assert you are an iwi authority you just get through the hoops? Or Mr Hovell, do you know anything about that?

MR HOVELL: No, I do not. Sorry, sir.

THE COMMISSIONER: Have you made any enquiries?

MS MCBETH: I understood that you just ask to be put on the other iwi authorities list. Is that ...? You haven't ...?

MALE SPEAKER: No, not(?) entirely true. I think it is actually quite (overspeaking)

THE COMMISSIONER: It might be useful if you can make an enquiry and I am looking at Mr Allen as well. Yes, I am just concerned a little bit about your comment that, given TPK's recognition(?) as an iwi(?) that supports that assertion; whether that has been through some sort of test on their behalf?

MS MCBETH: We can look into that, provide further information on that.

THE COMMISSIONER: Yes, I think that would be really helpful.

MS MCBETH: But I would note that I don't believe you need a firm position as to whether they are an iwi authority in order to perform your functions in this process. And council have not yet formed our view on whether Poutama is an iwi authority for the purposes of the RMA.

THE COMMISSIONER: So New Plymouth District Council has not formed a view?

MS MCBETH: No.

THE COMMISSIONER: Where does that leave me as a decision-maker then because it is uncertain? The council has not formed a view so I need a bigger(?) call?

MR HOVELL(?): No. I actually do not think we need to resolve that issue to make your decisions under section 171(1), (2) and (3). It is really a question about what are the effects on the environment, which includes effects on (inaudible).

THE COMMISSIONER: I mentioned, Mr Harwood - I cannot remember who I was talking to; it might have been Mr Allen - about that recent Rotokawa decision concerning Ngāti Tūwharetoa and Ngāti Tahu, I think. There has also been some recent commentary in the Auckland America's Cup decision about different iwi authorities. I think 18 iwi parties made submissions and the court - and I think that might have been Judge Newhall(?) who did that decision. So just looking around the counsel in closing and sending anything up I can have, and they resolved that, I think. Any advice I could have from counsel on that would be helpful, whether that adds anything. Sorry, Ms McBeth, just carry on.

MS MCBETH: That's fine. So I guess, yeah, that does -- that question does lead to what weight should be given to the matters

raised by the various people with cultural interests and in relation to the potential effects on it by the proposal depends on the evidence. And in the context of the application, considerations could include other iwis' ownership and ability to control the affected land. And you know, we(?) just recognise that Te Rūnanga o Ngāti Tama have that special status as an -- you know, undisputed status as an iwi authority.

THE COMMISSIONER: Your paragraph 23 is the nub of your advice?

MS MCBETH: That ...?

THE COMMISSIONER: That you are supportive of the kaitiaki forum group?

MS MCBETH: Yes and of Ngāti Tama being central to that group, of playing the key kaitiakitanga role.

THE COMMISSIONER: Okay, thank you.

MS MCBETH: So moving to ecological effects so, you know, the -- what a lot of the focus remains about this hearing. So the comments that I make are relevant to the assessment of the proposal against numerous provisions of the RMA. Section

31(b)(iii), council's responsibility to control the actual and potential effects to maintain indigenous biological diversity. And section 171(1)(a), having -- must, subject to Part 2, consider the effects on the environment, while having particular regard to relevant provisions of policy statements and plans. And so those -- the policies and objectives of those documents have been assessed in earlier reports and I don't intend to go over them again. But just giving DOC's legal and planning analysis of whether the proposal is consistent with District Plan policies, I have a few comments to make on that. So objective 16 seeks:

"To sustainably manage and where practical enhance indigenous vegetation and habitat."

Policy 16.1 states that land use development and subdivision should not result in adverse effects on the sustainable management of and should enhance where practical significant natural areas. And in the "Reasons" for this policy at paragraph 5, it states:

"This policy seeks to ensure that areas [significant natural areas] are sustainably managed rather than preserved. In a practical sense this means that subdivision use and development can occur adjacent to or within these areas provided that the character and natural processes of the ecosystem are able to continue."

Paragraph 8 states:

"The greatest threat to these areas is their loss or reduction in quality through infestation by pests and grazing stock."

Policy 16.2 states that:

"Land use development and subdivision should not result in adverse effects on and should enhance where practical the quality and intrinsic values of indigenous vegetation and habitat."

And this policy would apply to all indigenous vegetation and habitats within the district, whether or not they've been identified as SNA. I concur with the analysis at paragraphs 16 to 20 of Ms Ongley's legal submissions that District Plan policies and objectives, referring to areas of SNA -- of significant indigenous biodiversity should apply to the project footprint, even where they're not listed in appendix 21 of the plan on the basis that these areas meet the SNA significance criteria.

And paragraph 293 of NZTA's legal submissions, it states that no SNAs are affected. And I noted - but it's not in the submission - Mr Allen saying that there was no SNA intended for the Draft District Plan in relation to the Pascoe property. In

fact, the Draft District Plan does show vegetated areas of the Pascoe farm that our district planning team propose to be included as SNA. The proposed areas have been field checked as part of the District Plan review and have been demonstrated to meet the significance criteria.

THE COMMISSIONER: This is another quite important issue legally, I think. You have a draft District Plan, which has not been notified or tested. I have some submissions from Ms Ongley to say that it does not matter if it is in the plan or not, provided it meets significance criteria generally, I suppose on expert evidence. That is enough to get through section 6(c).

MS MCBETH: And Mrs -- Ms Ongley's statement that the District Plan's deficient in terms of protections. And I do concur with that because, even though we've got that significance criteria, we know areas meet that criteria, but they aren't currently subject to the operative overlay. So --

THE COMMISSIONER: Again, it is about the legal homework and I am not sure whether Ms Ongley gave me some cases, but I am certainly aware some of those Judge Smith decisions get stuck into section 6(c) and significant vegetation and whether they need to be identified in the District Plan to meet those tests

or you do not. I am thinking about the HMR Board of Inquiry decision which he made some findings. That is not a court decision, but there must be a body of case law that deals with that issue.

MS ONGLEY: There have been a lot of decisions ...

THE COMMISSIONER: You referred to that, Ms Ongley, yes.

MS ONGLEY: Yes, I was involved with Forest and Bird when they took enforcement and declaration proceedings against the New Plymouth District Council.

THE COMMISSIONER: Because they did not have SNAs in the areas that deserved them, essentially?

