

COUNCIL REPORTING OFFICIERS: **Ms R McBeth** (NPDC); and **Mr C McLellan & Ms K Hooper** (TRC)

COUNSEL APPEARANCES FOR NZTA: **Mr D Allen and Mr T Ryan**

SUBMITTER APPEARANCES: **Ms S Ongley** (Counsel for Department of Conservation – “DoC”)

Mr T Hovell (Counsel for Te Runanga o Ngati Tama – “TRoNT”)

Mr R Enright (Counsel for Te Korowai Tiaki o Te Hauāuru Inc – “Te Korowai”)

THE NOTICE OF REQUIREMENT AND RESOURCE CONSENT APPLICATIONS

1. In December 2017 NPDC & TRC received a Notice of Requirement (the “NOR”) and resource consent applications made by the NZTA under sections 168(2), 181(1) and 88 of the RMA for an alteration of designation for State Highway 3 between Uruti and Ahititi and for the associated construction and operation of the Mt Messenger Bypass.
2. The nature of the proposed public work, as set out in the NOR¹, is:
“The Project involves the construction, operation and maintenance of a new section of SH3, north of New Plymouth, to bypass the existing steep, narrow and winding section of highway at Mt Messenger. The Project comprises a new section of two lane highway, approximately 6km in length (including tie-ins), located to the east of the existing SH3 alignment.”
3. The NOR directly affects 16 private properties totalling some 77.18ha and some 20.93ha of legal road within the existing SH3 designation². The NOR summarises the project foot print as follows:
“The Project footprint is located generally to the east of SH3 between Uruti and Ahititi, and includes tie-ins to the existing SH3 at the northern and southern ends of the Project footprint.”

¹ Notice of a Requirement for an Alteration to a Designation under Sections 168(2) and 181 of the Resource Management Act 1991 – State Highway 3 Mt Messenger Bypass, NZTA, 14 December 2017

² Assessment of Environmental Effects, NZTA, 14 December 2017, Section 2.2, Page 8.

4. Details of the proposed alteration of designation and associated land requirement are shown on the following sets of plans:
 - **Designation Drawings** (Attachment B to the NOR)
 - **Schedule of Directly Affected Land** (Attachment C to the NOR)
5. Below is an elevation model showing the project area as provided in the NZTA Assessment of Environmental Effects, December 2017 (page 50).



Figure 1 – NZTA Elevation Model of Proposed Realignment Route

6. The specific objectives outlined in the NOR are:
 - “1. To enhance safety of travel on SH3.*
 - 2. To enhance resilience and journey time reliability of the state highway network.*
 - 3. To contribute to enhanced local and regional economic growth and productivity for people and freight by improving connectivity and reducing journey times between the Taranaki and Waikato Regions.*
 - 4. To manage the immediate and long term cultural, social, land use and other environmental effects of the Project by so far as practicable avoiding, remedying or mitigating any such effects through route and alignment selection, highway design and conditions.”*

7. The NOR states under the heading 'The Project and alteration to the designation are reasonably necessary for achieving the objectives of the requiring authority because':

"The Project is reasonably necessary to meet the Transport Agency's Project Objectives for the reasons extensively set out within the Assessment of Effects on the Environment (Volume 1), but in summary including:

- The existing Mt Messenger section of SH3 is no longer fit for purpose. It has a poor safety record, poor route resilience (common closures with no suitable alternative routes without significant extra journey time) and poor road geometry and low speeds. Without the Project the substandard status quo will continue, and get worse over time as traffic volumes increase;*
- The Project will enhance safety of travel on SH3, improving its star rating from 2 to 3, providing improved forward visibility, improved geometry, reduced exposure, better provision for active modes, improved passing opportunities and safer connections to the walking tracks.*
- The Project will enhance resilience and journey time reliability of SH3 (and the network) by Providing a route and modern design techniques with enhanced resilience to natural hazards and closures due to crashes*
- The Project will contribute to enhanced local and regional economic growth and productivity for people and freight by improving connectivity and reducing journey times between the Taranaki and Waikato Regions*
- The Project manages the immediate and long term cultural, social, land use and other environmental impacts of the Project, including through an extensive ecological mitigation and offset package and a wide range of measures that will avoid, remedy, mitigate or offset effects.*

8. A number of resource consents associated with the construction and operation of the Mt Messenger Bypass are also required from the TRC. Land Use consent has also been sought from NPDC to disturb soil under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 ("NESSC"), associated with the

construction of the Mt Messenger Bypass. The NOR and associated applications are outlined below:

- *Notice of Requirement for the alteration to Designation N36 to designate land for the construction and operation of the Mt Messenger Bypass – a new section of State Highway 3, located east of the existing highway corridor, between Uruti and Ahititi, in North Taranaki;*
- *Application for land use consent to disturb soil under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011, associated with constructing the Mt Messenger Bypass;*
- *Application 17-0429-1.0(A) - To dam, take and use surface water from the Mangapepeke Stream and Mimi River, and to erect and use temporary weirs on the bed of the Mangapepeke Stream and Mimi River associated with constructing the Mt Messenger Bypass, and to divert, take and use groundwater as a consequence of excavations and tunneling associated with constructing and operating the Mt Messenger Bypass;*
- *Application 17-0429-1.0(B) - To divert, disturb, realign and modify sections of the Mangapepeke Stream, Mimi River and their tributaries associated with constructing and operating the Mt Messenger Bypass;*
- *Application 17-0429-1.0(C) - To install, use and remove temporary culverts in the Mangapepeke Stream, Mimi River and their tributaries for the purpose of constructing the Mt Messenger Bypass;*
- *Application 17-0429-1.0(D) - To install and use culverts in the Mangapepeke Stream, Mimi River and their tributaries and to install a bridge over a tributary of the Mimi River associated with constructing and operating the Mt Messenger Bypass; and*
- *Application 17-0429-1.0(E) - To discharge to land, water and to air from soil disturbance and earthworks, to undertake vegetation clearance, and to undertake riverbed planting associated with constructing and operating the Mt Messenger Bypass.*

9. NZTA seeks a period of ten years for both the alteration of designation pursuant to Section 184(1)(c) of the RMA and resource consents pursuant to Section 125 of the RMA. The reasons given for this lapse period are:

“Construction works are expected to commence in 2018 and be completed in 2021. However, the Project is large and complex and flexibility is required. As a precaution, an extended lapse period of ten years is sought...”³:

10. NZTA has proposed various restrictions or conditions for the designation and resource consents, which I will not repeat or summarise here as these have been refined further through the various iterations of proposed conditions that I discuss later in this decision.

PUBLIC NOTIFICATION AND SUBMISSIONS

11. Public notification of the NOR and resource consent application was made by the NPDC and TRC on 27 January 2018. The details of the public notification are documented in Ms McBeth’s Section 42A Hearing Report on behalf of the NPDC (“S42A Report”)⁴. I note that NZTA in their Assessment of Environmental Effects (“AEE”) requested public notification with the following statement:

“Due to the nature of the Project, the Transport Agency requests that the NOR and applications for resource consent for the Project be publicly notified.”⁵

12. Some 1,177 Submissions were received by NPDC; 20 in opposition, three neutral and 1,154 in support. Ms McBeth outlines in her S42A Report⁶ that 1126 of the 1154 submissions in support, as well as 18 late submissions (also all in support), are on forms containing the same text, which states:

“We support the Mt Messenger bypass project and the option proposed.

State Highway 3 is a vital link to the north for us and our family, for the wider community and for the people and businesses of Taranaki.

³ Assessment of Environmental Effects, NZTA, 14 December 2017, Section 2.4, Page 14.

⁴ Mt Messenger Bypass Section 42A Hearing Report, NPDC, 18 May 2018 – Page 23.

⁵ Assessment of Environmental Effects, NZTA, 14 December 2017, Section 2.1.1, Page 7.

⁶ Mt Messenger Bypass Section 42A Hearing Report, NPDC, 18 May 2018 – Paragraph 90, Page 23.

We consider that the project will significantly improve the safety conditions of State highway 3 over Mt Messenger and will make the highway a more reliable route.

The project designs appear to address the requirements for a modern highway and are also sensitive to the environment.

We urge the Council to grant the RMA applications so that construction can start on this regionally important transport infrastructure project.”

13. A comprehensive summary of those submissions that differ to the above is provided in Ms McBeth’s S42A Report⁷. Prior to the beginning of the hearing I read through the submissions and have considered these in my decision-making.

14. I note that the themes of those submissions in opposition include the following concerns (in no particular order), many of which are occur in more than one submission:

- Cultural effects;
- Adverse effects on Ngati Tama;
- Effects on Parininihi and taonga flora and fauna;
- Upgrading of existing alignment is a better option;
- Effects on landowners and farmland;
- Destruction of native bush and wildlife;
- Silt and sedimentation effects on catchments;
- Impact on the Pascoe family and property;
- Effects on natural and landscape values;
- Flooding from runoff;
- Effects on Ngā Hapū o Poutama (“Poutama”);
- Effects on Ngati Mutunga;
- Adverse ecological and environmental effects;
- Effects on terrestrial and freshwater biodiversity;
- Adverse effects on Te Korowai;
- Traffic safety effects from lack of sun, black ice, fog and flooding;

⁷ Mt Messenger Bypass Section 42A Hearing Report, NPDC, 18 May 2018 – Paragraph 91, Pages 23 - 32.

- Big cuttings resulting in slips;
- A tunnel is detrimental;
- Contribution of more roads and fossil fuel use to climate change.

15. Those individual submissions in support included the following reasons for their support:

- New road will reduce travel costs and improve safety and resilience;
- Reduced travel times and improved efficiency;
- Long term benefits for Taranaki;
- Essential for economic sustainability of region;
- Endorsement of the option chosen;
- Essential for the movement of freight and tourism;
- Reduced fuel use, carbon emissions; tyre wear, noise and risk of accidents compared to the existing road;
- Better route for livestock transportation for animal welfare.

16. At the hearing the following submitters appeared and presented further statements in support of their submissions:

- DoC;
- Western Central District Road Carriers;
- TRoNT;
- Poutama;
- Roger Maxwell;
- Urs Singer and Marie Doorbar;
- Emily Bailey;
- Tony and Debbie Pascoe;
- Te Korowai;

17. I appreciated the time taken by these submitters (who in some cases were supported by legal counsel and witnesses) to personally present the issues of relevance to them, and for the opportunity for me to ask them questions of clarification. This process assisted me greatly in making my recommendation and decisions.

HEARING INFORMATION AND RECORDS

18. A record of relevant information associated with the hearing and this decision report can be found on the NPDC Website under the URL address:

<http://www.newplymouthnz.com/Council/Have-Your-Say/Consultations-and-Surveys/Mt-Messenger-Bypass>.

19. This information was regularly updated as the hearing process proceeded and includes:

- The project documentation lodged by NZTA;
- Additional information received from NZTA following notification;
- Section 92 requests and responses;
- Hearing notices;
- Planning officer reports;
- Commissioner minutes and responses;
- Counsel memoranda;
- Counsel submissions;
- Evidence;
- Condition and management plan updates;
- Daily hearing transcripts.

20. I have considered all this information in my decision making. In particular, as a Commissioner sitting alone, I have found the written transcript to be a valuable record of the legal matters and oral evidence and representations which I have heard and tested.

21. I have requested that NPDC maintain this website as the hearing record through the appeal period and that a record of all information associated with the case is appropriately archived for future reference as might be needed.

STATUTORY REQUIREMENTS

Notice of Requirement

22. The relevant statutory requirements associated with alterations of designations and the recommendation by the territorial authority are set out below:

168 Notice of requirement to territorial authority

(1) A Minister of the Crown who, or a local authority which, has financial responsibility for a public work, may at any time give notice in the prescribed form to a territorial authority of its requirement for a designation—

(a) for a public work; or

(b) in respect of any land, water, subsoil, or airspace where a restriction is necessary for the safe or efficient functioning or operation of a public work.

(2) A requiring authority for the purposes approved under section 167 may at any time give notice in the prescribed form to a territorial authority of its requirement for a designation—

(a) for a project or work; or

(b) in respect of any land, water, subsoil, or airspace where a restriction is reasonably necessary for the safe or efficient functioning or operation of such a project or work.

(3) [Repealed]

(4) A requiring authority may at any time withdraw a requirement by giving notice in writing to the territorial authority affected.

(5) Upon receipt of notification under subsection (4), the territorial authority shall—

(a) publicly notify the withdrawal; and

(b) notify all persons upon whom the requirement has been served.

181 Alteration of designation

(1) A requiring authority that is responsible for a designation may at any time give notice to the territorial authority of its requirement to alter the designation.

(2) Subject to subsection (3), sections 168 to 179 shall, with all necessary modifications, apply to a requirement referred to in subsection (1) as if it were a requirement for a new designation.

(3) A territorial authority may at any time alter a designation in its district plan or a requirement in its proposed district plan if—

(a) the alteration—

(i) involves no more than a minor change to the effects on the environment associated with the use or proposed use of land or any water concerned; or

(ii) involves only minor changes or adjustments to the boundaries of the designation or requirement; and

(b) written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration; and

(c) both the territorial authority and the requiring authority agree with the alteration—

And sections 168 to 179 and 198AA to 198AD shall not apply to any such alteration.

(4) This section shall apply, with all necessary modifications, to a requirement by a territorial authority to alter its own designation or requirement within its own district.

171 Recommendation by territorial authority

(1A) When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.

(1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—

(a) any relevant provisions of—

(i) a national policy statement:

(ii) a New Zealand coastal policy statement:

(iii) a regional policy statement or proposed regional policy statement:

(iv) a plan or proposed plan; and

(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—

(i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or

(ii) it is likely that the work will have a significant adverse effect on the environment; and

(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and

(d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

(1B) The effects to be considered under subsection (1) may include any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation, as long as those effects result from measures proposed or agreed to by the requiring authority

(2) The territorial authority may recommend to the requiring authority that it—

(a) confirm the requirement:

(b) modify the requirement:

(c) impose conditions:

(d) withdraw the requirement.

(3) The territorial authority must give reasons for its recommendation under subsection (2).

Regional Resource Consents

23. The relevant statutory requirements associated with the resource consent applications to the Taranaki Regional Council are set out below:

104 Consideration of applications

(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—

- (a) any actual and potential effects on the environment of allowing the activity; and*
- (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) any relevant provisions of—*
 - (i) a national environmental standard;*
 - (ii) other regulations;*
 - (iii) a national policy statement;*
 - (iv) a New Zealand coastal policy statement;*
 - (v) a regional policy statement or proposed regional policy statement;*
 - (vi) a plan or proposed plan; and*
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

(2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

(3) A consent authority must not,—

- (a) when considering an application, have regard to—*
 - (i) trade competition or the effects of trade competition; or*
 - (ii) any effect on a person who has given written approval to the application;*
- (b) [Repealed]*
- (c) grant a resource consent contrary to—*
 - (i) section 107, 107A, or 217;*
 - (ii) an Order in Council in force under section 152;*
 - (iii) any regulations;*
 - (iv) wāhi tapu conditions included in a customary marine title order or agreement;*
 - (v) section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011;*
- (d) grant a resource consent if the application should have been notified and was not.*

(4) A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.

(5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a

discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.

(6) A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.

(7) In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.

104B Determination of applications for discretionary or non-complying activities

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

(a) may grant or refuse the application; and

(b) if it grants the application, may impose conditions under section 108.

24. The proposed activities subject to resource consent from the TRC require consideration against the objectives, rules and policies of the relevant regional plans. As set out in the TRC's Section 42A Report, the Taranaki Regional Plans relevant to this application are the Regional Air Quality Plan (RAQP), Regional Freshwater Plan (RFP) and the Regional Soil Plan (RSP). The RAQP has been operative since 2011. Both the RFP and RSP have been operative since 2001.⁸
25. I have considered and agree with the following conclusion in the TRC's Section 42A Report regarding the bundling and activity status of the regional resource consents:

“The default position when there are multiple resource consent applications is to consider them as a whole, and not artificially divide them into component parts which may require consent under a number of different rules. In this case a ‘bundling’ approach to activity status is applied to overlapping resource consent applications so that the most restrictive activity status is applied to the entire proposal. It is considered that this is appropriate, as even though some of the activities have controlled status, the effects of exercising the consents will overlap, and have consequential flow on effects on matters to be considered in the discretionary applications. (South Park Corp Ltd v Auckland City Council [2001] NZRMA 350). Accordingly, the activity overall is

⁸ Memorandum to Commissioner for Consent Application 17-0429.1.0(A)-(E), Document 2045740, Taranaki Regional Council, 18 May 2018 (Page 42).

considered discretionary, while the various applicable rules identified in Table 3 above provide guidance as to the appropriate policies and objectives to be considered in relation to the proposed activities.”⁹

Resource Consent Under NES

26. The NPDC Section 42A Report concludes that the earthworks associated with the proposed road alignment will require resource consent as a Discretionary Activity under Regulation 11 of the NESCS¹⁰. I agree with that assessment and with the following statement in that report: *“Soil disturbance under the NESCS as a Discretionary Activity requires assessment under Sections 104 and 104B of the RMA, where Section 104 is subject to Part 2 of the RMA.”¹¹*

Summary of Recommendations and Decisions to be made

27. As set out above I am therefore required to make a recommendation on the Notice of Requirement under section 171(2) of the RMA; and separate decisions on the bundled regional resource consents and the NESCS *under* section 104B of the RMA.

Positive Effects to Offset or Compensate

28. I note the generally equivalent provisions in sections 171(1B) and 104(1)(ab) as set out above, which require regard to be given to *“any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation, as long as those effects result from measures proposed or agreed to by the requiring authority”¹²*. These provisions were inserted by the October 2017 amendments to RMA under the Resource Legislation Amendment Act 2017.

29. The positive effects on the environment proposed by NZTA to compensate for the adverse ecological effects of the project are in my view, a key component of this notice of requirement and resource consent application and indeed these

⁹ Ibid (Page 44, Paragraph 110).

¹⁰ Mt Messenger Bypass Section 42A Hearing Report, NPDC, 18 May 2018 (Paragraph 79, Page 22).

¹¹ Ibid (Paragraph 82, Page 22).

¹² Resource Management Act 1991, Section 171(1B).

matters occupied a significant proportion of the hearing. I also wish to record that in considering these effects I am limited to the *'measures proposed or agreed'* by NZTA and do not have the authority to require additional measures. That is, I am limited to the NZTA position at the end of the hearing as recorded in the conditions and management plans dated 30 October 2018.

Relevant Planning Instruments

30. Section 113 of the RMA sets out the matters that must be in a decision on a resource consent application. Such matters include the relevant provisions of the various statutory instruments considered (section 113(1)(ab) of the RMA). Section 113(3) provides that a decision may, instead of repeating material, cross refer to an assessment of environmental effects prepared by the applicant or a report prepared under section 42A of the RMA, and this is what I have done below.
31. I consider that the relevant statutory instruments relating to the NOR have been comprehensively assessed in that part of the NPDC Section 42A Report titled 'National, Regional and District Policy Assessment' (pages 98 – 103). That report refers to and assesses the relevant objectives and policies of the New Plymouth District Plan 2005, Regional Policy Statement for Taranaki 2010, National Policy Statement for Freshwater Management 2014, and New Zealand Coastal Policy Statement 2010. I note that in turn the NPDC Section 42A Report cross references and comments on the corresponding assessment provided in the application AEE. For the purposes of this decision I consider that the aforementioned documents are appropriately assessed in the NPDC Section 42A Report and therefore I adopt the assessment provided in that report which concludes:

"Overall, I conclude that Mt Messenger Bypass is not in conflict with or opposed to the outcomes sought by the instruments to which we are required to have particular regard to, such that confirmation of the NoR should be precluded. The application of the mitigation hierarchy by the RA, and the measures proposed within the application documents, has resulted in a

proposal that is largely consistent with many of the instruments in question.”¹³

32. Similarly, the relevant statutory instruments to the assessment of the regional resource consents have been comprehensively set out in the TRC Section 42A Report under the heading ‘Statutory Assessment’ (pages 78 – 88). That report assesses the resource consent component of the application against the National Policy Statement for Freshwater Management 2014, New Zealand Coastal Policy Statement 2010, and the Regional Policy Statement for Taranaki. Additional assessment is made against the relevant Taranaki regional plans, being the RFWP, RSP and RAQP (as referenced under my paragraph 24 above). I consider that the assessment against these documents in the TRC Section 42 Report considers the relevant provisions and appropriately assesses them. I therefore adopt the statutory assessment provided in pages 78 to 88 of that report, rather than repeating the relevant provisions of those documents here.
33. In considering the statutory assessments provided in the two Section 42A Reports it is important to note that since those reports were written, the compensation and offset measures offered by NZTA in regard to ecological effects, has increased significantly. For example, the application as it was prior to the hearing proposed pest management in perpetuity over an area of 1,085ha of indigenous forest. The area of indigenous forest to be subject to the pest management measures has now been increased to 3,650ha. The various management plans, including, the ‘Ecology and Landscape Management Plan’ have also been strengthened significantly through the rigour of the submission and hearing process.

SITE VISITS AND HEARING PROCESS

34. I undertook three site visits to view the project area and the surrounding area. The dates and purposes of these site visits are listed as follows:
- 23 July 2018.** I travelled over the existing Mt Messenger route with Mr Oliver Coneglan, a New Plymouth based Downer employee who has been working as

¹³ Mt Messenger Bypass Section 42A Hearing Report, NPDC, 18 May 2018 (Paragraph 346, Page 104).

part of the Mount Messenger Alliance and has been a local site representative arranging landowner access. I was also accompanied by the Hearing Manager, Mr McKay and Ms Laura Buttimore (Senior Planner, Laura Buttimore Planning) who was engaged by the Councils to assist me on the local planning context. We then took a helicopter flight both in northerly and southerly directions over the route of the proposed alignment. We also flew over the Parininihi Conservation area to the west of SH3 out to the coast to gain additional context of the wider area.

17 August 2018. I travelled to Mr & Mrs Pascoe's property with Mr Oliver Coneglan and was also accompanied by Mr McKay. We met Mr Pascoe adjacent the existing road entrance to his property. Mr Pascoe then guided us on a walk up the Mangapepeke Valley along the proposed road alignment within his property. We walked up the eastern side of the valley and back down the western side, often stopping to orientate ourselves with the road plans guided by Mr Coneglan and Mr Pascoe. In undertaking this site visit I took up the invitation offered by Mr and Mrs Pascoe in their representations of their submissions on Day 5 of the hearing on Thursday 9 August. I am most grateful to Mr and Mrs Pascoe for the opportunity to walk over their property and in doing so, to gain an appreciation on the ground as to how the Mangapepeke Valley would be changed by the construction and operation of the road, including the areas of farmland, wetland, stream and indigenous vegetation and associated habitat.

10 October 2018. I drove the existing Mt Messenger Road accompanied by Mr McKay as far north as Tongaporutu and including a side trip to Pukearuhe to gain an understanding of the wider context of the area.

35. Having undertaken these three site visits and reviewed the plans, submissions and evidence over the course of the hearing, I consider that I have a thorough and sound understanding of the subject area and the associated environmental effects, to make an informed recommendation on the NOR and decisions on the resource consent applications.
36. The hearing itself was conducted on 1, 2, 3, 8, 9, & 16 August; and 9, 10 & 24 October 2018. At the opening of the hearing I recorded that I accepted the 18

late submissions identified in Ms McBeth's S42A Report¹⁴ by waiving the timeframes under section 37 of the RMA. NZTA and all submitters seeking to be heard had made presentations to the hearing by 16th August 2018. I took the opportunity to question legal counsel, expert witnesses and submitters in some detail during this period of the hearing. The responses provided, in addition to the information presented, have been invaluable in clarifying my understanding of the issues at hand.

37. I note that part way through the hearing an adjournment was requested by counsel for NZTA in a memorandum dated 15 August 2018, which resulted in a break in the hearing between 17 August and 9 October 2018. The purpose for the adjournment was stated in the NZTA memorandum as:

"The Transport Agency intends to reflect on the outstanding matters covered by Council Officers in their discussion with Mr Roan¹⁵, and in the presentation of evidence to the Commissioner by the witnesses for DoC, and by Mr Shapiro¹⁶ for Ngāti Tama.

In order to properly reflect on the outstanding matters raised by the Council Officers, and to update the conditions and Ecology and Landscape Management Plan ("ELMP") as necessary, the Transport Agency seeks an adjournment to the hearing. The ability for DOC, Ngāti Tama, and the Councils to consider and respond to the updated documentation is factored into the adjournment period."

38. After canvassing the adjournment request at the start of the hearing on 16 August 2018 with all parties present, I granted this adjournment request as recorded in my Minute 4¹⁷ which included an additional evidence and hearing timetable. I ensured this timetable provided the opportunity for all submitters to also lodge and speak to additional evidence in, but only in response to the specific updated conditions, management plans and any evidence tabled by NZTA.

¹⁴ Mt Messenger Bypass Section 42A Hearing Report, NPDC, 18 May 2018 – Paragraphs 92 & 93, Page 32.

¹⁵ Planning witness for NZTA.

¹⁶ Ecology witness for TRoNT

¹⁷ Commissioner Minute 4 dated 17 August 2018

39. I also provided in Minute 4 the opportunity for the TRoNT to provide additional submissions and evidence, specifically in response to the Poutama Cultural Impact Assessment “CIA” and associated evidence, which had not been pre-circulated and was first tabled at the hearing by Poutama on 9 August 2018. I provided this opportunity as the CIA prepared on behalf of Poutama (and funded by NZTA) was, in my opinion, an assessment of effects that NZTA as the applicant had facilitated, and for which they had been in negotiations for receipt of since November 2016. I had allowed the late preparation and receipt of this CIA and associated evidence after a special case for more time was requested by Poutama, which I had agreed to prior to the commencement of the hearing¹⁸.
40. After hearing the submissions and evidence of both TRoNT and Poutama on 9 August 2018 it was clear to me that the Runanga should have the opportunity to consider and respond to this CIA, as it concerned land in their specified rohe and that opportunity had not been provided during the normal course of AEE and evidence preparation and pre-circulation. I will return to the issue of the different historical accounts and issues of mana whenua later in this recommendation and decisions report.
41. Following receipt of the NZTA updated conditions, management plans and associated evidence, and evidence in reply by DoC, received on 5 October 2018, I received a range of procedural requests that I considered and dealt with in my Minute 5¹⁹. In that minute I provided the opportunity for the parties to address me at the start of the reconvened hearing on 9 October relating to any of the procedural decisions I had made in that minute. Mr Hovell, representing TRoNT was the only party who took up this opportunity, seeking leave (which I granted) for Mr Silich to present a statement regarding the updated position of NZTA regarding the PMA area as it related to their Paraninihi land²⁰.
42. The hearing re-convened on 9 October 2018 to consider the updated draft conditions and management plans filed by NZTA on 28 September 2018 and supplementary evidence filed by witnesses for the DoC on 5 October 2018, along

¹⁸ See Commissioner Minute 3 dated 27 June 2018 for request and background

¹⁹ Commissioner Minute 5 dated 7 October 2018

²⁰ Memorandum of Counsel on behalf of Te Runanga o Ngati Tama – Procedural Matters in Minute 5, 8 October 2018

with some additional evidence provided by TRoNT in relation to the Poutama CIA.

43. There was considerable discussion around the proposed conditions and management plans at the re-convened hearing on 9 and 10 October 2018. On 10 October 2018 I suggested an adjournment to allow the ecology and planning witnesses representing the parties to liaise further on the proposed conditions and management plans and to issue Joint Witness Statements (“JWS”) documenting areas of agreement and any areas of disagreement, including reasons. A key issue, as set out later in this recommendation and decision report, was the nature and extent of proposed ecology mitigation and offset proposals, location options for the PMA and the associated conditions and management plan framework. These matters had evolved considerably during the course of the hearing, up to that time.
44. It had become clear to me in suggesting this JWS process and second adjournment proposal that the opinions of the ecology and planning witnesses for NZTA, DoC and the Councils in particular, had become reasonably closely aligned in terms of the wording of draft conditions and management plans. Because of this, I considered that opportunity to prepare an ecology witness and planning witness JWS may give rise to further agreement and help clarify any areas of remaining disagreement between these experts.
45. At this point of my report, it is important to record that by making such a suggestion I made it clear at that stage of the hearing that I had not decided against those submissions seeking the withdrawal of the NOR, which included the submissions from the following people or groups who had presented in the earlier part of the hearing, being: Poutama, Urs Singer and Marie Doorbar, Emily Bailey, Tony and Debbie Pascoe, and Te Korowai. Rather, I considered that in the event I found in favour of confirming the NOR and granting the resource consents (after weighing all the evidence and submissions) having as much agreement from the expert planning and ecology witnesses of the various parties, regarding the form and specific wording of conditions and management plans would be beneficial.

46. Counsel representing NZTA, DoC, the Councils and TRoNT attending the hearing on 10 October 2018 agreed that a JWS process, followed by a “hot-tubbing” session involving the participating experts was a useful process to pursue at that stage of the hearing. Accordingly, I issued Minute 6²¹ setting that process out, after the NZTA, DoC and Council representatives had conferred with their respective witnesses on their time availability.
47. In addition to the Joint Witness Statements, I also sought several other items of information be provided following the hearing on 10 October 2018. These items are set out in my Minute 6 and included:
- A request for counsel for the NPDC (who had also been appointed to advise me with hearing process and legal advice) to provide information regarding the status of Poutama as an iwi authority in terms of their listing on the Te Puni Kokiri website as an ‘other’ Iwi Authority, and in regard to relevant case law.
 - Counsel for NZTA and DoC were requested to provide joint legal submissions of the need of the requiring authority to secure full legal right for land associated with offsetting and compensation proposals offered.
 - Counsel for TRoNT were requested to confirm in writing the status of the current trustees of that organisation including any relevant documentation.
 - Mr Doherty, engineering witness for NPDC, was asked to provide a statement of evidence clarifying his opinion as to whether the assessment of alternatives that was undertaken by NZTA in its multicriteria options assessment process was adequate, given the evidence presented during the course of the hearing.
48. The final day of the hearing was held on 24 October 2018 and involved my questioning of those witnesses who participated in the preparation of the joint witness statements in a “hot tub” format, as well as hearing further submissions and questioning of the legal counsel present representing NZTA, DoC and TRoNT.

²¹ Commissioner Minute 6 (updated) dated 15 October 2018

At the end of the hearing on 24 October 2018 several matters remained outstanding to be resolved in writing, these being:

- A response from Mr Doherty to my written questions given his non-availability to attend the hearing on 24 October 2018;
- A response from Mr Drinan, ecology witness for DoC, to my questions regarding the area of riparian planting proposed as a compensation measure;
- Legal advice from counsel for the NPDC on the 'iwi authority' status of Poutama, as this was unable to be provided prior to the last hearing day on 24 October 2018; and
- Closing written submissions on behalf of NZTA, including their final proposed conditions and management plans.

49. The last of those items was received on 30 October 2018. Following consideration of those items I was satisfied that there was enough information on which to make a decision. I subsequently closed the hearing on 6 November 2018, by the issue of Minute 7.

THE NZTA CASE

50. The case for NZTA was presented by their legal counsel Mr Allan and Mr Ryan and a team of 22 expert witnesses. Those expert witnesses presented evidence on a wide range of matters including: assessment of the alternative route options; geotechnical engineering; engagement with tangata whenua; engineering structures and design; traffic and transportation; project management; economics; social effects; landscape, natural character and visual effects; noise and vibration; historic heritage; construction water management; freshwater ecology; vegetation and off set area calculations; terrestrial invertebrates; avifauna; bats and herpetofauna; ecology mitigation and offsets; project construction; statutory planning; and proposed conditions and management plans.

51. In terms of a summary of the NZTA evidence I requested a brief "highlights package" from each witness. These are all available on the NPDC Mt Messenger

Bypass website page²², and it is therefore not necessary, or efficient to summarise each witness statement here.

52. I asked a wide range of questions of the NZTA team relating to legal issues, and each of the evidential matters listed above, as recorded in the written transcript located on the NPDC Mt Messenger website page. My findings on the key matters that remained in contention at the end of the hearing are recorded later in this report starting at page 58, under the heading *“Primary Matters still in Contention and Findings”*.
53. The NZTA case is comprehensively set out in both the opening and closing submissions of their legal counsel. Drawing on the closing submissions²³ I have summarised the key points of their case in the following paragraphs.
54. SH3 is a strategically important route both at a regional and national level, but the Mt Messenger section of the road is inadequate and not in keeping with its strategic importance. The realignment proposed by the NOR would address these inadequacies and result in improvements to safety, resilience, journey time, and safety for passive transportation. It would also result in reductions in CO² emissions, because of reductions in journey times, road gradients and distance²⁴.
55. Mr Copeland presented evidence for NZTA that the NOR would result in economic benefits due to increased business competitiveness and better connections for the Taranaki region’s businesses, residents and visitors. The construction project is estimated to generate 74 additional jobs, \$5.5 million in wages and salaries per year and \$33 million per year in additional expenditure with Taranaki businesses²⁵.
56. Based on Ms Turvey’s evidence for the NZTA, the NOR will result in social benefits, such as for those who need access to essential facilities to the north such as the Waikato Hospital²⁶.

²² <http://www.newplymouthnz.com/Council/Have-Your-Say/Consultations-and-Surveys/Mt-Messenger-Bypass>

²³ Closing Legal Submissions on Behalf of the NZ Transport Agency, 30 October 2018.

²⁴ Ibid, pages 3 & 4.

²⁵ Ibid pages 4 & 5.

²⁶ Ibid page 5.

57. NZTA identify other positive effects, such as to ecology (as a result of the Restoration Package), visual and scenic values for highway users, cultural expression and kaitiaki, and improved recreational opportunities²⁷.
58. Regarding effects on the environment, NZTA's case focused extensively on cultural and ecological effects, although evidence was also provided by a comprehensive range of other witnesses covering matters such as engineering, economic and social impacts and landscape, archaeology, noise and visual effects.
59. A key platform in addressing cultural effects is the decision and commitment from NZTA not to compulsorily acquire any land from Ngāti Tama for the purposes of the Project. This means that the Project can only proceed once, and if, the negotiations between NZTA and Ngāti Tama (through TRoNT) are successfully concluded²⁸. I note that a significant portion of the land required for the project involves Ngāti Tama land and that their land is also included within the revised preferred location of the proposed ecological restoration package (the details of which I return to below). I understand that as a result of the commitment not to compulsorily purchase and other mitigation measures, the Rununga support the grant of consent and confirmation of the NOR, which I will return to in discussing the position of the submitters. In addition to their role in the ownership of affected land Ngāti Tama, via the Rununga, has statutory acknowledgement over the project area under the RMA²⁹.
60. In their proposed final conditions NZTA have offered a Kaitaki Forum Group ("KFG") to help address cultural effects. Amongst other roles, it is proposed the KFG provide input to determining the location of the Pest Management Area ("PMA") (which forms a key component of the compensation package and is discussed further below) following the bat monitoring and tracking programme.³⁰
61. The make up of the KFG was a point of some debate during the hearing, led by questions from me of various witnesses, as to whether the condition should

²⁷ Ibid

²⁸ Ibid, page 6, paragraph 22.

²⁹ Mt Messenger Bypass Section 42A Hearing Report, NPDC, 18 May 2018 – Paragraph 118, Page 42.

³⁰ Closing Legal Submissions on Behalf of the NZ Transport Agency, 30 October 2018, Paragraph 21, Page 6.

require representation from two other submitter groups involved in this hearing, being Te Korowai and Poutama. I will return to this matter in my findings below but note the NZTA position to be that the membership of the KFG should be determined by TRoNT³¹.

62. The NZTA case regarding Poutama is that it has engaged in good faith with Poutama, including through funding of a CIA but does not have a view on their status as an iwi authority³². Similarly, NZTA states that since Te Korowai was formed in February 2018, it has been willing to meet and discuss the Project with Te Korowai members³³.
63. NZTA's overall position on cultural effects is that the measures set out in the conditions and management plans (agreed between the Transport Agency and both Councils), together with the commitment not to acquire land from Ngāti Tama, will appropriately address such effects of the Project³⁴.
64. In regard to ecological effects, NZTA acknowledge that the proposed removal of 32ha of mature native vegetation will have significant adverse effects but that through compensation they seek to establish medium to long term net ecological benefits.³⁵ I note that a considerable portion of the hearing focused on the nature and quantum of the offset / compensation required to ensure a net medium to long term ecological benefit, as expressed in the various opinions of NZTA, DoC and Council ecology witnesses.
65. There was originally a substantial disagreement between the lead ecologists for NZTA (Mr MacGibbon) and for DoC (Dr Barea) regarding whether the ecological restoration package qualified as an offset (on a test of "no net loss") or was compensation. By the end of the hearing this question was largely resolved via the process of the JWS where the NZTA ecology team largely accepted that most of the ecology restoration package was not a true and provable "no net loss" outcome, but instead should be considered for RMA purposes as primarily a "compensation" regime targeting a net gain in biodiversity in the longer term.