MS ONGLEY: Yes.

THE COMMISSIONER: Yes, okay. Thank you.

MS MCBETH: And I actually just make that point as a matter of clarification because the -- regardless of the operative status of the SNA overlay, the agency's approach has centred on the

flora and fauna within the project footprint having ecological values, which they seek to sustainably manage.

I also note section 171(1)(b) where the council may only consider positive effects resulting from measures proposed or agreed to by the requiring authority. And this matter was also raised by Ms Ongley and Mr Ryan responded with an invitation to provide conditions for consideration.

And then, yeah, part 2, section 5, section 6(c), sections 7(d), (f) and (g). So, in my view the proposed clearance of indigenous vegetation could be consistent with the above District Plan policies and objectives and RMA provisions, provided a sustainable management approach is taken, where effects are minimised, and the qualities of the wider ecosystem are enhanced. This proposal seeks to achieve sustainable management of ecological resources through the route selection, which focused on avoidance of adverse effects, restoration works for remediation and other on-site mitigation, management of pest and livestock threats over a very large area for mitigation off-set compensation.

This approach has merit, in my view, as a meaningful response to the ecological effects of the proposal, providing

that a robust framework is in place which is well implemented. I consider this could be achieved through appropriate conditions and in reliance of adhering to the ELMP subject to some changes to those documents.

Mr McGibbon's evidence, as described, has described the objective of the NZTA Ecology Team to develop a restoration package that has a high likelihood of generating positive biologically diverse and enduring ecological outcomes. Greater in terms of net benefit than the residual effects caused by the project.

Mr Singers and Mr McGibbon consider the core areas of the PMA are more than sufficient to generate these positive biodiversity gains. Through the review submission and hearing processes, Wildlands, DOC and other submitters have expressed doubt as to whether the package will deliver on the aim of no net loss in biodiversity, and the package has evolved since it was lodged in December last year.

It would appear that numerous ecologists who have provided evidence at the hearing, generally accept the approach taken in the ELMP and that the measures proposed in perpetuity adequately

address effects on many, but indeed not all, flora and fauna values.

Prior to the adjournment in August, despite the PMA providing a significant level of off-set and compensation, and indeed for many species delivering positive effects, Wildlands and DOC had remaining serious concerns regarding the possible detrimental effects of the project on bats.

So, in my reports I have stated that I found it difficult to reconcile the desired outcome of net gain in biodiversity with the potential mortality of the local population of long-tail bats and at risk herpetofauna and avifauna.

So, in August, when the hearing was adjourned, Wildlands had concerns regarding the potential for bat mortality with the reduced vegetation removal protocol measures and also concerns with the lack of certainty as to whether the PMA would provide positive outcomes for bats, when it was not known whether maternity roosts were located in the PMA.

Yes, and I just thought it just does beg the question, if the local population becomes extinct, what impact would that have on the national population?

So, paragraph 30, we have heard from Mr Chapman, Mr O'Donnell and Council's own advice from Wildlands that radio tracking would be the best way to inform the degree of effect on bats and how best to respond by locating the measures around the roost trees.

I am just going to jump to section - paragraph 33. Since, serving the NOR, the agency has expanded the PMA from 560 to 3650 hectares. While I consider this is a significant package to address the effects, there are some concerns which we wish to highlight to the Commissioner, and Wildlands to provide some technical expertise on those matters.

So, we have talked a bit about bats, so I won't go onto the 5000-hectare idea. But, yes, prior to the adjournment I had turned my mind to whether some flexibility could allow for identification of maternal roosts. So, to frame some conditions around finding a way through that significant concern, and I understood from hearing the submission of DOC that they would be satisfied with that 3650-hectare PMA if roosts were known to be within in, or a 5000 PMA be provided.

Prior to the hearing being adjourned, I asked the agency to consider conditions requiring that radio tracking be carried out within the first stage of the works over the appropriate months to obtain data to demonstrate the location of those roosts. And since then the key focus of discussions with the Agency, including input from Wildlands and the bat vegetation off-setting experts have been involved in trying to find if there is a workable way through there.

So, NZTA have accepted that there's a need for better data regarding the location of the bat roosts and Wildlands and I have carefully considered the Agency's proposed conditions. We are generally supportive of what is now proposed, if the proposed PMA is adjacent to, or in the same low-land forest complex as the project footprint. So, these comments are, you know, just summarising the view of Wildlands, but I encourage you to explore that further with Mr Martin and Mr Shaw.

We wish to ensure the conditions achieve the proposed outcomes so they need to be not inflexible that the PMA is carelessly deferred to the Waitaanga Valley, and although scenario 4 of condition 30 appears to be a reasonable back-up option with regards to bats, we view it as significantly less desirable than land within the study area from the perspective

of like for like proximity, and proximity principles of biodiversity offsetting compensation.

And having heard from Ngati Tama today, that alignment with the cultural values is another, you know, reason we would really prefer to see it in the study area.

THE COMMISSIONER: Yes, so Ms McBeth, when you refer to the "we" is that you and the Wildlands team?

MS MCBETH: Yes, sorry. So, the next point about the forest types, I think Mr Martin's got some comments about that, so I won't do that, and they also have some more comments about the additionality in the PMA.

With regard to the herpetofauna provisions and the compensation now proposed, I agree with - well, yes, my first question was, well where would the project benefits lie? And, I was wondering whether we could look at being relevant to the local area or at Lake Rotokare where it is intended that relocated lizards would be going.

THE COMMISSIONER: Must have read my mind, Ms McBeth.

MS MCBETH: Yes, but whether it is or is not, I agree that that condition, we will be looking at whether we can make that a bit more focussed in our conferencing.

THE COMMISSIONER: Thank you.

MS MCBETH: And just in terms of the fresh water ecology offset, just to confirm that I -- you know, there has been three experts give evidence on that and Wildlands have considered it as well and Mr Goldwater from Wildlands, is satisfied with Mr Hamill's calculations.

So, Mr Martin and Mr Shaw have a prepared statement. So, I will pass that around?

MR SHAW: I am going to read this, but Tim and I are both here to answer questions and Tim has worked a lot with our specialist team and through all the tele-conferencing processes with all the applicants' ecologists, so he will - he will probably answer a lot of the questions, and I intend to paraphrase some of this. I do not intend to read it all out, with your leave, Mr Commissioner.