³¹ Ibid, Paragraphs 34 – 36, Page 9.

³² Ibid, paragraphs 31 & 32 Page 8.

³³ Ibid, paragraph 28 Page 7.

³⁴ Ibid, paragraph 38 Page 9.

³⁵ Ibid, paragraph 39 Page 9.

The changes to the Ecology and Landscape Management Plan (“ELMP”) in Section 3.1 agreed in the ELMP version attached with the 23 October 2018 Ecology JWS states:

“Compensate” refers to approaches such as cash payments towards achieving an environmental benefit, where mitigation and offsetting may not be possible.

This discussion is relevant to the management of ecological effects on the Project because, as is highlighted in sections below, it is not possible to avoid, remedy or fully mitigate the net significant residual ecological effects within the Project footprint. Such Significant ecological effects created by the construction and operation of the Project will need to be offset or compensated for.

In terms of offsetting and compensation the approach and over-riding objective of the Project is to “kick start” natural processes in an environment that has enough of its original components to be restored to a state close to what it might have been previously. The stated target for the mitigation and offset package (and therefore the ecological restoration) is to achieve no net loss or equivalent in biodiversity (after residual effects have been offset or compensated for) 10 years following the completion of road construction and a net gain in biodiversity from 15 years.”

66. NZTA also consider that route selection and Project design has sought to avoid adverse ecological effects (including avoidance of the Parininihi area to the west of SH3 and adjusting the alignment to be above and outside the Mimi wetland and the use of bridges and a tunnel). They acknowledge that the project will have residual ecological effects and have therefore proposed a restoration package. As discussed above, the details of this package evolved over the course of the hearing to address concerns raised by the DoC and Council witnesses. At the close of the hearing and following the JWS process the restoration package, via the final proposed conditions and management plans, involved:

- Intensive pest management over an area of 3,650ha (referred to as the Pest Management Area or ‘PMA’);
- 6ha of kahikatea swamp forest planting;

- 9ha of mitigation planting;
- The fencing, retirement (from stock) and riparian planting of 10,738m² of stream area which, with an additional 798m² of restoration associated with remediating stream diversions;
- The planting of 200 seedlings of the same species for each significant tree felled (presently 3,400 seedlings for the 17 trees);
- Provision of \$200,000 (plus GST if any) as a contribution towards lizard research that would benefit herpetofauna in the North Taranaki Ecological District; and
- Establishment of an Ecological Review Panel³⁶.

67. The NZTA case is that this restoration package in association with the specific details of the conditions and management plans will ensure that there is a medium to long term benefit in ecological effects. I note that the NZTA case included specific expert evidence on the following aspects of ecology: vegetation, freshwater, invertebrates, avifauna, herpetofauna, bats and the PMA. I have already noted that as the PMA is provided primarily by a compensation regime, that sections 171(1B) and 104(1)(ab) of the RMA apply, and therefore while I have the ability to have regard to the resulting positive effects, I do not have the power to impose additional offsets or compensation as conditions.

68. A considerable amount of hearing time was spent on the location of the PMA to ensure that adverse effects on bats can be mitigated. NZTA is proposing bat tracking over this current summer, with the results to determine the location of the PMA. That is, if the tracking demonstrates that there are sufficient numbers of bats living within the preferred PMA area or variations proposed near the project site, then that is where it will be. If not, the PMA, following the step by step selection process in the ELMP, it will be located in the Waitaanga Valley. This is an area of DoC managed land, including known bat habitat, which is beyond the project boundaries to the west. The NZTA position is that the location of the PMA can be conditional upon the bat tracking results via the Ecological Review Panel, and that their preference is for the proposed location,

³⁶ Ibid, paragraph 44 Page 10.

but that the Waitaanga Valley is an appropriate fall-back location if the adverse effects of the Project on bats cannot be mitigated in the preferred location adjacent the project area. The process is set out in the proposed ELMP filed with the NZTA closing.

69. NZTA's overall position on ecological effects is that: *"The Project will provide significant ecological benefits in perpetuity such that it appropriately avoids, remedies, mitigates, offsets and compensates its effects (to the point where they will be ecological enhancement)."*³⁷

70. NZTA acknowledge that the proposal will give rise to a number of other effects and their position on them is summarised in the following bullet points:

- Landscape, Visual and Natural Character Effects – will be appropriately addressed by the proposed conditions and the Landscape and Environmental Design Framework ("LEDF")³⁸;
- Social effects on local residents – will be addressed by the proposed conditions and Construction Environment Management Plan ("CEMP"), except for on Mr & Mrs Pascoe on whom there would be social effects during construction³⁹;
- Recreation Effects – are addressed by maintaining road access and car parking for the Mt Messenger and Kiwi Road tracks⁴⁰;
- Heritage Effects – conditions are proposed to address the accidental discovery of unknown heritage remains or koiwi tangata and the archaeological authority granted on 28 August 2018 will be complied with⁴¹;
- Construction Water Effects – the version of the Construction Water Management Plan ("CWMP") and conditions related to construction water management proposed should be approved without the

³⁷ Ibid, paragraph 109 Page 23.

³⁸ Ibid, paragraphs 111 & 112 Page 24.

³⁹ Ibid, paragraphs 113 & 114 Page 24.

⁴⁰ Ibid, paragraphs 115 & 116 Page 25.

⁴¹ Ibid, paragraphs 119 & 120 Page 25.

amendments and additions as sought by DoC as TRC are satisfied with this approach⁴²;

- Construction Traffic Effects – will be managed through the proposed conditions and the Construction Traffic Management Plan (“CTMP”) and would be significantly less than for the ‘online option’⁴³;
- Noise and Vibration Effects – will be addressed by the proposed conditions and the Construction Noise Management Plan (“CNMP”), except for on Mr & Mrs Pascoe. A condition is proposed by NZTA to require them to provide alternative housing to the Pascoe’s during construction works if they are unable to purchase the land on which the house sits prior to the commencement of construction⁴⁴;
- Air Quality and Dust Effects - will be managed through the proposed conditions and the Construction Dust Management Plan (“CDMP”) ⁴⁵;
- Lighting Effects - will be managed through the proposed conditions and the CEMP. Intersection lighting requirements will be confirmed through detailed design⁴⁶;
- Natural Hazards – the Project will be a resilient section of state highway and significantly more resilient to natural hazards than the existing highway⁴⁷;
- Soil Contamination and Hazardous Substances Effects – in response to the NPDC supplementary S42A Report, are addressed through updates to the Detailed Site Investigation, CEMP and Contaminated Land Management Plan (“CLMP”); and
- Property Access – for properties served by the existing SH3 will be maintained during construction in accordance with designation condition 37. Longer term access will be addressed through the state highway revocation process⁴⁸.

⁴² Ibid, paragraph 128 Page 27.

⁴³ Ibid, paragraph 129 & 130 Page 27

⁴⁴ Ibid, paragraphs 131 – 135 Pages 27 & 28.

⁴⁵ Ibid, paragraph 136 Page 28.

⁴⁶ Ibid, paragraph 138 Pages 28 & 29.

⁴⁷ Ibid, paragraph 139 Page 29.

⁴⁸ Ibid, paragraph 145 Page 30.

71. The following is a bullet point summary of the NZTA position on the statutory and legal matters in contention at the hearing, from their closing submissions:

- Conditions prescribing minimum terms for access to PMA and planted areas to ensure the PMA and planted areas will be enduring – accepts that it must carry out pest management within the PMA in perpetuity and ensure that all planted areas are protected on an ongoing basis. If access is lost to the PMA or planting land, replacement areas will be sought and that this is secured, to the satisfaction of the Councils but not DoC, through proposed designation condition 29A and consent condition GEN.24A⁴⁹;
- In response to NPDC seeking a condition relating to the revocation of state highway status for the bypassed section of road⁵⁰, NZTA consider that there is no need for a designation condition that addresses the state highway revocation process. Section 103 of the Land Transport Management Act 2003 provides for that process and need not be duplicated.⁵¹ NZTA has committed to consultation with the councils over the future of the section of SH3 that would be bypassed by the project.⁵²
- The default unlimited terms are sought for the required land use consents and 35 year terms are sought for the other resource consents required from the TRC. A lapse period of 10 years is sought for all the resource consents required from the TRC and for the land use consent required under the NESCS.⁵³ TRC has agreed to the proposed conditions setting these lapse periods and terms, however the extended 10-year term for the NES was omitted from the discussion in the planners JWS.⁵⁴
- NPDC have sought that a lapse period of 10 years also be applied to the designation⁵⁵, but NZTA's position is that no lapse period may be included

⁴⁹ Ibid, paragraphs 149 - 151 Pages 31 & 32.

⁵⁰ Statement to Hearing by R McBeth dated 9 October 2018, Page 15, paragraph 68

⁵¹ Closing Legal Submissions on Behalf of the NZ Transport Agency, 30 October 2018, Paragraph 68, Page 15.

⁵² Ibid, paragraph 160, Page 35.

⁵³ Ibid, paragraph 167, Page 38.

⁵⁴ Ibid, paragraph 169, Page 38.

⁵⁵ Statement to Hearing by R McBeth dated 9 October 2018, Page 15, paragraph 69.

on an alteration to a designation based on the application of section 181 of the RMA⁵⁶.

- Sections 171(1)(b)⁵⁷, and(c)⁵⁸ of the RMA – the AEE and evidence presented during the hearing demonstrate that NZTA followed a detailed and robust process for assessing alternative options for the Project, centred on but not determined solely by a two-stage MCA process. In light of the information, including the \$185m difference in cost between Options E and Z, NZTA's decision to progress Option E was perfectly reasonable. It is standard and responsible practice to continue refining the chosen Project option through to the consenting stage (including refining the mitigation / offset / compensation required to address environmental effects). The costs associated with the ecological restoration package are dwarfed by the \$185m cost difference between Options E and Option Z.⁵⁹
- In relation to the conditions and management plans there are only a few areas remaining in dispute, which will be discussed further below. NZTA submit that that the proposed conditions and management plans are robust and will ensure outcomes such that the effects of the Project will be appropriately avoided, remedied, mitigated, offset and compensated.⁶⁰

72. The above section of the decision devotes a significant amount of space to the NZTA's case as per their closing submissions. I however, consider this to be a useful summary in this recommendation and decisions report due to the way that parts of the case have evolved over the course of the hearing.

⁵⁶ Ibid, paragraph 172, Page 39.

⁵⁷ Whether adequate consideration has been given to alternatives.

⁵⁸ Whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.

⁵⁹ Closing Legal Submissions on Behalf of the NZ Transport Agency, 30 October 2018, Paragraph 184, Pages 40 & 41.

⁶⁰ Ibid, Paragraph 189, Page 42.

OUTLINE OF SUBMITTER POSITIONS

73. In paragraphs 13 to 15 above, I have summarised the matters raised by submissions. In the following section I set out the positions of the submitters who appeared at the hearing, as I have understood them to be at the close of the hearing. It will be appreciated that with 9 days of hearing and over 80 statements of evidence it has not been possible to capture all the points and issues raised by each submitter in this report. I have attempted, though, to capture and record the key points and positions of each of the parties in a fair way.
74. It is also important to note that through the course of the hearing, and through ongoing dialogue, some issues have been agreed between expert witnesses and parties, especially those relating to the scale of ecological effects and appropriate mitigation, offset and compensation approaches.

TRoNT

75. The TRoNT submission was presented by Mr Hovell, with evidence provided on cultural matters by Mr Gregory White and by Mr Shapiro and on ecological matters. TRoNT has been engaged with NZTA throughout the project development as outlined by Mr White.

“As was stated in the Maori Values Assessment prepared by TRoNT, the TRoNT has been happy with the process for consultation and discussions with TRoNT. This has included important input into the MCA process and selection of the route.

There are still some matters that remain outstanding, but this is not due to any lack of effort or commitment to work through these matters.”⁶¹

76. Mr White explained that *“TRoNT is the Post Settlement Governance Entity (PSGE) that is the recognised representative body of Ngati Tama in the Ngati Tama rohe, North Taranaki.”⁶²*

77. Mr White then went on to explain his view of the TRoNT mandate as follows:

⁶¹ Brief of Evidence of Gregory White, Cultural Expert, July 2018, Paragraph 9, page 3

⁶² Ibid, Paragraphs 60 & 61, Page 11

“The Taranaki Report Kaupapa Tuatahi was released in 1996. Throughout the Tribunal hearing process and especially following the final hearing, strong views were expressed by Iwi regarding who might be entitled to negotiate a settlement on behalf of each of the eight recognised Taranaki Iwi.

I was part of the group organising the four Tokomaru Waka Iwi, Ngati Tama, Ngati Mutunga, Ngati Maru, and Te Atiawa into an entity called the Northern Taranaki Claims Progression Team (CPT) that commenced negotiating a settlement with the Crown. I was appointed the Ngati Tama negotiator and also doubled as manager of the CPT.

Mandate challenges were an issue at every step of the negotiation process and even surfaced again following settlement where the PSGE successfully defended its mandate in the Maori Land Court in 2005¹. Those who challenged the TRONT mandate are now principles of the group referred to as Poutama.

In spite of these challenges, settlement was eventually concluded with the enactment of the Ngati Tama Settlement Act 2003.

It may help if I record that TRONT has not been operating with a full complement of Trustees for almost 2 years. This is for reasons which are not part of this process, and which are the subject of other Court proceedings, so it is not appropriate to go into detail here. However, I note this to record that TRONT has been operating with a quorum, and I also understand other trustees are part of the group referred to as Te Korowai.

I understand that the RMA allows all persons to have their say and it is not the intention of TRONT to take anything away from any Ngati Tama whanau who have lodged submissions and wish to be heard. We are all aware that this project has major impacts on our tikanga principles and makes the project a difficult one for all our whanau.

¹Refer to Maori Land Court, Aotea District Minute of the Court 2004, 146 AOT 152 Determination of representatives of Ngati Tama and Ngati Maru iwi for the purposes of Appointing a representative to the Board of Te Whare Punanga Korero Trust.”⁶³

⁶³ Ibid, Paragraphs 20 to 25, page 5

78. The TRoNT position, as set out in its opening submissions from Mr Hovell, is that it has the mandate to speak for Ngati Tama who hold mana whenua over the area of the Project and that it is supportive of the grant of the RMA approvals for the project⁶⁴. TRoNT maintained the following position throughout the hearing as outlined in the conclusions to Mr Hovell's legal submissions:

"While there are ongoing discussions between the Runanga and NZTA, the Runanga supports the grant of the RMA approvals for the following reasons:

a. Measures to address metaphysical effects have been incorporated in the consent conditions;

b. There are a number of ongoing processes to address the outstanding issues including:

i. Any further RMA process;

ii. Ongoing consultation;

iii. The negotiation of PWA matters

c. The Runanga has taken an active and open approach with its members in relation to the project, and will continue to do so;

d. Ngati Tama (through the Runanga) retains sufficient control to freely consent to the project outside this forum given the agreement by NZTA not to use the compulsory acquisition powers in respect to the Ngati Tama Treaty settlement land."⁶⁵

79. The ecological evidence of Mr Shapiro advocated for the inclusion of the TRoNT owned land within the proposed PMA:

"The area of Ngati Tama land referred to as the Ngati Tama Parininihi Block (Appendix 1) is connected to the main area of the proposed PMA and is directly adjacent to the impact site of the Project. In my opinion, this area adheres to the four ecology principles of ecological equivalence, ecological proximity, connectedness and high likelihood of success. I would have expected this land to be included within the proposed PMA instead of the

⁶⁴ Legal Submissions on Behalf of Te Rununga o Ngati Tama, 8 August 2018, Paragraph 4, Page 12.

⁶⁵ Ibid, Paragraph 6, pages 12 & 13

most western area of Ngati Tama land identified as within the PMA or the eastern extents of the DOC land.”⁶⁶

80. As previously outlined, I provided the opportunity for TRoNT to respond to the CIA and associated evidence presented on behalf of Poutama at the hearing on 9 of August as this CIA and evidence had not been pre-circulated. TRoNT exercised this right by presenting its own historic evidence prepared by Mr Paul Thomas to the hearing on 9 October 2018. Mr Thomas is an historian and has worked on Treaty of Waitangi issues since 1995. His evidence states that:

“In 2011, I wrote “The Crown and Māori in Mokau: 1840-1911”. This report, commissioned by the Waitangi Tribunal for its Te Rohe Pōtae inquiry, analyses historical issues and tribal land tenure in the Mokau-Poutama region. It examines the Crown’s 1865 confiscation of land in the region, including the area which is now designated for the Mt Messenger bypass project.”⁶⁷

In his evidence he states that there are no historical records that refer to a tribal group known as Ngā Hapū o Poutama or Poutama.⁶⁸ Throughout his evidence Mr Thomas counters Mr Stirling’s evidence on key events and history. I do not propose to undertake a detailed discussion on the contest in historical evidence between these two experienced historical witnesses at this juncture of my report, and I will return to this matter in my deliberations below.

81. Another matter addressed by the TRoNT prior to the close of the hearing, at my request, was to confirm the current status of the Rununga and its trustees. A Memorandum from Counsel for TRoNT on the Status of Trustees, dated 18 October 2018, and tabled at the final day of the hearing on 24 October 2018, confirmed that the TRoNT is now operating with the full complement of seven trustees.

82. In response to questions from me regarding the current status of the Trust and whether the seven trustees in the “reinstated trust” had met, Mr Hovell said:

⁶⁶ Brief of Evidence of Lee Shapiro, Ecologist, 24 July 2018, Paragraph 26, page 5

⁶⁷ Brief of Evidence of Paul Thomas, Historian, 8 October 2018, Paragraph 2

⁶⁸ Ibid Paragraphs 8 to 12

“A memorandum that I have lodged addressed the status of the trustees so that is confirmed that the seven trustees are all now full trustees of Te Rūnanga o Ngāti Tama have been reinstated.”⁶⁹

My instructions are they have called meetings in which they have invited all of the trustees to and the trustees have had a meeting. As to whether all the trustees have turned up I cannot comment on that but at least there has been invitations to all the trustees to attend meetings and have a trust meeting.”⁷⁰

Te Korowai

83. The Te Korowai submission was presented by Mr Enright, with supporting planning and cultural evidence, and is that there are significant cultural effects of the Project on Ngāti Tama which are not mitigated by the agreements between NZTA and TRoNT. This position was retained throughout the hearing. I note that although Te Korowai did have a planning witness, Mr Carlyon, that witness did not participate in the Planning Joint Witness Statement process, as his brief was limited to cultural matters as set out below:⁷¹

“The opinions given in my evidence are qualified as the key requirements to address tangata whenua matters particularly:

- *NZTA engagement and consultation with Te Korowai (relevant under s6(e), s7(a) and s8 RMA;*
- *NZTA evaluation of avoidance, cultural mitigation and cultural offsetting in relation to the issues raised in Te Korowai’s submission (s6(e), s7(a) and s8 RMA;*
- *and cultural relationships, associations to be raised in kaumatua and kuia evidence for Te Korowai (s6(e), s7(a), s8 RMA;*

remain unresolved at the time of writing.”

84. Evidence was also provided by Messrs’ Adrian White, William White, Allen White and William Simpson. I read and listened carefully to all of the evidence provided by Mr Carlyon and the Te Korowai cultural experts. The essence of the

⁶⁹ Hearing Transcript, 24 October 2018, Pages 8 & 9

⁷⁰ Ibid, Page 11

⁷¹ Brief of Evidence of Greg Carlyon, Planner, 24 July 2018, Paragraph 8, page 2

Te Korowai position was put by one of the cultural witnesses, Mr Simpson in his oral statement as follows:

“We fully support a construction of a bypass through te amunga o purehuroa, Paraninihi however I am here to state that we as whānau were made aware that there are many other Ngati Tama beneficiaries and whānau that have been excluded from the consultation process with NZTA for one reason or another.

That TRONT had failed to notify all beneficiaries of their Hui a iwi.

Therefore after deep consideration and many hours of discussion with the whānau we ask the commissioner and people before us to set aside the Resource Management Application until such time as Ngati Tama o Taranaki (Ngati Tama) as a whole are fully included in the consultation process. Ngati Tama is in an extremely dark place and have been put through harrowing times and experiences with the loss of our treaty settlement monies through bad investments.”⁷²

85. The position of Mr Carlyon is captured in the following extracts from his evidence:

“The NZTA has identified that the Mt Messenger roading project would not proceed without the blessing of Te Runanga o Ngāti Tama, which it has identified as the mandated representative body for Ngāti Tama. The agency does not have that blessing at this time and is advancing a proposition before the resource consent and NoR hearing, on the basis that approval is to be provided.

It is clear to NZTA and its agents that Ngāti Tama’s representation to speak solely to issues regarding the Mt Messenger roading project is questioned. It is not my place to address the role of the mandated representatives of Ngāti Tama to speak to the issues raised by the Mt Messenger project. In light of the serious concerns and challenge laid by Te Korowai, it is reasonable to assert that good-faith consultation would have occurred with Te Korowai.

⁷² Oral Statement of William Simpson, 16 August 2018, Paragraphs 10 to 14

This consultation and the efforts made by Mr Dreaver on behalf of NZTA, has come belatedly in the process and not reached a conclusion.

I acknowledge the substantial body of work undertaken by NZTA, the Alliance partnership and its agents, and accept that projects of this scale require a degree of adaptability. However, in respect of the substantive matter of recognising and providing for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga, as a matter of national importance, with the associated support of sections 7(a) and 8 of Part 2 of the Act, these current approaches are inappropriate.

Parties to this process seek a hearing decision that gives certainty to both the applicant and stakeholders. In light of the substantial knowledge gap in respect of cultural matters, in my opinion the rights and interests of the runanga and Te Korowai Trust are not provided for. A decision made in the absence of a reconciled position on cultural matters may potentially elevate uncertainty and sustain a legitimate grievance from tangata whenua.

The designation sought to secure the land required for the project, and resource consents sought pursuant to sections 9, 12, 13, 14 and 15 of the RMA, should be declined in the absence of greater clarity in respect of the rights and interests of hapū and tangata whenua, as represented by Te Korowai, as expressed at section 6(e), 7(a) and 8 of the Act. In this light, the application does not manage the use, development and protection of natural and physical resources in a way, or at a rate which enables the Te Korowai people, as descendants of Ngāti Tama, to provide for their cultural wellbeing, and accordingly does not promote the sustainable management purpose of the Act at section 5.”⁷³

86. Mr Enright covered a range of matters and made the following specific submissions regarding the agreement between NZTA and TRoNT not to proceed with the project without the agreement and blessing of TRoNT:

⁷³ Brief of Evidence of Greg Carlyon, Paragraphs 12 to 16, pages 3&4

“Fettering the exercise of RMA powers, pending the agreement of Ngāti Tama (as 3rd party), is arguably ultra vires (unlawful) for several reasons:

(1) NZTA cannot fetter exercise of its statutory powers to provide for and build the road. It would be a perverse outcome if NZTA, having identified the road as the most appropriate option in light of detailed evidence, and meeting the “public interest” criteria in s171 RMA, then prevented the public work proceeding through side agreement with Te Runanga;

(2) your RMA assessment cannot rely on exercise of third party of side agreement or powers (in this case, approval by Te Runanga of a pending agreement (or two agreements: one under the RMA, the other involving property sale and inferred land swap);

(3) RMA assessment of effects cannot be contingent on a veto power to be exercised through side agreement on property and ownership issues. As Commissioner, you have no way of knowing whether the designation will be exercised. It may be futile if Te Runanga exercises its veto.

Te Korowai opposes the deal done by Te Runanga as demonstrating bad faith, likely breach of Trust deed powers, including likely breach of process followed to notify beneficiaries and mandate the agreement. For now, that is a civil matter likely to result in judicial review proceedings or other remedies. It does not concern your RMA assessment.

What does concern your inquiry is that Te Runanga cannot and does not speak for the tangata whenua represented by Te Korowai. NZTA has used mandate as sword and shield. It says on the one hand that you cannot assess mana whenua and mandate, as between Te Runanga and other iwi entities; but on the other, asserts that Te Runanga speaks for Te Korowai members that identify as Ngāti Tama, or hapu of Ngāti Tama. Both positions cannot be right. The RMA (and

Treaty principles) recognise the right of hapu to self-identify and represent themselves separately from iwi authorities.”⁷⁴

87. Fairly, during questioning Mr Enright acknowledged that the Te Korowai criticisms regarding the lack of specific engagement by NZTA with this group had to be put into perspective, when he volunteered:

“As we say, and it is the evidence really, that there has been a lack of engagement with Te Korowai members and that is an unfortunate aspect of this process. Now I accept, and it is a point made in NZTA's evidence, Korowai did not exist as a legal entity until the day its submission was lodged. Absolutely accept that. But there was a window of time from the end of February through to the start of the hearing for engagement direct with Korowai and not through the medium of the rūnanga, which is where most of that engagement has happened other than -- yes, there were offers made by NZTA, one meeting took place, which we acknowledge. I think it was 24 July.”⁷⁵

88. Mr Enright made a request at the end of his case to file some further matters in writing as follows:

“There is a couple of points I would like to deal with as closing comments, but I would prefer, if that is all right with you, to commit to writing. It might assist you better, but just around principally the Public Works Act point. I think it is dealt with in section 186 RMA, but I would like to check that, and the point which just came up about how does the Act deal with iwi authorities as distinct from Māori generally, I would like the opportunity to just commit a couple of comments on that to you in writing as well, so I could file that by Monday.”⁷⁶

89. I granted this request, but no further written submissions or updates have been received from Te Korowai on those matters, or in relation to the updates provided from Mr Hovell on Hearing Day 7 on 9 October 2018. During that hearing day there was an indication from Mr Silich that there may have been

⁷⁴ Legal Submissions on behalf of Te Korowai, 16 August 2018, Paragraphs 17 to 19

⁷⁵ Hearing Transcript Day 6, 16 August 2018, Pages 60 & 61

⁷⁶ Ibid Page 151

some form of Court Order or reinstatement of the suspended TRoNT trustees and in response to an inquiry from me, Mr Hovell stated:

“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.”⁷⁷

90. Following on from this I made the request below:

“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.”⁷⁸

91. Mr Walden provided an update on the Te Korowai position the following hearing day on 10 October 2018 as follows:

“I am here assisting Mr Enright. I communicated the difficulty to Mr Enright yesterday. I talked to him this morning. I then talked to a number of senior members of Te Korowai. The position has not changed from the position it was at the hearing in any way whatsoever.”⁷⁹

92. As previously recorded, during Hearing Day 9 on 24 October 2018 Mr Hovell filed a Memorandum of Counsel on behalf of TRoNT saying that the Trust was back to its full complement. This Memorandum included a letter from the legal firm

⁷⁷ Hearing Transcript Day 7, 9 October, Pages 201 & 202

⁷⁸ Ibid, Pages 202 and 203

⁷⁹ Hearing Transcript Day 8, 10 October 2018, Page 11

advising the trustees, Anthony Harper, which stated the names of the trustees as at 16 October 2018 and that those Trustees “*presently hold all the powers and obligations of that office*”.⁸⁰ In response to a question Mr Hovell deposed that:

“...the seven trustees are all now full trustees of Te Rūnanga o Ngāti Tama have been reinstated.

I put a request through to Mr Enright to see if he could advise on the status of Te Korowai. I have not heard back from him before lodging that memorandum and we still have not heard back so I cannot address that. So for my part it was just addressing the status of the trustees themselves which is now verified.”⁸¹

And my instructions are they have called meetings in which they have invited all of the trustees to and the trustees have had a meeting”⁸².

93. I will return to these aspects later in this report when assessing the primary matters in contention.

Poutama

94. The submission of Poutama was presented by Mr Russell Gibbs and Mr Haumona White and was supported by a CIA and historic evidence by Mr Stirling presented on 9 August 2019. The position of Poutama is that they have mana whenua status and through Mrs Pascoe who identifies as Poutama, have an association with land directly affected by the Project. They seek that the NOR and applications be declined. Mr Haumoana White summarised the position of Poutama in three succinct paragraphs of his evidence as follows:

“Poutama does not seek and has never sought recognition from the Crown, local or central government, its’ agents or departments. Poutama is mandated by Poutama. It is not for any Crown department or its agents and representatives to recognise who is and who isn’t. We the Poutama people are still on lands today. I am a Kaitiaki for the iwi. We hold and exercise Kaitiakitanga within our rohe regularly.

⁸⁰ Memorandum of counsel for Te Runanga o Ngati Tama on Status of Trustees, 18 October 2018

⁸¹ Hearing Transcript Day 9, 24 October 2018, Pages 8 & 9

⁸² Ibid Page 11

The Pascoe whānau are part of Poutama iwi, through Debbies whakapapa. We support their position to retain their whenua and cultural assets on behalf of the wider iwi. These include the following:

- *Mangapepeke stream*
- *Pā tuna*
- *Rongoa*
- *Te wairua*
- *Te Waimaori – Te puna waiora*
- *Trees*
- *Koha*
- *Birds and wildlife*
- *Wild pigs*
- *Watercress*
- *..including their turangawaewae, privacy, the naturalness, the old house site and their kaitiakitanga.*

Mangapepeke Valley has a mauri which is important to Poutama and its hapū. It is unique and we appreciate the Pascoe whānau for keeping the valley in its natural state. The wetland has never been drained or contaminated with agricultural products.”⁸³

95. Historic evidence was presented on behalf of Poutama by Mr Bruce Stirling. Mr Stirling is a historian with some 25 years of experience. He specialises in Treaty of Waitangi claims research and negotiation, Māori Land Court matters, Environment Court research, and heritage issues. Mr Stirling’s evidence is a substantial and extensively referenced 51-page brief and essentially comprises the CIA which NZTA funded Poutama to complete, and which I have discussed previously in this report. It is important to record that during Day 7 of the hearing Ms McBeth raised that an updated CIA report dated 31 August 2018 had been provided to NPDC and provided me with a copy of this. After canvassing the views of counsel present and as I and other parties had no opportunity to ascertain the differences, I determined that this version would not be accepted

⁸³ Brief of Evidence of Haumoana White, Cultural Expert, 9 August 2018, Paragraphs 6 to 8

into the process and would be disregarded for the purposes of my decision making.⁸⁴

96. In his evidence, Mr Stirling concludes that *“Nga Hapu o Poutama”* are the *tangata whenua of Poutama and hold mana whenua on Poutama. This has been recognised by the Government today and by Government institutions and officials in the mid- to late-nineteenth century.*”⁸⁵ He goes on to state by way of summary that:

“The traditional boundary of Poutama extends, in the south, from Waikaramuramu Stream and inland to the south-east to Tahoraparoa (Tahora) near Tangarakau. This includes the bypass project area. The Poutama hapū have ancient connections to Poutama land, including descent from the peoples of the Tainui and Tokomaru waka who occupied the land centuries ago and left ancestral marks and tāonga for whom the Poutama hapū have acted as kaitiaki ('guardians'). In particular, the Poutama hapū descend from Poutama and Panirau. The ancestor Poutama is of Tainui descent (through Hoturoa) and Panirau is of Tokomaru descent (through Rakeiora). These origins are remembered in a Poutama whakatauki ('proverb'). Poutama hapū also have ancestral ties to those who were already living on Poutama when these waka arrived. In the many generations since Poutama and Panirau, the Poutama hapū forged continuing connections with the Taranaki descendants of Tokomaru, including with Ngāti Tama, Puketapu, and Ngāti Rahiri. Poutama also established connections with inland Ngāti Maniapoto, descended from Tainui. These connections were embodied in chiefly marriages intended to establish alliances and foster peace and security for both parties and their descendants. At the same time customary authority on Poutama remained with those who occupied and held the land. For many generations, Ngāti Tama were among those groups who occupied and held the Poutama land. This changed from the late eighteenth century and into the early nineteenth century, a period of widening conflict and inter-

⁸⁴ Hearing Transcript, Day 7, 9 October 2018, Page 8

⁸⁵ Brief of Evidence of Bruce Stirling, Historian, 7 August 2018, Paragraph 9, Page 2

tribal warfare that drew in large tribes from beyond Poutama, including Waikato-Tainui and Ngāti Maniapoto. This conflict culminated in the decisive defeat of Ngāti Tama on Poutama and in Taranaki in the 1820s and early 1830s. They were driven not only from Poutama but also from Taranaki, migrating to the Cook Strait region and even to the Chatham Islands. Nearly all the survivors among other northern Taranaki tribes also migrated far from the district at this time. Most never returned.

Poutama was much fought over in this period because of its strategic position on the narrow strip of coastal land that provides access between Taranaki and Waikato. It was also fought over due to the bounty of its customary resources, which are recounted in a Poutama whakatauki.

The conflict of the 1820s and early 1830s resulted in the Poutama hapū securing mana whenua over Poutama lands. These resident hapū had ancestral connections to Ngāti Maniapoto to the north and to those of Ngāti Tama and other Taranaki tribes who had left the district. However, the hapū occupying Poutama and exercising authority had an autonomy of their own on their land.”⁸⁶

97. I also received oral evidence from Mr Russell Gibbs and this is recorded on the 9 August 2018 (Day 5) Hearing Transcript from page 80 onwards. Mr Gibbs stated he was a kaitiaki and part of the Poutama Taumata. He explained that *“the role of an Iwi Taumata is to advocate and support the hapū and whānau within the iwi and not have authority over their hapū business or lands or whatever they have got to support those things.”*⁸⁷

98. From this advocacy position the core message I took from Mr Gibbs representations is captured in the following passages on his commentary relating to Mr Dreaver’s evidence which was presented on behalf of NZTA:

“I see in Mr Dreaver's large agreement, paragraph 78, there is a list of actions, I suppose, that NZTA are proposing in conjunction with Ngāti Tama and the application documents acknowledge there is a significant cultural effect from the project.

⁸⁶ Ibid, Paragraphs

⁸⁷ Hearing Transcript, Day 5, 9 August 2018, Page 81

But the actions are a recognition by the Transport Agency of the cultural association of Ngāti Tama within the project area, the land exchange involving Gilbert Road, there is a cash payment, environmental mitigation packages, processed to enhance the relationship with DOC and opportunities to maximise training, work and business opportunities for the Ngāti Tama people as well as cultural input by Ngāti Tama into the design and implementation of the project and cultural monitoring afterwards. In comparison, at paragraph 87, Poutama is being dismissed as a group and we see that as another determination that NZTA have made the distinction that Poutama is not an iwi authority, it is a group. That seems to be the rationale for a less than robust engagement.”⁸⁸

99. Also referencing Mr Dreaver’s evidence summary report, Mr Gibbs provided his commentary on Section 2 of the RMA in relation to the definition of “iwi authority” and “mana whenua” and “tangata whenua” and how he saw these terms applying in relation to Poutama in the following discussion:

“Section 2, and we look at iwi authority and meaning means:

“The authority which represents an iwi and which is recognised by the iwi as having authority to do so.”

I think that gets to the point. There has been a lot of Treaty settlements allocating mana whenua and kaitiakitanga but we are dealing in the Resource Management Act and that is where yourself as Commissioner exercises jurisdiction from.

With regard to Poutama, the authority is often outside processes and is referred to a mandate. The mandate, if you like, for the Poutama iwi authority is rightly from the iwi. It is where the authority came from. Most organisations chose their own representation. The district council chooses who works for it and speaks for it. NZTA chooses who works for it and speaks for it and Poutama as an iwi is no different.

So related in those section 2 terms is mana whenua which means:

“Customary authority exercised by the iwi or Hapū in an identified area.”

⁸⁸ Ibid, Pages 84&85

Just a comment in relation to the previous speakers, the term Poutama Hapū is often used. We use it but it is generally used in a plural term. There is a list of - a non-exhaustive if you like - list of hapū in the Poutama Iwi Plan which you are more than welcome to have a copy of it. Section 2 also mentions kaitiakitanga and the exercise of guardianship by the tangata whenua etcetera.

In saying those things, then there is a definition of tangata whenua which: "In relation to a particular area means either the iwi or hapū that holds mana whenua over that area."⁸⁹

100. Mr Gibbs referred to an Iwi Management Plan – the “Te Whakapuakitanga o Poutama” and confirmed in response to a question that NPDC and TRC would have had received copies. I have reviewed this document and note that it refers to a number of individual hapū.

101. Mr Gibbs also made a number of representations on behalf of Mr and Mrs Pascoe who he said were “part of Poutama”. In particular Mr Gibbs referred to a meeting he had attended with the Pascoe’s and NZTA on 12 July 2018 and referred to a meeting summary he had prepared and which he said he had sent a copy to NZTA.⁹⁰ In relation to that meeting and referring to the cultural values of the Pascoe land, Mr Gibbs made the following statement:

“We did see that hui as a turning point in that there was an acceptance on that day that the kaitiakitanga of that land belonged primarily with the Pascoes and that NZTA had to change how they treat the Pascoes, or they needed to change how they treat the Pascoes. I am sure that is ...

The issue that we're facing today is saying, "What does that look like?" that treating the Pascoes differently and acknowledging and providing for that kaitiakitanga. There has been no specific progress with that. What we can say is that application definitely does not provide for those cultural outcomes in substance.”⁹¹

102. This discussion prompted me to follow up the kaitiakitanga theme with Mrs Pascoe as discussed below.

⁸⁹ Ibid, Pages 86&87

⁹⁰ Ibid Pages 100 & 101

⁹¹ Ibid Page 103

Mr and Mrs Pascoe

103. Mr and Mrs Pascoe own land at the northern end of the Mt Messenger project area and both provided a statement of evidence on 9 August 2018. In his evidence Mr Pascoe explained the following background and association with the land:

“We are from Ahiti and live at the head of the Mangapepeke Valley. We own the land that the proposed NZTA Mt Messenger alignment has been identified for.

I do not have formal qualifications, but am here as an affected landowner, stakeholder, guardian, holder of knowledge, traditions and values through my long connection with this valley. Through my wife, our children and grandchildren, I am part of Poutama iwi.

We have been able to live off the land to survive. We have made ends meet by pig hunting and possum trapping for the family. As a teenager I started cutting ponga and firewood for sale. We still do this. We regularly give pork and pigs to people. We pick watercress for our household from the valley streams. We let people take eels and crayfish for tangi as well.”⁹²

104. In his evidence Mr Pascoe explained that NZTA had met with them over 24 times and outlined that these were tense and distressing meetings. His view is that the valley is the wrong place to make a new road. He invited me to physically walk over and take a closer look up the valley, an invitation that I accepted as I have discussed above.

105. Mrs Pascoe explained her background and values in her evidence in the following extract:

“I have lived in the Mangapepeke Valley, Ahiti for 29 years and raised a family there with my husband Tony. Our mokopuna love staying with us. We always take them and other children to explore the valley habitat to the many birds, insects, native flora and fauna.

My great grandmother was Hera Stockman. She was also known as Sarah Stockman. I whakapapa to Ngāti Rahiri and Poutama through her. My

⁹² Statement of Evidence of Tony Pascoe, Landowner, 9 August 2018, Paragraph 2, 3 and 10

cultural identity not only comes from her and Poutama iwi but from Mangapepeke itself which is within the Poutama tribal area.”⁹³

106. Like her husband, Mrs Pascoe does not support the road alignment and prefers that the existing Mt Messenger Road be upgraded.
107. I confirmed with Mrs Pascoe that the land she owned with Mr Pascoe was freehold land and then asked “...but in your view, you exercise kaitiakitanga in the sense, in terms of the valley and your land”, to which Mrs Pascoe replied “Yes, that’s right.”
108. As a follow up question, I asked “So if there was a kaitiakitanga panel set up to oversee, if the project did get approved, you think you would have as much right to be on that as other people? Mrs Pascoe replied “I don’t see why not”⁹⁴

Urs Singer, Marie Doorbar, and Emily Bailey

109. Mr Singer, Ms Doorbar and Ms Bailey made a joint presentation and tabled a petition from over 1,300 people from Taranaki and beyond calling on a stop to the bypass. The petition reads
- “We strongly urge you to decline consent to NZTA’s proposed Mount Messenger bypass. This new road will destroy 44.4 hectares of indigenous forest and wetlands, home to thousands of threatened or at risk endemic species, including North Island Brown kiwi, the threatened nationally vulnerable Archey’s frog and the nationally vulnerable New Zealand Long Tail bat.”⁹⁵*
110. Mr Singer confirmed to me that he, along with Ms Doorbar and Ms Bailey, are involved with two groups being Climate Justice Taranaki and Te Whenua Tomuri Trust and that “those two groups are the ones pushing for people to get involved in this process by signing the petition”.⁹⁶ In response to questioning Mr Singer confirmed the signatories to the petition and these two groups were not submitters in their own right, and he was tabling the petition to support his own submission.

⁹³ Statement of Evidence of Debbie Pascoe, Landowner, 9 August 2018, Paragraph 2 & 3

⁹⁴ Hearing Transcript, Day 5, 9 August Pages 179 & 180

⁹⁵ Ibid, Page 129

⁹⁶ Ibid, Page 130

111. As well as concerns associated with the ecological effects of the proposal Mr Singers expressed concerns associated with investing in roads and highways which will encourage the use of fossil fuels and impact on climate change.
112. Ms Doorbar explained that she grew up in the Chatham Islands but is associated with Taranaki through whakapapa links to Nga Mahanga and Ngāti Tairi. She explained that *“My passion and first love is the ngahere, the forest, of which I am blessed to say has become my trade or service to others through knowledge of Rongoa Māori, traditional Maori medicine and healing”*⁹⁷
113. She explained, and as recorded on the transcript, that she has recently become connected with the Mangapepeke and had met Tony and Debbie Pascoe in February 2018. She then went into some detail regarding the concepts of Rongoa Māori and that for her work harvesting medicine the valley provided all the qualities she looked for such as a clean environment, preferably away from human habitat, free from sprays, fertilisers and in its natural, virgin state. She further explained that the underlying philosophy of Rongoa Māori to her is kaitiakitanga.
114. Ms Bailey outlined that her Ngāti Mutunga tupuna arrived at least 17 generations ago on the Tokomaru waka, and that she lives in coastal Taranaki. She has a Bachelor of Science in ecology and physical geography and works as a community educator. Ms Bailey explained that she is an iwi representative on TRC’s policy and planning committee, but she has made her submission and is appearing in her own time.
115. The primary concerns outlined by Ms Bailey, and as set out on the hearing transcript relate to a concern that straightening the road and increasing speeds may lead to more crashes; effects on ecology that cannot be appropriately mitigated, and her vision for the future of Taranaki as a growing adventure tourism area, whereby the area around Mt Messenger would be an obvious area to promote.

⁹⁷ Ibid, Page 138

Western Central District Road Carriers

116. Mr Tom Cloke, Mr John Hickman, and Mr David Rogers spoke under the submission of Western Central District Road Carriers. They explained to me that they were all experienced transport operators, who were very familiar with the Mt Messenger Road. Mr Hickman, for example said he had a staff of over 100 and his firm made approximately 20 trips over the mountain each day.

117. Significant benefits of the Mt Messenger Bypass project in their submissions included the fact that the current road was not fit for purpose and there really was not other suitable roads for heavy vehicles. Mr Cloke explained the key problems as:

“It has steep gradients, tight corners, shallow pavements to name a few of the issues. The greatest issue is the route is unavoidably and regularly closed due to slips, crashes, many times trucks stuck on the Mount due to lack of traction on the southern side due to continually wet.

No short detour, the one-way trip having to travel an extra 350 km through Wanganui to bypass the Mount when it's closed costing the trucking industry about \$1,000 per trip. An average of 400 vehicle movements per day costing \$824,000 additional costs to transport operators which most times cannot be recovered. The added cost is a round trip and cannot be done in any one due to the driving hour limits placed on truck drivers limiting them to 14 hours work per day and a one-way trip takes an extra 4 hours.”⁹⁸

118. Mr Cloke also submitted that there would be environmental benefits as follows:

“Environmental benefits, following our early comments about the new project design, especially lower gradients and straighter alignments, the project will reduce many of the environmental contamination issues the old route has now. Reduction in vehicle noise emissions, especially heavy vehicles, will not be under full load due to the lower gradients and lesser gear changes. Lesser tyre wear fragments due to lower gradients and straighter alignments, lesser brake wear and reduction in brake contamination and brake dust, a lower

⁹⁸ Hearing Transcript, Day 4, 8 August 2018, Pages 184&185

gradient, straighter alignments, safer route to drive and of course less fuel burn".⁹⁹

119. Mr Rogers followed on calculating the following environmental benefit in terms of reduce CO² emissions:

"Using a calculator and formula to calculate fuel consumption and CO² emissions a heavy truck and trailer combination supplied by EKA and the Road Transport Forum of New Zealand, I've been able to calculate the CO² emissions that will be saved by building the proposed bypass.

Based on an average heavy vehicle combination weight of 36 tonnes -- now this is if you consider the maximum gross weight on the vehicles is up to between 57 and 60 tonnes coming through and average would be running at 50 or 46 tonnes and a stock truck and a large 'B' train has a tare weight of 18 tonnes, so you've got a significant weight movement all the time. So the existing route of 7.4 km with a gradient of 12 per cent the CO² emissions using those calculators will be 14.37 kg per trip. The proposed route of 6 km with a gradient of 7.5 per cent, the CO² emissions will be 7.7 kg per trip, a saving of 6.6 kg per trip.

Now in the TA published numbers of 500 heavy vehicle movements over the route per day, and the industry operates on a 24/7 basis, that would be 182,500 trips a year and if you 191 multiply that by the number of kilograms that gives us a saving in CO² emissions of 1,204,500 kilograms per year. This saving is a significant contribution to the improvement in the environment and taken together with the other advantages we stated, I believe this proposed route should proceed for the benefit of the community".¹⁰⁰

Roger Maxwell

120. Mr Maxwell, a former member of Parliament and long-term Regional Councillor spoke in strong favour of the Mt Messenger Project. He gave the example of the Huntly Bypass project of which he is familiar, and which is

⁹⁹ Ibid, Pages 188&189

¹⁰⁰ Ibid, Pages 190&191

currently being constructed, as a well-developed project with significant benefits and buy-in:

“Not only is Huntly a major construction project, but the -- dealing with the hapū and iwi representatives in there, and conservation groups, was arguably of a greater scale than what we would anticipate at Mount Messenger, and that's all been successfully managed and it had a very positive outcome. And I know the construction of this highway will benefit everyone and I don't know of too many people who will be disenfranchised as a result of that major investment in roading.”¹⁰¹

121. He concluded with the following personal observations as a local farmer who had lived in Taranaki all of his life:

“I understand the landowners' real concern about obviously quite significant disruption to life. I think NZTA should take account of that and be sympathetic in how they manage that. But with the good will and acknowledgment of the full impact of land loss on a particular farm, it should be possible to have a fair and equitable compensation package or suitable reparation for those people, and it should be reached.

*Now, the public expectation is that projects like this are carried out to a high standard, including those cultural issues, the environmental issues, and I think the proposed mitigation design is capable of meeting that expectation. And my experience is that the communities at large can and will get great benefit in the future from this project proceeding”.*¹⁰²

DoC

122. At the start of the hearing DoC had a number of substantial concerns relating to both how the full range of ecological effects had been assessed, and the proposals from NZTA for their mitigation, offset and compensation. Eight expert witnesses appeared for DoC covering avifauna, bats, herpetofauna, invertebrates, freshwater ecology, erosion and sediment control, biodiversity offsetting and environmental compensation, and planning. Ms Ongley presented

¹⁰¹ Hearing Transcript, Day 5, 9 August Pages 179 & 180

¹⁰² Ibid, Pages 161&162

extensive legal submissions throughout the hearing on a number of matters. A significant area of contention and debate centred around the proposed Ecology and Landscape Management Plan “ELMP” objectives and methods

123. After two agreed adjournments to do further work on both sides (NZTA and DoC), and following the preparation of the ecology and planning Joint Witness Statements along with the subsequent witness “hot tubbing” sessions, only seven matters remained in contention between DoC and NZTA.

124. These relate to three discrete aspects of the proposed designation conditions, as follows:

1. Disagreement on the wording of Condition 29(d)(ii) relating to Kiwi Fencing adjoining the new bypass and the associated provisions in Condition 4a) of Schedule 1. DoC seek kiwi exclusion fencing at all locations where kiwi may be able to access the road corridor and NZTA propose kiwi exclusion fencing where there is a high risk of kiwi entering the road corridor¹⁰³;
2. The form of Condition 29A relating to land access agreements including those relating to the ongoing pest management in the PMA; and
3. A technical disagreement associated with wording in the Freshwater Management Plan (which forms part of the ELMP) and associated Schedule 1 Conditions. DoC, via the supplementary evidence of Mr Inger¹⁰⁴ seek a more detailed and prescriptive wording to the clause 6 of Schedule 1 to the NOR Conditions regarding the objectives and performance outcomes of the Freshwater Management Plan.

125. There are also four discrete matters associated with the regional resource consent conditions, as follows:

1. Disagreement by DoC on the wording of Condition GEN.24A relating to the conditions where they seek that legal agreements and rights are in perpetuity;

¹⁰³ Designation & Resource Consent Conditions 30 October 2018, NZTA (proposed condition 29(d)(ii)).

¹⁰⁴ Attachment 1 to the Supplementary Evidence of Mr Ben Inger on behalf of the Director General of Conservation, 5 October 2018.

2. A technical disagreement by Dr Drinnan regarding the monitoring conditions in Condition SED.11;
 3. The provisions in Condition 4a) of Schedule 1 relating to kiwi fencing; and
 4. A technical disagreement associated with wording in the Freshwater Management Plan (which forms part of the ELMP) and associated Schedule 1 Conditions.
126. The documented evidence for this refinement and agreement process between NZTA and DoC led by their respective experts is all recorded on the NZDC Mt Messenger Bypass website in date sequence, and this can also be tracked through the daily hearing transcript.

THE COUNCIL REPORTING OFFICERS' POSITION

127. The reporting officers who co-ordinated the preparation of the respective Section 42A reports and updates to these as the hearing progressed were Ms Rachelle McBeth for NPDC and Mr Colin McLellan, the TRC Consents Manager, and Ms Kathryn Hooper for TDC. Ms McBeth was assisted by a group of experts who prepared background reports and reviews on a range of matters¹⁰⁵. Towards the end of the hearing as matters had narrowed the primary NPDC expert advisors were ecology experts, Dr William Shaw and Dr Tim Martin from Wildland Consultants, and Mr Graeme Doherty, a civil infrastructure engineer from AECOM. Mr McLellan, Ms Hooper, and Ms McBeth participated as planning experts in the planning JWS process.¹⁰⁶

NPDC

128. The initial NPDC Section 42A Report dated 18 May 2018 covered a comprehensive range of matters and concluded by saying, *“if the RA can satisfactorily address the key areas of concern in evidence, then I would recommend the NoR be confirmed and the NESCS consent be granted, subject to appropriate conditions”*.¹⁰⁷ At that stage Ms McBeth considered two principal

¹⁰⁵ Mt Messenger Bypass Section 42A Hearing Report, NPDC, 18 May 2018, Appendices

¹⁰⁶ See Planners Joint Witness Statement, 23 October 2018

¹⁰⁷ Mt Messenger Bypass Section 42A Hearing Report, NPDC, 18 May 2018, Paragraph 384

effects areas remained unresolved, being cultural effects and whether the adverse effects on ecology and biodiversity can be adequately addressed through a mitigation and offsetting proposal to result in a “no net loss” in biodiversity over the medium to long term (10 to 15 years). Ms McBeth also expressed some reservations regarding the alternative’s assessment process in this initial Section 42A Report.

129. On 30 July 2018 following the deferral of the hearing requested jointly by NZTA and DoC, Ms McBeth furnished an update to the Section 42A hearing report.¹⁰⁸ The key elements of this updated report included further analysis of, and questions associated with the NZTA options assessment, along with an update on condition matters, including the adequacy of the proposed ELMP, following further assessment by the Councils’ ecology and transportation advisors.
130. On 9 October 2018, following the second adjournment requested by NZTA and the furnishing of further evidence on conditions and management plans by NZTA and DoC experts, Ms McBeth produced and spoke to a statement of evidence.¹⁰⁹ After traversing a wide range of matters, including the adequacy of the NZTA alternatives assessment, further consideration of the progress made on the ecological and biodiversity matters and further opinion on social and cultural values matters, Ms McBeth confirmed her recommendation that the NOR be confirmed subject to conditions.¹¹⁰
131. Attached with this report was a letter from Mr Doherty from AECOM dated 14 August 2018 in which he gave the opinion in the final paragraph that *“I think the NZTA should review its decision to adopt Option E rather than Option Z”*. In the same paragraph Mr Doherty said he considered *“the outturn cost of Option Z is similar to Option E”*. I queried Ms McBeth regarding these statements as they appeared to contradict her conclusion that NZTA had undertaken an adequate assessment of alternatives pursuant to Section 171(1)(b) of the RMA. Because of this I asked that Mr Doherty prepare a further statement of evidence on these

¹⁰⁸ Mt Messenger Bypass Section 42A Hearing Report Update, NPDC, 30 July 2018

¹⁰⁹ Statement of Evidence of Rachelle McBeth, Planner, 9 October 2018

¹¹⁰ Ibid, Paragraph 73

matters.¹¹¹ Mr Doherty was not available in person to speak to this evidence and answer questions when the hearing reconvened for the final day on 24 October 2018 and therefore, I sent Mr Doherty some written questions and his response is covered in a further statement of evidence dated 26 October 2018. After considering this further evidence from Mr Doherty I am satisfied that, as per the expert evidence of Mr Roan for NZTA and Ms McBeth for NPDC, NZTA has completed an adequate assessment of evidence to meet the test of Section 171(1)(b) of the RMA.

132. After the planners “hot tubbing” session held on 24 October 2018 to consider the remaining conditions which had not been agreed between NZTA, DoC and the Councils in the Planners Joint Witness Statement¹¹² there remained only three condition matters which had not been agreed between the NPDC and NZTA planners. These relate to the following proposed designation conditions:

- Condition 3 relating to the provision of a 10 Year lapse period;
- Condition 29(h)(ii)(4) relating to the period required for pest management associated with wasps with NZTA promoting a 6 year period and Wildlands on behalf of NPDC who sought wasp control in perpetuity; and
- The merits of an additional designation condition relating to the future status of the existing road over Mt Messenger.

TRC

133. TRC produced the following Section 42A Reporting information authored by Mr McLellan and Ms Hooper

- A comprehensive Section 42A report dated 18 May 2018 covering all aspects relevant to the regional resource consent applications lodged by NZTA in association with the NOR. This report highlighted some key issues requiring further consideration, but recommended the granting of the applications, with appropriate conditions to address those matters;
- A supplementary Section 42A report dated 30 July 2018 which provided an update on progress and changes made as a result of further

¹¹¹ Statement of Evidence of Graeme Doherty, Engineer, 19 October 2018

¹¹² Planners Joint Witness Statement, 23 October 2018

information provided and further discussions with NZTA since the original report was prepared, and in response to their evidence and that of submitters.

134. Following the planners “hot tubbing” session held on 24 October 2018 to consider the remaining conditions which had not been agreed between NZTA, DoC and the Councils in the Planners Joint Witness Statement, all of the conditions associated with the regional resource consents had been agreed between the TRC and NZTA planners.

PRIMARY MATTERS STILL IN CONTENTION AND FINDINGS

135. There are three substantive matters in contention which have been raised in submissions and through evidence and representations that require my consideration and findings on. These are:

- Whether there has been appropriate recognition of the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, (Section 6(e) matters) and provision for Kaitiakitanga, (Section 7(a));
- Whether there has been appropriate; preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development (Section 6(a)); protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development (Section 6(b)); protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, (Section 6(c)), along with the maintenance and enhancement of amenity values (Section 7(c)), intrinsic values of ecosystems (Section 7(d)) and the maintenance and enhancement of the quality of the environment (Section 7(f))
- Transport related effects associated with safety and climate change effects.

Recognition of Maori and their culture and traditions

136. I have heard a wide range of submissions, expert evidence and kaumatua evidence associated with this matter through the course of this hearing, as I have summarised in my outline of the various positions of NZTA, TRoNT, Te Korowai, Poutama and Mr and Mrs Pascoe above. I have also taken my own separate advice on issues associated with the status of iwi authorities on the Te Puni Kokiri website and associated case law¹¹³.
137. There is no doubt from the information before me that many Maori have whakapapa ties through which they identify to particular iwi and hapū, and who all have a “relationship” with their ancestral lands, water, sites, waahi tapu, and other taonga in the specific project area and/or the surrounding parts of North Taranaki, including in areas proposed for the PMA.
138. I have heard historical expert evidence from Mr Stirling and Mr Thomas with different historical interpretations relating to iwi and hapū in the wider North Taranaki area. I have heard from a number of kaumatua witnesses representing TRoNT, Te Korowai and Poutama, who each support the submissions and cases of these submitter parties, with different interpretations. I have heard from Mrs Pascoe who says she has whakapapa which links her to a hapū called Ngāti Rahiri and who identifies with Poutama as her iwi.
139. I have also heard evidence from Mr Dreaver associated with a consultation and engagement process that NZTA has undertaken with all Maori parties who have claimed mana whenua in the project and surrounding areas.
140. As a decision maker under the RMA it is not my role to make any determination as to Maori historical events and rights when there are competing histories, nor is it to acknowledge or recognise one Maori person or a group of Maori people who claim to have a Section 6(e) relationship with an area over and above another person or group. Instead my role is to ensure that in exercising my decision-making powers I recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, and to have particular regard to Kaitiakitanga. I am also

¹¹³ Legal advice to Commissioner from Simpson Grierson, 25 October 2018

required to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) under Section 8 of the RMA.

141. I have already outlined the position of NZTA in relation to this matter (see paragraphs 59 to 63 of this report) and have also assessed and attempted to synthesise the cases for TRoNT, Te Korowai, Poutama, and Mr and Mrs Pascoe in those sections of this report which deal with their submissions. From this information and taking into account the Part 2 matters I reference above, I make the following findings:

- That NZTA has completed a considered and fair attempt to undertake meaningful consultation with Maori in the wider project area in order to understand and recognise the key relationships under Section 6(e);
- The “Prior Agreement” protocol with Ngāti Tama is a significant recognition provided to this iwi, given they have significant land areas involved in the greater project area (including the preferred PMA) which will be affected by the project area;
- NZTA can not be expected to halt their project planning pending resolution of trustee conflicts and possible unspecified governance changes within the TRoNT, as seems to have underpinned the case for Te Korowhai. NZTA did make a reasonable attempt to engage with the Te Korowai representatives after they established in February 2018, and I received uncontested legal submissions from Mr Hovell that the original Trustees (some of who were in the Te Korowai fold) have now been reinstated.
- NZTA has recognised Poutama through engagement meetings and the funding of the CIA and evidence produced by Mr Stirling. However, they have not recognised Maori who identify with Poutama in any kaitiakitanga sense through the KFG processes. In my view the KFG processes and responsibilities set out in the conditions proposed by NZTA do encompass real influence in project design and delivery, and ongoing environmental management and monitoring, and hence a position on the KFG does carry with it both responsibility and recognition.

- I consider that it is right and appropriate for Mr and Mrs Pascoe who both identify with Poutama and whose land is the most affected of any private landowner to, as specified individuals, be provided the opportunity to be members of the KFG. Having listened carefully to Mr and Mrs Pascoe during the hearing, and having walked some of their land in the Mangapepeke Valley, I have no doubt they are kaitiaki for that land. If Mrs Pascoe accepts the role on the KFG, this would also provide her the opportunity to represent Poutama as a kaitiaki in relation to the wider project on behalf of tangata whenua who she relates to. Listening to their evidence, I also consider the Pascoe's interests extend to the ethic of stewardship (Section 7(aa)), in relation to their own land.
- I have accordingly added in the conditions attached with my recommendation to NZTA, the opportunity for Mr and Mrs Pascoe to be engaged in the KFG alongside members of TRoNT. Under these conditions TRoNT will still hold significant influence in that group through the right to appoint three members, have the Chairs role assigned to one of their people, and also have the opportunity to invite others into the KFG. I have done this by updating the conditions attached with my recommendation on the NOR by adding in provision in the conditions for Mr and Mrs Pascoe to be involved, and by renaming the KFG as the "Kaitiaki and Stewardship Group". I note that if requiring authority accepts this recommendation then consequential amendments will need to be made to some of the Management Plans including section 1.5 of the ELMP. I have sought to minimise such changes by retaining the initials KFG as the shortened term for the Kaitiaki and Stewardship Group.
- In providing this opportunity for Mr and Mrs Pascoe to form part of the KFG if they wish, while also maintaining the mana and influence of those who affiliate with TRoNT, I have also considered and agree with the evidence of Ms McBeth, where she said:

"Although it is understood that Poutama's status as an Iwi or Iwi Authority appears to be disputed by Ngati Tama, as well as neighbouring Ngati Maru and Ngati Maniapoto, Poutama have

asserted that they are tangata whenua and, on the face of it, TPK's recognition as an "Other Iwi Authority" appears to support that assertion. Therefore, it is open for you to conclude that Poutama are tangata whenua that could exercise kaitiakitanga over the areas identified on the TPK website in terms of section 7 of the RMA"

However, what weight should be given to the matters raised by Poutama in relation to the potential effects on it by the proposal depends on the evidence. In the context of this application, considerations could also include other Iwi Authorities' ownership and ability to control affected land.

I am supportive of the proposal to establish the Kaitiaki Forum Group as proposed in the conditions, which allow for involvement of people beyond Te Runanga o Ngati Tama, but in my view it is appropriate that the runanga is central to this group.¹¹⁴

Effects on ecology, biodiversity and amenity values

142. Issues relating to actual or potential adverse effects on the ecology and overall biodiversity of the Mt Messenger Bypass Project area are central to submissions of several parties, particularly those made by Mr Singers, Ms Doorbar, Ms Bailey (and those who signed the petition I received that was organised by these submitters). Te Korowai, TRoNT, Poutama and Mr and Mrs Pascoe also have ecology and biodiversity as core components of their submissions.

143. As I have explained earlier in this submission, in my discussion associated with the position of DoC and the Councils, I have received a wealth of expert ecological evidence from a wide range of eminent New Zealand ecologists. Mr Lister, the expert Landscape Architect engaged by NZTA and who gave evidence had a significant involvement in aspects associated with landscape design and

¹¹⁴ Statement of Evidence of Rachelle McBeth, Planner, 9 October 2018, Paragraphs 21 to 23

amenity values, which was supported by the Landscape Architect engaged by NPDC, Mr Richard Bain. Their combined expert view is that with the (essentially) agreed final conditions, including the content and objectives of the ELMP these matters are appropriately mitigated and offset/compensated. In this regard it is important to note the objective of the ELMP in relation to ecological offsetting and compensation as outlined below:

The objective of the ecological offsetting and compensation work is to restore a range of ecosystem processes (and therefore ecosystem function and landscape values) that have been degraded by human activity and the presence of animal pests and livestock by:

- *Intensive multi-species pest management in perpetuity (or until such time as pest management in the form we know of it today is no longer necessary to sustain the levels of biodiversity created);*
- *The re-establishment of swamp forest and wetland habitat to areas that were once swamp forest and wetland and which retain the environmental conditions suitable for re-establishment; and*
- *The restoration of stream habitat by pest and stock exclusion and riparian planting.*

144. I agree with this approach and the uncontested ecology and landscape witnesses' expert views supporting the ELMP and associated conditions. Accordingly, I find that this will appropriately recognise and provide for the matter of national importance under Sections 6 (a), (b) and (c) and gives particular regard to the other matters under Section 7 (c), (d), and (f) of the RMA.

Transport related effects

145. A number of submissions including those of Mr Maxwell, the Western Central District Road Carriers, Mr Singer, Ms Doorbar, and Ms Bailey raised issues regarding both positive benefits and potential adverse transport related effects of the Mt Messenger Bypass project, as I have outlined previously in this report. NZTA also addressed these various effects through expert evidence provided by Mr McCombs (transportation and safety), Mr Copeland (economic effects) and Ms Turvey (social effects).

146. Having considered all submissions and the evidence and representations on these matters I find that the Mt Messenger Bypass will have positive overall effects in relations to transport related safety, and the economic and social wellbeing of the people who will utilise this route.

RESIDUAL CONDITIONS MATTERS STILL IN CONTENTION AND FINDINGS

147. The residual condition matters still in contention between NZTA and DoC are:

Designation Conditions

1. Disagreement on the wording of Condition 29(d)(ii) relating to Kiwi Fencing adjoining the new bypass and the associated provisions in Condition 4a) of Schedule 1.

I find in favour of the NZTA position based on the evidence of Dr McLennan that their condition wording is the more certain and practically achievable condition wording for protecting kiwi from road traffic.

2. The form of Condition 29A relating to land access agreements including those relating to the ongoing pest management in the PMA; and the authorisation to access the land involved that is located beyond the boundaries of the designation.

I find in favour of the NZTA position that a condition 29A preventing works from commencing until legal agreements and / or other authorisations are in place to enable NZTA access to implement the measures set out in the ELMP on an ongoing basis, is appropriate. I agree with the position in the NZTA closing submissions that the additional “in perpetuity” wording sought by DoC is unnecessary for the reasons provided in paragraphs 148 to 158 of that submission.

3. A technical disagreement associated with wording in the Freshwater Management Plan (which forms part of the ELMP) and associated Schedule 1 Conditions.

I find in favour of the NZTA position which is based on the evidence of Mr Hamill, Dr Neale and Mr Ridley. In my opinion the additional wording

proposed by Mr Inger lacks sufficient clarity to be incorporated as a valid objective and associated outcomes.

TRC Regional Resource Consent Conditions

1. Disagreement by DoC on the wording of Condition GEN.24A relating to the conditions where they seek that legal agreements and rights are in perpetuity;

I find in favour of the NZTA position that the proposed wording in their Proposed Mt Messenger Consent Conditions dated 30 October 2018 is appropriate, for the same reasons as those provided above associated with Designation Condition 29A.

2. A technical disagreement by Dr Drinnan regarding the monitoring conditions in Condition SED.11;

I find in favour of the NZTA position that the proposed wording in their Proposed Mt Messenger Consent Conditions 31 October 2018 is appropriate and sufficient to ensure that adequate monitoring occurs. In making this finding I prefer the evidence of Mr Hamill on this matter.

3. The provisions in Condition 4a) of Schedule 1 relating to kiwi fencing; and I find in favour of the NZTA position that the DoC proposed condition position would possibly be unachievable in some circumstances. That would raise concerns around condition achievability, based on the evidence of Dr McLennan.

4. A technical disagreement associated with wording in the Freshwater Management Plan (which forms part of the ELMP) and associated Schedule 1 Conditions.

I find in favour of the NZTA position which is based on the evidence of Mr Hamill, Dr Neale and Mr Ridley. In my opinion the additional wording proposed by Mr Inger lacked sufficient clarity to be incorporated as a valid objective and associated outcomes.

148. The residual condition matters still in contention between NZTA and NPDC are:

1. Designation Condition 3 relating to the provision of a 10 Year lapse period;

I find in favour of the NPDC position and agree with the reasoning provided by Ms McBeth in paragraph 69 of her 9 October 2018 statement of evidence.

2. Designation Condition 29(h)(ii)(4) relating to the period required for pest management associated with wasps with NZTA promoting a 6 year period and Wildlands on behalf of NPDC who seek wasp control in perpetuity;

I find in favour of the NZTA position, as a condition in perpetuity as originally suggested by Dr Martin is considered unreasonable based on the evidence of Dr Watts that the new vegetation edges will close over time negating the effect in question.

3. The merits of a condition relating to the future status of the existing road over Mt Messenger.

I find in favour of the NZTA position as expressed in the closing legal submissions that Section 103 of the Land Transport Act 2003 provides the appropriate statutory framework for the revocation process and it need not be duplicated as a condition on the designation.¹¹⁵

CRITERIA FOR MAKING RECOMMENDATION AND DECISIONS

Notice of Requirement Recommendation

149. Under Section 171 (2) acting under the delegated authority granted to me by

NPDC, I may make a recommendation to:

- (a) Confirm the requirement
- (b) Modify the requirement
- (c) Impose conditions
- (d) Withdraw the requirement

150. Before making a recommendation, I am required to (subject to Part 2) consider the effects on the environment of allowing the requirement, having particular regard to the various matters under Sections 171(A), 171(1)(a), (b) and (c) and 171 (B) which I have referenced earlier in this recommendation.¹¹⁶

¹¹⁵ NZTA Closing Submissions, 30 October 2018, Pages 34 to 37, Paragraphs 159 to 166

¹¹⁶ See Paragraph 22.

151. I note for completeness that no trade completion issues have been raised in submissions or in evidence and none are apparent, so this issue is not relevant to my recommendation in terms of Section 171(A).

Section 171(1) – Part 2 and Effects on the Environment

152. In Paragraphs 135 to 146 of this recommendation and decisions report I outlined the primary matters that were still in contention at the end of the hearing with reference to the relevant sections 6, 7 and 8 matters that I have considered in making my findings.

153. Having reviewed all the evidence, and after considering my findings in Paragraphs 135 to 146, in overall terms it is my view that the purpose of the RMA in Section 5(1) to promote the sustainable management of natural and physical resources will be achieved through confirming the notice of requirement and granting the resource consent applications, with the conditions as set.

Section 171(1)(a) - The Planning Instruments

154. I have covered these matters in paragraphs 31 and 32 of this report, agreeing with the analysis of Ms McBeth, and Mr McLellan and Ms Hooper.

Section 171(1)(b) – Adequacy of the Assessment of Alternatives

155. I have covered this matter in paragraphs 130 and 131 of this report, where I conclude there has been an adequate assessment of alternatives. I have also considered and agree with the summary provided in the NZTA closing submissions on this matter.¹¹⁷

Section 171(1)(c) – Achieving the Objectives of the Requiring Authority

156. After considering all the evidence I have heard, as summarised in the NZTA closing submission¹¹⁸, I find that the proposed work is reasonably necessary for achieving the objectives of NZTA (as outlined in paragraph 6 of this report) for this public work.

Section 171(1)(d) – Other Matters

157. I have considered the “other matters” contained in Paragraphs 347 to 353 of Ms McBeth’s Section 42A Report along with the Poutama Plan “Te

¹¹⁷ Closing submissions for NZTA, 30 October 2018, Page 40 & 41, Paragraph 184

¹¹⁸ Ibid

Whakapuakitanga o Poutama” in this making my recommendation and decisions.

Section 171(1B) – Positive Effects to Offset or Compensate

158. The ELMP and associated conditions proposed by NZTA in their closing submissions outlines positive effects to offset and compensate the identified landscape, ecological and biodiversity effects.

Resource Consent Decision Making Criteria Statutory Criteria

159. I have set out the statutory decision-making criteria for considering and making decisions on the resource consents as discretionary activities. The following provides a brief summary of these matters.

Section 104(1)(a) Actual and Potential Effects on the Environment

160. See my conclusions in paragraphs 152 and 153 above, which are equally relevant in relation to my analysis of the resource consents sought.

Section 104(1)(ab) – Positive Effects to Offset or Compensate

161. See my conclusions in paragraph 158 above, which is equally relevant in relation to my analysis of the resource consents sought.

Section 104(1)(b) – Relevant Statutory Instruments

162. See my conclusions in paragraph 154 above, which is equally relevant in relation to my analysis of the resource consents sought.

RECOMMENDATION

163. My recommendation to the requiring authority (the New Zealand Transport Agency) under authority delegated to me by New Plymouth District Council is that the Notice of Requirement dated 14 December 2017 and as modified throughout the submission and hearing process for an alteration of Designation N36 to allow the construction and operation of the Mt Messenger Bypass – a new section of State Highway 3, located east of the existing highway corridor, between Uriti and Ahititi be confirmed, with the imposition of the conditions attached as **Schedule A** of this recommendation and decisions report.