But, I will start with the introduction. Prior to the hearing adjournment, we undertook comprehensive reviews of information provided by the applicant in October 2017, which was pre-lodgement; December 2017; February 2018, May and July, along with at least two rounds of comments on the draft ELMP, and around the teleconferencing between our specialists and relevant Alliance specialists and we provided written reviews with many comments and suggestions and have indicated various areas of serious deficiency.

Now, prior to adjournment of the hearing, we thought there were still key issues in relation to lack of appropriate data for the biodiversity offsets model and long-tail bats, significant trees, size of the proposed PMA, various ecologist conditions and the ELMP itself.

Now, paragraphs 3 to -- paragraph 3 is just a statement, a summary of what has happened during the adjournment.

THE COMMISSIONER: Take that as read I think.

MR SHAW: Yes, thank you. So, picking up again at 4, we're really just -- I'm leading into an overview here, of where the current state of play is, and I'll just say, it must be noted

the timeframes for our latest review have been very compressed with a number of our staff being on leave with their family during the school holidays. So, crunching all this stuff through in the last week or so, has been quite difficult. And, I think it's going to get even more interesting over the next few days, as it turns out.

The location of the intended PMA. The PMA should be located to address, as much as possible, the adverse effects of the proposal in a like for like manner. As such, the location of the intended PMA, proposed by Mr McGibbon, in paragraphs 50-53, is appropriate. We agree with the reasons set out in paragraph 53(a) of Mr McGibbon's evidence in relation to that matter.

In principle, inclusion of the Paraninihi area, which is 1335 hectares, is supported. Although there does seem to be little evidence of the potential removal of Department of Conservation funding for the existing pest control programme in this area, which could be interpreted as meaning that the overall additional PMA is 3650 hectares, less the 1335. In other words, 2315 hectares. Overall, however, permanent funding of the work Paraninihi in perpetuity is very positive, in our view.

THE COMMISSIONER: Dr Shaw, the logic for that statement is that, if it's including the PMA, DOC won't provide funding and on-going there's some sort of loss of value there. What's -- what are you trying to say in that paragraph 6?

MR SHAW: Well, the PMA should be additional to existing ecological management work going on in the area to specifically address the adverse effects of the project. If funding is withdrawn from Paraninihi by other parties that would be additional.

THE COMMISSIONER: Presumably that funding won't be lost to DOC, but (inaudible) somewhere else, but that's --

MR SHAW: It might go else --

THE COMMISSIONER: -- is that too much of an assumption?

MR SHAW: It might go elsewhere in the country. It may not be expended in Paraninihi. So, the major issue, and as I've said there, you know, in balance, the funding in Paraninihi, in perpetuity, is positive.

THE COMMISSIONER: Is positive, yes. Thank you.

MR SHAW: The size of the PMA. Determination of the exact extent of the PMA is not an exact science, but it does need to ensure that potential adverse effects are likely to be addressed. Based on the representation of coastal and semi-coastal and forest in the intended PMA and the diversity of habitats and species present to the extent of the intended PMA, is probably appropriate.

The alternative PMA. An alternative PMA is described in Mr McGibbon's evidence at paragraphs 60-63. In paragraph 62, Mr McGibbon notes that this site, in Waitaanga Conservation Area, contains the least coastal vegetation. Now Waitaanga is an inland site that actually contains no coastal vegetation, but I do note, and this is an additional sentence here, that Mr McGibbon has clarified that in his supplementary statement today.

Because the ecological mitigation should be based on the principle of like for like, the intended PMA is a much better option. One possible approach, subject to the findings of the further bat survey work to be undertaken, would be to undertake

bat protection and enhancement work at Waitaanga and to continue to undertake other work within the intended PMA.

If the alternative PMA was to be selected, additional measures would be required to address adverse ecological effects, such as pest control, at Waitaanga. If pest control at Waitaanga cannot address the loss of forest types present within the forest, the project footprint, which is a key issue.

Lizard mitigation. In principle, the current proposal by the applicant is positive. We find it interesting, however, that the scale of mitigation is being determined by an untested approach based on the costs of a pest-exclusion fence and eradication of pests from within that fence. This cost basis does not appear to include any management or monitoring over the life of a pest-free enclosure, which could have been operated for a longer period than originally proposed by the applicant, for 12 years.

THE COMMISSIONER: Would you agree we're not dealing with an exact science with this off setting, are we? So, there's no perfect methodology or ideal methodology with any of this, is there?

MR SHAW: No, there isn't.

THE COMMISSIONER: It comes back to professional judgment and --

MR SHAW: It does.

THE COMMISSIONER: -- and practicality and common sense. Is that fair?

MR SHAW: Yes, it does. That's exactly what it comes back to, and in this case a call has been made based on a particular costing approach, which is fine. It was just two actions. The construction of the fence and the eradication, and somewhere in the process it became "accepted" that that was a reasonable basis for the mitigation. And, that's fine, but it's just being -- worth being aware that there are other elements that could've been added to that equation.

THE COMMISSIONER: Thank you.

MR SHAW: Edge effects. The applicant has provided a calculation of net change in forest edge. This calculation includes 7900 metres of new forest edge due to vegetation clearance. The calculations are not accompanied by a map, so

cannot be verified. The calculation of net increase of forest edge at 605 metres appears to assume that plantings adjacent to the cleared forest edge establish to seal that edge, which will be dependent on control of pest animals, and at some sites is likely to take many decades. Regardless of plantings alongside the cleared forest edges, there will be permanent edge effects where earthwork cuts adjacent to forest are unable to be planted.

The applicant does not adequately recognise forest edge effects in its mitigation package, including additional loss of forest trees due to enhanced mortality and wind throw on the forest edge, or the creation of more favourable habitats for invasive species, such as wasps.

Outstanding issues with the ELMP. At paragraph 12 we haven't fully reviewed the revised ELMP due to the time constraints around this, and there may be many outstanding issues around that document, and at paragraphs 14-19 I've set out some examples of those, and I don't know whether there's much merit in running through them.

THE COMMISSIONER: Not really.

MR SHAW: Given the process, that's likely to occur now.

THE COMMISSIONER: Do you agree that this latest version of the following and tracking provides -- you know, obviously this is the current state of the play on behalf of the applicant. I've found this helpful to bring together the various statements of evidence from the various parties.

MR SHAW: It's certainly a big step forward and every iteration has been an improvement and the latest two iterations from the 28th of September and the version today, are both improvements. No question of that. The document though is so long, it's about 200 pages, and complex. But, we have to track it and to track our input into the process, maintained a table where we've basically kept a record of our suggestions in relation to particular aspects of the ELMP and then whether or not changes have been made in each iteration, and the most recent version of that we finished on Friday, last week, and it's already out of date because there's another version of the ELMP as of today. So -- and many of our issues that we've raised through the course of the evolution of the document have been addressed, but there are many issues which are still outstanding, as we've already -- we've heard from the DOC witnesses.

THE COMMISSIONER: So, I think with this conferencing and talking about this statement, you know I'm not expecting that you're going to resolve all the issues. If I can have a document that just highlights where there's still residual issues, after all of the attempts, with some reasons why there's differences. It would be great to be able to nail everything down, but, yes, you've been in those dual witness statements before, Mr Shaw, I'm sure -- those processes.

MR SHAW: We don't expect to nail down every issue.

THE COMMISSIONER: Okay, thank you.

MR SHAW: And there'll be issues that we will continue to - that technical witnesses will continue to disagree on. The big issue for us is that many of the big issues, well the biggest issues at play here, are being resolved or are well on the way to being resolved with the process that's occurring, which is positive.

THE COMMISSIONER: Yes, thank you.

MR SHAW: Given our discussion then around the ELMP and the conferencing that is due to start at the end of today, or thereabouts.

THE COMMISSIONER: There's not much left of today, but --

MR SHAW: No. Paragraphs 20 onwards reflect where our views were sitting in relation to the ELMP document, as its -- the version that was released on the 28th, and I think it's -- and because we still have some concerns about the content of it, we, in paragraphs 20 and 21 I've set out reasons why, in our view, there was merit in the Council having a final certification process around the document. And of course, we wrote this without -- before we came to the hearing today, and without realising the process that was going to be brought to play to resolve these issues. So, that -- those two paragraphs are probably now redundant.

Which leads me then to the conclusion, which still contains a statement around certification, but I'll at least read through the conclusion, because I think it's a reasonable summary of where we got to at the end of last week.

Paragraph 22. This is a major project which will result in significant adverse ecological effects. Overall, subject to further work yet to be undertaken, the location and scale of ecological mitigation is probably appropriate. However, this is

very much dependent on the selection of a PMA within the Paraninihi-Mount Messenger area.

If the Alternative PMA at Waitaanga is selected, many components of the mitigation package will likely fail. For example, plantings in areas of high pest density at Mount Messenger, or they will not be addressed, for example, no pest control to improve the condition of lowland forest, semi-coastal forest. If the Alternative PMA is to be selected, that PMA will need to be subject to baseline biodiversity surveys, and a new ELMP would need to be prepared.

As there is still uncertainty regarding the location of the proposed PMA, and there are still many outstanding matters, it is our view that the Council needs to retain the right of final certification of the management plans to be provided, particularly to the ELMP. But, as I said, that was -- that was contingent on where we were sitting with this on Friday.

THE COMMISSIONER: But, do you agree that because the final PMA, there needs to be a process, a conditional process, set of conditions, which lead to the finalisation of the final PMA post the bat monitoring programme this current season? This current survey season. So, even if, for example, I approve the ELMP as

part of my decision-making, there still needs to be a process in there that finalises and certifies the final PMA on the basis of some of objective decision-making which would need, I think, to sit with the Council, or the Council and with advice from the Environmental Review Panel. Some sort of process like that.

MR SHAW: Yes.

THE COMMISSIONER: Is that how you see --

MR SHAW: Yes.

THE COMMISSIONER: See, even if it is a final -- there's got to be some process conditions which take you to finalising the PMA.

MR SHAW: Yes, there has to be, exactly.

THE COMMISSIONER: Yes, and that I think -- you know, I've heard lots of good ideas today, and thoughts floating in the various ecologists' minds so it's that ways and means process, which you really need to turn your mind to, I think, through the next few days.

MR SHAW: Yes, it is, because the parties, the ecological technical specialists have become closer and closer through this process. Initially we were very far apart. Now, I think, overall, even though there's still debate, probably disagreement around a few technical issues, we're, in principle I think quite close.

THE COMMISSIONER: Yes. That's my perception, and just for everyone, that's why I've suggested that you don't lose that momentum and you just, you know, see whether we can get, sort of, you know, as close as you can, before I need to make my decision. You take that opportunity, which I know it's an imposition on everyone, but it's -- it will be time well spent I'm sure, if we can get some refinement. Thank you Mr Shaw. I don't have any particular questions. Oh, I suppose other than I should ask you some questions about the habitat differences between the two areas, and Mr Martin, are you a vegetation specialist or a habitat specialist?

MR MARTIN: Forests and vegetation is my speciality.

THE COMMISSIONER: Yes. So, you've heard me ask some questions about habitat types and whether they're relatively similar, and

I think you've heard (several inaudible words) and yes, so if you could provide any comments on that?

MR MARTIN: So, I rely on my personal observations of the Mount Messenger area and also (inaudible) for Waitaanga, which I have not been to. However, we know that Paraninihi and Mount Messenger, well the western boundary of Paraninihi is the coast, so there is a strong coastal, semi-coastal component to the flora and therefore other components of biodiversity of that site and the majority of the areas are below the (several inaudible words).

So, as acknowledged by the applicant there are a suite of species which are absent from just that increase of altitude and further distancing than at Waitaanga, which goes up to around sort of 550 metres or so. It's quite a different environment. Colder temperatures and most of that coastal element and so the bulk of the mitigation package is predicated on pest control, primarily for bats, but also capturing other components of that system. And, so if there is a transfer of that PMA to Waitaanga, there will be a whole suite of species which are no longer addressed for adverse effects that are associated with that lowland forest type, with that coastal environment.

THE COMMISSIONER: And associated with the effects of the project?

MR MARTIN: And the effects of the project, yes.

THE COMMISSIONER: So, your preference would be the proposed PMA area if there can be alignment with the bat issue?