DECISIONS

164. My decision under authority delegated to me by New Plymouth District Council is to grant NZTA's application dated 14 December 2017 for land use consent to disturb soil under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011, associated with constructing the Mt Messenger Bypass (Consent LUC18/47193), subject to the conditions in **Schedule B** of this recommendation and decisions report.
165. My decision under authority delegated to me by Taranaki Regional Council is to grant the following NZTA applications for resource consent dated 14 December 2017, subject to the conditions in subject to the conditions in **Schedule C** of this recommendation and decisions report.
- a) Application 17-0429-1.0(A) - To dam, take and use surface water from the Mangapepeke Stream and Mimi River, and to erect and use temporary weirs on the bed of the Mangapepeke Stream and Mimi River associated with constructing the Mt Messenger Bypass, and to divert, take and use groundwater as a consequence of excavations and tunneling associated with constructing and operating the Mt Messenger Bypass;
 - b) Application 17-0429-1.0(B) - To divert, disturb, realign and modify sections of the Mangapepeke Stream, Mimi River and their tributaries associated with constructing and operating the Mt Messenger Bypass;
 - c) Application 17-0429-1.0(C) - To install, use and remove temporary culverts in the Mangapepeke Stream, Mimi River and their tributaries for the purpose of constructing the Mt Messenger Bypass;
 - d) Application 17-0429-1.0(D) - To install and use culverts in the Mangapepeke Stream, Mimi River and their tributaries and to install a bridge over a tributary of the Mimi River associated with constructing and operating the Mt Messenger Bypass; and
 - e) Application 17-0429-1.0(E) - To discharge to land, water and to air from soil disturbance and earthworks, to undertake vegetation clearance, and to undertake riverbed planting associated with constructing and operating the Mt Messenger Bypass.

NOTES ON CONDITIONS

166. In response to a clarification enquiry I made of the TRC Consents Manager, Mr McLellan on 7 December 2018 he made the following comments.

“You have requested an explanation of the relationship between the applications sought, the application wording in the TRC S42A report, and the consent purposes and condition reference numbers in the conditions document.

NZTA applied for 58 separate consents. For ease of administration the TRC aggregated the consents into one of five separate applications. The number of consents sought was reduced to 57 at the hearing when in evidence (McEwen, Roan) NZTA advised that one of the culverts would not be needed. The five applications are numbered as 17-10429-1.0(A) to 17-10429-1.0(E). The consents are numbered in the range 10601-1.0 to 10660-1.0 (there are 60 numbers in this range because early drafts included 60 consents).

The relationship between the application numbers, the consent numbers and the consent purpose is shown on the spreadsheet “Mt Messenger consent details” (attached). The spreadsheet also indicates which of the conditions applies to each consent as recorded in the version of the conditions provided by NZTA in their closing – dated 30 October 2018, with corrections as detailed below.

The corrections resulted from changes that were not picked up in the drafting and were:

- a) on the Table of Contents page, where the ‘Condition No’ column had not been updated following agreed changes made to conditions;*
- b) deletion of Culvert #12 and Culvert #19 from the list of permanent culverts being consented (culvert 19 not required, Culvert 12 changed to a bridge – evidence of Mr McEwen & Mr Roan) and*
- c) the addition of a consent for the second bridge (to replace Culvert #12) and conditions that relate to that bridge. The Consent Number for culvert #12 was reassigned to the second bridge.*

167. I have adopted these corrections and updates in the conditions in Schedule C.

168. Based on my discussion in paragraph 141 of this report as part of my recommendation and decisions I have amended Designation Conditions 4 and the TRC resource consent condition GEN 5 relating to the composition of the KFG using underlining for the new condition wording and strikethrough for wording I have deleted.
169. While I have carefully checked through the condition versions provided to me on 30 October 2018 with the closing submissions of NZTA and have included my preferred conditions, where there was not agreement, it is conceivable that the conditions may still contain errors of a grammatical or cross-referencing nature. Accordingly, should the applicant or reporting officer identify any minor mistakes or defects in the attached conditions, then I am prepared to issue an amended suite of conditions under section 133A of the RMA correcting any such matters. Consequently, any minor mistakes or defects in the conditions should be brought to my attention prior to the end of the 20 working day period specified in section 133A.

REASONS

170. In considering the reasons for this recommendation and decisions I agree with and adopt those provided by Ms McBeth as a summary in her final statement of evidence where she recommended approval of the NOR and grant of the resource consents. These reasons are that the confirmation of the NOR and grant of the resource consents sought, with the conditions required and set in **Schedules A to C** of this report the Mt Messenger Bypass project will:
- Provide regionally significant infrastructure, improving security and resilience of Taranaki's key route to the north;
 - Support growth and development of the region, which is supported by, among other relevant plans and policies, "Tapuae Roa: Make Way for Taranaki": Taranaki Regional Economic Development Strategy (August 2017), which identifies improvement to Taranaki's northern gateway as a "*one-off regional game changer*";
 - Deliver health and safety outcomes for the users of SH3;

- Appropriately manage health and safety risks associated with construction;
- Mitigate the effects of natural hazards on people, infrastructure and the environment, and improve resilience to significant risks from natural hazards;
- Recognise and provides for tangata whenua values;
- Result in social benefits from improved connectivity including enhanced employment opportunities with increased liveability;
- Achieve natural character benefits from planting valley floors and riparian margins;
- Sustainably manage freshwater resources;
- Provide ecological benefits and benefits for biodiversity through the large Pest Management Area (PMA), provided the area is well determined and the Ecological and Landscape Management Plan (ELMP) is well implemented.

Signed:



Stephen Graeme Daysh

Hearings Commissioner

8 December 2018

Schedule A – Designation Conditions

TABLE OF CONTENTS FOR NOTICE OF REQUIREMENT CONDITIONS

Condition No.	Condition Content
1 - 2	General and administration
3	This condition is intentionally left blank
4 and 4(a)	Cultural protocols
5	Community Liaison Person
6	Complaints
7	Outline Plan
8 - 15	Management Plans – General
16 - 18	Construction Environmental Management Plan
19 – 21	Construction Noise Management Plan
22 - 24	Construction Traffic Management Plan
25 - 26	Landscape and Environmental Design Framework
27 - 32	Ecology and Landscape Management Plan
33	Ecological Review Panel
34 - 35	Accidental Discovery Protocol
36 - 37	Access
38	Network utilities
39	Construction Lighting
40	Operational Lighting
41 – 41A	Engineering Review
42	General Monitoring
43	Completion of Construction Works
44	Kiwi Road Access Track Layout

A glossary of abbreviations and terms used in the conditions is included at the end of this document.

MT MESSENGER BYPASS NOTICE OF REQUIREMENT CONDITIONS

GENERAL AND ADMINISTRATION

1. (a) Except as modified by the conditions below, the Project shall be undertaken in general accordance with the information provided by the Requiring Authority in the Notice of Requirement dated December 2017, the Drawing Set provided at the Hearing, and the management plans dated October 2018.

(b) Except for the work required under the Ecological and Landscape Management Plan (ELMP) and the Pest Management Plan (PMP) and in respect of the Ecological Review Panel in Conditions 27 - 33 none of the conditions apply to the on-going operation or maintenance of SH3 once construction is complete and the new road is operational.

(c) Where there is conflict between the documents listed in (a) above and these designation conditions, these conditions shall prevail. Where there is an inconsistency between the information and plans lodged with the Notice of Requirement and information provided subsequently, the most recent plans and information shall prevail.

(d) The Requiring Authority shall provide the Council with an electronic file containing the designation boundaries in a DXF (or ACAD dwg file with version noted) file.
2. As soon as practicable following Completion of Construction Works, the Requiring Authority shall:
 - (a) review the extent of the area designated for the Project;
 - (b) identify any areas of designated land that are no longer necessary for the on-going operation or maintenance of SH3, or the mitigation or offsetting of effects of the Project; and
 - (c) give notice to NPDC in accordance with section 182 of the RMA for the removal of those parts of the designation identified in (b) above.
3. The designation shall lapse if not given effect to within 10 years from the date on which it is included in the New Plymouth District Plan under section 175 of the RMA.

Cultural and stewardship protocols

4. At least three months prior to the Commencement of Construction, the Requiring Authority shall invite mandated representatives of Ngāti Tama along with Mr Tony Pascoe and Mrs Debbie Pascoe to participate in a Kaitiaki and Stewardship Forum Group (KFG).
 - (a) The KFG shall, in addition to Mr and Mrs Pascoe, comprise up to 3 members who have been determined by Te Runanga o Ngāti Tama (TRoNT). From time to time, as appropriate, TRoNT may change their KFG membership (i.e. the 3 members determined by them), and may also invite other iwi, iwi representatives or other

Ngāti Tama members to attend KFG meetings. TRoNT may appoint a chairperson to the KFG who would be responsible for confirming any advice from the KFG to the Requiring Authority and who will oversee the implementation of KFG activities.

(b) The purpose of the KFG is to facilitate engagement between the Requiring Authority, ~~and Ngāti Tama, and the Pascoe's~~ as kaitiaki and stewards of their land, in respect of the activities authorised by this designation and to enable ~~Ngāti Tama to provide~~ kaitiaki and stewardship inputs to the design and construction of the Project.

(c) The KFG will be invited to hold regular meetings (monthly) throughout the construction period. The KFG shall continue until six months after Completion of Construction.

(d) The Requiring Authority shall record the main points arising from each meeting of the KFG, and shall provide a copy of that record to the meeting invitees within a reasonable time following the meeting.

The Requiring Authority shall, on receipt of itemised invoices, be responsible for paying all reasonable costs associated with the attendance at KFG meetings to provide the kaitiaki inputs described in Condition 4 and Condition 4(a).

For the avoidance of doubt, while the KFG participants listed in condition 4(a) must be invited to attend each meeting, the non-attendance of any participant does not invalidate the KFG meeting.

4a. The KFG shall be invited by the Requiring Authority to participate in the following (amongst other things):

(a) The development of the Project designs to incorporate cultural values into elements such as (but not limited to):

Cultural expression in artwork on road corridor features such as the tunnel, bridge and in landscape works and plantings.

Water management principles.

Biodiversity mitigation, offset and compensation measures implemented as part of the ELMP required by Condition 27.

Signage of local features.

Naming of the new highway.

(b) Review of the Accidental Discovery Protocol (as required by designation Condition 34) and any updates to this Protocol.

(c) The development and implementation of agreed cultural protocols / tikanga appropriate to stages of the works or activities (for example: blessings, accidental discoveries, vegetation clearance, relocation of animals).

(d) The development of cultural indicators covering matters such as (but not limited to) traditional association, mahinga kai and cultural stream health measures.

(e) The development and implementation of a Cultural Monitoring Plan. The purpose of the Cultural Monitoring Plan is to set out the agreed cultural monitoring requirements and measures to be implemented during construction activities, to acknowledge the historic and living cultural values of the area to Ngāti Tama and Mr and Mrs Pascoe in their kaitiaki role, and to minimise potential adverse effects on these values. The Plan shall be prepared by a person endorsed by the KFG and the Requiring Authority. Where the provisions of the Plan are not agreed by the Requiring Authority, reasons for the disagreement will be provided in writing to TRoNT and added to the agenda for the next KFG meeting.

Community Liaison Person

5. (a) The Requiring Authority shall appoint a Community Liaison Person for the duration of the construction phase of the Project to be the main and readily accessible point of contact for persons affected by construction works. An alternative contact shall be provided in the event the liaison person is unavailable, to ensure that a Project contact person is available by telephone 24 hours per day/seven days per week during the construction phase of the Project.
- (b) No less than one month prior to the commencement of construction, the Requiring Authority shall advise all key project stakeholders listed in the CEMP of the liaison person's name and contact details.
- (c) The Requiring Authority shall keep stakeholders and the wider public informed of the construction works, progress and timing and shall carry out communications in general accordance with the CEMP.

Complaints

6. (a) At all times during the Works, the Requiring Authority shall maintain a register of any complaints received alleging adverse effects from, or related to, the Works. The record shall include:
 - (i) the name and address (where this has been provided) of the complainant;
 - (ii) identification of the nature of the complaint;
 - (iii) the location, date and time of the complaint and of the alleged event;
 - (iv) weather conditions at the time of the complaint (as far as practicable), including wind direction and approximate wind speed if the complaint relates to air discharges;
 - (v) the outcome of the Requiring Authority's investigation into the complaint;
 - (vi) measures taken to respond to the complaint; and
 - (vii) any other activities in the area, unrelated to the Project, which may have contributed to the complaint (such as non-Project construction, fires, or unusually dusty conditions generally).

- (b) When a complaint is received, the Requiring Authority shall:
- (i) acknowledge the complaint within 2 working days;
 - (ii) promptly investigate, identify the level of urgency in respect of the complaint and communicate that to the complainant; and
 - (iii) take reasonable steps to remedy or mitigate the matters giving rise to the complaint if there are reasonable grounds for the complaint, within 10 working days of receiving the complaint or such sooner time as may be reasonably necessary in the circumstances.
- (c) The Requiring Authority shall also maintain a record of its responses and any remedial actions undertaken.

This record shall be maintained on site and shall be made available to the Planning Lead (or Nominee) upon request. The Requiring Authority shall provide the Planning Lead (or Nominee) with a copy of the complaints register every month.

Advice Note: where for (b) and (c) there are a number of complaints relating to the same incident(s) the Requiring Authority may bundle those complaints together and provide one response (to be provided to all complainants) in accordance with those conditions.

7. The Requiring Authority shall provide to the Council an Outline Plan (or Outline Plans) in accordance with the provisions of s176A of the RMA for the following elements of the Project, prior to their construction:

- (a) The tunnel control building;
- (b) The tunnel emergency water supply tanks; and
- (c) The bridge over the Mimi swamp forest and the bridge at or about Chainage 2400.

Any other Works carried out in general accordance with Condition 1 shall not be subject to the requirement for an Outline Plan to be submitted to NPDC.

An Outline Plan shall be required under Section 176A of the RMA in respect of matters not in accordance with Condition 1. An Outline Plan shall be required under Section 176A of the RMA in respect of matters not in accordance with Condition 1.

Management Plans – General

8. All Works shall be carried out in general accordance with Condition 1, the Landscape and Environmental Design Framework and the management plans authorised by these designation conditions, which are the Construction Environmental Management Plan (CEMP) dated October 2018 and the following documents provided as appendices to the CEMP:
- (a) Construction Noise Management Plan (CNMP);
 - (b) Construction Traffic Management Plan (CTMP);

- (c) Ecology and Landscape Management Plan (ELMP);
- (d) Accidental Discovery Protocol (ADP);
- (e) Control of a Spill Procedure; and
- (f) Incident Reporting and Investigation.

Advice Note: In addition to the abovementioned plans, the CEMP shall also include copies of the management plans required under the resource consents but not for the designation, being: the Contaminated Land Management Plan (CLMP), the Construction Water Management Plan (CWMP) and any associated Specific Construction Water Management Plans (SCWMP), and the Construction Dust Management Plan (CDMP). The requirements for these additional plans shall be determined in accordance with the relevant Resource Consent Condition(s).

9. The management plans:
 - (a) provide the overarching principles, methodologies and procedures for managing the effects of construction of the Project to achieve the environmental outcomes and performance standards required by these conditions; and
 - (b) shall be maintained and implemented by the Requiring Authority during Works, and in the case of the ELMP, those matters that continue beyond the Completion of Construction Works.
10. (a) The Requiring Authority may make minor amendments to the management plans described in Condition 8 at any time. For the purpose of this condition, a 'minor amendment' is either a small change to the content of the Management Plan which has either no or a de minimis adverse environmental effect; or is a change which would result in an improved environmental outcome. Any changes to the management plans shall remain consistent with the objectives and performance standards of the management plan and the designation conditions.
 - (b) The Requiring Authority shall submit, in writing, the minor amendment to the Planning Lead (or Nominee) at least 10 days before Works associated with the amendment are to be implemented. The Requiring Authority shall maintain a record of all minor amendments.
 - (c) If the Planning Lead (or Nominee) considers that the amendment is a material amendment in accordance with Condition 11, then it must notify the Requiring Authority within 5 working days of receipt of the amendment and then consider the amendment in accordance with Condition 11. If the Requiring Authority does not receive notice from the Planning Lead (or Nominee) under Condition 10(c) any Works associated with the minor amendment may proceed.
11. (a) The Requiring Authority may make material amendments to the final management plans at any time subject to the Certification of the Planning Lead (or Nominee). Material amendment is any amendment that is in general accordance with Condition 1, but is not a minor amendment in accordance with Condition 10.

(b) Any material amendment to the management plans shall meet the objectives and performance requirements of the management plan and these designation conditions.

(c) In the event of an amendment to a management plan under Condition 11(a), the Requiring Authority must submit, in writing, the amendment to the Planning Lead (or Nominee) for Certification 20 working days before the commencement of the relevant Works. Certification shall confirm that the amendment is in accordance with Condition 1 and meets the objectives and performance requirements of the management plan.

(d) The Planning Lead (or Nominee) will carry out its best endeavors to consider the material amendment within 10 working days of receipt of the material amendment, noting that expert input, including from the Ecological Review Panel, may be required before Certification can be provided. If the Planning Lead (or Nominee) is unable to consider the material amendment within 10 working days it shall notify the Requiring Authority and advise a revised timeframe. Regardless, the Planning Lead (or Nominee) will carry out its best endeavors to consider the material amendment within a total of 20 working days of receipt.

(e) Provided that the Requiring Authority has not been advised of a revised timeframe under Condition 11(d) the Planning Lead (or Nominee) shall, no later than 10 working days of receipt of the material amendment, confirm in writing to the Requiring Authority that the material amendment is either certified or declined, or shall request that the Requiring Authority incorporate changes suggested by the Planning Lead (or Nominee). If a revised timeframe has been advised, confirmation shall be made in accordance with that timeframe.

(f) Should the Planning Lead (or Nominee) decline to certify the material amendment or request the incorporation of changes to the material amendment the Requiring Authority may then resubmit a revised material amendment to the management plan. The Certification process for a revised material amendment shall follow the same process described above in Conditions 11 (a) to (e).

(g) Any material amendment involving changes to pest management methodologies and monitoring, kiwi fencing and underpasses, and amendments to the ELMP if the PMA is selected based on Scenario 3 or Scenario 4 shall be reviewed by the Ecological Review Panel.

(h) The resolution process stipulated under Condition 14 shall be followed:

- (i) Where the Requiring Authority and the Planning Lead (or Nominee) are unable to agree on the finalisation of a material amendment to a management plan; or
- (ii) Where the Requiring Authority considers that the Planning Lead (or Nominee) has not acted in accordance with Condition 11(d) to consider the material amendment within a reasonable timeframe.

Works unaffected by the amendment may continue.

12. *This condition is intentionally left blank.*
13. All personnel involved with the construction of the Project shall be made aware of, and have access to, all conditions and management plans applicable to the construction of the Project, including any amendments to the management plans made under Conditions 10 and 11. Copies of these documents shall be kept on site at all times.
14. (a) In the event of any dispute arising about the content of the management plans between NPDC and the Requiring Authority, matters shall be referred in the first instance to the Planning Lead, and to the Requiring Authority's Construction Manager (as described in the CEMP), to determine a process of resolution.

(b) If a resolution cannot be agreed under (a) within 15 working days, the matter shall be referred within 10 working days to an independent appropriately qualified expert, acceptable to both parties, setting out the details of the matter to be referred for determination and the reasons the parties do not agree.

(c) The expert shall, as soon as possible, issue a recommendation on the matter. The Planning Lead (or Nominee) must notify its decision to the Requiring Authority within 5 working days of receipt of the recommendation from the expert that the management plan is certified, declined, or request that the Requiring Authority incorporate changes suggested by the Council.
15. The Requiring Authority shall undertake an annual review of all management plans. This review shall include, but not necessarily be limited to:
 - (a) Reviewing compliance with the Project designation conditions, the CEMP and management plans.
 - (b) Reviewing any significant changes to construction activities or methods, and/or any unanticipated adverse effects resulting from the Construction Works.
 - (c) Any changes to roles and responsibilities within the Project team.
 - (d) Reviewing the results of inspections, monitoring and reporting procedures associated with the monitoring of adverse effects during construction.
 - (e) Reviewing responses to any comments or recommendations from NPDC regarding the CEMP and management plans.
 - (f) Reviewing responses to any comments or recommendations from KFG, NPDC, DOC or the Ecological Review Panel regarding the ELMP and PMP made in the previous 12 months.
 - (g) Reviewing any unresolved complaints and any response to complaints and remedial action taken to address the complaint.The outcome of this review shall be provided to the Planning Lead (or Nominee), and a copy shall be provided to the KFG and the Operations Manager of DOC New Plymouth District Office.

Where either the Requiring Authority proposes, or the Planning Lead (or Nominee) requests changes to management plans as a result of the annual review, any change to a management plan shall be made as soon as practicable and shall be subject to the provisions of Conditions 10, 11 and 14.

Annual review of the management plans shall cease following the Completion of Construction Works, except that review of the ELMP and PMP shall continue to be carried out in accordance with the reporting and review required under Condition 32.

Advice note: comments or recommendations regarding the CEMP and management plans may also be received from TRC under the resource consent conditions.

Construction Environmental Management Plan

16. The Requiring Authority shall implement the Construction Environmental Management Plan (**CEMP**) dated October 2018, which provides the overarching framework to ensure that the Project remains within the limits and standards required by these conditions and that Works appropriately avoid, remedy, mitigate, offset or compensate for adverse effects on the environment. The CEMP shall remain in place until the Completion of Construction Works with the exception of those matters of the ELMP that continue beyond the Completion of Construction Works.
17. The CEMP includes details of:
 - (a) staff and contractors' responsibilities;
 - (b) training requirements for employees, sub-contractors and visitors;
 - (c) environmental incident and emergency management (including the procedures required under regional consent condition GEN.8);
 - (d) communication and interface procedures;
 - (e) complaints management (in accordance with condition 6);
 - (f) compliance monitoring;
 - (g) environmental reporting;
 - (h) corrective action;
 - (i) environmental auditing;
 - (j) construction lighting;
 - (k) rehabilitation of construction yards;
 - (l) the methods to engage with stakeholders, including:
 - (i) how the community will be kept informed of progress with Works, including proposed hours of operation outside normal working hours and Project construction personnel contact details;

- (ii) how the Requiring Authority will engage with the community in order to foster good relationships and to provide opportunities for learning about the Project;
- (iii) providing early information on key Project milestones;
- (iv) identifying stakeholders such as landowners, road users, local community, iwi, regulatory authorities, industry, network utility operators, road maintenance contractors, emergency services;
- (v) responding to queries and complaints (in accordance with condition 6);;
- (vi) subject to any necessary health and safety requirements identified by the Requiring Authority, provision for DOC staff (or their nominees) to gain reasonable access to the site during the construction period;

(m) CEMP review (in accordance with condition 15); and

(n) construction methodologies and construction timeframes, including Staging.

18. The Requiring Authority shall appoint a representative(s) who shall be the Planning Lead's (or Nominee) principal contact person(s) in regard to matters relating to the designation conditions for the Project. The Requiring Authority shall inform the Council of the representative's name and how they can be contacted, prior to the commencement of construction. Should that person(s) change during the construction of the Project, the Requiring Authority shall immediately inform the Planning Lead (or Nominee) and provide confirmation of the new representative's name and contact details.

18A. Subject to any necessary health and safety requirements identified by the Requiring Authority, the Planning Lead (or Nominee) shall have access to all relevant parts of the Project Area at all reasonable times for the purpose of carrying out inspections, surveys, investigations, tests, measurements and/or to take samples.

Construction Noise Management Plan

19. Construction noise shall, subject to the exceptions provided for in the Construction Noise Management Plan (CNMP) set out in conditions 20 and 21, comply with the following criteria in accordance with NZS6803: 1999:

	Time period	dB LAeq	dB LAFmax
Weekdays	0630-0730	55	75
	0730-1800	70	85
	1800-2000	65	80
	2000-0630	45	75
Saturday	0630-0730	45	75
	0730-1800	70	85
	1800-2000	45	75
	2000-0630	45	75
Sunday and Public Holidays	0630-0730	45	75
	0730-1800	55	85
	1800-2000	45	75
	2000-0630	45	75

Notes: Measurement and assessment of construction noise shall be undertaken in accordance with NZS6803:1999.

- 19(a). Should the Requiring Authority not rent or otherwise occupy the dwelling at 2397 Mokau Road during construction:
- (a) operation of the spoil disposal site at 2397 Mokau Road shall be limited to Monday to Saturday 0730 to 1800 (no works are permitted on Sundays, public holidays or between 1800 and 0730 Monday to Saturday); and
 - (b) Noise mitigation at this site shall be implemented in accordance with the CNMP.
- 19b. The Requiring Authority shall prior to the commencement of Works, write to the occupiers of the dwelling at 3072 Mokau Road to offer to provide alternative housing from the commencement of Works until the Completion of Construction Works. If that offer is accepted, the Requiring Authority will provide that alternative housing in a form that is as similar as is reasonably practicable to the dwelling at 3072 Mokau Road. The obligation to provide alternative housing under this condition will not apply (or will cease to apply) if the Requiring Authority acquires the dwelling at 3072 Mokau Road.
20. The Requiring Authority shall implement the CNMP dated October 2018, which identifies how the Requiring Authority will manage effects from construction noise that will exceed the criteria in condition 19. The CNMP shall remain in place until the Completion of Construction Works.
- The CNMP shall be in accordance with:
- (a) the requirements of Annex E to NZS 6803:1999; and
 - (b) the NZ Transport Agency State highway construction and maintenance noise and vibration guide (2013).
21. The CNMP includes:
- (a) the general hours of work for the Project;
 - (b) the details of any activities that may be undertaken outside of the general hours of work for the Project;
 - (c) procedures to comply with NZS6803:1999;
 - (d) the details of any activities that may not comply with NZS6803:1999 and measures to mitigate construction noise from those activities as far as practicable to ensure the effects are appropriate;
 - (e) the necessary setbacks for specific construction plant and equipment in relation to residential dwellings; and
 - (f) the management and communication procedures for Works that may not comply with NZS6803:1999.

Construction Traffic Management Plan

22. The Requiring Authority shall implement the Construction Traffic Management Plan (CTMP) dated October 2018, which identifies how the Requiring Authority will manage construction traffic to:
- (a) protect public safety;
 - (b) minimise delays to road users;
 - (c) minimise disruption to property access; and
 - (d) inform the public about any potential impacts on the road network.

The CTMP shall remain in place until the Completion of Construction Works.

23. The CTMP includes:
- (a) details of traffic management activities and sequencing proposed for the Project;
 - (b) methods for managing construction related traffic movements;
 - (c) provisions to ensure that, as far as practicable, road users will not be held up by construction activities for an unreasonable period of time (such time period to be specified); and
 - (d) provisions for emergency services to have access along SH3 24 hours per day, unless construction requires the temporary closure of a road, in which case, prior to any temporary closure, an emergency action plan shall be developed and agreed with emergency services to provide for access for the duration of that closure.
24. The CTMP shall comply with the version of the NZ Transport Agency Code of Practice for Temporary Traffic Management (COPTTM) which applies at the date of the CTMP. Where it is not possible to adhere to the COPTTM, the COPTTM's prescribed Engineering Exception Decision process shall be followed.

Landscape and Environmental Design Framework

25. The Requiring Authority shall ensure that detailed design of the Project is in general accordance with the LEDF dated July 2018 including consideration of the following:

(a) Restoration planting

Extensive revegetation of riparian margins and areas of pasture, as further detailed in the ELMP. The revegetation is to use indigenous species eco-sourced from the area, and planted to reflect natural patterns. Planting techniques are to use enrichment planting to mimic succession. Revegetation is to be coordinated between ecological restoration experts, landscape experts and Ngāti Tama.

(b) Naturalisation of Stream Diversions

Naturalising stream diversions to reflect characteristics of the existing streams at each location.

(c) Retention of Significant Trees and Vegetation

Retaining as many significant trees (and other significant vegetation) as possible close to the alignment through such measures as fine-tuning the alignment and earthworks.

(d) Cut Batters

Designing cut batters to integrate with the area's landforms, including echoing natural slope angles, avoiding benched cuts, and treatment of rock faces to promote natural revegetation over time.

(e) Fill Batters

Treatment of fill batters to minimise footprint or merge with natural contours depending on context, and revegetation of batter slopes.

(f) Surplus fill disposal

Selection of sites with low visibility and low natural value for the disposal of surplus fill, contouring such fill to marry with natural contours, and revegetating it with indigenous bush species.

(g) Bridge Design

Detail design of the Mimi swamp forest bridge (its form and finish) appropriate to its setting adjacent to a significant natural area and including attention to barrier and rail design to maintain views from the bridge, whilst addressing safety and engineering requirements.

Simplifying the suite and spatial layout of 'highway furniture' (such as barriers and signage poles) to minimise visual clutter.

(h) Cycling Shoulder

Detail design of the 1.5m shoulder to ensure its suitability for cycling, noting that this is to be modified in the tunnel to a 1.2m shoulder in conjunction with a painted median.

(i) Access and stopping places

Reinstatement of access to the Kiwi Road Track. Consideration of stopping places where acceptable.

(j) Cultural expression and kaitiakitanga

Expression by Ngāti Tama of their cultural presence and kaitiakitanga integrated into the detailed design and mitigation through such aspects as involvement in the restoration of natural systems, design and finish of the tunnel portals and bridge, naming of elements (such as tunnel and bridge), and dedicating the large trees to be removed for cultural purposes.

26. Prior to construction of any Stage (or Stages) of the Construction Works, the Requiring Authority shall arrange a peer review by a suitably qualified and experienced landscape architect to verify that the detailed design is in general

accordance with the LEDF and the matters listed in Condition 25, and shall provide written confirmation of such verification to the Planning Lead (or Nominee). Upon receipt of the peer review for any Stage (or Stages) of Construction Work the Planning Lead (or Nominee) shall confirm by writing to the Requiring Authority that the requirements of this condition are met.

Advice note: This Condition does not apply to Establishment Works.

Ecology and Landscape Management Plan

27. The Requiring Authority shall implement the Ecology and Landscape and Management Plan (**ELMP**) dated October 2018, which identifies how the Project will avoid, remedy, mitigate, offset and compensate for potential adverse effects on the ecological, landscape and biodiversity values of the land within the Project Area and its surrounds, including on:
- (a) vegetation / habitat (including wetlands);
 - (b) herpetofauna (lizards and frogs);
 - (c) bats;
 - (d) avifauna;
 - (e) peripatus;
 - (f) fish, kōura and kākahi; and
 - (g) streams.
28. The matters addressed in the ELMP are set out in Schedule 1 to these Conditions in accordance with a series of sub-management plans:
- (a) Landscape and Vegetation Management Plan;
 - (b) Bat Management Plan;
 - (c) Avifauna Management Plan;
 - (d) Herpetofauna Management Plan;
 - (e) Freshwater Management Plan;
 - (f) Pest Management Plan;
 - (g) Peripatus Management Plan; and
 - (h) Biosecurity Management Plan.
- 28A. (a) The Requiring Authority shall provide a complete set of Ecological Constraints Maps covering the entire Project Area, as referred to in the ELMP. The Ecological Constraints Maps shall show the constraints identified in accordance with the ELMP and may be prepared to reflect the Stage or Staging of Works.
- (b) The Ecological Constraints Maps for any Stage (or Stages) of Works shall be submitted to the Planning Lead (or Nominee) for certification in accordance with Conditions 10 or 11 The Ecological Constraints Maps for any Stage (or Stages) of

Works shall be submitted to the Planning Lead (or Nominee) for certification in accordance with Conditions 10 or 11.

(c) Should an amendment be required to the ELMP as a consequence of preparing the Ecological Constraints Maps, the amendment shall be submitted to the Planning Lead (or Nominee) in accordance with Conditions 10 or 11.

(d) Once finalised in accordance with this condition, the Ecological Constraints Maps for each Stage (or Stages) of Work shall be inserted into Appendix A of the ELMP.

(e) Works associated with any Stage (or Stages) of the Project shall not commence until the Ecological Constraints Maps have been certified by the Planning Lead (or Nominee) and inserted into the ELMP.

29. The Requiring Authority shall undertake ecological mitigation and biodiversity offset and compensation measures in accordance with the ELMP to address the matters in Schedule 1 and to achieve the following:

(a) Vegetation:

(i) The retention, where possible, of the vegetation with the highest ecological value within the Project area as identified in Figures 4.1 and 4.2 of the ELMP;

(ii) Restoration planting as follows:

(1) At least 6ha of kahikatea swamp forest; and

(2) At least 9ha of mitigation planting using an appropriate mix of plant seedlings.

(3) Planting of 200 saplings of the same species for each significant tree that is felled.

Advice note: significant trees are defined in the ELMP and shown on the Landscape Concept Plans in the LEDF.

(4) Following the completion of vegetation clearance, the Requiring Authority shall measure the extent of vegetation clearance and shall reassess the extent of restoration planting required under Conditions 29(a)(ii) (2) and (3), using the methodology set out in the ELMP. The Requiring Authority shall prepare and provide a report to the Planning Lead (or Nominee) confirming the restoration planting required. If additional restoration planting is required, the extent of the restoration planting area required shall be identified and the report provided to the Planning Lead (or Nominee) for Certification that the calculation of the additional planting achieves the requirement of Conditions 29(a)(ii) (2) and (3). If the recalculation results in a lesser restoration planting area, the planting area required in Condition 29(a)(ii)(2) and (3) shall be provided.

Advice Note: Certification of the report shall be carried out in accordance with the Certification process set out in Condition 11.

(5) The completion of all restoration planting within three planting seasons of the Completion of Construction Works, unless natural conditions during Construction Works result in poor seed production, or poor seed condition and adversely limits seedling propagation for indigenous plant species, in which case completion would be delayed to reflect the availability of suitable seedlings. The Requiring Authority shall notify the Planning Lead (or Nominee) when the restoration plantings have been completed.

(6) Should there be a delay in the completion of restoration planting due to the availability of suitable seedlings as described in (5) above, the Requiring Authority shall provide the Planning Lead (or Nominee) with an amended timeframe, which shall not exceed three planting seasons, and shall complete the planting as soon as reasonably possible within the agreed timeframe, informing the Planning Lead (or Nominee) when planting is complete.

(7) For the restoration planting required under Condition 29(a)(ii)(1) and (2), the plantings shall achieve 80% canopy cover 6 years following planting in the areas where trees and shrubs are planted. If 80% canopy cover is not achieved at 6 years following planting, any necessary replacement planting and planting maintenance shall continue beyond year 6 until 80% canopy cover is achieved.

(8) For the restoration planting required under Condition 29(a)(ii)(1) the planting shall achieve kahikatea forming 16% of the tree canopy at year 10. Additional kahikatea will be planted in the areas where the kahikatea contribution to the canopy is less than 16%. At year 35, kahikatea shall comprise 65% of the canopy in the kahikatea swamp forest planting required by this condition.

(9) For each significant tree felled, the restoration planting required under Condition 29(a)(ii)(3) shall achieve 90% survival of the 200 planted trees at 6 years following planting. If 90% plant survival has not been achieved within 6 years following planting, any necessary replacement planting and planting maintenance shall continue beyond year 6 until 90% survival is achieved.

(b) Herpetofauna:

- (i) The salvage and relocation of lizards from felled vegetation within the Project Area in accordance with the ELMP.
- (ii) The Requiring Authority shall provide funding of a total of \$200,000 (plus GST, if any) as a contribution to one or more research and / or development projects where the outcomes are intended to benefit herpetofauna in the North Taranaki Ecological District. The project or projects to receive this funding will be nominated by DOC, following discussion by the Requiring Authority with the Operations Manager of DOC New Plymouth District Office and the Planning Lead (or Nominee).

- (iii) DOC will receive, administer and distribute the funding required to be provided pursuant to Condition 29(b)(ii). The Requiring Authority will make the funding available prior to commencing Works, and will provide written notice to the Planning Lead (or Nominee) that it has done so. Within two years of commencing Works, the Requiring Authority will provide a written update to the Planning Lead (or Nominee) setting out progress on how the funding has been allocated and will be utilised.

(c) Bats:

- (i) For vegetation removal within the Project Area, the Vegetation Removal Protocol (VRP) set out in Annex DH of the 'NZ Transport Agency (the Transport Agency) research report 623 'Effects of land transport activities on New Zealand's endemic bat populations: reviews of ecological and regulatory literature' (Smith et al. 2017)' and set out in the ELMP, which includes modification to account for local conditions shall apply to:

(1) all trees greater than 80cm Diameter at Breast Height (DBH).