MR MARTIN: As a very strong preference, but also if there is a shift to Waitaanga, essentially, in my view, the entire mitigation package will simply be looked at, because there are several key components that were not on the loop. So, for example, (inaudible) of swamp forest vegetation. Sure, there might be some pest control during establishment, but then you walk away post establishment and it will fail because of pest control, or lack of pest control in that area. Similar with birds and bird risk. You know, the list goes on.

So, if there was a move to Waitaanga, essentially that is for, with regards to this project, the benefit to bats, but the benefits for all the other species that we were hoping to be captured by (inaudible) to benefit bats, is no longer occurring, and therefore to address each adverse ecological effect in terms

on the wider ecosystem, there will need to be considerable reconsideration of the entire ELMP.

THE COMMISSIONER: So, I think -- and this is just an observation, you know, I was interested to read that if the bat survey shows that we cannot really get across the line on a fenced basis in that intended PMA area, that perhaps there's some bat mitigation in the Waitaanga area and the rest of the PMA hangs together as the primary area and that accords with Ngati Tama's preference to have their area included so there's different ways of looking at it. So, I'd explore -- ecologists to think, you know, think with an open mind about those sorts of things, in the process discussion around the ELMP.

MR MARTIN: We're certainly considering the possibility of a hybrid approach. There might need to be mitigation particularly targeted at bats, which could be Waitaanga. But what residual mitigation may need to occur at Mt Messenger to cover the other aspects of those effects.

THE COMMISSIONER: Look, I'm also very mindful that, in terms of compensation offset, they (several inaudible words), so, keeping in tune with NZTA and things as well, so that's pretty much a

good discussion for me and I don't have anything else in terms of this ecology from the Council's side at the moment.

MS MCBETH: So, I'll proceed with some discussion with conditions, if that's okay?

THE COMMISSIONER: Yes.

MS MCBETH: So, since finalising the section 42A report I've taken report in condition sessions with Mr Roan and including since the hearing adjournment, we've continued to discuss conditions. This has resulted in the evolution, refinement and improvement of conditions where we've sought to tighten the effect of the conditions, create more certainty as to environmental outcomes, and to ensure Council is able to monitor clear conditions without its enforcement obligations being undermined.

So, I've just jumped back up to paragraph 42, regarding the land ownership, lack of land ownership or established legal rights concerns, and earlier in the hearing the Commissioner alluded to condition precedent option, which has merit, and I note that DOC have recommended that condition, that that's in paragraph 32, and the Commissioner's encouraged us to look at

the Ruataniwha condition, as well, which I have - I think, I've found, so we'll give that some more thought.

THE COMMISSIONER: Yeah, just be mindful of hold out problems with -- if you're trying to package up a whole bunch of different land, then the project can get stalled by those sorts of practical legal sort of negotiation things. So, I think, you've got to be mindful in setting RMA conditions about -- you know, unintended consequences.

MS MCBETH: Yes, I also am not completely opposed to not having all of the legal rights established, but, you know, you don't need that certainty at this point of the process. Having that balance of certainty and flexibility and I'm aware that there's certain landowners that are on board already, and others -- and, yes, so if I just go onto paragraph 43.

So, what's come through is that, in addition to the land currently proposed for the PMA, there are other areas that may be suitable and available. So, land owned by Ngati Tama, or the alternative DOC land. So, while there's a concern about lack of ownership and legal rights and it hasn't been resolved yet, which I can accept, there is some degree of certainty that there is suitable land, could be used for the off-setting and

compensation, that it's reasonably likely to contain maternal roosts, and that owners would happily receive the Agency's assistance to manage pests on that land.

But, yes, some certainty around timing of securing the land is recommended, even though we don't need to know that right now.

And, I note, paragraph 44, I understand that Ngati Tama and Te Korowhai support the Paraninihi inclusion in the PMA, but note that they have reservations about an in perpetuity term to any agreement, and yes, I think a long-term agreement could be acceptable on the basis that if a future agreement is not able to be reached, then there would be a process to review the -- as a material amendment to the ELMP, the PMA boundaries, or alternatively to alter the designation if, you know, some decades in the future you could still have a condition that you require that size area, but the boundaries could potentially be looked at later.

Condition 33, which sets out the process for setting the PMA boundaries. I consider that we're going to need some feedback from the Kaitiaki Forum Group from Tront, prior to any

decision being made, so -- and I support the submission from Mr Silich in that regard.

Just a note on whether the management plans are able to be approved at the hearing, so I concur with Mr Shaw, but I would report that we consider that the Construction Land Management Plan and Contaminated Land Management Plan and the Noise Plan are now able to be approved. But I think I've got my acronyms wrong there, so, yes, the Noise Management Plan and Contaminated Land Management Plans, we consider are ready to go.

And 47, that, so yes there are matters of disagreement. We're down to a relatively small number of matters and they tend to be subject to different expert opinion.

THE COMMISSIONER: So, that may never get resolved on an expert opinion basis, but that's why, if I understand the differences and the reason, I'd like at least the opportunity to be able to decide as part of decision-making.

MS MCBETH: And essentially, you know, we were coming today, you know, not having enough time to fully review the outstanding matters, but we were going to offer to provide a list of the

things that we felt you should make a decision on, if you were going to approve them through the hearing process.

Some comments about the proposed condition 14 regarding a conflict resolution process. I would just say that I'm comfortable with that condition and acknowledging that the requiring Authority's concerns around delays and the cost that that just gives a bit of certainty to them.

THE COMMISSIONER: Yes.

MS MCBETH: I mean, it's fair, so okay with that.

THE COMMISSIONER: Thank you.

MS MCBETH: Pleased to see that the preparatory works definition and provisions have been removed, and then I did turn my attention to establishment works, which still define and include vegetation clearance, but the way that I read the conditions, that does not allow for any vegetation clearance. Yes, that doesn't raise concerns as the preparatory works provisions did.

Just in terms of the restoration planting, I think Mr Roan has adopted condition 43, which I suggested, which that was just

about making - putting timeframes on actions to be taken and so that our monitoring of the consent, we can, you know, we've got a milestone that we can base things being completed on, so I'm happy with that.

And I think that we need something similar for the riparian planting, though. I'm not aware of the conditions, having any timeframe for the riparian planting, so that will be something that we'll be wanting to discuss.

Just, yes and related to those is this definition of completion of construction works. So, it does -- you know, I have discussed with Mr Roan there's some potential in those definitions for confusion about when things need to be completed. Just noting that construction works include landscaping and, you know, is it landscaping, is it restoration planting? I just think there's a potential for confusion, but I think that it has been addressed with condition 43, to some extent, which I'll get to. Yes, and number of conditions do refer to that completion of construction works.

But, note that 43b as currently drafted, still leaves it open-ended, so I'll be looking at that again with the other planners.

I think that the performance targets and what's in Schedule 1 and what's in the condition and what's in the ELMP are -- we'll be reporting back to you later, so I won't go into that.

The Ecological Review Panel. Supportive of the provision of it. However, I believe it should be extended, and in my view, it should be a mechanism for the planning lead to seek assistance for review of any ecological matter.

THE COMMISSIONER: So, you see the ERP as an advisory body for the Council? That certifying role they have a reference?

MS MCBETH: Yes, and in a way it's to enable the requiring authority to again, not be as reliant on Council timeframes. So, they can be proactive and having information reviewed and it would be unlikely that we would then need to have a longer timeframe to consider it, and, yes, that condition it is limiting to, you know, restricted matters and I see that as having a wider role, so that we can be satisfied the intent of the management plans and compliance with ecological conditions have been achieved.

THE COMMISSIONER: Yes.

MS MCBETH: And I also think -- and that's an interesting way for, I mean, the Kaitiaki Forum Group also has a role in that. Well Ngati Tama has a role in the formation of that Ecological Review Panel as well so -- and I think that Ngati Tama need to be more strong in those decisions around the --

THE COMMISSIONER: So, is your evidence that that's a positive supportive link?

MS MCBETH: A positive -- yes, support the use of the Panel. I mean the alternative is that we rely on our experts, which we may still need to do anyway, and that's you know --

THE COMMISSIONER: I do note that the makeup of the Panel is, I think there's, you know -- I think the Panel will be general, what are called general ecologists -

MR MARTIN: General ecologists.

THE COMMISSIONER: -- who have wide experience across a number of matters, which rather than honing on specific. So, a range, I think, is important, of expertise, but --

MS MCBETH: And also, the ability to bring in the expertise and that would be at their requiring Authority's ...

So, but Council does seek to maintain the right to make the final determinations based on appropriate independent expertise.

THE COMMISSIONER: Yes, thank you.

MS MCBETH: Paragraph 58. In relation to Mr Doherty's letter and the questions that you raised during the hearing of Mr Boam about the tunnel. So, we have recommended a condition which the requiring authority has adopted and include as condition 41a.

Now, I'm going to talk about the State Highway revocation issue and just part of that. So, at the moment there's a proposal for lighting of the new intersections from the new State Highway to the old State Highway, and I question whether that is necessary. I think in my section 42(a) I've suggested that it may not be necessary. Potential effects on nocturnal flora and also, you know, minor impact on rural character.

Just, at this stage I would just recommend that it be addressed following a decision on revocation and I've suggested some alternative wording there.

Now, I'm just going to ask Mr Harwood to discuss the State Highway revocation issue.

THE COMMISSIONER: Sure, yes.

MR HARWOOD: Thank you, Sir. In terms of the legal issue here, this is really in response to paragraph A5 of the Agency's opening submissions that essentially says that revocation is not something that you should address through this process, and essentially the same submission was made to the Board in the Transmission Gully Board of Inquiry process and which you'll recall that that Board was chaired by an Environment Judge at the time and the Board found that potential revocation effects - - in that case it was the return of the current State Highway 1 that winds its way around Plimmerton and Mana, to the relevant Councils, was an effect that the Board could have regard to and then ultimately include a condition about.

And the particular concern in that case was that, the - what's now still State Highway 1 would be returned, you know, in a state that's fit for its future purpose. And for this piece of road that is a live issue. When the existing State Highway gets returned to the Council or whoever else, that is a

potential effect that you have, as Commissioner you have jurisdiction to consider.

And then on -- you'll see, we've quoted some passages from the Board of Inquiry decision. Now I don't plan to take you through those. But you'll see at paragraph 66 there is a draft conditions there from Ms McBeth that deals with some, I'd say some basic requirements that would be useful to pin down at this stage, so the future revocation process is carried out in an appropriate way.

And you'll see there at clause (a) just puts some -- puts a framework around consultation with the Council and potentially affected users of the old State Highway. Now, I simply note there that under the Land Management Transfer Act there is a requirement for the Agency to consult with the Council, but it's not a similar requirement for the Agency to consult with other affected landowners, and in this case that could be useful.

THE COMMISSIONER: So, Mr Harwood, is your suggested condition similar to what was imposed by the Transmission Gully Board of Inquiry? Is it based on that? Is it something --

MR HARWOOD: Well the facts are quite different in those circumstances. The broader ideas are the same, but the condition is different. And, clause (b) there, that is -- that's about -- that was essentially the Transmission Gully issue, is that the existing State Highway is left in a state that's fit for its future use, and paragraph (c) simply says that, "The requiring authority shall have particular regard to the likely ongoing maintenance costs as part of its decision" as to what type of surface treatment will be left, because it may be, we don't know, that parts of the existing State Highway might be -- they might be best to be a four wheel track. It might be some sort of road. We don't know. But the on-going maintenance is likely to be a live issue.

And then also, you'll see at (d) there, there is a suggestion that the by-pass route will be maintained by the Agency for five years following revocation and that is essentially based on NZTA's policy about revocation, where it says, Policy 4, State Highway Revocation Policy Guide, it says that:

NZTA and development territorial authority may negotiate for a transitional funding assistance package if the revocation substantially increases the cost of their [and it must be the territorial authority's] overall maintenance programme.

So, that's really just putting some sort of basic
(overspeaking).

THE COMMISSIONER: So, is that the NZTA policy?

MR HARWOOD: That is, yes.

THE COMMISSIONER: Could you provide me a copy of that,
(inaudible)?

MS MCBETH: Mr Harwood will just comment on the lapse date as
well.

THE COMMISSIONER: That looks like a legal point as well.

MR HARWOOD: Again it's a very minor point, really. That's a
response to another part of NZTA's legal submissions. It's at
paragraph 276 there, and that was a submission that there's no
ability or no need for a lapse date for an alternation to a
designation and they're now set out there, but from a sort of
pragmatic or purpose of interpretation of those provisions that
would seem to be quite an unusual outcome if a new notice

requirement would have a lapse date but an alteration wouldn't, and I set out that analysis there in paragraph 67.