(2) all trees between 15cm and 80cm DBH which are considered by a specialist bat ecologist as having features suitable for bat roosting, such features including:

- i. cracks, crevices, cavities, fractured limbs, or other deformities, large enough to support roosting bat(s);
- ii. sections of loose flaking bark large enough to support roosting bats;
- iii. a hollow trunk, stem or branches;
- iv. deadwood in canopy or stem of sufficient size to support roost cavities or hollows;
- v. guano, grease marks and/or urine staining around cavity entrances; and
- vi. selected individual trees with high epiphyte loading (five or more perched nested epiphytes located on horizontal branches).

(3) All trees shown through the bat monitoring programme (Condition 30) to be Roosts.

(4) The 17 significant trees referred to in condition 29(a)(ii)(3).

Advice Note: the VRP shall not apply to the removal of any other vegetation.

(d) Avifauna:

- (i) The tracking and monitoring of kiwi prior to and during construction along the entire length of the road corridor, and the relocation of kiwi where necessary.

- (ii) The design, installation and ongoing maintenance of kiwi exclusion fencing to restrict kiwi accessing the road at locations where:
 - (1) the territories identified by the tracking and monitoring in (i) straddle the road corridor; and
 - (2) the Project ecologist considers there is a high risk of kiwi being able to enter the road corridor at these locations.
- (iii) The placement of appropriate road signage along the new road corridor to warn motorists about the possible presence of kiwi.
- (iv) Monitoring of Australasian bittern using automatic acoustic bird monitors at the Mimi wetland and in the Mangapepeke Valley prior to construction. Should bittern be recorded in the Project Area the Requiring Authority shall advise the Operations Manager of DOC New Plymouth District Office within two days of the data from the automatic acoustic bird monitor being analysed. The Requiring Authority shall design, install and maintain low fencing adjacent to the road corridor at marshland locations where bittern are recorded, prior to operation of the road.
- (v) The DOC Operations Manager New Plymouth District Office, TRoNT and the Planning Lead (or Nominee) shall be notified should nesting kokako or their nests be detected in the construction area. Notification shall be provided within 2 hours of detection. Appropriate response actions shall be implemented immediately to avoid disturbance.

(e) Peripatus

- (i) The salvage and relocation of peripatus contained within suitable selected peripatus habitat from within the Project Area.

(f) Fish, kōura and kākahi

- (i) The recovery and relocation of fish, kōura and kākahi in the sections of waterways affected by instream works, prior to instream works occurring.
- (ii) The rescue and relocation of fish, kōura and kākahi from any spoil.
- (iii) The design and installation of permanent culverts that shall maintain fish passage in all affected waterways (with the exception that maintenance of fish passage is not required at culverts 2, 10 and 13). Culvert design shall be informed by the New Zealand Fish Passage Guidelines for Structures Up to 4 Metres (2018).

(g) Streams

- (i) The design and construction of diverted streams shall be in accordance with the Stream Ecological Design Principles attached to the LEDF. 798m² of remediated stream diversions will be restored, through riparian

planting, and livestock exclusion. Riparian margins of an average of 10m each side of the stream will be created and planted.

- (ii) The riparian planting and exclusion from livestock of at least 10,738m² of existing streambed area. Riparian margins of an average of 10m each side of the stream will be created and planted. Together with (i) this will create 11,536m² of stream restoration.
- (iii) Following the completion of stream works, the Requiring Authority shall measure the extent of stream works and shall reassess the extent of riparian planting required under Conditions 29(g)(ii), using the methodology set out in the ELMP. The Requiring Authority shall prepare and provide a report to the Planning Lead (or Nominee) confirming the riparian planting required. If additional riparian planting is required the extent of the riparian planting required shall be identified and the report provided to the Planning Lead (or Nominee) for Certification that the calculation of the additional planting achieves the requirement of Condition 29(g)(ii). If the recalculation results in a figure less than 10,738m² of existing streambed area the Requiring Authority shall provide planting to achieve the requirement of Condition 29(g)(ii).

Advice Note: Certification of the report shall be carried out in accordance with the Certification process set out in Condition 11.

- (iv) The completion of all riparian planting within three planting seasons of the Completion of Construction Works, unless natural conditions during Construction Works result in poor seed production, or poor seed condition and adversely limits seedling propagation for indigenous plant species, in which case completion would be delayed to reflect the availability of suitable seedlings. The Requiring Authority shall notify the Planning Lead (or Nominee) when the riparian plantings have been completed.
- (v) Should there be a delay in the completion of riparian planting due to the availability of suitable seedlings as described in (iv) above, the Requiring Authority shall provide the Planning Lead (or Nominee) with an amended timeframe, which shall not exceed three planting seasons, and shall complete the planting as soon as reasonably possible within the agreed timeframe, informing the Planning Lead (or Nominee) when planting is complete.
- (vi) For the riparian planting required under Condition 29(g)(ii), the plantings shall achieve 80% canopy cover 6 years following planting in the areas where trees and shrubs are planted. If 80% canopy cover is not achieved at 6 years following planting, any necessary replacement planting and planting maintenance shall continue beyond year 6 until 80% canopy cover is achieved.

(h) Pest management:

- (i) Pest management in perpetuity over the Pest Management Area (PMA) confirmed by Condition 30, being an area of 3,650ha.
- (ii) Pest management in the PMA shall be undertaken in accordance with the Pest Management Plan (PMP) in the ELMP to:
 - (1) reduce and maintain rats, possums, feral cats and mustelids to low levels in perpetuity.
 - (2) reduce and maintain feral goats and pigs to low densities in perpetuity.
 - (3) exclude farm stock in perpetuity.
 - (4) monitor and control wasps along the road corridor only during construction and through to the conclusion of a 6 year plant maintenance period.
- (iii) Implementation of the PMP shall commence as soon as practicable, and no later than one year following the commencement of Works.
- (iv) Pest management shall be undertaken in accordance with the PMP to achieve the following outcome target pest densities in the PMA, measured immediately prior to the breeding season (for bats and birds) and then through the critical stages when young remain in the roost / nest.
 - (1) rat species – $\leq 5\%$ tracking tunnel index.
 - (2) mustelids – no detections.
 - (3) cats – no detections.And throughout any year, to achieve the following outcome target pest densities in the PMA.
 - (4) possums – $\leq 5\%$ chew card index.
 - (5) goats and deer - < 1 kill per hunter/day.
 - (6) feral pigs - < 1 kill per hunter/day; and
 - (7) farm livestock – zero presence.
- (v) Pest management shall be undertaken in accordance with the PMP to achieve the following outcomes for palatable plant species:
 - (1) The recruitment of vegetation species in the PMA which are currently suffering ungulate induced recruitment failure, with the following species used as indicators of recruitment: mahoe, hangehange, large leaved coprosma spp., pate, wineberry, tawa, hinau, kamahi and pikopiko.

(2) Recovery of condition of possum palatable trees in the PMA, with the following species used as indicators of recovery: swamp maire, mahoe, kaikomako, northern rata and thin-barked totara.

(vi) Pest management shall be undertaken in accordance with the PMP to achieve the following outcome for avifauna:

(1) A statistically significant 20% increase in relative abundance for kiwi, tui, bellbird, kereru, whitehead, long-tailed cuckoo, fernbird, and North Island Robin in the PMA within 12 years of the Completion of Construction Works.

- 29A. (a) Works shall not commence until the Requiring Authority provides the Planning Lead (or Nominee) with written confirmation that it has in place the legal agreements and/or other authorisations necessary to allow the Requiring Authority to enter onto land outside the boundaries of the designation to carry out, continue and maintain all the measures set out in the ELMP, including the restoration planting, riparian planting and pest management measures. This shall also include appropriate access to such sites, for the purposes of undertaking those measures.
- (b) If the final location of the PMA is confirmed through the application of Scenario 4 in Condition 30, Works may commence before the Requiring Authority has in place the relevant agreements and/or other authorisations to carry out, continue and maintain pest management measures, but:
- (i) Implementation of the PMP shall commence in accordance with Condition 29(h)(iii); and
 - (ii) The statement confirming legal agreements and/or other authorisations, required under Condition 29A(a), shall be provided to the Planning Lead (or Nominee) prior to implementation of the PMP.
- (c) The Requiring Authority will carry out pest management within the PMA in perpetuity, and ensure that the restoration and riparian planting is protected on an ongoing basis.
- (d) If, for the pest management measures, the legal agreements or other authorisations under Condition 29A(a) provide for a term that is time-limited, the Requiring Authority shall notify the Planning Lead (or Nominee) at least 2 years prior to the expiry of the term that a new PMA may be required to be confirmed, and shall immediately commence the process for renewing the relevant authorisations, or for confirming a new or amended PMA. Any new or amended PMA shall be confirmed following the process set out in Condition 30, with any amendments deemed necessary to Conditions 30(a) to (f), following consultation with DOC, and with the agreement of the Planning Lead (or Nominee). Any new or amended PMA must be at least 3,650 ha. The location and details for the new or amended PMA, including amendments to the ELMP, shall be certified following the process in Condition 11. The Requiring Authority shall provide written confirmation to the Planning Lead (or Nominee) that it has in place the legal agreements and/or other authorisations to carry out the PMA works.

Advice note: amendments to the bat monitoring programme may be appropriate in relation to 29A(d) if suitable information is known about long-tailed bat Maternity Roosts to recommend the location of the new PMA.

30. (a) The Requiring Authority shall implement a programme of long-tailed bat radio tracking (the "Monitoring Programme") to establish the location of long-tailed bat roosts and in particular Maternity Roosts within the Study Area. The purpose of the Monitoring Programme is to identify and define the location of the PMA based on the location of Maternity Roosts, to ensure that the intended outcomes for long-tailed bats are achieved.

Bat Monitoring Programme

(b) The Monitoring Programme shall be carried out for one season during the period of peak long-tailed bat activity (1 October to 31 March).

(c) The Monitoring Programme will confirm and map the location of long-tailed bat Maternity Roosts within the Study Area. Knowledge gained from the monitoring programme will be used to confirm the location of the PMA, and to identify the roost trees that will be subject to the VRPs.

(d) The Requiring Authority shall appoint a bat expert (the "bat expert") who will manage the Monitoring Programme and prepare the Bat Monitoring Report. The Requiring Authority will also appoint Dr Stuart Parsons, or an alternative independent peer reviewer selected by the Planning Lead (or Nominee) in consultation with the Requiring Authority and DOC (the "independent peer reviewer").

(dd) The bat expert and the bat peer reviewer shall meet the E Class bat competency, as set out in Table D2 of Appendix D: to 'NZ Transport Agency research report 623 'Effects of land transport activities on New Zealand's endemic bat populations: reviews of ecological and regulatory literature' (Smith et al. 2017)'. All other personnel involved in implementing the monitoring programme shall meet the bat competency class of D for all personnel involved in bat handling, or C2 for all personnel involved in roost identification, as set out in Table D2 of Appendix D: to NZ Transport Agency research report 623.

(e) The Monitoring Programme shall be undertaken in accordance with the DOC best practice manual of conservation techniques for bats Version 1 (DOCDM-131465), and the methodology as set out in the ELMP.

(f) The Monitoring Programme described in Condition 30(a) shall involve:

- (i) At least 30 nights of bat trapping effort in conditions suitable for bat activity;
- (ii) The use of at least 8 harp traps, as well as mist-net traps and acoustic lures;
- (iii) An additional 10 nights of trapping should fewer than 10 Maternity Roosts have been identified at the conclusion of 30 nights of monitoring;

- (iv) The fitting of bats with radio transmitters, and the subsequent tracking of those bats until the transmitters are no longer transmitting; and
- (v) Bat trapping may cease earlier than provided for in (i) and (iii) above if 30 bats have been fitted with radio transmitters and those bats have been tracked until the transmitters are no longer transmitting.

Bat Monitoring Report

(g) On completion of the Monitoring Programme a report (the “Bat Monitoring Report”) shall be prepared by the bat expert that:

- (i) Details the methods used and the monitoring effort undertaken;
- (ii) Sets out the findings of the Monitoring Programme;
- (iii) Identifies the location of all identified long-tailed bat roosts, including Maternity Roosts (if found) within the Study Area;
- (iv) Sets out any comments received from the independent peer reviewer and any comments received from DOC’s nominated bat expert regarding whether the monitoring programme has been completed in accordance with the requirements of these conditions and on the recommended location of the PMA; and
- (v) Recommends the location of the PMA in accordance with the following Scenarios 1, 2, 3 or 4.

Scenario 1

In the event that the Monitoring Programme identifies:

- (1) 10 or more Maternity Roosts within the Intended PMA; or
- (2) 10 or more Maternity Roosts within the Study Area and 70% of these are located within the Intended PMA area shown on Figure 9.1 in the ELMP:

the Intended PMA will be the Confirmed PMA.

Scenario 2:

In the event that Scenario 1 above does not apply, but the Monitoring Programme identifies suitable bat roosting habitat that is located in the Wider PMA, the bat expert shall, in consultation with DOC’s nominated bat expert, review the monitoring data and consider whether the Wider PMA supports suitable Maternity Roosts for the PMA to be set within the Wider PMA.

In doing so, the bat expert shall take into account the size and nature of the Maternity Roosts and their value to the local long-tailed bat population, along with any other relevant matters that relate to determining the suitability of the Wider PMA for bat habitat.

If after reviewing the monitoring data, the bat expert, in consultation with Mr MacGibbon, Mr Nicholas Singers and Dr John McLennan (or, if Mr MacGibbon, Mr

Singers or Dr McLennan are not available, other experts in vegetation and avifauna selected by the Requiring Authority) and DOC's nominated bat expert, considers that the Wider PMA does support suitable Maternity Roosts, the PMA may be recommended to be located within the Wider PMA.

In recommending the boundaries of the PMA the following factors will be considered:

- (a) the ability to utilise Parininihi;
- (b) the location of the identified Maternity Roosts;
- (c) retaining the Project Area and kahikatea-swamp forest plantings in the PMA;
- (d) minimising the overall length of the edge of the PMA;
- (e) minimising the length of the edge of the PMA that adjoins mature forest;
- (f) the practicality of implementing pest management, including access; and
- (g) the effectiveness of the PMA in offsetting or compensating for the effects of the Project on other ecological values, in particular vegetation and avifauna.

Scenario 3:

In the event that the majority of Maternity Roosts are discovered in the Study Area but outside of the Wider PMA, the bat expert shall, in consultation with, Mr MacGibbon, Mr Nicholas Singers and Dr John McLennan (or, if Mr MacGibbon, Mr Singers or Dr McLennan are not available, other experts in vegetation and avifauna selected by the Requiring Authority) and DOC's nominated bat expert, review the monitoring data and consider whether the Study Area supports suitable Maternity Roosts for the PMA to be recommended to be within the Study Area.

In doing so, the bat expert shall take into account the size and nature of the Maternity Roosts and their value to the local long-tailed bat population, along with any other relevant matters that relate to considering the suitability of the Study Area for bat habitat.

If after reviewing the monitoring data, the bat expert, in consultation with DOC's nominated bat expert, considers that the Study Area does support suitable Maternity Roosts, the PMA may be recommended to be located within the Study Area.

In that case, the PMA shall be 3,650 ha, and the boundaries shall be recommended by the bat expert in consultation with Mr Roger MacGibbon, Mr Nicholas Singers and Dr John McLennan (or, if Mr MacGibbon, Mr Singers or Dr McLennan are not available, other experts in vegetation and avifauna selected by the Requiring Authority) and DOC's nominated bat expert, considering the following factors:

- (a) the ability to utilise Parininihi;
- (b) the location of the identified Maternity Roosts;

- (c) minimising the overall length of the edge of the PMA;
- (d) minimising the length of the edge of the PMA that adjoins mature forest;
- (e) the practicality of implementing pest management, including access;
- (f) the effectiveness of the PMA in offsetting or compensating for the effects of the Project on other ecological values, in particular vegetation and avifauna; and
- (g) the availability of the land for inclusion in the PMA.

Where the bat expert recommends that land that is both outside the Wider PMA and not administered by DOC should be included in the PMA:

- (a) that land will only be included in the PMA if the Requiring Authority confirms to the bat expert that it is able to acquire the necessary rights over that land in order to carry out the pest control and related activities required in the PMA under the Pest Management Chapter of the ELMP; and

Where the bat expert (having consulted with others as required under this Scenario) considers there is no appropriate alternative for setting the PMA within the Study Area, Scenario 4 below will apply.

Scenario 4

In the event that the PMA has not been recommended to be confirmed through Scenarios 1, 2 or 3, the PMA shall be located in the Alternative PMA, or some other location agreed with DOC.

In that case, the PMA shall be 3,650 ha, and the boundaries shall be recommended by the bat expert in consultation with Mr Roger MacGibbon, Mr Nicholas Singers and Dr John McLennan (or, if Mr Roger MacGibbon, Mr Singers or Dr McLennan are not available, other experts in vegetation and avifauna selected by the Requiring Authority) and DOC's nominated bat expert, considering the following factors:

- (a) the location of the known short-tailed bat Maternity Roosts, or should the Requiring Authority seek to establish the PMA elsewhere, the location of long-tailed bat Maternity Roosts determined through a further radio-tracking study, the scope of which would be equivalent to the programme described in Condition 30(b) – (f).;
- (b) minimising the overall length of the edge of the PMA;
- (c) minimising the length of the edge of the PMA that adjoins mature forest;
- (d) the practicality of implementing pest management, including access;
- (e) the effectiveness of the PMA in offsetting or compensating for the effects of the Project on other ecological values, in particular vegetation and avifauna;
- (f) the availability of the land for inclusion in the PMA; and

(g) other pest control undertaken by DOC that may act as a buffer to the PMA.

(h) The Bat Monitoring Report prepared under Condition 30(g) shall be provided to DOC and the KFG for comment. Should DOC and / or the KFG have comments on the report they shall be provided to the Requiring Authority within 15 working days of receipt of the Report.

(i) The Bat Monitoring Report prepared under Condition 30(g), and any comments from DOC and / or the KFG, shall be provided to the independent peer reviewer who shall review the Report and provide an assessment of the findings, including whether:

- (i) The monitoring programme has been completed in accordance with the requirements of these Conditions; and
- (ii) The PMA has been recommended to be located in accordance with the provisions of Condition 30(g).

If the independent peer reviewer is unable to confirm the matters described in Condition 30(i)(i) and 30(i)(ii), the independent peer reviewer shall make recommendations to the Requiring Authority that address any concerns. The Requiring Authority shall provide the peer review assessment to DOC and the KFG for comment. The Requiring Authority must consider any comments on the assessment that are provided by DOC or the KFG within 10 working days of receipt of the report.

(j) The Requiring Authority shall consider the peer review assessment and any comments from DOC and the KFG and shall update the Bat Monitoring Report prepared under Condition 30(g), including identifying how any comments from the peer reviewer, DOC or the KFG have been addressed. If required, the Bat Management Chapter and the Pest Management Chapter of the ELMP shall be updated to reflect the findings of the Bat Monitoring Report.

(k) The Bat Monitoring Report and any amendments to the ELMP shall be provided to the Planning Lead (or Nominee), for Certification that the recommended PMA is the Confirmed PMA. Certification of the Bat Monitoring Report and any amendment to the ELMP shall be carried out in accordance with the Certification process set out in Condition 11.

(kk) If the PMA has been recommended in accordance with Scenario 3 or Scenario 4, the Planning Lead (or Nominee) shall seek advice or recommendations from the Ecological Review Panel as part of the Certification process under Condition 30(k).

(kkk) If the PMA has been recommended in accordance with Scenario 4, the amendment to the ELMP shall address how the residual ecological effects of the Project are offset or compensated for at the Alternative PMA, including the residual effects on long-tailed bats, avifauna and vegetation.

(l) A copy of the final certified Bat Monitoring Report and any changes to the ELMP shall be provided to DOC and the KFG.

(m) The Requiring Authority shall implement the findings of the final Bat Monitoring Report and Bat Management and Pest Management ELMP Chapters, including the location of the PMA, in accordance with Condition 29(h)(iii).

(n) Works shall not commence until Conditions 30(a) to 30(l) have been met.

(o) For the avoidance of any doubt, the final PMA shall be a single 3,650 ha area, unless otherwise agreed by the Transport Agency.

31. Monitoring of the ecological mitigation and biodiversity offset and compensation measures required in Conditions 29(a) to (h) shall be undertaken by the Requiring Authority in accordance with the details set out in Schedule 1.

32. (a) The Requiring Authority shall prepare an annual monitoring report describing the findings of all monitoring undertaken in the previous 12 months pursuant to Condition 31. The annual monitoring report shall be prepared by a suitably qualified ecologist. This report shall include an assessment of the effectiveness of the ELMP in achieving compliance with the measures required in Condition 29 and Schedule 1, and if necessary, the actions to be undertaken to achieve compliance with Condition 29 and Schedule 1, including identifying any necessary updates required to the ELMP. The Requiring Authority shall provide a copy of the annual report to the KFG and DOC. The report shall be submitted to the Planning Lead (or Nominee).

(b) Annual reporting under Condition 32(a) shall cease one year following Completion of Construction Works other than monitoring to assess the effectiveness of the PMP.

(c) Reporting on the monitoring undertaken pursuant to Condition 31 to assess the effectiveness of the PMP in achieving compliance with Conditions 29(h)(iv) to (vi) shall be undertaken as follows:

- (i) Vegetation reporting – three reports in total, to be prepared following the 1st, 3rd and 5th year after the Completion of Construction Works.
- (ii) Avifauna reporting – four reports in total, to be prepared following the 3rd, 6th, 9th and 12th year after the Completion of Construction Works.
- (iii) Pest management reporting – at the end of every year after the Completion of Construction Works, on an ongoing basis.

(d) If necessary, the report shall identify any actions required to achieve compliance with Condition 29(h)(iv) to (vi), including identifying any updates required to the ELMP. The reporting shall be submitted to the Planning Lead (or Nominee) within 3 months of the completion of the monitoring. A copy of the report shall be provided to TRoNT and DOC.

(e) If the reporting required by Condition 32(a) identifies that actions are required to achieve compliance with Condition 29(h)(iv) to (vi) the Requiring Authority shall update the ELMP in accordance with the recommendations of the monitoring report within 2 months of the completion of the monitoring report. Any amendment to the ELMP shall be dealt with in accordance with Conditions 10 or 11. The Requiring

Authority shall implement any amendments to the ELMP made in accordance with this Condition.

Ecological Review Panel

33. (a) As soon as practicable following confirmation of the designation the Requiring Authority shall establish an expert ecological review panel. The expert panel shall:
- (i) Comprise three suitably qualified experts with skills in ecology and pest management. DOC, TRoNT, and the Requiring Authority shall each be invited to provide one member for this panel, whose names shall be agreed with the Planning Lead (or Nominee). From time to time, and if requested by the panel by agreement of all members, the Planning Lead (or Nominee) may appoint an additional expert in any or all of the following areas of ecology: terrestrial vegetation, terrestrial invertebrates, herpetofauna, avifauna, bats, freshwater ecology, or pest management to assist the panel in its functions. Any such additional expert panel members shall not be employees of either DOC, TRoNT or the Requiring Authority.
 - (ii) Provide expert advice and recommendations to the Planning Lead (or nominee) if such advice is required by Condition 11 or otherwise determined to be required by the Planning Lead (or Nominee). This shall include:
 - (1) Reviewing any material amendments to the ELMP under Condition 11.
 - (2) Reviewing the location and design of kiwi exclusion fencing, provided in accordance with Condition 29(d)(i).
 - (3) Reviewing the pest management methods to be employed in the PMA.
 - (4) Reviewing the results of pest monitoring and any changes to the pest management methods in the PMP needed to achieve the pest densities set out in Condition 29(h)(iv).
 - (5) Reviewing the reporting required under Condition 32.
 - (6) Reviewing the Bat Monitoring Report if Scenario 3 in Condition 30(g) is used to recommend the PMA.
 - (7) Reviewing the Bat Monitoring Report, and any necessary amendments to the ELMP, if Scenario 4 in Condition 30(g) is used to recommend the PMA. If the PMA has been recommended in accordance with Scenario 4, the Ecological Review Panel shall consider:
 - A. Whether the Panel requires additional expertise to assess the Bat Monitoring Report. If the Panel considers additional expertise is required, experts shall be appointed in accordance with Condition 33(a)(i).

B. Whether the residual ecological effects of the Project are offset or compensated for at the Alternative PMA, including the residual effects on long-tailed bats, avifauna and vegetation.

C. Whether the amendments made to the ELMP in relation to the Alternative PMA, and in particular to the Pest Management Plan, will offset or compensate for the Project's residual effects and achieve the objectives stated in Schedule 1 and in the ELMP. The Ecological Review Panel may recommend amendments to the ELMP.

D. Prior to recommending any amendments to the ELMP in accordance with Condition 33(a)(ii)(7)C above, the Ecological Review Panel shall consult with the experts employed by the Requiring Authority to prepare the Bat Monitoring Report and the amendments to the ELMP.

(iii) Before engaging the expert panel the Planning Lead (or Nominee) must notify the Requiring Authority.

(b) On receipt of an itemised invoice the Requiring Authority shall pay all reasonable costs associated with the engagement of the expert panel.

(c) The Ecological Review Panel shall remain in place until all actions under Condition 33(a)(ii) have been completed.

Accidental Discovery Protocol

34. The Requiring Authority shall rely on P45, the NZ Transport Agency Accidental Discovery Protocol and implement that protocol throughout Works. P45, the Transport Agency Accidental Discovery Protocol, shall be reviewed by the KFG and modified to:

(a) reflect the site specific Project detail; and

(b) be consistent with any archaeological authority issued by Heritage New Zealand under the *Heritage New Zealand Pouhere Taonga Act 2014* applying to the Project.

Advice Note: The Ministry for Culture and Heritage must also be advised of any artefact finds within 28 days of the discovery in accordance with the Protected Objects Act 1975. The final repatriation of artefacts is a matter for the Ministry of Culture and Heritage in consultation with iwi.

35. The Accidental Discovery Protocol referred to in condition 34 shall not apply, and need not be implemented, in the event that:

(a) the Project is subject to an archaeological authority granted under section 48 of the *Heritage New Zealand Pouhere Taonga Act 2014* (or the corresponding provision in any legislation replacing that Act); and

(b) that authority provides for a protocol to be implemented in the event of discovery of cultural or archaeological artefacts or features during the construction of the Project, including the matters provided in condition 34.

Advice Note: The purpose of this condition is to ensure consistency between these conditions and the conditions imposed on any archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014.

Advice note: Archaeological Authority 2019/057 was granted by Heritage New Zealand Pouhere Taonga on 28th August 2018. Implementation of the Authority would meet the requirements of Condition 35(a) and (b).

Access

36. The Requiring Authority shall, as far as reasonably practicable, maintain access to the Kiwi Road and Mt Messenger Tracks during construction.
37. The Requiring Authority will ensure that reasonable vehicular access is maintained during the Project to the properties currently served by the section of SH3 that will be bypassed or otherwise affected by the Project.

Network utilities

38. Works within the designation shall be undertaken in accordance with the National Code of Practice for Utility Operators' Access to Transport Corridors (September 2016), or any approved update to that code.

Construction Lighting

39. The Requiring Authority shall implement procedures at all times during construction to manage lightspill (if any) to residential properties from any night lighting that is required on the site, in accordance with AS 4282 – 1997 "Control of the Obtrusive Effects of Outdoor Lighting". Construction lighting shall also be managed in a manner which reduces, to the extent that is reasonably practicable, adverse light overspill effects on nocturnal fauna.

Operational Lighting

40. Lighting installed at the tie-ins points with the existing SH3 and the tunnel shall be designed and screened to minimise the amount of light overspill and illumination received at residential dwellings and to reduce adverse effects on bats and other nocturnal fauna. The Requiring Authority shall:
 - (a) Demonstrate that all lighting designed in accordance with "Road lighting Standard AS/NZS1158"; and
 - (b) Provide written verification to the Planning Lead from an ecologist that the lighting has been designed to reduce adverse effects on nocturnal fauna.

Engineering Review

41. Prior to construction of any Stage (or Stages) of the Works, the Requiring Authority shall provide written confirmation to the Planning Lead (or Nominee) that peer review of geotechnical and structural detailed design has been carried out by an

independent and suitably qualified and experienced engineer(s), with particular emphasis on ensuring that detailed design manages the significant risks from natural hazards. Upon receipt of the peer review for any Stage (or Stages) of Construction Work the Planning Lead (or Nominee) shall confirm by writing to the Requiring Authority that the requirements of this condition are met.

41A. Prior to the Completion of Construction Works, the Requiring Authority shall provide the Planning Lead (or Nominee) with the detailed design and operational details of the tunnel. This shall be accompanied by the results of a safety audit of the tunnel carried out for the Requiring Authority by a suitably qualified, experienced and independent road safety auditor, which includes but is not limited to, consideration of:

(a) the effects of wind on cyclists within the tunnel from both passing vehicles and naturally occurring high winds outside the tunnel;

(b) the position of side protection barriers and the safety tunnel wall correlated to near-side shy line requirements;

(c) the width of the shoulder and other tunnel dimensions; and

(d) the appropriate and safe speed limit for vehicles in the tunnel.

Upon receipt of the detailed design and operational details of the tunnel and the safety audit of the tunnel the Planning Lead (or Nominee) shall confirm by writing to the Requiring Authority that the requirements of this condition are met.

General Monitoring

42. On receipt of an itemised invoice, the Requiring Authority shall pay to the New Plymouth District Council all the administration, monitoring and supervision costs of these Conditions, fixed in accordance with section 36 of the Resource Management Act, 1991.

Completion of Construction Works

43. (a) As soon as practicable following Completion of Construction Works, the Requiring Authority shall notify the Planning Lead (or Nominee) that Construction Works are complete. The notification shall include a list of the Construction Works completed, and be accompanied by maps to show the location of the completed works. This shall include the identification of:

(i) areas of landscaping and reinstatement; and

(ii) all areas of restoration and riparian plantings required under Condition 29(a)(ii) and 29(g)(ii) and notice of whether the plantings have been completed.

(b) If Completion of Construction Works is to occur more than six months following the operation of the new State highway commencing, the Requiring Authority shall notify the Planning Lead (or Nominee) of the expected date for Completion and Construction Works. This date shall be no more than 18 months following the operation of the new road.

Upon receipt of the notice of under 43(a) the Planning Lead (or Nominee) shall confirm in writing to the Requiring Authority that the requirements of this condition are met.

Kiwi Road Track Access Parking

44. Unless otherwise agreed with the Planning Lead (or Nominee), prior to the Completion of Construction Works the Requiring Authority shall construct a carpark area to provide parking for the users of the Kiwi Road Track. This carpark area shall be in accordance with the drawing titled "Indicative Carpark Layout", reference MMA-DES-GEM-E1-FIG-0022 Rev A.

SCHEDULE 1: REQUIREMENTS ADDRESSED IN THE ELMP

- 1. Overarching objectives and matters addressed in the ELMP**
 - a) The objectives of the Ecology and Landscape and Management Plan (**ELMP**), dated October 2018, are to:
 - i. identify how the potential adverse effects of the Project on the ecological, landscape and biodiversity values within the Project Area and its surrounds will be avoided, remedied, mitigated, offset and compensated for, including on: vegetation / habitats (including wetlands); herpetofauna (lizards and frogs); bats; avifauna; peripatus; fish, kōura and kākahi; and streams; and
 - ii. achieve a net gain in biodiversity after the residual effects on biodiversity have been offset or compensated for.
 - b) The ELMP includes a summary of the ecological and landscape values and effects of the Project.
 - c) The ELMP comprises a series of sub-management plans that address the designation and resource consent conditions, including: Landscape and Vegetation Management Plan; Bat Management Plan; Avifauna Management Plan; Herpetofauna Management Plan; Freshwater Management Plan; Pest Management Plan; Peripatus Management Plan; and Biosecurity Management Plan.
 - d) The ELMP also describes:
 - i. The physical mechanisms (e.g. fences) to protect the restoration and riparian planting from clearance and / or livestock, on an ongoing basis.
 - ii. The necessary rights to carry out the restoration and riparian planting, and to carry out the required pest management where these activities are to occur on land that is not owned by the Requiring Authority.
 - iii. The measures proposed for biosecurity management, including the management of risk associated with myrtle rust, and the management of pest plants and pest animals.
 - e) The ELMP includes maps showing:
 - i. existing vegetation types for all areas of proposed mitigation plantings, to determine if these will result in habitat gain;
 - ii. the location and extent of the stream reaches proposed for restoration works;

iii. the location and extent of the Intended PMA.

- f) The ELMP contains details of monitoring and reporting to the Planning Lead (or Nominee) prior to, during and post-construction to determine if the ELMP objectives and the performance measures are being met, including a repeatable monitoring design incorporating adaptive management responses.
- g) The ELMP includes details of the roles and responsibilities of key staff responsible for implementing the ELMP and procedures for training of contractors and other Project staff regarding the ELMP.
- h) ELMP includes details of the process for reviewing and amending the Plan, in accordance with the Conditions of the Designation and Resource Consents.

2. Landscape and Vegetation Management Plan

Specific objectives

The Landscape and Vegetation Management Plan addresses:

- a) Details of the method for a pre-construction survey of wetland vegetation composition and structure to assist planning for the swamp forest restoration planting.
- b) The retention, where possible, of the high value ecological areas identified in Figures 4.1 and 4.2 in the ELMP dated 31 October 2018.
- c) Provisions for the relocation or cultivation of threatened plants found within the Project Area.
- d) Details of how, prior to vegetation removal, the appropriate delineation of vegetation to be cleared will be made.
- e) A programme for vegetation clearance that allows for vegetation to be cleared only prior to Works beginning in any particular Stage (or Stages) of the Project Area in order to reduce habitat effects and reduce the potential for erosion and sediment generation.
- f) The staging of restoration planting and landscape treatments in relation to the construction programme to reduce the potential for erosion and sediment generation. Where practicable restoration planting shall commence after the completion of any Stage of Construction Work.
- g) Provisions for the cultural use of significant trees by Ngāti Tama.
- h) The supervision of vegetation clearance by a suitably qualified person.
- i) Landscaping design and treatments (landform and planting),

including rehabilitation of all areas used for temporary work and construction yards.

- j) The location, details and principles for achieving the following restoration planting, including identification (maps) of where the restoration planting will take place:
- i. At least 6 hectares of kahikatea swamp forest.
 - ii. At least 9ha of mitigation planting using an appropriate mix of plant seedling.
 - iii. Planting of saplings in ecologically appropriate sites at a loss to replacement ratio of 1:200 on a 'like for like' species basis for each significant tree that is felled.
 - iv. All new plantings must be eco-sourced from the North Taranaki Ecological District.
 - v. The Requiring Authority shall complete all restoration planting within three planting seasons of the Completion of Construction Works, unless natural conditions during Construction Works result in poor seed production, or poor seed condition and adversely limits seedling propagation for indigenous plant species, in which case completion would be delayed to reflect the availability of suitable seedlings.
 - vi. Should there be a delay in the completion of restoration planting due to the availability of suitable seedlings as described in v above, the Requiring Authority shall provide the Planning Lead (or Nominee) with an amended timeframe, which shall not exceed three planting seasons, and shall complete the planting as soon as reasonably possible within the agreed timeframe, informing the Planning Lead (or Nominee) when planting is complete.
- k) Provisions to monitor and manage all planting so that plants establish and those that fail to establish are replaced, such that the listed performance measures are met within their specified timeframes.

Performance measures

- l) The Landscape and Vegetation Management Plan addresses the following performance measures.
- i. For each significant tree felled, 90% survival of the 200 planted trees required by j)iii at 6 years following planting. If 90% plant survival has not been achieved within 6 years following planting, any necessary replacement planting and planting maintenance shall continue beyond year 6 until 90% survival is achieved.
 - ii. 80% canopy cover 6 years following planting for all restoration

planting required by j)i and j)ii, in the areas where trees and shrubs are planted. If 80% canopy cover is not achieved at 6 years following planting, any necessary replacement planting and planting maintenance shall continue beyond year 6 until 80% canopy cover is achieved.

- iii. For kahikatea swamp forest planting required by j)i, kahikatea forming 16% of the tree canopy at year 10. Additional kahikatea will be planted in the areas where the kahikatea contribution to the canopy is less than 16%.
- iv. 65% canopy cover at year 35 for kahikatea swamp forest planting required by j)i.

Monitoring

The Landscape and Vegetation Management Plan includes the following survey and monitoring requirements.

- m) Provision to measure the extent of actual vegetation clearance within 6 months following the completion of Establishment Works and to reassess the extent of restoration planting required under j)ii and j)iii. The Requiring Authority shall prepare and provide a report to the Planning Lead (or Nominee) confirming the restoration planting required to achieve the amount specified under j)ii and j)iii. If additional restoration planting is required, the extent of the restoration planting required shall be identified in the report. If the recalculation results in lesser restoration planting area than that specified in j)ii and j)iii, the restoration planting shall remain as that required under j)ii and j)iii. The report shall be provided to the Planning Lead (or Nominee) for Certification that the additional planting is in accordance with the restoration planting required under j)ii and j)iii.
- n) Provision to undertaken post-construction monitoring of vegetation condition for all restoration planting to demonstrate that the performance measures for the Landscape and Vegetation Management Plan have been met. The monitoring shall be undertaken, as required, until such time as all of the performance measures have been shown to be achieved.

3. Bat Management Plan

Specific objectives

The Bat Management Plan addresses the following matters:

- a) Provision for a long-tailed bat radio tracking programme to identify long-tailed bat roost locations and confirm the PMA location.

- b) Vegetation Removal Protocols (VRP) for:
- i. the 17 significant trees.
 - ii. all other trees that are ≥ 80 cm Diameter at Breast Height (DBH), and trees between 15cm and 80cm DBH which are considered by a specialist bat ecologist as having features suitable for bat roosting, including:
 - cracks, crevices, cavities, fractured limbs, or other deformities, large enough to support roosting bat(s);
 - sections of loose flaking bark large enough to support roosting bats;
 - a hollow trunk, stem or branches;
 - deadwood in canopy or stem of sufficient size to support roost cavities or hollows;
 - guano, grease marks and/or urine staining around cavity entrances; and
 - selected individual trees with high epiphyte loading (five or more perched nested epiphytes located on horizontal branches).
 - iii. all trees shown through the bat monitoring programme to be Roosts.

Advice Note: the VRP shall not apply to the removal of any other vegetation.

- c) When Automatic bat detectors (ABMs) are used to determine the presence of bats around potential roost trees, provision for monitoring to occur for a minimum of three consecutive nights.
- d) Provision for consultation with the DOC Operations Manager New Plymouth District Office to discuss appropriate actions if a bat roost remains occupied for longer than 7 days.
- e) Other than the amendments made through a) to c) above, the VRP shall be in accordance with Annex DH of the 'NZ Transport Agency (the Transport Agency) research report 623 'Effects of land transport activities on New Zealand's endemic bat populations: reviews of ecological and regulatory literature' (Smith et al. 2017)' and set out in the ELMP after modification to account for local conditions.

Performance outcomes

- f) The performance outcomes for bats will be achieved by the successful implementation of the VRP and by pest management in the PMA (refer to Pest Management Plan).

Monitoring

- g) There are no specific monitoring requirements for bats, other than those associated with the implementation of the VRP and the monitoring for pest management in the PMA.

4. Avifauna Management Plan

Specific objectives

The Avifauna Management Plan addresses the following matters;

- a) Measures to detect and protect kiwi from the likelihood of direct mortality during the construction and operation of the road, including:
- i. A North Island brown kiwi radio-tracking programme, prior to and during construction, along the entire length of the road corridor, conducted by a suitably qualified ecologist.
 - ii. Provision for the capture and relocation of kiwi and/or their eggs during construction, if deemed appropriate by the kiwi expert, and in accordance with DOC best practice for kiwi (2018).
 - iii. Based on the outcome of radio-tracking and the identification of kiwi territories, details on the design, installation and ongoing maintenance of kiwi exclusion fencing at locations where:
 - (1) the territories identified by the tracking and monitoring in (i) straddle the road corridor; and
 - (2) the Project ecologist considers there is a high risk of kiwi being able to enter the road corridor at these locations.
- This will direct kiwi to culvert locations where they can underpass beneath the road during low stream flow conditions. The design and location of these fences shall be discussed with the DOC Operations Manager New Plymouth District.
- iv. Provision for the placement of appropriate road signage along the new road corridor to warn motorists about the possible presence of kiwi.
- b) Measures to provide for the detection of kōkako in the construction area and to prevent disturbance from construction, along with measures outlining the subsequent actions to be taken that avoid disturbance in the event that any nesting kōkako or their nests be detected within the Project Area. Notification shall be provided to DOC Operations Manager New Plymouth District Office, TRoNT, and the Planning Lead (or Nominee) within 2 hours of kokako being detected. Appropriate response actions shall be implemented immediately to avoid disturbance.

- c) Monitoring of Australasian bittern using automatic acoustic bird monitors at the Mimi wetland and in the Mangapepeke Valley prior to construction. If bittern are detected, notification must be provided to the DOC Operations Manager New Plymouth District Office within two days of the data from the automatic acoustic bird monitor being analysed. The Requiring Authority shall design, install and maintain low fencing adjacent to the road corridor at marshland locations where bittern are recorded, prior to operation of the road.

Performance outcomes

- d) The performance outcomes for avifauna will be achieved by the successful implementation of the measures outlined above under a) to c) for kiwi, kōkako and Australasian bittern and by pest management in the PMA (refer to Pest Management Plan).

Monitoring

The Avifauna Management Plan includes the following survey and monitoring requirements:

- e) Details of up to 1 year of post-construction monitoring utilising motion detection cameras deployed at selected locations to assess the effectiveness of the exclusion fences and use of the culvert underpasses by kiwi.
- f) Details of a survey involving the placing of automatic acoustic bird monitors for bittern in the Mimi wetland and Mangapepeke Valley in the spring of 2018.
- g) Additional avifauna monitoring associated with the Pest Management Plan is set out in Section 7 below.

5. Herpetofauna Management Plan

Specific objectives

The Herpetofauna Management Plan addresses the following matters:

- a) Provision for (limited) salvage effort for lizards that may be located on vegetation cleared within the Project Area, focusing on high value habitat and known lizard locations. The provisions shall also include details on the relocation and release of salvaged striped skink at the Rotokare Scenic Reserve and other lizards into the PMA.
- b) Provision for the development of a management plan for Hochstetter's frog (*Leiopelma aff. hochstetteri*) and Archey's frog (*Leiopelma archeyi*), if they are discovered in the Project Area.

Performance outcomes

- c) The performance outcomes for herpetofauna will be achieved by the successful implementation of the salvage measures outlined in a) above.

Monitoring

- d) The Herpetofauna Management Plan includes: provision for recording the details of any salvaged lizards, including: species, sex, age class, weight, snout to vent length, and location of capture and release. All records shall be reported to the BioWeb Herpetofauna database.

6. Freshwater Management Plan

Specific objectives

The Freshwater Management Plan addresses the following matters:

- a) The design and construction of reinstated and diverted streams in accordance with the Stream Ecological Design Principles attached to the LEDF. 798m² of remediated stream diversions will be restored, through riparian planting, and livestock exclusion. Riparian margins of an average of 10m each side of the stream will be created and planted.
- b) The measures to maintain fish passage in all affected waterways as a result of permanent culverts (with the exception of culverts 2, 10 and 13), which shall be informed by the New Zealand Fish Passage Guidelines for Structures Up to 4 Metres (2018).
- c) Riparian planting and exclusion from livestock of at least 10,738m² of existing stream within the Mimi and Mangapepeke catchments. Riparian margins of an average of 10m each side of the channel shall be created and planted. Together with (a) this will create 11,536m² of stream restoration. Should culvert or stream diversion lengths be increased in the detailed design stage of the Project, the length of riparian planting required shall be re-calculated using the same Stream Ecological Valuation (SEV) method used to derive the 10,738m² figure (note that provisions are addressed in the Landscape and Vegetation Management Plan).
- d) The Requiring Authority shall complete all riparian planting within three planting seasons of the Completion of Construction Works, unless natural conditions during Construction Works result in poor seed production, or poor seed condition and adversely limits seedling propagation for indigenous plant species, in which case completion would be delayed to reflect the availability of suitable seedlings.
- e) Should there be a delay in the completion of riparian planting due

to the availability of suitable seedlings as described in d) above, the Requiring Authority shall provide the Planning Lead (or Nominee) with an amended timeframe, which shall not exceed three planting seasons, and shall complete the planting as soon as reasonably possible within the agreed timeframe, informing the Planning Lead (or Nominee) when planting is complete.

- f) Fish Recovery and Rescue Protocols, including addressing:
 - i. How the recovery and relocation of fish, kōura and kākahi will occur prior to instream works.
 - ii. How the rescue of fish, kōura and kākahi will occur from any spoil.
 - iii. The qualifications and experience required for fish recovery/rescue work.
 - iv. Details of fish recovery, relocation and rescue methods to be used.

Advice Note: Details of the water quality monitoring, response process and measures to address potential adverse effects of sediment and other contaminant discharges to waterways during construction, including streams and wetlands, are set out in the Construction Water Management Plan and the Construction Water Discharges Monitoring Plan.

Performance outcomes

The Freshwater Management Plan includes the following performance measures:

- g) Provision of fish passage through all permanent culverts, except culverts 2, 10 and 13.
- h) Implementation of stream diversions and riparian planting to achieve successful colonisation by aquatic biota, and to match existing habitat types compared with the original stream reach affected.
- i) For the riparian planting required by (c) the plantings shall achieve 80% canopy cover 6 years following planting in the areas where trees and shrubs are planted. If 80% canopy cover is not achieved at 6 years following planting, any necessary replacement planting and planting maintenance shall continue beyond year 6 until 80% canopy cover is achieved.

Monitoring

The Freshwater Management Plan includes the following survey and monitoring requirements:

- j) Provision for monitoring the fish passage performance after peak upstream migration (August – December) upstream of culverts 9, 15 and 18 annually for two years after construction is completed. The

monitoring will be used to determine if recruitment is occurring by assessing if a suitable age structure (juvenile and adult fish) is present within the fish population above culvert 9 and culvert 15. If after 2 years the recruitment of young fish is not occurring then refinements to the culvert fish passage devices will be made.

- k) Provision for monitoring of macroinvertebrates and fish at 3 selected locations in each of the Mangapepeke and Mimi catchments.
 - i. Pre-construction and construction phase fish monitoring will be undertaken during base flow conditions at least two weeks following any large flood event in spring (October to December) and summer (February to April). Fish surveys will use methods consistent with the New Zealand freshwater fish sampling protocols (Joy et al. 2013). Fish will be identified, counted and lengths recorded.
 - ii. Pre-construction and construction phase aquatic macroinvertebrate monitoring will be undertaken during base flow conditions at least two weeks following any large flood event in spring (October to December) and summer (February to April). Aquatic macroinvertebrate surveys will use methods consistent with Protocols for sampling macroinvertebrates in wadeable streams (Stark et al. 2001). For each site the area sampled and type of stable habitat sampled will be recorded. The following metrics will be calculated from the aquatic macroinvertebrate data: taxa richness, Macroinvertebrate Community Index (MCI), Quantitative Macroinvertebrate Community Index (QMCI), %EPT taxa and %EPT abundance. EPT (Ephemeroptera-Plecoptera-Trichoptera) metrics will exclude the species *Oxyethira* and *Paroxyethira*. Following at least one year of baseline monitoring and one year of construction monitoring, aquatic macroinvertebrate monitoring will be reduced to annual monitoring if there is less than 20% change in QMCI or MCI comparable to baseline sampling.
- l) Provision for pre-construction and construction phase sediment deposition monitoring at a site within the raupo reedland, downstream of the Mimi Stream tributary draining the tunnel portal, located upstream of the Mimi swamp forest. This involves monitoring change in sediment accumulation e.g. artificial astroturf attached to a tray. The purpose of the monitoring is to assess sediment deposition that might extend from the end of the stream to the Mimi swamp forest. The monitoring will follow selected heavy rain events prior to the commencement of construction and in response to specific rainfall events during construction (set out in the Construction Water

Discharge Monitoring Programme in Appendix C of the CWMP).

7. Pest Management Plan

Specific objectives

The Pest Management Plan addresses the following matters:

- a) The identification of the confirmed location for the 3,650ha Pest Management Area (PMA).
- b) Within the PMA, to:
 - i. reduce and maintain rats, possums, feral cats and mustelids to low levels in perpetuity.
 - ii. reduce and maintain feral goats and pigs to low densities in perpetuity.
 - iii. exclude farm stock in perpetuity.
 - iv. monitor and control wasps along the road corridor during construction and through to the conclusion of a 6 year plant maintenance period.
- c) To generate biodiversity benefits within the PMA across a wide range of plants and animals.
- d) An adaptive management approach to enable pest management techniques to be modified if target pest densities and the performance outcomes for avifauna identified below are not met.

Performance outcomes

The Pest Management Plan includes the following performance measures:

- e) The following target pest densities in the PMA, measured immediately prior to the breeding season (for bats and birds) and then through the critical stages when young remain in the roost / nest:
 - i. rat species – ≤5% tracking tunnel index;
 - ii. mustelids – no detections;
 - iii. cats – no detections;And throughout any year, the following target pest densities in the PMA:
 - a. possums – ≤5% chew card index;
 - b. goats and deer - <1 kill per hunter/day;
 - c. feral pigs - <1 kill per hunter/day; and
 - d. farm livestock – zero presence.
- f) For palatable plant species:
 - i. The recruitment of vegetation species which are currently suffering ungulate induced recruitment failure. Indicator

species will include: mahoe, hangehange, large leaved coprosma spp., pate, wineberry, tawa, hinau, kamahi and pikopiko.

- ii. Recovery of condition of possum palatable trees. Indicator species will focus on measuring changes in foliage density of small trees such as; swamp maire, mahoe, kaikomako, northern rata and thin-barked totara.
- g) A statistically significant 20% increase in relative abundance for kiwi, tui, bellbird, kereru, whitehead, long-tailed cuckoo, fernbird, and North Island Robin in the PMA within 12 years of the Completion of Construction Works.

Monitoring

The Pest Management Plan includes the following survey and monitoring requirements within the PMA.

- h) Provision for monitoring pest levels to assess performance targets and enable adaptive management processes in the event targets are not met.
- i) Provision for a quantitative assessment of canopy condition and understorey condition to establish pre-pest management and post-pest management vegetation condition knowledge for the PMA, including the composition and abundance of palatable vegetation.
- j) Provision for monitoring avifauna prior to commencement of pest management in the PMA to establish a relevant baseline, including for kiwi, kōkako, forest birds and fernbird.
- k) Provision for outcome monitoring of kiwi, tui, bellbird, kereru, whitehead, long-tailed cuckoo, fernbird, North Island Robin conducted for 12 years, at 3-yearly intervals, following the onset of the pest management measures.

8. Peripatus Management Plan

Specific objectives

The Peripatus Management Plan addresses the following matters:

- a) The specific procedures to avoid, remedy or mitigate adverse effects associated with the construction and operation of the Project on peripatus species through salvaging peripatus contained within suitable selected peripatus habitat into a suitable relocation site outside of the Project Area.

Performance outcomes

The Peripatus Management Plan includes the following performance measures:

- b) To salvage peripatus contained within suitable selected peripatus habitat locate and capture peripatus from the proposed Project Area, and to successfully relocated it at predetermined release sites, immediately adjacent to the Project Area, with minimal stress caused to the animals.

Monitoring

- c) There are no specific monitoring requirements for peripatus.

9. Biosecurity Management Plan

Specific objectives

The Biosecurity Management Plan addresses the following matters:

- a) The biosecurity measures to avoid the likelihood of spread or introduction of invasive pest plants and pest animals as a result of Project-related activities.
- b) Specific provisions for the minimisation of spread of Myrtle Rust onto and along the Project Area;
- c) Measures to avoid the introduction to the Project Area of invasive pest plants and animals with nursery produced seedlings

Performance outcomes

- d) Non-detection in the planting areas of pest plants and pest animals.

Monitoring

The Biosecurity Management Plan includes the following survey and monitoring requirements within the Project Area:

- e) Provision for pest plant and pest animal surveillance to be carried out by suitably qualified personnel within the Project Area and at restoration planting areas for the first growing season of any new plantings.
- f) Before-delivery inspections by suitably qualified personnel for invertebrate and plant pests at the premises of supplier nurseries of plant material being grown for planting in the Project Area and mitigation sites.

g) Before construction walk-through survey of the Project Area by suitably qualified personnel to identify plant and animal pests and plant diseases already present.

Glossary of Abbreviations and Terms Used in Conditions	
ADP	Accidental Discovery Protocol
AEE	Assessment of Effects on the Environment Report
CDMP	Construction Dust Management Plan
CEMP	Construction Environmental Management Plan
Certification	The process of the Requiring Authority or Consent Holder submitting to the NPDC or TRC a report or an amendment to a management plan, a design, or a drawing for technical confirmation that it complies with the technical requirements of these designation or resource consent conditions and the management plan to which the design or drawings relate.
CLMP	Contaminated Land Management Plan
Completion of Construction Works	When Construction Works for the Project are complete. Completion of the restoration plantings required under Condition 29(a) and the riparian plantings required under Condition 29(g) may occur after Completion of Construction Works. The Requiring Authority shall advise the Planning Lead (or Nominee) of the Completion of Construction Works in accordance with Condition 43.
Consent Holder	NZ Transport Agency
Construction Work(s)	<p>Main construction works, including:</p> <ul style="list-style-type: none"> • ground improvement works; • temporary and permanent drainage installation; • bulk earthworks (including cut and fill activities); • bridge and tunnel construction; • pavements and surfacing; • site reinstatement; • landscaping; and <p>installation of permanent road furniture and</p>

	ancillary works.
CNMP	Construction Noise Management Plan
CTMP	Construction Traffic Management Plan
COPTTM	NZ Transport Agency Code of Practice for Temporary Traffic Management
CTMP	Construction Traffic Management Plan
CWMP	Construction Water Management Plan
dBA	A unit of sound level which has its frequency characteristics modified by a filter (C-weighted) so as to account for the non-linear frequency response of the human ear at high noise level (typically greater than 100 decibels)
DOC	Department of Conservation
ELMP	Ecology and Landscape Management Plan
Establishment Work(s)	Progressively opening up and establishing the site, including: <ul style="list-style-type: none"> • construction and/or widening of roads/tracks to access construction areas and install sediment control measures (e.g. sediment control ponds); • vegetation clearance; • establishment of construction yards; • establishing full width access tracks/haul roads; • installing remaining erosion and sediment controls; and stream diversions.
Existing Network Utilities	All network utilities existing at the date of notification of the Notice of Requirement. Network utility has the same meaning as in section 166 of the Resource Management Act 1991
KFG	Kaitiaki & Stewardship Forum Group
LEDf	Landscape and Environment Design Framework
NPDC	New Plymouth District Council
Heritage New Zealand	Heritage New Zealand Pouhere Taonga
Maternity roost	A roost occupied by two or more long tailed

	bats, including at least one parous, pregnant, lactating or post-lactating female long-tailed bat and/or young bat of the year
Pest Management Area (PMA)	<p>The 3,650ha area that will be subject to pest management measures for biodiversity offsetting and compensation purposes.</p> <p>For the purpose of Condition 30, the following terms are also defined in relation to the Pest Management Area:</p> <ul style="list-style-type: none"> • Wider PMA: the area shown in Figure 9.2 in the ELMP, that has an area greater than 3,650ha, from which the Confirmed 3,650ha PMA may be selected through the process in Condition 30(g). • Intended PMA: the 3,650ha area shown in Figure 9.1 in the ELMP, that is within the Wider PMA and that may be selected as the Confirmed PMA through the process set out in Condition 30(g). • Confirmed PMA: the 3,650ha area that is selected as the PMA through the process set out in Condition 30(g). • Study Area: the area, including the Project Area, the Intended PMA and land beyond both, over which bats will be tracked, as shown in Figure 9.3 in the ELMP and from which the Confirmed PMA may be selected through the process set out in Condition 30(g). • Alternative PMA: The Waitaanga Valley, as shown in Figure 9.4 in the ELMP, that has an area greater than 3,650ha, from which the Confirmed PMA may be selected through the process set out in Condition 30(g).
Planning Lead	New Plymouth District Council Planning Lead for the Designation Conditions
PMP	Pest Management Plan
Project	The construction of a new section of SH3

	generally between Uruti and Ahititi, north of New Plymouth that is approximately 6km in length and located to the east of the existing SH3 alignment, comprising all associated Work in the area shown as the proposed designation in Figure 1.1 of the AEE
Project Area	The area shown as the proposed designation in Figure 1.1 of the AEE
Requiring Authority	NZ Transport Agency
RMA or 'the Act'	Resource Management Act 1991
SCWMP	Specific Construction Water Management Plan
SH3	State Highway 3
Stabilised Area	An area inherently resistant to erosion such as rock, or rendered resistant by the application of aggregate, geotextile, vegetation or mulch, or as identified in the Construction Water Management Plan. Where vegetation is to be used on a surface that is not otherwise resistant to erosion, the surface is considered stabilised once an 80% vegetation cover has been established.
Stabilisation	The activity to achieve a Stabilised Area
Stage or Staging	A stage of the Works to construct the Project as identified in the CEMP, CWMP or SCWMP
TRC	Taranaki Regional Council
TRoNT	Te Runanga o Ngāti Tama
VRP	Vegetation Removal Protocol
Work or Works	Establishment Works and Construction Works associated with the Project
Working Day	Has the same meaning as under section 2 of the Resource Management Act 1991

Schedule B – NES Conditions

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES)

Contaminated Land Management Plan

1. The Consent Holder shall implement the Contaminated Land Management Plan (CLMP) dated October 2018. The CLMP shall remain in place until the Completion of Construction Works.
2. The CLMP is, and shall remain, in general accordance with Ministry for the Environment Contaminated Land Management Guideline No. 1: Reporting on Contaminated Sites in New Zealand (Revised 2011). The CLMP includes procedures to manage the effects of contaminated or potentially contaminated soils on human health and the environment during ground disturbance activities, including the following:
 - (a) site establishment procedures;
 - (b) classification of soil to be disturbed;
 - (c) soil management procedures for off-site disposal; and
 - (d) unexpected discovery of contaminated material protocol and requirement to record and track placement of any such material if reused on-site.
3. On receipt of an itemised invoice, the Consent Holder shall pay to the New Plymouth District Council all the administration, monitoring and supervision costs of these consents, fixed in accordance with section 36 of the Resource Management Act, 1991.
4. Pursuant to section 125(1) of the Act, the consent referenced LUC18/ 47193 shall lapse 10 years from the date of commencement of the consents in accordance with section 116 of the Act.

Schedule C – Regional Resource Consent Conditions

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TRC REGIONAL RESOURCE CONSENT CONDITIONS

GENERAL CONDITIONS APPLYING TO ALL CONSENTS

GEN.1 (a) Except as modified by the conditions below, the Project shall be undertaken in general accordance with the information provided by the Consent Holder in the resource consent application dated December 2017, the Drawing Set provided at the Hearing, and the management plans dated October 2018.

(b) Where there is conflict between the documents listed in (a) above and these conditions, these conditions shall prevail. Where there is an inconsistency between the information and plans lodged with the resource consent application and information provided subsequently, the most recent plans and information shall prevail.

GEN.2 Pursuant to section 125(1) of the Act, the consents [referenced 10601-1.0, 10602-1.0, 10603-1.0, 10604-1.0, 10606-1.0, 10607-1.0, 10608-1.0, 10609-1.0, 10610-1.0, 10611-1.0, 10612-1.0, 10613-1.0, 10614-1.0, 10616-1.0, 10617-1.0, 10618-1.0, 10619-1.0, 10620-1.0, 10621-1.0, 10622-1.0, 10623-1.0, 10624-1.0, 10625-1.0, 10626-1.0, 10627-1.0, 10628-1.0, 10629-1.0, 10630-1.0, 10631-1.0, 10632-1.0, 10633-1.0, 10634-1.0, 10635-1.0, 10636-1.0, 10637-1.0, 10638-1.0, 10639-1.0, 10640-1.0, 10641-1.0, 10642-1.0, 10643-1.0, 10644-1.0, 10645-1.0, 10646-1.0, 10647-1.0, 10648-1.0, 10649-1.0, 10650-1.0, 10652-1.0, 10653-1.0, 10654-1.0, 10655-1.0, 10656-1.0, 10657-1.0, 10658-1.0, 10659-1.0, 10660-1.0 shall lapse 10 years from the date of commencement of the consents in accordance with section 116 of the Act.

GEN.3 Pursuant to section 123(c) of the Act, the consents [referenced 10601-1.0, 10602-1.0, 10603-1.0, 10604-1.0, 10606-1.0, 10607-1.0, 10608-1.0, 10609-1.0, 10610-1.0, 10611-1.0, 10612-1.0, 10613-1.0, 10614-1.0, 10616-1.0, 10617-1.0, 10618-1.0, 10619-1.0, 10620-1.0, 10621-1.0, 10622-1.0, 10623-1.0, 10624-1.0, 10625-1.0, 10626-1.0, 10627-1.0, 10628-1.0, 10629-1.0, 10630-1.0, 10631-1.0, 10632-1.0, 10633-1.0, 10634-1.0, 10635-1.0, 10636-1.0, 10637-1.0, 10638-1.0, 10639-1.0, 10640-1.0, 10641-1.0, 10642-1.0, 10643-1.0, 10644-1.0, 10645-1.0, 10646-1.0, 10647-1.0, 10648-1.0, 10649-1.0, 10650-1.0, 10652-1.0, 10653-1.0, 10654-1.0, 10655-1.0, 10656-1.0, 10657-1.0, 10658-1.0, 10659-1.0, 10660-1.0 shall expire 35 years from the date of commencement in accordance with section 116 of the Act.

GEN.4 In accordance with section 128 and section 129 of the Resource Management Act 1991, the Taranaki Regional Council may serve notice of its intention to review, amend, delete or add to the conditions of these resource consents by giving notice of review during the month of June annually, for the purpose of ensuring that the conditions are adequate to deal with any more than minor adverse effects on the environment arising from the exercise of this resource consent, which were either not foreseen at the time the resource consent applications were considered or which it was not appropriate to deal with at the time.

Cultural and stewardship protocols

GEN.5 At least three months prior to the Commencement of Construction, the Consent Holder shall invite mandated representatives of Ngāti Tama along with Mr Tony Pascoe and Mrs Debbie Pascoe to participate in a Kaitiaki and Stewardship Forum Group (KFG).

(a) The KFG shall, in addition to Mr and Mrs Pascoe, comprise up to 3 members who have been determined by Te Runanga o Ngāti Tama (TRoNT). From time to time, as appropriate, TRoNT may change their KFG membership (i.e. the 3 members determined by them), and may also invite other iwi, iwi representatives or other Ngāti Tama members to attend KFG meetings. TRoNT may appoint a chairperson to the KFG who would be responsible for confirming any advice from the KFG to the Consent Holder and who will oversee the implementation of KFG activities.

(b) The purpose of the KFG is to facilitate engagement between the Consent Holder, ~~and~~ Ngāti Tama, and the Mr and Mrs Pascoe as kaitiaki and stewards of their land, to enable ~~Ngāti Tama to provide~~ kaitiaki and stewardship inputs to the design and construction of the Project.

(c) The KFG will be invited to hold regular meetings (monthly) throughout the construction period. The KFG shall continue until six months after Completion of Construction.

(d) The Consent Holder shall record the main points arising from each meeting of the KFG, and shall provide a copy of that record to the meeting invitees within a reasonable time following the meeting.

The Consent Holder shall, on receipt of an itemised invoices, be responsible for paying all reasonable costs associated with the attendance at KFG meetings to provide the kaitiaki inputs described in Condition GEN.5 and Condition GEN.5(a).

For the avoidance of doubt, while the KFG participants listed in condition GEN 5(a) must be invited to attend each meeting, the non-attendance of any participant does not invalidate the KFG meeting.

GEN.5 (a) The KFG shall be invited by the Consent Holder to participate in the following (amongst other things):

(a) The development of the Project designs to incorporate cultural values into elements such as (but not limited to):

- (i) Cultural expression in artwork on road corridor features such as the tunnel, bridge and in landscape works and plantings.
- (ii) Water management principles.
- (iii) Biodiversity mitigation offset and compensation measures implemented as part of the ELMP required by Condition GEN.22.
- (iv) Signage of local features.

- (v) Naming of the new highway.
- (b) Review of the Accidental Discovery Protocol (as required by the NPDC Designation Condition 34) and any updates to this Protocol.
- (c) The development and implementation of agreed cultural protocols / tikanga appropriate to stages of the works or activities (for example: blessings, accidental discoveries, vegetation clearance, relocation of animals).
- (d) The development of cultural indicators covering matters such as (but not limited to) traditional association, mahinga kai and cultural stream health measures.
- (e) The development and implementation of a Cultural Monitoring Plan. The purpose of the Cultural Monitoring Plan is to set out the agreed cultural monitoring requirements and measures to be implemented during construction activities, to acknowledge the historic and living cultural values of the area to Ngāti Tama and of Mr and Mrs Pascoe in their kaitiaki role, and to minimise potential adverse effects on these values. The Plan shall be prepared by a person endorsed by the KFG and the Consent Holder. Where the provisions of the Plan are not agreed by the Consent Holder reasons for the disagreement will be provided in writing to TRoNT and added to the agenda for the next KFG meeting.

Community Liaison Person

- GEN.6 (a) The Consent Holder shall appoint a Community Liaison Person for the duration of the construction phase of the Project to be the main and readily accessible point of contact for persons affected by Construction Works. An alternative contact shall be provided, in the event the liaison person is unavailable, to ensure that a Project contact person is available by telephone 24 hours per day/seven days per week during the construction phase of the Project.
- (b) No less than one month prior to the commencement of Works, the Consent Holder shall advise all key project stakeholders listed in the CEMP of the liaison person's name and contact details.
- (c) The Consent Holder shall keep stakeholders and the wider public informed of the construction works, progress and timing and shall carry out communications in general accordance with the CEMP.

Complaints

- GEN.7 (a) At all times during implementation of the consents, the Consent Holder shall maintain a register of any complaints received alleging adverse effects from, or related to, the exercise of the consents. The record shall include:
- (i) the name and address (where this has been provided) of the complainant;
 - (ii) identification of the nature of the complaint;
 - (iii) location, date and time of the complaint and of the alleged event;

- (iv) weather conditions at the time of the complaint (as far as practicable), including wind direction and approximate wind speed if the complaint relates to air discharges;
- (v) the outcome of the Consent Holder's investigation into the complaint;
- (vi) measures taken to respond to the complaint; and
- (vii) any other activities in the area, unrelated to the Project, which may have contributed to the complaint (such as non-Project construction, fires, or unusually dusty conditions generally).

(b) The Consent Holder shall:

- (i) acknowledge the complaint within 2 working days;
- (ii) promptly investigate, identify the level of urgency in respect of the complaint and communicate that to the complainant; and
- (iii) take reasonable steps to remedy or mitigate the matters giving rise to the complaint, if there are reasonable grounds for the complaint, within 10 working days of receiving the complaint or such sooner time as may be reasonably necessary in the circumstances.

(c) The Consent Holder shall also maintain a record of its responses and any remedial actions undertaken.

(d) This record shall be maintained on site and shall be made available to the Chief Executive, TRC upon request. The Consent Holder shall provide the Chief Executive, TRC with a copy of the complaints register every month.

Advice Note: where for (b) and (c) there are a number of complaints relating to the same incident(s) the Consent Holder may bundle those complaints together and provide one response (to be provided to all complainants) in accordance with those conditions.

Incidents

GEN.8 The Consent Holder shall prepare procedures for incident management that outline how the Consent Holder will manage the incident and notify the Chief Executive, TRC of:

- (a) discharges from non-stabilised areas that are not treated by erosion and sediment control measures as required by the Construction Water Management Plan; and / or
- (b) failure of any erosion and sediment control measures; and / or
- (c) discharge of a hazardous substances or any other contaminants, including cement, to a water body; and / or
- (d) failure of any temporary stream diversion; and / or

(e) any other event that occurs in contradiction to a current management plan.

The procedures shall be consistent with the Management Plans required under Condition GEN.9 and provided to the Chief Executive, TRC on request.

Management Plans – General

GEN.9 All Works shall be carried out in general accordance with Condition GEN.1, the Landscape and Environmental Design Framework, and the management plans authorised by these resource consent conditions and dated October 2018, which are the Construction Environmental Management Plan (CEMP) and the plans attached as appendices to the CEMP:

(a) Ecology and Landscape Management Plan (ELMP) (those parts described under regional consent conditions GEN.22 and GEN.23);

(b) Construction Dust Management Plan (CDMP);

(c) Construction Water Management Plan (CWMP), including Specific Construction Water Management Plans (SCWMPs);

(d) Control of a Spill Procedure; and

(e) Incident Reporting and Investigation.

Advice note: In addition to the abovementioned plans, the CEMP also includes copies of the management plans and relevant documents required under the designation conditions but not for the resource consents, being: the remaining sections of the Ecology and Landscape Management Plan, the Construction Noise Management Plan (CNMP), Construction Traffic Management Plan (CTMP), Accidental Discovery Protocol ; and the Contaminated Land Management Plan (CLMP) required under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations, 2011 (NES Soil).

Requirements for these additional plans shall be determined in accordance with the relevant designation condition(s) and the NES Soil conditions in relation to the CLMP.

GEN.10 The management plans:

(a) provide the overarching principles, methodologies and procedures for managing the effects of construction of the Project to achieve the environmental outcomes and performance standards required by these conditions; and

(b) shall be maintained and implemented by the Consent Holder during Works and in the case of the ELMP, those matters that continue beyond the Completion of Construction Works.

GEN.11 No earthworks shall commence on site unless a Specific Construction Water Management Plan (SCWMP) is in place for that specific area of works and the SCWMP has been certified by the Chief Executive, TRC. A SCWMP can be based on a geographic area or based on a specific activity type.

Advice Note: The geographic basis for a SCWMP may be based on a specific chainage location along the alignment. The activity basis for a SCWMP may be based on having a SCWMP for a particular activity, such as shoulder widening, anywhere along the alignment.

- GEN.12 With the exception of the three SCWMPs provided at the Hearing (being SCWMPs for: Fill Disposal Site 4; Construction Yard; Crossing at CH570) the Consent Holder shall provide all SCWMPs to the Chief Executive, TRC, for certification at least 10 working days before the commencement of Works to which the SCWMP will apply.
- GEN.13 (a) The Consent Holder may make minor amendments to the management plans at any time. For the purpose of this condition, a 'minor amendment' is either a small change to the content of the Management Plan which has either no or a de minimis adverse environmental effect, or is a change which would result in an improved environmental outcome. Any changes to the management plans shall remain consistent with the objectives and performance standards of the management plan and the resource consent conditions.
- (b) The Consent Holder shall submit, in writing, the minor amendment to the Chief Executive, TRC at least 10 days before Works associated with the amendment are to be implemented. The Consent Holder shall maintain a record of all minor amendments.
- (c) If the Chief Executive, TRC considers that the amendment is a material amendment in accordance with Condition GEN.14, then it must notify the Consent Holder within 5 working days of receipt of the amendment and then consider the amendment in accordance with Condition GEN.14. If the Consent Holder does not receive notice from TRC under Condition GEN.13(c) any Works associated with the minor amendment may proceed.
- GEN.14 (a) The Consent Holder may make material amendments to the management plans at any time, subject to the certification of the Chief Executive, TRC. A material amendment is any amendment that is in general accordance with Condition GEN.1 but is not a minor amendment in accordance with Condition GEN.13.
- (b) Any material amendment to the management plans shall meet the objectives and performance requirements of the management plan and these resource consent conditions.
- (c) In the event of an amendment to a management plan under Condition GEN.14(a), the Consent Holder must submit, in writing, the amendment to the Chief Executive, TRC for Certification 20 working days before the commencement of the relevant Works. Certification shall confirm that the amendment is in accordance with Condition GEN.1 and meets the objectives and performance requirements of the management plan.
- (d) The Chief Executive, TRC will carry out its best endeavours to consider the material amendment within 10 working days of receipt of the material amendment, noting that expert input may be required before Certification can

be provided. If the Chief Executive, TRC is unable to consider the material amendment within 10 working days it shall notify the Consent Holder and advise a revised timeframe. Regardless, the Chief Executive, TRC will carry out its best endeavours to consider the material amendment within a total of 20 working days of receipt.

(e) Provided that the Consent Holder has not been advised of a revised timeframe under Condition GEN.14(d) the Chief Executive, TRC shall, no later than 10 working days of receipt of the material amendment, confirm in writing to the Consent Holder that the material amendment is either certified or declined, or shall request that the Consent Holder incorporate changes suggested by the Chief Executive, TRC. If a revised timeframe has been advised, confirmation shall be made in accordance with that timeframe.