THE COMMISSIONER: Do designations effectively lapse and need to be rolled over when plans are reviewed, or what's effectively a lapse process anyway?

MS MCBETH: They do, unless the requiring authority informs the Council that the --

THE COMMISSIONER: But then again you can make a submission on them? So, from a pragmatic point of view this seems to be a more than 10-year lapse on (inaudible) depending on how --

MS MCBETH: Well, a normal five-year lapse, we're comfortable with a 10-year lapse, as well, which is what the original application was for.

THE COMMISSIONER: Okay. Thank you for that.

MS MCBETH: So, in conclusion, the principal area of substance in contention, in my opinion, relates to ecological effects and the details of the effects management package which is relevant in terms of Part 2, section 5, the need to safeguard the life

supporting capacity of ecosystems. Section 6(c), section 7(d), (f) and (g).

So, excuse if this is a bit crude, but I've set out some of the questions I've turned my mind to in trying to reach a conclusion as to whether the project's adverse ecological and biodiversity effects are addressed and, in particular, in relation to section 6(c). So, you know, some questions which they're just brief answers and based on my understanding from working with Wildlands.

So, the first question. Are effects of individual species, avoided, remedied, mitigated, off-set or compensated? For some species, yes, but there may be some losers. The Agency's new proposed bat conditions represent a significant effort to generate benefits to bats which were a key species of concern.

Are effects on ecosystems adequately avoided, remedied, mitigated, off-set or compensated? Largely, but I have residual concerns regarding ratios for restoration planting because what has been removed is of higher ecological value than what it is being replaced with, and over time restoration areas will become more increasingly valuable and naturalised, but to get to the same level of ecosystem functioning would take many decades for

younger vegetation, or centuries for mature emergent trees as Wildlands can confirm.

Is the project likely to achieve its stated outcome of no loss in biodiversity? This is problematic to measure, particular with bats, herpetofauna and invertebrates and so yes, problems with the biodiversity off-sets model. So, compensation is relied upon.

Is the ecological effects management package sufficient compensation? So, our view is, yes, provided there are maternal roosts within the PMA and the area is in lowland forest in close proximity to the project footprint.

If the PMA does not result in positive effects on bats, are the ecological and biodiversity benefits for other species enough to say that there is no net loss in biodiversity? I respond: no. Biodiversity is the diversity of species, the benefits to species which are not threatened only goes so far. The possible extinction of a local population of critically threatened long-tail bats would be, in my opinion, a significant effect of the project that, in my view, should be given considerable weight and there needs to be sufficient certainty that a local extinction will not result from the project or that

neighbouring populations will increase over time through the PMA to conclude that the project will not result in no -- will result in no net loss in biodiversity.

And the final question. Given the agreement I think among the ecologists here that the project footprint is likely to effect bat habitat, that is significant for the purposes of section 6(c). If the project does not recognise and provide for threatened bats and other indigenous fauna is it consistent with sustainable management purpose of the Act despite the worst-case risk of local extinction of a critically threatened species?

So, yes, I recognise that these aren't the statutory tests and the ultimate question is whether the project is consistent with sustainable management as defined in section 5.

Prior to the adjournment in August, I was of a view that if the requiring authority is not prepared to increase measures to ensure positive effects on bats, or to demonstrate that no maternal roosts exist within the project footprint, then it would be difficult to conclude that the proposal recognises and provides for the protection of habitats of indigenous fauna in relation to bats. Unless you applied significant weight to the

Agency's evidence and little weight to Wildlands or DOC evidence.

However, the changes made to the condition since adjournment are significant and I commend the Agency for including conditions relating to radio-tracking of bats. I also recognise the proposal will have significant positive effects and the compensation package is likely to lead to a range of positive effects for a number of indigenous species.

So, in taking that section 5 --

THE COMMISSIONER: Can I just interrupt you there? I think, look I'm really thankful for the way you've posed those questions and the way you've looked at them, because you're thinking like a decision-maker has to think. So, really good.

The last question, and I think, Mr Shaw can give me some help on this, I tested Dr O'Donnell about this local extinction of bat population and whether local meant within the little yellow slither or was it in the whole area on our North Taranaki and whether that was credible. I think he said it was 50:50. But, have you got an opinion on that matter?

MR SHAW: I do. I'm not - I'm not a bat expert so I'll just preface my comments with that.

THE COMMISSIONER: Just as a general -

MR SHAW: Just as a general ecologist who's watched bats, I'd have to say on and off for several decades in different places, who knows. As Dr O'Donnell has said, I mean they could all be roosting along that valley in those large trees that are going to be removed by this project in a worst-case scenario, and so in the lack of -- the lack of good solid information, that's probably a reasonable assumption to make, as a worst-case scenario, I think.

THE COMMISSIONER: Yes. But, the radio tracking process and then the definition of PMA post that, provides the sort of the process conditions to at least get some information and make some decisions.

MR SHAW: It will provide some good information and some certainty about where these animals are living and residing and moving through the landscape, and as Dr O'Donnell said, I mean they could actually be tracking from Waitaanga, or from the coast and moving quite widely across the landscape but they

could equally be living right in that valley, within the footprint.

THE COMMISSIONER: Okay. That's helpful. Thank you. Sorry to interrupt you.

MS MCBETH: That's all right. So, now to the overall assessment of the section 5 test. Does the proposal meet the RMA in terms of is it consistent with sustainable development and management? I consider the following features of the project are significant. Provide regionally significant infrastructure; improve route security and resilience to Taranaki's key route of Taranaki's key route to the north; supports growth and development of the region, which in economic strategies and for decades it's been identified as Taranaki's northern gateway to be fixed would be a one-off regional gain changer. So, considerable weight would be applied to that.

The project designed to deliver health and safety outcomes for users of State Highway 3; it appropriately manages health and safety risks associated with construction; it mitigates the effects of natural hazards on people, property, infrastructure and the environment and improves resilience to significant risks from natural hazards. It recognises and provides for tangata

whenua values; creates social benefits resulting from improved connectivity, including enhanced employment opportunities and increased liveability; natural character and ecological benefits from planting valley floors and riparian margins; sustainable management of freshwater resources and the large PMA providing ecological benefits and benefits to biodiversity, providing the area is well determined and the ELMP is well implemented.