(f) Should the Chief Executive, TRC decline to certify the material amendment or request the incorporation of changes to the material amendment the Consent Holder may then resubmit a revised material amendment to the management plan. The certification process for a revised material amendment shall follow the same process described above in Conditions GEN.14 (a) to (e).

(g) The resolution process stipulated under Condition 17 shall be followed:

(i) Where the Consent Holder and the Chief Executive, TRC are unable to agree on the finalisation of a material amendment to a management plan; or

(ii) Where the Consent Holder considers that the Chief Executive, TRC has not acted in accordance with Condition GEN.14(d) to consider the material amendment within a reasonable timeframe.

Works unaffected by the amendment may continue.

- GEN.15 This condition has been intentionally left blank
- GEN.16 All personnel involved with the construction of the Project shall be made aware of, and have access to, all conditions and management plans applicable to the construction of the Project, including any amendments to the management plans made under Conditions GEN.13 and GEN.14. Copies of these documents shall be kept on site at all times.
- GEN.17 (a) In the event of any dispute arising about the content of the management plans between the Chief Executive, TRC and the Consent Holder matters shall be referred in the first instance to the Chief Executive, TRC, and to the Consent Holder's Construction Manager (as described in the CEMP), to determine a process of resolution.
- (b) If a resolution cannot be agreed under (a) within 15 working days, the matter shall be referred within 10 working days to an independent appropriately qualified expert, acceptable to both parties ('expert'), setting out the details of the matter to be referred for determination and the reasons the parties do not agree.

(c) The expert shall, as soon as possible, issue a recommendation on the matter. The Chief Executive, TRC must notify its decision to the Consent Holder within 5 working days of receipt of the recommendation from the expert that the management plan is certified, declined, or request that the Consent Holder incorporate changes suggested by the Council.

GEN.18 The Consent Holder shall undertake an annual review of all management plans. This review shall include, but not necessarily be limited to:

(a) Reviewing compliance with the Project consent conditions, the CEMP and management plans.

(b) Reviewing any significant changes to construction activities or methods and/or unanticipated adverse effects resulting from the Construction Works.

(c) Any changes to roles and responsibilities within the Project team.

(d) Reviewing the results of inspections, monitoring and reporting procedures associated with the management of adverse effects during construction.

(e) Reviewing responses to any comments or recommendations from TRC regarding the CEMP and management plans.

(f) Reviewing responses to any comments or recommendations from the KFG or DOC regarding the CWMP and the ELMP made in the previous 12 months.

(g) Reviewing any unresolved complaints and any response to complaints and remedial action taken to address the complaint.

The outcome of this review shall be provided to the Chief Executive, TRC, and a copy shall be provided to the KFG and the Operations Manager of DOC New Plymouth District Office.

Where either the Consent Holder proposes, or the Chief Executive, TRC requests changes to management plans as a result of the Annual Review, any change to a management plan shall be made as soon as practicable and shall be subject to the provisions of Conditions GEN 13, 14 and 17.

Annual review of the management plans shall cease following Completion of Construction Works, except that review of the ELMP shall continue to be carried out in accordance with the reporting and review required under Condition GEN.26.

Advice note: comments or recommendations regarding the CEMP and management plans may also be received from NPDC under the designation conditions.

Construction Environmental Management Plan

GEN.19 The Consent Holder shall implement the Construction Environmental Management Plan (CEMP) dated October 2018, which provides the overarching framework to ensure that the Project remains within the limits and standards required by these conditions and that Works appropriately avoid, remedy, mitigate, offset or compensate for adverse effects on the environment. The

CEMP shall remain in place until the Completion of Construction Works, with the exception of those matters of the ELMP that continue beyond the Completion of Construction Works.

GEN.20 The CEMP includes details of:

- (a) key staff responsibilities and contact details, including emergency contacts;
- (b) training requirements for employees, sub-contractors and visitors;
- (c) environmental incident and emergency management (including the procedures required under regional consent condition GEN.8);
- (d) communication and interface procedures;
- (e) environmental complaints management (required under condition GEN.7);
- (f) compliance monitoring;
- (g) environmental reporting;
- (h) corrective action;
- (i) environmental auditing;
- (j) construction lighting;
- (k) rehabilitation of construction yards;
- (l) the methods to engage with stakeholders, including:
 - (i) how the community will be kept informed of progress with Works, including proposed hours of operation outside normal working hours and Project construction personnel contact details;
 - (ii) how the Consent Holder will engage with the community in order to foster good relationships and to provide opportunities for learning about the Project;
 - (iii) providing early information on key Project milestones;
 - (iv) identifying stakeholders such as landowners, road users, local community, iwi, regulatory authorities, industry, network utility operators, road maintenance contractors, emergency services;
 - (v) responding to queries and complaints (in accordance with condition GEN.6);
 - (vi) subject to any necessary health and safety requirements identified by the Consent Holder, provision for DOC staff (or their nominees) to gain reasonable access to the site during the construction period;
- (m) CEMP review (in accordance with condition GEN.18); and
- (n) Construction methodologies and construction timeframes, including Staging.

GEN.21 The Consent Holder shall appoint a representative(s) who shall be the TRC's principal contact person(s) in regard to matters relating to the resource

consents for the Project. The Consent Holder shall inform the Council of the representative's name and how they can be contacted, prior to the commencement of construction. Should that person(s) change during the construction of the Project, the Consent Holder shall immediately inform TRC and provide confirmation of the new representative's name and contact details.

GEN.21A Subject to any necessary health and safety requirements identified by the Consent Holder, the Chief Executive, TRC shall have access to all relevant parts of the Project Area at all reasonable times for the purpose of carrying out inspections, surveys, investigations, tests, measurements and/or to take samples.

Ecology and Landscape Management Plan

GEN.22 The Consent Holder shall implement the Ecology and Landscape Management Plan (ELMP) dated October 2018, which identifies how the Project will avoid, remedy, mitigate, offset and compensate potential adverse effects on the ecological, landscape and biodiversity values of the land (including the beds of rivers, lakes and streams) within the Project Area and its surrounds, including on:

- (a) vegetation / habitat (including wetlands);
- (b) fish, kōura and kākahi; and
- (c) streams.

GEN.23 The matters addressed in the ELMP are set out in Schedule 1 to these Conditions. Only the matters addressed Sections 1 (Objectives & matters addressed in the ELMP), 2 (Landscape Management Plan) and 6 (Freshwater Management Plan) of Schedule 1 are relevant to these Resource Consents.

GEN.23A (a) The Consent Holder shall provide a complete set of Ecological Constraints Maps covering the entire Project Area, as referred to in the ELMP. The Ecological Constraints Maps shall show the constraints identified in accordance with the ELMP and may be prepared to reflect the Stage or Staging of Works.

(b) The Ecological Constraints Maps for any Stage (or Stages) of Works shall be submitted to the Chief Executive, TRC for certification in accordance with Conditions GEN.13 or GEN.14.

(c) Should an amendment be required to the ELMP as a consequence of preparing the Ecological Constraints Maps, the amendment shall be submitted to the Chief Executive, TRC, in accordance with conditions GEN.13 or GEN.14.

(d) Once finalised in accordance with this condition, the Ecological Constraints Maps for each Stage (or Stages) of Work shall be inserted into Appendix A of the ELMP.

(e) Works associated with any Stage (or Stages) of the Project shall not commence until the Ecological Constraints Maps have been certified by the Chief Executive, TRC and inserted into the ELMP.

GEN.24 The Consent Holder shall undertake ecological mitigation and biodiversity offset and compensation measures in accordance with the ELMP to address the matters in Schedule 1 and to achieve the following:

(a) Vegetation:

- (i) The retention, where possible, of the vegetation with the highest ecological value within the Project area as identified in Figures 4.1 and 4.2 of the ELMP.
- (ii) Restoration planting as follows:
 - (1) At least 6ha of kahikatea swamp forest.
 - (2) At least 9ha of mitigation planting using an appropriate mix of plant seedlings.
 - (3) Planting of 200 saplings of the same species for each significant tree that is felled.

Advice note: significant trees are defined in the ELMP and shown on the Landscape Concept Plans in the LEDF

- (4) Following the completion of vegetation clearance, the Consent Holder shall measure the extent of vegetation clearance and shall reassess the extent of restoration planting required under Conditions GEN.24(a)(ii) (2) and (3), using the methodology set out in the ELMP. The Consent Holder shall prepare and provide a report to the Chief Executive, TRC confirming the restoration planting required. If additional restoration planting is required, the extent of the restoration planting area required shall be identified and the report provided to the Chief Executive, TRC for Certification that the calculation of the additional planting achieves the requirement of Conditions GEN.24(a)(ii) (2) and (3). If the recalculation results in a lesser restoration planting area, the planting area required in Condition 24(a)(ii)(2) and (3) shall be provided.

Advice Note: certification of the report shall be carried out in accordance with the certification process set out in Condition GEN.14.

- (5) The completion of all restoration planting within three planting seasons of the Completion of Construction Works, unless natural conditions during Construction Works result in poor seed production, or poor seed condition and adversely limits seedling propagation for indigenous plant species, in which case completion would be delayed to reflect the availability of suitable seedlings. The Consent Holder shall notify the Chief Executive, TRC when the restoration plantings have been completed.

- (6) Should there be a delay in the completion of restoration planting due to the availability of suitable seedlings as described in (5) above, the Consent Holder shall provide the Chief Executive, TRC with an amended timeframe, which shall not exceed three planting seasons, and shall complete the planting as soon as reasonably possible within the agreed timeframe, informing the Chief Executive, TRC when planting is complete.
- (7) For the restoration planting required under Condition GEN.24(a)(ii)(1) and (2), the plantings shall achieve 80% canopy cover 6 years following planting in the areas where trees and shrubs are planted. If 80% canopy cover is not achieved at 6 years following planting, any necessary replacement planting and planting maintenance shall continue beyond year 6 until 80% canopy cover is achieved.
- (8) For the restoration planting required under Condition GEN.24(a)(ii)(1) the planting shall achieve kahikatea forming 16% of the tree canopy at year 10. Additional kahikatea will be planted in the areas where the kahikatea contribution to the canopy is less than 16%. At year 35, kahikatea shall comprise 65% of the canopy in the kahikatea swamp forest planting required by this Condition.
- (9) For each significant tree felled, the restoration planting required under Condition GEN.24(a)(ii)(3) shall achieve 90% survival of the 200 planted trees at 6 years following planting. If 90% plant survival has not been achieved within 6 years following planting, any necessary replacement planting and planting maintenance shall continue beyond year 6 until 90% survival is achieved.

(b) Fish, kōura and kākahi:

- (i) The recovery and relocation of fish, kōura and kākahi in the sections of waterways affected by instream works, prior to instream works occurring.
- (ii) The rescue and relocation of fish, kōura and kākahi from any spoil.
- (iii) The design and installation of permanent culverts that shall maintain fish passage in all affected waterways (with the exception that maintenance of fish passage is not required at culverts 2, 10 and 13). Culvert design shall be informed by the New Zealand Fish Passage Guidelines for Structures Up to 4 Metres (2018).

(c) Streams

- (i) The design and construction of diverted streams shall be in accordance with the Stream Ecological Design Principles attached to the LEDF. 798m² of remediated stream diversions will be restored,

through riparian planting, and livestock exclusion. Riparian margins of an average of 10m each side of the stream will be created and planted.

- (ii) The riparian planting and exclusion from livestock of at least 10,738m² of existing streambed area. Riparian margins of an average of 10m each side of the stream will be created and planted. Together with (i) this will create 11,536m² of stream restoration.
- (iii) Following the completion of stream works, the Consent Holder shall measure the extent of stream works and shall reassess the extent of riparian planting required under Conditions GEN.24(c)(ii), using the methodology set out in the ELMP. The Consent Holder shall prepare and provide a report to the Chief Executive, TRC confirming the riparian planting required. If additional riparian planting is required the extent of the riparian planting required shall be identified and the report provided to the Chief Executive, TRC for certification that the calculation of the additional planting achieves the requirement of Condition GEN.24(c)(ii). If the recalculation results in a figure less than 10,738m² of existing streambed area the Consent Holder shall provide planting to achieve the requirement of Condition GEN.24(c)(ii).

Advice Note: certification of the report shall be carried out in accordance with the certification process set out in Condition GEN.14.

- (iv) The completion of all riparian planting within three planting seasons of the Completion of Construction Works, unless natural conditions during Construction Works result in poor seed production, or poor seed condition and adversely limits seedling propagation for indigenous plant species, in which case completion would be delayed to reflect the availability of suitable seedlings. The Consent Holder shall notify the Chief Executive, TRC when the riparian plantings have been completed.
- (v) Should there be a delay in the completion of riparian planting due to the availability of suitable seedlings as described in (iv) above, the Consent Holder shall provide the Chief Executive, TRC with an amended timeframe, which shall not exceed three planting seasons, and shall complete the planting as soon as reasonably possible within the agreed timeframe, informing the Chief Executive, TRC when planting is complete.
- (vi) For the riparian planting required under Condition GEN.24(a)(ii)(7), the plantings shall achieve 80% canopy cover 6 years following planting in the areas where trees and shrubs are planted. If 80% canopy cover is not achieved at 6 years following planting, any necessary replacement planting and planting maintenance shall continue beyond year 6 until 80% canopy cover is achieved.

- GEN.24A (a) Works shall not commence until the Consent Holder provides the Chief Executive, TRC with written confirmation that it has in place the legal agreements and/or other authorisations necessary to allow the Consent Holder to enter onto land outside the boundaries of the designation to carry out, continue and maintain all the measures set out in the ELMP, including the restoration planting and riparian planting. This shall also include appropriate access to such sites, for the purposes of undertaking those measures.
- (b) The Consent Holder shall ensure that the restoration and riparian planting is protected on an ongoing basis.
- GEN.25 Monitoring of the ecological mitigation and biodiversity offset and compensation measures required in Conditions GEN.24(a) to (c) shall be undertaken by the Consent Holder in accordance with the details set out in Sections 2 (Landscape Management Plan) and 6 (Freshwater Management Plan) of Schedule 1.
- GEN.26 (a) The Consent Holder shall prepare an annual monitoring report describing the findings of all monitoring undertaken in the previous 12 months pursuant to Condition GEN. 25. The annual monitoring report shall be prepared by a suitably qualified ecologist. This report shall include an assessment of the effectiveness of the ELMP in achieving compliance with measures in Condition GEN.24 and Schedule 1, and if necessary, the actions to be undertaken to achieve compliance with Condition GEN.24 and Schedule 1, including identifying any necessary updates required to the ELMP. The Consent Holder shall provide a copy of the annual report to the KFG and DOC. The report shall be submitted to the Chief Executive, TRC.
- (b) The report shall identify any actions required to achieve compliance with Condition GEN.24(a)(ii) (7) to (9) and GEN.24(c)(vi), including identifying any updates required to the ELMP. The reporting shall be submitted to the Chief Executive, TRC within 3 months of the completion of the monitoring. A copy of the report shall be provided to TRoNT and DOC.
- (c) If the reporting required by Condition GEN.26(a) identifies that actions are required to achieve compliance with Condition GEN.24(a)(ii)(7) to (9) and GEN.24(c)(vi) the Consent Holder shall update the ELMP in accordance with the recommendations of the monitoring report within 2 months of the completion of the monitoring report. Any amendment to the ELMP shall be certified in accordance with Conditions GEN.13 and GEN.14. The Consent Holder shall implement any amendments to the ELMP made in accordance with this Condition.
- (d) Annual reporting under Condition GEN. 26(a) shall cease following the completion of all monitoring required under Condition GEN.24(a)(ii)(7) to (9) and GEN.24(c)(vi).

General Monitoring

- GEN.27 On receipt of an itemised invoice, the Consent Holder shall pay to the Taranaki Regional Council all the administration, monitoring and supervision costs of

these consents, fixed in accordance with section 36 of the Resource Management Act, 1991.

Completion of Construction Works

GEN.28 (a) As soon as practicable following Completion of Construction Works, the Consent Holder shall notify the Chief Executive, TRC that Construction Works are complete. The notification shall include a list of the Construction Works completed, and be accompanied by maps to show the location of the completed works. This shall include the identification of:

- (i) areas of landscaping and reinstatement; and
- ii) all areas of restoration and riparian plantings required under Condition GEN. 24(a)(ii) and (c)(ii) and notice of whether the plantings have been completed.

(b) If Completion of Construction Works is to occur more than six months following the operation of the new State highway commencing, the Consent Holder shall notify the Chief Executive, TRC of the expected date for Completion and Construction Works.

(c) Upon receipt of the notice of under GEN.28(a) the Chief Executive, TRC shall confirm in writing to the Consent Holder that the requirements of this condition are met.

CONSENT FOR DISCHARGE OF DUST TO AIR

10656-1.0 - To discharge contaminants (dust) to air from earthworks associated with the establishment of the Mt Messenger Bypass

AIR.1 The Consent Holder shall implement the Construction Dust Management Plan (CDMP) dated October 2018, which identifies and details methods to be used to manage, mitigate and monitor dust emissions during the Works. The CDMP shall remain in place until the Completion of Construction Works.

AIR.2 The CDMP includes, but need not be limited to:

- (a) identification of potential sources of dust taking into account construction activities and the construction programme;
- (b) identification of sensitive receptors likely to be adversely affected by emissions of dust;
- (c) methods for managing and mitigating adverse dust effects that may arise from construction activities, particularly in proximity to sensitive receptors. Where appropriate, these methods may include:

- (i) the use of water carts or sprinklers to apply water to areas generating dust;
- (ii) reducing vehicle speeds on unsealed surfaces; and

(iii) the use of commercial dust suppressants;

(d) an outline of the methods for managing the effects of dust on the dwelling at 2397 Mokau Road; and

(e) the methods of monitoring for potential dust generation, including assessment of weather conditions, soil conditions and visual dust assessments.

AIR.3 The exercise of this consent shall not cause any noxious, dangerous, offensive or objectionable dust beyond the site boundary.

DISCHARGE STORMWATER AND SEDIMENT

10655-1.0 - To discharge stormwater and sediment onto and into land and into the Mangapepeke Stream and Mimi River and their tributaries from earthworks associated with the construction of the Mt Messenger Bypass

Sediment and Stormwater General

SED.1 This consent authorises the discharge of stormwater from land where earthworks is being undertaken for the purpose of constructing the Mt Messenger Bypass ('The Project').

Construction Water Management Plan

SED.2 The Consent Holder shall implement the Construction Water Management Plan (CWMP) dated October 2018, which identifies how all Works shall be undertaken and addresses:

(a) The procedures for determining staging and sequencing of earthworks.

(b) Identification of a suite of appropriate structural and non-structural erosion and sediment control measures to be installed prior to and during all Works.

(c) The design specifications for all erosion and sediment controls to be implemented.

(d) A procedure to establish and define minor on the ground changes to erosion and sediment control, in accordance with the intent of the CWMP.

(e) The procedures for decommissioning the erosion and sediment control measures.

(f) Methods for amending and updating the CWMP as required.

(g) Methods for revegetation and / or stabilisation.

(h) And all matters set out in Conditions SED.3 to SED.11.

The CWMP shall remain in place until the Completion of Construction Works.

Advice note: The CEMP provides additional management details on personnel, training, emergency response, complaints management, construction activities, reporting and review procedure

- SED.3 The CWMP includes, but need not be limited to:
- (a) construction activities to be undertaken;
 - (b) area and volume of the earthworks and / or streamworks proposed;
 - (c) location of the earthworks and / or streamworks with particular consideration of the downstream receiving environment;
 - (d) methods for managing construction water effects;
 - (i) duration of the earthworks and / or streamworks;
 - (ii) time of the year that the streamworks are to be undertaken, and where applicable, the measures to be implemented to respond to any heightened risks at that time;
 - (iii) stabilisation and timing to reduce the open area of high risk locations to assist with a reduction in sediment generation;
 - (iv) framework for the chemical treatment (flocculation) of sediment retention ponds and decanting earth bunds receiving catchments larger than 500m²; and
 - (e) construction water related monitoring programme in accordance with condition SED.11, including the procedures for adapting the controls to appropriately respond to the monitoring findings.

Specific Construction Water Management Plans

- SED.4 Specific Construction Water Management Plans (SCWMP) shall be prepared for all earthworks in accordance with the CWMP and shall otherwise be consistent with the CWMP.

The SCWMPs shall be provided to the Chief Executive, TRC for certification in accordance with Condition GEN.12.

Advice Note: These SCWMPs will be developed within the context of the principles and practices of the CWMP and the Construction Water Assessment Report and will allow for innovation, flexibility and practicality of approach to effects of construction on water (including, erosion and sediment control). The SCWMPs will also enable ongoing adaption to changing conditions throughout the Project lifetime.

- SED.4(A) For all earthworks to be carried out within the period from 1 May to 30 September inclusive, the relevant SCWMP shall include a specific risk assessment for the works, which shall address:
- (a) scope and nature of the proposed works and associated risk;
 - (b) structural controls required to minimise risk;
 - (c) non-structural controls required to minimise risk; and
 - (d) maintenance considerations.

Advice Note: The relevant SCWMP may be newly prepared or a revision to an existing SCWMP, and will be provided to the Chief Executive, TRC in accordance with Condition GEN.12

SED.5 Where applicable to a site or activity, SCWMPs shall include, the:

(a) Details of all principles, procedures and practices that will be implemented to undertake erosion and sediment control to minimise the potential for sediment discharge from the site, including site plans showing the location of all devices;

(b) The design criteria and dimensions of all key erosion and sediment control structures;

(c) A summary of construction methodologies for the following aspects, where relevant to the given stage or activity covered by the SCWMP:

- (i) Staging of earthworks;
- (ii) Cut and fill operations;
- (iii) Disposal of surplus or unsuitable cut; and
- (iv) Dewatering.

(d) A site plan/s of a suitable scale to identify:

- (i) The locations of waterways;
- (ii) The extent of soil disturbance and vegetation removal;
- (iii) Any “no go” and/or buffer areas to be maintained undisturbed adjacent to watercourses, including specific identification of sensitive ecological areas where threatened species and /or habitats are to be protected;
- (iv) Areas of cut and fill;
- (v) Locations of topsoil (and fill) stockpiles;
- (vi) All key erosion and sediment control structures;
- (vii) The boundaries and area of catchments contributing to all erosion and sediment control devices;
- (viii) The locations of all specific points of discharge to the environment; and
- (ix) Any other relevant site information.

(e) Timing of erosion and sediment control works and the bulk earthworks proposed;

(f) Timetable and nature of progressive site rehabilitation, stabilisation and re-vegetation proposed as relevant to the works; and

(g) Details of the chemical treatment (flocculation) of sediment retention ponds and decanting earth bunds in accordance with condition SED.6.

Each stage or activity of earthworks shall be implemented in accordance with the corresponding certified SCWMP.

SED.6 In each SCWMP that specifies chemical treatment (flocculation) of sediment retention ponds and decanting earth bunds, the Consent Holder shall include:

- (a) specific design details of the chemical treatment system;
- (b) monitoring maintenance (including post-storm) and contingency programme;
- (c) details of optimum dosage (including catchment specific soil analysis and assumptions, and consideration of any environmental effects);
- (d) where it is considered necessary, procedures for carrying out an initial treatment trial; and
- (e) details of the person or bodies that will hold responsibility for the maintenance of the chemical treatment system and the organisational structure which will support the system (which shall be described in the CEMP).

Erosion and Sediment Control Device requirements

SED.7 The Consent Holder shall design, construct and maintain all erosion and sediment control measures in general accordance with the Transport Agency's Erosion and Sediment Control Guidelines for State Highway Infrastructure – Construction Stormwater Management 2014, including:

- a) Directing, including pumping, of all sediment laden runoff and groundwater during Construction Works shall be to Sediment Retention Ponds (SRPs), Decanting Earth Bunds (DEBs), or temporary sediment retention devices such as container impoundment systems.
- b) All DEBs and SRPs that serve a catchment area greater than 500m² shall be treated using a liquid flocculant and a rainfall activated dosing system. Flocculation shall be undertaken and managed in accordance with the certified SCWMP.
- c) All SRPs and DEBs shall be fitted with floating decants that are designed to discharge at a rate of 3 litres per second per ha of contributing catchment.
- d) All SRPs shall contain measures to cease discharge (e.g. decant pulley systems) and a forebay with a minimum volume of 10% of the pond volume.
- e) All erosion and sediment control devices shall be located outside of the 20 year Annual Return Interval (ARI) flood level, unless no other viable location exists. In the event where it is not possible to locate a device outside the 20 year ARI, the SCWMP prepared for that area of work shall set out how flooding risks will be managed.

f) All DEBs shall have a volume no less than 3 m³ for every 100m² of contributing catchment, unless the physical characteristics of the location of the DEB constrain the sizing of the device. In the event that the characteristics of the location of the DEB constrain the sizing of the device the SCWMP prepared for that area of work shall set out the sizing of the DEB.

g) All SRPs shall have a volume no less than 3m³ for every 100m² of contributing catchment and shall contain decant pulley systems and a forebay with a minimum volume of 10% of the pond volume, unless the characteristics of the location of the SRP constrain the sizing of the device. In the event that the characteristics of the location of the SRP constrain the sizing of the device the SCWMP prepared for that area of work shall set out the sizing of the SRP.

h) All dirty water diversion channels shall be constructed with sediment sumps with a minimum volume of 2m³ per sump. The details of the sediment sumps shall be set out in the SCWMP prepared for that area of work and shall be spaced at intervals generally no more than 50m.

Advice note: Any modifications to the above shall be subject to certification in accordance with Condition GEN.12.

Stabilisation

SED.8 The Consent Holder shall stabilise areas of earthworks not actively worked for more than a 14 day period, as detailed in the CWMP, unless specified in a final SCWMP for that earthworks area.

SED.8A Re-vegetation and / or stabilisation of all disturbed areas is to be completed in general accordance with the measures set out in the 'Erosion and Sediment Control Guidelines for State Highway Infrastructure – Construction Stormwater Management', NZ Transport Agency 2014.

As built audit

SED.9 (a) An 'as-built' audit of the erosion and sediment devices shall be undertaken by an appropriately qualified and experienced erosion and sediment control practitioner. The audit shall be provided to the Chief Executive, TRC as confirmation that the erosion and sediment control measures for that location / activity to which the SCWMP applies have been constructed in accordance with the SCWMP.

(b) Bulk earthworks within each location to which a SCWMP applies shall not commence until the 'as-built' audit confirming compliance with the SCWMP has been provided to the Chief Executive, TRC.

SED.10 No erosion and sediment control measures shall be removed or decommissioned from the earthworks location to which those measures apply, before that location is stabilised, unless the Chief Executive, TRC has been informed not less than 2 working days prior to such removal and decommissioning, and it is in accordance with:

(a) the CWMP;

(b) a SCWMP; and / or

(c) works approved by a suitably qualified and experienced erosion and sediment practitioner.

Construction Water Discharges Monitoring Programme

SED.11 The Consent Holder shall undertake monitoring of construction water discharges in accordance with the Construction Water Discharges Monitoring Programme (set out as an Appendix C to the CWMP). The Construction Water Discharges Monitoring Programme shall include:

(a) Baseline monitoring – monitoring of at least 12 months of baseline water quality monitoring to be undertaken prior to the commencement of Works. This shall include at least 3 months of continuous turbidity monitoring at the locations described in (c) (i) below.

(b) Monitoring undertaken during the construction period including both qualitative and quantitative monitoring. This monitoring shall include (i) to (iv) following rainfall trigger:

- (i) Visual inspections of all receiving waterways, SRPs and DEB's;
- (ii) Manual inlet and outlet sampling from SRPs;
- (iii) Stream grab sampling at WQ1 to WQ5; and
- (iv) Sediment deposition sampling at Mimi wetland.

(c) Continuous monitoring - real-time continuous turbidity (NTU) monitoring shall be undertaken in both the Mimi River and the Mangapepeke Stream at locations to be confirmed with TRC, generally as follows:

- (i) at a point downstream of the works following reasonable mixing (CM1 and CM2); and
- (ii) at a point upstream of the works (EM4 and EM1).

Data shall be made available to the Chief Executive, TRC on request.

(d) If upstream monitoring in SED.11(c)(ii) above doesn't reflect the extent or stage of works, or is demonstrated to be unsuitable, the consent holder may seek written approval from the TRC to use an alternative upstream location, or to use baseline or control data as the comparison. Only once this approval has been obtained shall the monitoring programme be altered.

(e) The establishment of a publicly accessible Project website on which monitoring data gathered under this Condition shall be reported with a comparison of upstream versus downstream data made available.

All monitoring data gathered in accordance with Conditions (b) shall be reported on the Project website within one week of the results becoming available to the Consent Holder.

All monitoring data gathered in accordance with Condition (c) shall be audited by the Consent Holder for its accuracy and shall be reported on the Project website on a weekly basis.

(f) Establishing the monitoring response triggers and the associated actions which shall be undertaken in the event that triggers are exceeded. This shall include a process for establishing trigger level(s) and actions for continuous monitoring locations, and provision of a method to immediately alert the Consent Holder of an exceedance of a trigger at continuous monitoring locations and detail how this alert system will be effective 24 hours per day, 7 days per week. The trigger level(s) and actions for the continuous monitoring locations determined pursuant to this Condition shall include a trigger on downstream NTU against the upstream NTU data for the sites in each of the Mangapepeke and Mimi Catchments, a process to verify exceedances as real. This shall be submitted to the Chief Executive, TRC for certification in accordance with Condition GEN.14.

(g) Any exceedance on the continuous downstream NTU Trigger levels shall be reported to the Chief Executive within two hours of the exceedance. The consent holder shall verify the exceedance, and notify the Chief Executive, TRC of the result of that verification exercise, within 24 hours of the exceedance. Any other exceedance of a trigger level shall be reported to the Chief Executive, TRC within two working days, including reporting on the actions undertaken, which could include amending the SCWMP(s).

Advice note: the condition provides for the possibility that NTU Trigger level exceedances may not be 'real'. The condition provides for immediate reporting of the NTU trigger exceedance, and for the consent holder to then verify and confirm whether the exceedance is 'real', or caused by non-Project related issues, such as equipment issues.

(h) Details on chemical treatment monitoring requirements;

(i) Procedures for responds to the spillage or accidental discharge of sediment or contaminants to an aquatic environment; and

(j) Reporting requirements in accordance with this condition.

An annual monitoring report shall be prepared each year during the Works for the period from 1 May to 30 April, summarising the outcomes of all monitoring data collected in accordance with this condition, with specific reference to all trigger level exceedances. This report shall be submitted to The Chief Executive, TRC and DOC at the end of each earthworks season and no later than the end of May.

SURFACE WATER TAKE CONSENTS

10601-1.0 - To take water from the Mimi River for dust suppression and other construction activities associated with the construction of the Mt Messenger Bypass.

10602-1.0 - To take water from the Mangapepeke Stream for dust suppression and other construction activities associated with the construction of the Mt Messenger Bypass.

Mimi River

SWT.1 The Consent Holder shall ensure that the maximum volume of water abstracted from the Mimi River does not exceed 150 cubic metres per day at a rate of less than 5L/s.

Mangapepeke Stream

SWT.2 The Consent Holder shall ensure that the maximum volume of water abstracted from the Mangapepeke Stream does not exceed 300 cubic metres per day at a rate of less than 5L/s.

Intake Structure

SWT.3 The Consent Holder shall:

- (a) install, operate and maintain water intake structures, screens and any associated equipment to minimise the catching or capture of fish; and
- (b) The fish screen shall be positioned so as not restrict fish passage and to avoid the entrapment of fish at the point of abstraction, and to minimise the risk of fish being damaged by contact with the screen face; and
- (c) ensure that the intake structure, screen and associated equipment does not exceed:
 - (i) maximum water velocity into the entry point of the intake structure of 0.12 metres per second; and
 - (ii) intake screen mesh maximum aperture size of 3mm side-of-square or 2mm bar width.

GROUNDWATER TAKE CONSENTS

10603-1.0 - To take groundwater encountered during tunnel activities and ongoing operation of the tunnel associated with the Mt Messenger Bypass route; and

10604-1.0 - To take groundwater encountered during cut excavations associated with the Mt Messenger Bypass route

GWT.1 The only water taken shall be groundwater encountered at cut faces and in the tunnel, as necessary for construction and operation of the Project.

DAMMING CONSENTS

10659-1.0 - To dam water in the Mimi River with a weir.

10660-1.0 - To dam water in the Mangapepeke Stream with a weir.

DAM.1 The weirs shall be located at or about the following locations:

- (a) Mimi River, at location near to the Project's southern tie-in point to SH3.

(b) Mangapepeke Stream, at location near to the Project's northern tie-in point to SH3.

- DAM.2 The height of the weir shall not exceed 1 metre above the existing bed.
- DAM.3 The Consent Holder shall notify the Chief Executive, TRC, in writing at least 5 working days prior to commencing construction of the weir. Notification shall include the consent number and a brief description of the activity consented and be emailed to work.notification@trc.govt.nz. Final location co-ordinates shall be provided to the TRC at this time.
- DAM.4 Installation and removal of the weirs shall be undertaken in accordance with the relevant SCWMP.
- DAM.5 The weir shall be temporary and shall be removed when no longer required, and no later than 6 months after the Completion of Construction Works.
- DAM.6 Upon removal of the weir, the Consent Holder shall remove all introduced material from the bed of the stream, and reinstate the bed, as far as practicable, to its original condition.
- DAM.7 The exercise of this consent shall not restrict fish passage.

STREAM DIVERSIONS

10606-1.0 - To realign (#2) approximately 90m of an unnamed tributary of the Mangapepeke Stream through a newly constructed channel, including associated streambed disturbance and reclamation.

10607-1.0 - To realign (#3) approximately 900m of an unnamed tributary of the Mangapepeke Stream through a newly constructed channel, including associated streambed disturbance and reclamation.

10608-1.0 - To realign (#4) approximately 200m of an unnamed tributary of the Mangapepeke Stream through a newly constructed channel, including associated streambed disturbance and reclamation.

10609-1.0 - To realign (#5) approximately 220m of the Mangapepeke Stream through a newly constructed channel, including associated streambed disturbance and reclamation.

10610-1.0 - To realign (#6) approximately 100m of the Mangapepeke Stream through a newly constructed channel, including associated streambed disturbance and reclamation.

10611-1.0 - To realign (#7) approximately 350m of the Mangapepeke Stream through a newly constructed channel, including associated streambed disturbance and reclamation.

10612-1.0 - To realign (#8) approximately 300m of an unnamed tributary of the Mimi River through a newly constructed channel, including associated streambed disturbance and reclamation.

10613-1.0 - To realign (#9) approximately 230m of an unnamed tributary of the Mimi River through a newly constructed channel, including associated streambed disturbance and reclamation.

10614-1.0 - To realign (#10) approximately 75m of an unnamed tributary of the Mimi River through a newly constructed channel, including associated streambed disturbance and reclamation.

- DIV.1 The permanent diversion of the full stream flow through a reconstructed channel, and reclamation of stream bed shall be generally in accordance with Condition GEN.1.
- DIV. 2 The diversions shall be designed and constructed to replicate the flow capacity and aquatic habitat values of the upstream and downstream channel sections, in accordance with the provisions set out in the LEDF.
- DIV.2A The diversion authorised by this consent shall be designed, constructed and maintained in such a manner so as to avoid causing any new or exacerbating any existing more than minor adverse flooding effects on adjacent and upstream land.
- DIV.3 The diversions shall provide for fish passage, in accordance with the provisions set out in the ELMP.
- DIV.4 The Consent Holder shall recover and relocate fish from the stream prior to the diversion occurring, and relocate any fish uncovered or stranded during the works in accordance with the Fish Recovery and Rescue Protocols in the ELMP.
- DIV.5 The Consent Holder shall provide final design plans, location details and calculations for each diversion of permanently flowing watercourses to the Chief Executive, TRC, at least 20 working days prior to any works related to that diversion authorised by this consent commencing. The purpose of this condition is to demonstrate compliance with the conditions of this consent.
- DIV.6 The Consent Holder shall undertake works in general accordance with the CWMP and relevant SCWMP(s) to minimise sedimentation and increased turbidity of the stream during the construction, implementation and maintenance of the works. The CWMP and SCWMP(s) address how:
- (a) All works shall be completed in the minimum time practicable;
 - (b) The placement of excavated material in the flowing channel shall be avoided;
 - (c) All machinery shall be kept out of the actively flowing channel, as far as practicable; and
 - (d) All disturbed areas shall be reinstated.
- DIV.7 To avoid introduction of unwanted pests, all machinery shall be thoroughly cleaned of soil and plant debris prior to use on the stream diversion works.
- DIV.8 Where there is an existing upstream flow, the Consent Holder shall maintain a continuous flow of water in the stream channel downstream of the work area by ensuring that there are temporary clean water diversions around the active work sites.

TEMPORARY CULVERTS

10616-1.0 - To install and use a temporary culvert (#1) in the Mangapepeke Stream.

10617-1.0 - To install and use a temporary culvert (#2) in an unnamed tributary of the Mangapepeke Stream.

10618-1.0 - To install and use a temporary culvert (#3) in the Mangapepeke Stream.

10619-1.0 - To install and use a temporary culvert (#4) in the Mangapepeke Stream.

10620-1.0 - To install and use a temporary culvert (#5) in an unnamed tributary of the Mangapepeke Stream.

10621-1.0 - To install and use a temporary culvert (#6) in an unnamed tributary of the Mangapepeke Stream.

10622-1.0 - To install and use a temporary culvert (#7) in the Mangapepeke Stream.

10623-1.0 - To install and use a temporary culvert (#8) in an unnamed tributary of the Mangapepeke Stream.

10624-1.0 - To install and use a temporary culvert (#9) in an unnamed tributary of the Mangapepeke Stream.

10625-1.0 - To install and use a temporary culvert (#10) in the Mangapepeke Stream.

10626-1.0 - To install and use a temporary culvert (#11) in the Mangapepeke Stream.

10627-1.0 - To install and use a temporary culvert (#12) in an unnamed tributary of the Mangapepeke Stream.

10628-1.0 - To install and use a temporary culvert (#13) in an unnamed tributary of the Mangapepeke Stream.

10629-1.0 - To install and use a temporary culvert (#14) in the Mangapepeke Stream.

10630-1.0 - To install and use a temporary culvert (#15) in an unnamed tributary of the Mangapepeke Stream.

10631-1.0 - To install and use a temporary culvert (#16) in an unnamed tributary of the Mangapepeke Stream.

10632-1.0 - To install and use a temporary culvert (#17) in an unnamed tributary of the Mimi River.

TCV.1 All culverts shall be constructed generally in accordance with Condition GEN.1 and the certified SCWMP(s).

TCV.2 The Consent Holder shall be responsible for the design and structural integrity of all culverts and shall undertake maintenance of the culverts and any erosion control works that become necessary to preserve the integrity and stability of the waterway channel and/or to control erosion as a result of the exercise of this resource consent. All works shall be in accordance with the relevant SCWMP.

- TCV.3 The Consent Holder shall notify the Chief Executive, TRC, in writing at least 5 working days prior to the exercise of this consent. Notification shall include details on the location and design of the temporary culverts, state the consent number and a brief description of the activity consented and be emailed to worknotification@trc.govt.nz. Final location co-ordinates shall be provided to the TRC at this time.
- TCV.4 Any work carried out in the river bed shall be in accordance with the CWMP and relevant SCWMP.
- TCV.5 The consent holder shall ensure that any wet concrete placed in the channel is not exposed to flowing water until it has cured.
- TCV.6 Between 1 May and 31 October no work shall be undertaken on any part of the stream bed that is covered by water, unless the work has been approved by the Chief Executive, TRC and all works is in accordance with the CWMP and relevant SCWMP.
- TCV.7 The Consent Holder shall undertake works in accordance with the CWMP and relevant SCWMP to minimise stream bed disturbance, sedimentation and increased turbidity during installation of the culvert The CWMP and SCWMP address how:
- (a) All works shall be completed in the minimum time practicable;
 - (b) The placement of excavated material in the flowing channel shall be avoided;
 - (c) All machinery shall be kept out of the actively flowing channel, as far as practicable; and
 - (d) All disturbed areas shall be reinstated.
- TCV.8 To avoid introduction of unwanted pests, all machinery shall be thoroughly cleaned of soil and plant debris prior to use on the stream diversion works.
- TCV.9 The temporary culverts shall allow for fish passage in accordance with the ELMP.
- TCV.10 The culvert structures authorised by this consent shall be designed, constructed and maintained in such a manner so as to avoid causing any new or exacerbating any existing more than minor adverse flooding effects on adjacent and upstream land.
- TCV.11 The Consent Holder shall repair any more than minor erosion, scour or instability of the stream bed or banks that the culvert causes and shall maintain the culvert so that it allows the free flow of water.
- TCV.12 All temporary culverts authorised by this consent shall be removed or decommissioned as soon as practical once they are no longer required, and no later than 6 months after the Completion of Construction Works.

PERMANENT CULVERTS

10633-1.0 - To install and use a culvert (#1) in an unnamed tributary of the Mangapepeke Stream.

10634-1.0 - To install and use a culvert (#2) in an unnamed tributary of the Mangapepeke Stream.

10635-1.0 - To install and use a culvert (#3) in an unnamed tributary of the Mangapepeke Stream.

10636-1.0 - To install and use a culvert (#4) in an unnamed tributary of the Mangapepeke Stream.

10637-1.0 - To install and use a culvert (#5) in an unnamed tributary of the Mangapepeke Stream.

10638-1.0 - To install and use a culvert (#6) in an unnamed tributary of the Mangapepeke Stream.

10639-1.0 - To install and use a culvert (#7) in an unnamed tributary of the Mangapepeke Stream.

10640-1.0 - To install and use a culvert (#8) in an unnamed tributary of the Mangapepeke Stream.

10641-1.0 - To install and use a culvert (#9) in an unnamed tributary of the Mangapepeke Stream.

10642-1.0 - To install and use a culvert (#10) in an unnamed tributary of the Mangapepeke Stream.

10643-1.0 - To install and use a culvert (#11) in an unnamed tributary of the Mangapepeke Stream.

10645-1.0 - To install and use a culvert (#13) in an unnamed tributary of the Mangapepeke Stream.

10646-1.0 - To install and use a culvert (#14) in an unnamed tributary of the Mangapepeke Stream.

10647-1.0 - To install and use a culvert (#15) in the Mimi River.

10648-1.0 - To install and use a culvert (#16) in an unnamed tributary of the Mimi River.

10649-1.0 - To install and use a culvert (#17) in an unnamed tributary of the Mimi River.

10650-1.0 - To install and use a culvert (#18) in an unnamed tributary of the Mimi River.

10652-1.0 - To install and use a culvert (#20) in an unnamed tributary of the Mimi River.

10653-1.0 - To install and use a culvert (#21) in an unnamed tributary of the Mimi River.

PCV.1 The culverts shall be constructed generally in accordance with Condition GEN.1.

- PCV.2 The Consent Holder shall provide design plans and calculations for each culvert to the Chief Executive, TRC, at least 20 working days prior to any works authorised by this consent commencing. The purpose of this condition is to demonstrate compliance with the conditions of this consent.
- PCV.3 The culvert structures authorised by this Consent shall be designed, constructed and maintained in such a manner so as to avoid causing any more than minor new or exacerbating to a more than minor degree any existing adverse flooding effects on adjacent and upstream land.
- PCV.4 The Consent Holder shall notify the Chief Executive TRC, in writing at least 5 working days prior to the exercise of this consent. Notification shall include the consent number and a brief description of the activity consented and be emailed to worknotification@trc.govt.nz. Final location co-ordinates shall be provided to the TRC at this time.
- PCV.5 The Consent Holder shall undertake works in accordance with the CWMP and relevant SCWMP to minimise stream bed disturbance, sedimentation and increased turbidity during installation of the culvert. The CWMP and SCWMP shall address how:
- (a) All works shall be completed in the minimum time practicable;
 - (b) The placement of excavated material in the flowing channel shall be avoided;
 - (c) All machinery shall be kept out of the actively flowing channel, as far as practicable; and
 - (d) All disturbed areas shall be reinstated as far as practicable.
- PCV.6 The consent holder shall ensure that any wet concrete placed in the channel is not exposed to flowing water until it has cured.
- PCV.7 Between 1 May and 31 October no work shall be undertaken on any part of the stream bed that is covered by water, unless the works set out in a SCWMP have been approved by the Chief Executive, TRC.
- PCV.8 To avoid introduction of unwanted pests, all machinery shall be thoroughly cleaned of soil and plant debris prior to use on the stream diversion works.
- PCV.9 Where there is an existing upstream flow, the Consent Holder shall maintain a continuous flow of water in the stream channel immediately downstream of the work area by ensuring that there are temporary clean water diversions around the active work sites.
- PCV.10 With the exception of culverts 2, 10 and 13, the culverts shall provide for fish passage in accordance with Condition GEN. 24(b) (iii) and the ELMP.
- For those culverts where fish passage is to be specifically provided for, the Consent Holder shall arrange a peer review by a suitably qualified and experienced freshwater ecologist to verify that the detailed design process for these culverts has appropriately addressed effects on fish passage, and shall

provide this written confirmation of such verification to the Chief Executive, TRC.

- PCV.11 The Consent Holder shall recover and relocate fish from the stream prior to the culvert installation occurring, and relocate any fish uncovered/stranded during the works in accordance with the Fish Recovery and Rescue Protocols in the ELMP.
- PCV.12 Riparian planting shall be undertaken in accordance with Condition GEN.24.
- PCV.13 On completion of works, the banks of the channel upstream and downstream of the culvert shall be no steeper than the existing natural banks. Where the bank consists of fill, the fill must be well compacted and stable and shall be constructed in accordance with the approved SCWMP.
- PCV.14 The Consent Holder shall repair any more than minor erosion, scour or instability of the stream bed or banks that the culvert causes and shall maintain the culvert so that it allows the free flow of water.

BRIDGE CONSENTS

10654-1.0 - To construct, use and maintain a bridge over the Mimi River, including associated disturbance of the stream bed.

- BRG.1 Bridge shall be constructed generally in accordance with Condition GEN.1.
- BRG.2 The Consent Holder shall notify the Chief Executive TRC, in writing at least 5 working days prior to the exercise of this consent. Notification shall include the consent number and a brief description of the activity consented and be emailed to worknotification@trc.govt.nz.
- BRG.3 The Consent Holder shall be responsible for the design, structural integrity and maintenance of bridge and for any erosion control works that become necessary to preserve the integrity and stability of the bridges and the underlying wetland at the Mimi swamp forest and the watercourse at or about Chainage 2400 and/or to control erosion as a result of the exercise of this resource consent.
- BRG.4 Works in the wetland beneath the bridge over the Mimi swamp forest are to be limited to the minimum required to achieve the bridge structure, and any areas that are disturbed are reinstated to their original condition.
- BRG.5 The Consent Holder shall undertake works in accordance with the CWMP and SCWMP to minimise sedimentation and increased turbidity of the waterway during the construction, implementation and maintenance of the works. The CWMP and SCWMP shall address how:
- (a) All works shall be completed in the minimum time practicable;
 - (b) The placement of excavated material in the flowing channel shall be avoided;

- (c) All machinery shall be kept out of the actively flowing channel, as far as practicable; and
- (d) All disturbed areas shall be reinstated as far as practicable.

10644-1.0 - To construct, use and maintain a bridge over an unnamed tributary of the Mangapepeke Stream, including associated disturbance of the stream bed.

- BRG.1 Bridge shall be constructed generally in accordance with Condition GEN.1.
- BRG.2 The Consent Holder shall notify the Chief Executive TRC, in writing at least 5 working days prior to the exercise of this consent. Notification shall include the consent number and a brief description of the activity consented and be emailed to worknotification@trc.govt.nz.
- BRG.3A The Consent Holder shall be responsible for the design, structural integrity and maintenance of bridges and for any erosion control works that become necessary to preserve the integrity and stability of the bridge and/or to control erosion as a result of the exercise of this resource consent.
- BRG.5 The Consent Holder shall undertake works in accordance with the CWMP and SCWMP to minimise sedimentation and increased turbidity of the waterway during the construction, implementation and maintenance of the works. The CWMP and SCWMP shall address how:
 - (a) All works shall be completed in the minimum time practicable;
 - (b) The placement of excavated material in the flowing channel shall be avoided;
 - (c) All machinery shall be kept out of the actively flowing channel, as far as practicable; and
 - (d) All disturbed areas shall be reinstated as far as practicable.

CONSENT FOR VEGETATION REMOVAL

10657-1.0 - To remove and disturb vegetation associated with constructing the Mt Messenger bypass.

- VEG.1 The vegetation disturbance and removal authorised by this consent shall be as generally described in the ELMP.
- VEG.2 To mitigate the effects of the exercise of this consent, the Consent Holder shall undertake restoration planting in accordance with the ELMP and LEDF
- VEG.3 The Consent Holder shall ensure that the slash is managed and stored in accordance with the ELMP and CWMP so as to minimise erosion or sediment discharges and/or avoid exacerbating flood risk, including

- (a) storing slash away from water ways and the paths of floodwaters;
- (b) ensuring slash piles are stable and placed away from steep slopes to prevent accelerated soil erosion from debris avalanche.

VEG.4 Where practicable, trees shall be felled away from, and not be dragged through, any waterway.

CONSENT TO PLANT IN RIVERBEDS

10658-1.0 - To undertake riverbed planting for restoration of diverted stream beds associated with the establishment of the Mt Messenger Bypass

- PLN.1 The planting shall be undertaken generally in accordance with the resource consent application and the ELMP.
- PLN.2 The Consent Holder shall notify the Chief Executive, TRC, in writing at least 5 working days prior to the commencement of planting work. Notification shall include the consent number and a brief description of the activity consented and be emailed to worknotification@trc.govt.nz. Final location co-ordinates shall be provided to the TRC at this time.
- PLN.3 The Consent Holder shall ensure that the area and volume of stream bed disturbance during planting is, as far as practicable, minimised and any areas that are disturbed are, as far as reasonably practicable, reinstated.
- PLN.4 The Consent Holder shall undertake works in accordance with the CWMP and SCWMP to minimise sedimentation and increased turbidity of the waterway during the construction, implementation and maintenance of the works. The CWMP and SCWMP shall address how:
- (a) All works shall be completed in the minimum time practicable;
 - (b) The placement of excavated material in the flowing channel shall be avoided;
 - (c) All machinery shall be kept out of the actively flowing channel, as far as practicable; and
 - (d) All disturbed areas shall be reinstated as far as practicable.
- PLN.5 The planting shall not materially restrict flow or exacerbate flooding events.

SCHEDULE 1: REQUIREMENTS ADDRESSED IN THE ELMP

Note: as set out in Condition GEN.23 only the matters addressed Sections 1 (Objectives & matters addressed in the ELMP), 2 (Landscape Management Plan) and 6 (Freshwater Management Plan) apply to these Resource Consents.

- 1. Overarching objectives and matters addressed in the ELMP**
- a) The objectives of the Ecology and Landscape and Management Plan (ELMP), dated 31 October 2018, are to:
 - i. identify how the potential adverse effects of the Project on the ecological, landscape and biodiversity values within the Project Area and its surrounds will be avoided, remedied, mitigated, offset and compensated for, including on: vegetation / habitats (including wetlands); herpetofauna (lizards and frogs); bats; avifauna; peripatus; fish, kōura and kākahi; and streams; and
 - ii. achieve a net gain in biodiversity after the residual effects on biodiversity have been offset or compensated for.
- b) The ELMP includes a summary of the ecological and landscape values and effects of the Project.
- c) The ELMP comprises a series of sub-management plans that address the designation and resource consent conditions, including: Landscape and Vegetation Management Plan; Bat Management Plan; Avifauna Management Plan; Herpetofauna Management Plan; Freshwater Management Plan; Pest Management Plan; Peripatus Management Plan; and Biosecurity Management Plan.
- d) The ELMP also describes:
 - vii. The physical mechanisms (e.g. fences) to protect the restoration and riparian planting from clearance and / or livestock, on an ongoing basis.
 - viii. The necessary rights to carry out the restoration and riparian planting, and to carry out the required pest management where these activities are to occur on land that is not owned by the Consent Holder.
 - ix. The measures proposed for biosecurity management, including the management of risk associated with myrtle rust, and the management of pest plants and pest animals.
- e) The ELMP includes maps showing:
 - v. existing vegetation types for all areas of proposed mitigation plantings, to determine if these will result in habitat gain;
 - vi. the location and extent of the stream reaches proposed for restoration works;

vii. the location and extent of the Intended PMA.

- f) The ELMP contains details of monitoring and reporting to the Chief Executive, TRC prior to, during and post-construction to determine if the ELMP objectives and the performance measures are being met, including a repeatable monitoring design incorporating adaptive management responses.
- g) The ELMP includes details of the roles and responsibilities of key staff responsible for implementing the ELMP and procedures for training of contractors and other Project staff regarding the ELMP.
- h) ELMP includes details of the process for reviewing and amending the Plan, in accordance with the Conditions of the Designation and Resource Consents.

2. Landscape and Vegetation Management Plan

Specific objectives

The Landscape and Vegetation Management Plan addresses:

- a) Details of the method for a pre-construction survey of wetland vegetation composition and structure to assist planning for the swamp forest restoration planting.
- b) The retention, where possible, of the high value ecological areas identified in Figures 4.1 and 4.2 in the ELMP dated 31 October 2018.
- c) Provisions for the relocation or cultivation of threatened plants found within the Project Area.
- d) Details of how, prior to vegetation removal, the appropriate delineation of vegetation to be cleared will be made.
- e) A programme for vegetation clearance that allows for vegetation to be cleared only prior to Works beginning in any particular Stage (or Stages) of the Project Area in order to reduce habitat effects and reduce the potential for erosion and sediment generation.
- f) The staging of restoration planting and landscape treatments in relation to the construction programme to reduce the potential for erosion and sediment generation. Where practicable restoration planting shall commence after the completion of any Stage of Construction Work.
- g) Provisions for the cultural use of significant trees by Ngāti Tama.
- h) The supervision of vegetation clearance by a suitably qualified person.
- i) Landscaping design and treatments (landform and planting), including rehabilitation of all areas used for temporary work and construction yards.
- j) The location, details and principles for achieving the following restoration planting, including identification (maps) of where the restoration planting will

take place:

- i. At least 6 hectares of kahikatea swamp forest.
 - ii. At least 9ha of mitigation planting using an appropriate mix of plant seedlings
 - iii. Planting of saplings in ecologically appropriate sites at a loss to replacement ratio of 1:200 on a 'like for like' species basis for each significant tree that is felled.
 - iv. All new plantings must be eco-sourced from the North Taranaki Ecological District.
 - v. The Consent Holder shall complete all restoration planting within three planting seasons of the Completion of Construction Works, unless natural conditions during Construction Works result in poor seed production, or poor seed condition and adversely limits seedling propagation for indigenous plant species, in which case completion would be delayed to reflect the availability of suitable seedlings.
 - vi. Should there be a delay in the completion of restoration planting due to the availability of suitable seedlings as described in v above, the Consent Holder shall provide the Chief Executive, TRC with an amended timeframe, which shall not exceed three planting seasons, and shall complete the planting as soon as reasonably possible within the agreed timeframe, informing the Chief Executive, TRC when planting is complete.
- k) Provisions to monitor and manage all planting so that plants establish and those that fail to establish are replaced, such that the listed performance measures are met within their specified timeframes.

Performance measures

- l) The Landscape and Vegetation Management Plan addresses the following performance measures.
- i. For each significant tree felled, 90% survival of the 200 planted trees required by j)iii at 6 years following planting. If 90% plant survival has not been achieved within 6 years following planting, any necessary replacement planting and planting maintenance shall continue beyond year 6 until 90% survival is achieved.
 - ii. 80% canopy cover 6 years following planting for all restoration planting required by j)i and j)ii, in the areas where trees and shrubs are planted. If 80% canopy cover is not achieved at 6 years following planting, any necessary replacement planting and planting maintenance shall continue beyond year 6 until 80% canopy cover is achieved.
 - iii. For kahikatea swamp forest planting required by j)i, kahikatea forming 16% of the tree canopy at year 10. Additional kahikatea will be planted in the areas where the kahikatea contribution to the canopy is less than 16%.
 - iv. 65% canopy cover at year 35 for kahikatea swamp forest planting

required by j)i.

Monitoring

The Landscape and Vegetation Management Plan includes the following survey and monitoring requirements.

- m) Provision to measure the extent of actual vegetation clearance within 6 months following the completion of Establishment Works and to reassess the extent of restoration planting required under j)ii and j)iii. The Consent Holder shall prepare and provide a report to the Chief Executive, TRC confirming the restoration planting required to achieve the amount specified under j)ii and j)iii. If additional restoration planting is required, the extent of the restoration planting required shall be identified in the report. If the recalculation results in lesser restoration planting area than that specified in j)ii and j)iii, the restoration planting shall remain as that required under j)ii and j)iii. The report shall be provided to the Chief Executive, TRC for Certification that the additional planting is in accordance with the restoration planting required under j)ii and j)iii.
- n) Provision to undertaken post-construction monitoring of vegetation condition for all restoration planting to demonstrate that the performance measures for the Landscape and Vegetation Management Plan have been met. The monitoring shall be undertaken, as required, until such time as all of the performance measures have been shown to be achieved.

3. Bat Management Plan

Specific objectives

The Bat Management Plan addresses the following matters:

- a) Provision for a long-tailed bat radio tracking programme to identify long-tailed bat roost locations and confirm the PMA location.
- b) Vegetation Removal Protocols (VRP) for:
 - i. the 17 significant trees.
 - ii. all other trees that are ≥ 80 cm Diameter at Breast Height (DBH), and trees between 15cm and 80cm DBH which are considered by a specialist bat ecologist as having features suitable for bat roosting, such features including: including:
 - cracks, crevices, cavities, fractured limbs, or other deformities, large enough to support roosting bat(s);
 - sections of loose flaking bark large enough to support roosting bats;
 - a hollow trunk, stem or branches;
 - deadwood in canopy or stem of sufficient size to support roost

cavities or hollows;

guano, grease marks and/or urine staining around cavity entrances;
and

selected individual trees with high epiphyte loading (five or more
perched nested epiphytes located on horizontal branches).

iii. all trees shown through the bat monitoring programme to be Roosts.

Advice Note: the VRP shall not apply to the removal of any other vegetation.

- c) When Automatic bat detectors (ABMs) are used to determine the presence of bats around potential roost trees, provision for monitoring to occur for a minimum of three consecutive nights.
- d) Provision for consultation with the DOC Operations Manager New Plymouth District Office to discuss appropriate actions if a bat roost remains occupied for longer than 7 days.
- e) Other than the amendments made through a) to c) above, the VRP shall be in accordance with Annex DH of the 'NZ Transport Agency (the Transport Agency) research report 623 'Effects of land transport activities on New Zealand's endemic bat populations: reviews of ecological and regulatory literature' (Smith et al. 2017)' and set out in the ELMP, which includes modification to account for local conditions.

Performance outcomes

- f) The performance outcomes for bats will be achieved by the successful implementation of the VRP and by pest management in the PMA (refer to Pest Management Plan).

Monitoring

- g) There are no specific monitoring requirements for bats, other than those associated with the implementation of the VRP and the monitoring for pest management in the PMA.

4. Avifauna Management Plan

Specific objectives

The Avifauna Management Plan addresses the following matters;

- a) Measures to detect and protect kiwi from the likelihood of direct mortality during the construction and operation of the road, including:
 - i. A North Island brown kiwi radio-tracking programme, prior to and during construction, conducted by a suitably qualified ecologist along the entire length of the road corridor.
 - ii. Provision for the capture and relocation of kiwi and/or their eggs during construction, if deemed appropriate by the kiwi expert, and in

accordance with DOC best practice for kiwi (2018).

iii. Based on the outcome of radio-tracking and the identification of kiwi territories, details on the design, installation and ongoing maintenance of kiwi exclusion fencing at locations where

- (1) the territories identified by the tracking and monitoring in (i) straddle the road corridor; and
- (2) the Project ecologist considers there is a high risk of kiwi being able to enter the road corridor at these locations.

This will direct kiwi to culvert locations where they can underpass beneath the road during low stream flow conditions. The design and location of these fences shall be discussed with the DOC Operations Manager New Plymouth District.

iv. Provision for the placement of appropriate road signage along the new road corridor to warn motorists about the possible presence of kiwi.

b) Measures to provide for the detection of kōkako in the construction area and to prevent disturbance from construction, along with measures outlining the subsequent actions to be taken that avoid disturbance in the event that any nesting kōkako or their nests be detected within the Project Area. Notification shall be provided to DOC Operations Manager New Plymouth District Office, TRoNT, and the Chief Executive, TRC, within 2 hours of kokako being detected. Appropriate response actions shall be implemented immediately to avoid disturbance.

c) Monitoring of Australasian bittern using automatic acoustic bird monitors at the Mimi wetland and in the Mangapepeke Valley prior to construction. If bittern are detected, notification must be provided to the DOC Operations Manager New Plymouth District Office. The Consent Holder shall design, install and maintain low fencing adjacent to the road corridor at marshland locations where bittern are recorded.

Performance outcomes

d) The performance outcomes for avifauna will be achieved by the successful implementation of the measures outlined above under a) to c) for kiwi, kōkako and Australasian bittern and by pest management in the PMA (refer to Pest Management Plan).

Monitoring

The Avifauna Management Plan includes the following survey and monitoring requirements:

e) Details of up to 1 year of post-construction monitoring utilising motion detection cameras deployed at selected locations to assess the effectiveness of the exclusion fences and use of the culvert underpasses by kiwi.

f) Details of a survey involving the placing of automatic acoustic bird monitors for bittern in the Mimi wetland and Mangapepeke Valley in the spring

of 2018.

- g) Additional avifauna monitoring associated with the Pest Management Plan is set out in Section 7 below.

5. Herpetofauna Management Plan

Specific objectives

The Herpetofauna Management Plan addresses the following matters:

- a) Provision for (limited) salvage effort for lizards that may be located on vegetation cleared within the Project Area, focusing on high value habitat and known lizard locations. The provisions shall also include details on the relocation and release of salvaged striped skink at the Rotokare Scenic Reserve and other lizards into the PMA.
- b) Provision for the development of a management plan for Hochstetter's frog (*Leiopelma aff. hochstetteri*) and Archey's frog (*Leiopelma archeyi*), if they are discovered in the Project Area.

Performance outcomes

- c) The performance outcomes for herpetofauna will be achieved by the successful implementation of the salvage measures outlined in a) above.

Monitoring

- d) The Herpetofauna Management Plan includes: provision for recording the details of any salvaged lizards, including: species, sex, age class, weight, snout to vent length, and location of capture and release. All records shall be reported to the BioWeb Herpetofauna database.

6. Freshwater Management Plan

Specific objectives

The Freshwater Management Plan addresses the following matters:

- a) The design and construction of reinstated and diverted streams in accordance with the Stream Ecological Design Principles attached to the LEDF. 798m² of remediated stream diversions will be restored, through riparian planting, and livestock exclusion. Riparian margins of an average of 10m each side of the stream will be created and planted.
- b) The measures to maintain fish passage in all affected waterways as a result of permanent culverts (with the exception of culverts 2, 10 and 13), which shall be informed by the New Zealand Fish Passage Guidelines for Structures Up to 4 Metres (2018).
- c) Riparian planting and exclusion from livestock of at least 10,738m² of

existing stream within the Mimi and Mangapepeke catchments. Riparian margins of an average of 10m each side of the channel shall be created and planted. Together with (a) this will create 11,536m² of stream restoration. Should culvert or stream diversion lengths be increased in the detailed design stage of the Project, the length of riparian planting required shall be re-calculated using the same Stream Ecological Valuation (SEV) method used to derive the 10,738m² figure (note that provisions are addressed in the Landscape and Vegetation Management Plan).

- d) The Consent Holder shall complete all riparian planting within three planting seasons of the Completion of Construction Works, unless natural conditions during Construction Works result in poor seed production, or poor seed condition and adversely limits seedling propagation for indigenous plant species, in which case completion would be delayed to reflect the availability of suitable seedlings.
- e) Should there be a delay in the completion of riparian planting due to the availability of suitable seedlings as described in d) above, the Requiring Authority shall provide the Chief Executive, TRC with an amended timeframe, which shall not exceed three planting seasons, and shall complete the planting as soon as reasonably possible within the agreed timeframe, informing the Chief Executive, TRC when planting is complete.
- f) Fish Recovery and Rescue Protocols, including addressing:
 - i. How the recovery and relocation of fish, kōura and kākahi will occur prior to instream works.
 - ii. How the rescue of fish, kōura and kākahi will occur from any spoil.
 - iii. The qualifications and experience required for fish recovery/rescue work.
 - iv. Details of fish recovery, relocation and rescue methods to be used.

Advice Note: Details of the water quality monitoring, response process and measures to address potential adverse effects of sediment and other contaminant discharges to waterways during construction, including streams and wetlands, are set out in the Construction Water Management Plan and the Construction Water Discharges Monitoring Plan.

Performance outcomes

The Freshwater Management Plan includes the following performance measures:

- g) Provision of fish passage through all permanent culverts, except culverts 2, 10 and 13.
- h) Implementation of stream diversions and riparian planting to achieve successful colonisation by aquatic biota, and to match existing habitat types compared with the original stream reach affected.
- i) For the riparian planting required by (c) the plantings shall achieve 80%

canopy cover 6 years following planting in the areas where trees and shrubs are planted. If 80% canopy cover is not achieved at 6 years following planting, any necessary replacement planting and planting maintenance shall continue beyond year 6 until 80% canopy cover is achieved.

Monitoring

The Freshwater Management Plan includes the following survey and monitoring requirements:

- j) Provision for monitoring the fish passage performance after peak upstream migration (August – December) upstream of culverts 9, 15 and 18 annually for two years after construction is completed. The monitoring will be used to determine if recruitment is occurring by assessing if a suitable age structure (juvenile and adult fish) is present within the fish population above culvert 9 and culvert 15. If after 2 years the recruitment of young fish is not occurring then refinements to the culvert fish passage devices will be made.
- k) Provision for monitoring of macroinvertebrates and fish at 3 selected locations in each of the Mangapepeke and Mimi catchments.
 - i. Pre-construction and construction phase fish monitoring will be undertaken during base flow conditions at least two weeks following any large flood event in spring (October to December) and summer (February to April). Fish surveys will use methods consistent with the New Zealand freshwater fish sampling protocols (Joy et al. 2013). Fish will be identified, counted and lengths recorded.
 - ii. Pre-construction and construction phase aquatic macroinvertebrate monitoring will be undertaken during base flow conditions at least two weeks following any large flood event in spring (October to December) and summer (February to April). Aquatic macroinvertebrate surveys will use methods consistent with Protocols for sampling macroinvertebrates in wadeable streams (Stark et al. 2001). For each site the area sampled and type of stable habitat sampled will be recorded. The following metrics will be calculated from the aquatic macroinvertebrate data: taxa richness, Macroinvertebrate Community Index (MCI), Quantitative Macroinvertebrate Community Index (QMCI), %EPT taxa and %EPT abundance. EPT (Ephemeroptera-Plecoptera-Trichoptera) metrics will exclude the species *Oxyethira* and *Paroxyethira*. Following at least one year of baseline monitoring and one year of construction monitoring, aquatic macroinvertebrate monitoring will be reduced to annual monitoring if there is less than 20% change in QMCI or MCI comparable to baseline sampling.
- l) Provision for pre-construction and construction phase sediment deposition monitoring at a site within the raupo reedland, downstream of the Mimi Stream tributary draining the tunnel portal, located upstream of the Mimi swamp forest. This involves monitoring change in sediment accumulation e.g.

artificial astroturf attached to a tray. The purpose of the monitoring is to assess sediment deposition that might extend from the end of the stream to the Mimi swamp forest. The monitoring will follow selected heavy rain events prior to the commencement of construction and in response to specific rainfall events during construction (set out in the Construction Water Discharge Monitoring Programme in Appendix C of the CWMP).

7. Pest Management Plan

Specific objectives

The Pest Management Plan addresses the following matters:

- a. The identification of the confirmed location for the 3,650ha Pest Management Area (PMA).
- b. Within the PMA, to:
 - iii. reduce and maintain rats, possums, feral cats and mustelids to low levels in perpetuity.
 - iv. reduce and maintain feral goats and pigs to low densities in perpetuity.
 - v. exclude farm stock in perpetuity
 - vi. monitor and control wasps along the road corridor during construction and through to the conclusion of a 6 year plant maintenance period.
- c. To generate biodiversity benefits within the PMA across a wide range of plants and animals.
- d. An adaptive management approach to enable pest management techniques to be modified if target pest densities and the performance outcomes for avifauna identified below are not met.

Performance outcomes

The Pest Management Plan includes the following performance measures:

- e. The following target pest densities in the PMA, measured immediately prior to the breeding season (for bats and birds) and then through the critical stages when young remain in the roost / nest:
 - i. rat species – ≤5% tracking tunnel index;
 - ii. mustelids – no detections;
 - iii. cats – no detections;And throughout any year, the following target pest densities in the PMA:
 - a. possums – ≤5% chew card index;
 - b. goats and deer - <1 kill per hunter/day;
 - c. feral pigs - <1 kill per hunter/day; and
 - d. farm livestock – zero presence.
- f. For palatable plant species:
 - i. The recruitment of vegetation species which are currently suffering

ungulate induced recruitment failure. Indicator species will include: mahoe, hangehange, large leaved coprosma spp., pate, wineberry, tawa, hinau, kamahi and pikopiko.

- ii. Recovery of condition of possum palatable trees. Indicator species will focus on measuring changes in foliage density of small trees such as; swamp maire, mahoe, kaikomako, northern rata and thin-barked totara.
- g. A statistically significant 20% increase in relative abundance for kiwi, tui, bellbird, kereru, whitehead, long-tailed cuckoo, fernbird, and North Island Robin in the PMA within 12 years of the Completion of Construction Works.

Monitoring

The Pest Management Plan includes the following survey and monitoring requirements within the PMA.

- h. Provision for monitoring pest levels to assess performance targets and enable adaptive management processes in the event targets are not met.
- i. Provision for a quantitative assessment of canopy condition and understorey condition to establish pre-pest management and post-pest management vegetation condition knowledge for the PMA, including the composition and abundance of palatable vegetation.
- j. Provision for monitoring avifauna prior to commencement of pest management in the PMA to establish a relevant baseline, including for kiwi, kōkako, forest birds and fernbird.
- k. Provision for outcome monitoring of kiwi, tui, bellbird, kereru, whitehead, long-tailed cuckoo, fernbird, North Island Robin conducted for 12 years, at 3-yearly intervals, following the onset of the pest management measures.

8. Peripatus Management Plan

Specific objectives

The Peripatus Management Plan addresses the following matters:

- a) The specific procedures to avoid, remedy or mitigate adverse effects associated with the construction and operation of the Project on peripatus species through salvaging peripatus contained within suitable selected peripatus habitat into a suitable relocation site outside of the Project Area.

Performance outcomes

The Peripatus Management Plan includes the following performance measures:

- b) To salvage peripatus contained within suitable selected peripatus habitat locate and capture peripatus from the proposed Project Area, and to

successfully at predetermined release sites, immediately adjacent to the Project Area, with minimal stress caused to the animals.

Monitoring

- c) There are no specific monitoring requirements for peripatus.

9. Biosecurity Management Plan

Specific objectives

The Biosecurity Management Plan addresses the following matters:

- a) The biosecurity measures to avoid the likelihood of spread or introduction of invasive pest plants and pest animals as a result of Project-related activities.
- b) Specific provisions for the minimisation of spread of Myrtle Rust onto and along the Project Area;
- c) Measures to avoid the introduction to the Project Area of invasive pest plants and animals with nursery produced seedlings

Performance outcomes

- d) Non-detection in the planting areas of pest plants and pest animals.

Monitoring

The Biosecurity Management Plan includes the following survey and monitoring requirements within the Project Area:

- e) Provision for pest plant and pest animal surveillance to be carried out by suitably qualified personnel within the Project Area and at restoration planting areas for the first growing season of any new plantings.
- f) Before-delivery inspections by suitably qualified personnel for invertebrate and plant pests at the premises of supplier nurseries of plant material being grown for planting in the Project Area and mitigation sites.
- g) Before construction walk-through survey of the Project Area by suitably qualified personnel to identify plant and animal pests and plant diseases already present.