I do wish to, again, acknowledge the serious social impact on Mr and Mrs Pascoe and, you know, that I think all the parties in this process challenged by the environmental effects from the significant vegetation clearance and work within and near waterways. Serious cultural effects and range of other effects, but on balance, I consider the Notice of Requirement with -- if we can get these conditions right, and I think we're nearly there, is consistent with the purposes, principles of sustainable management under section 5 and also that the requiring authority and the Council have recognised and provided for the relevant matters of national importance under section 6 and have had particular regard to the relevant section 7 other matters and so, in my view, a recommendation can be made under section 171 on the basis that all matters required by that section to be considered, have been considered and my

recommendation is that the NOR be confirmed subject to conditions.

THE COMMISSIONER: Thank you very much and I think we've picked up questions along the way, so, as I say, really appreciate the thoughtful way you've gone through that.

MS MCBETH: Thank you.

THE COMMISSIONER: I do want to come back to Mr Doherty and his one line in his last paragraph. See that, and I'm not sure whether this is the case or not. We haven't read everything. You've -- the 42A report where you've recommended that the requirement be confirmed. If Mr Doherty is recommending something else, I really do need to have to talk with him and have just some more information and clarity of the justification for that.

So, could I ask you and maybe Mr Harwood could talk to Mr Doherty and just, if he's -- on behalf of -- as a Council witness, if that is his position, I would like to see a bit more clarity around those reasons and have the opportunity to talk to him tomorrow, and we should probably talk about timing at some stage. But, I think, is that --

MS MCBETH: Yes, I'm more than -- I mean, I'll be more than happy to ring him now, or once you've had a chance -- or he's very open to receiving a phone call.

THE COMMISSIONER: Okay. Mr Harwood is that, is that us for the Council? Was there anything else to ...

MR HARWOOD: That's all.

THE COMMISSIONER: Thank you. Ms Hooper, do you have anything from the Regional Council?

MS HOOPER: To be honest, Sir, no. I think most of the concerns we have now rationalised (several inaudible words) being addressed. We're down to honestly maybe three or four minor points of clarification in the conditions. So, bearing in mind we're going to do conferencing either later today or tomorrow, we haven't -- well tomorrow at this rate. I'm conscious that's everyone's (inaudible). So, we haven't finalised a written statement yet, but if it would help you for me to -- if I fire something through this evening.

THE COMMISSIONER: No, look, I think I would rather you concentrate on the joint witness process and capture any thoughts that you can't come to an agreement with, with the other planners on conditions in that joint witness statement document.

MS HOOPER: That sounds fine.

THE COMMISSIONER: Yes, and so, just thinking about that timing, it's been a big day and I think it's going to be tough to pick yourselves up and do any serious conferencing today. So, is it realistic to be able to come back tomorrow afternoon with the planners' position on the conditions? I see some nodding heads.

Well, if you could coordinate that joint witness statement, that's signed by you all with any residual conditions that you have differences on, thinking about (inaudible) principles, I would think it would be helpful to hot-tub you. So, basically, four planners at the table with the position and then I can ask questions, and we can have a discussion together about those. I think I've used that several times and that's really -- that's really helpful when you're getting down to fine differences on matters like this.

It's just a question about what's a realistic time to reconvene the hearing and to do that? Ms Ongley?

MS ONGLEY: I just have a couple of things. Is Ms McBeth's redlined submissions available?

MS MCBETH: I will bring it to the conferencing.

MS ONGLEY: Right. Yes.

MS MCBETH: It's just --

MS ONGLEY: Mr Inger was hoping to look over it this evening. And, is the electronic version of the ELMP available so that we could send that to our technical people? And the only other thing was, I understand Mr Chapman's now going to do conferencing with technical people. So, that's good.

THE COMMISSIONER: Thank you. Mr Roan, what's your feeling on timeframe, 2 o'clock, 3 o'clock? Earlier?

MR ROAN: I think, well depending on what time we start in the morning, Sir. I would imagine we would be starting around --

THE COMMISSIONER: Well, there's no business.

MALE SPEAKER: 8 o'clock.

THE COMMISSIONER: So, I think - I think we've finished with the evidence from the cases, so if we said back here at 2 o'clock.

MR ROAN: I think that is (inaudible) Sir.

THE COMMISSIONER: And we'll see where you're up to there, and ideally a joint witness statement that can be delivered, and we'll go through it as a -- as a team of planners and talk about any residual matters, and then the ecologists I think. They must try to have something by the end of Friday. But, if you just keep in touch with me through the -- probably through Mr McIver, it would be best, on the - on the witness statements, that would be good.

MS MCBETH: Sorry, so I should let Mr Doherty know sometime between 2 and 4?

THE COMMISSIONER: I think if you can have a talk with him, about if he's maintaining his position as a Council witness, I would like to see a more definite statement of why -- of his --

of his position that the -- I think that NZTA should review its decision to adopt Option E rather than Option Z, which really, in my mind, is a recommendation from him to decline the applications.

If that is the position, we'll be prepared to have a discussion about that and provide some more clarity about his reasons. I think, probably it's in your court, Mr Harwood. So, if he's maintaining that position as an expert, we just need to test that with him in the way I would with any expert.

Thank you. Is there any other matters to discuss before we adjourn for the day?

MR SHAW: One query, who's coordinating the meeting of the ecologists tomorrow morning and where is it happening?

MALE SPEAKER: The ecologists will be nabbed by one Mr Ogilvey and where they'll be happening -

MR OGILVEY: I thought I was supposed to be notetaking, but I'm happy to be wrangler as well. (several inaudible words).

MALE SPEAKER: It will be at Opus, and I mean seen we're all talking, Peter mentioned 9 am, which I think is very leisurely, but potentially 8 am.

THE COMMISSIONER: Look, I'll leave you to wrangle the best you can. So, we'll adjourn for today. We'll reconvene at 2 pm tomorrow afternoon and thank you very much for the day. It's been very productive from my point of view. Very -- yeah quite tiring but I think we got through a lot of work, so thank you very much.

(Adjourned until Wednesday 10 October 2018 at 2.00 pm)