

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

**MT MESSENGER BYPASS PROJECT**

In the matter of the Resource Management Act 1991

and

In the matter of applications for resource consents, and a notice of requirement by the NZ Transport Agency for an alteration to the State Highway 3 designation in the New Plymouth District Plan, to carry out the Mt Messenger Bypass Project

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**JOINT MEMORANDUM OF COUNSEL ON BEHALF OF THE NZ TRANSPORT  
AGENCY AND THE DIRECTOR-GENERAL OF CONSERVATION IN RESPONSE  
TO COMMISSIONER'S MINUTE SIX**

19 October 2018

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1. This joint memorandum is filed on behalf of the NZ Transport Agency ("**Transport Agency**") and the Director-General of Conservation ("**DOC**").
2. This memorandum updates the Commissioner following the Commissioner's Minute Six, a joint memorandum of counsel dated 17 October, emails provided to the hearing administrator yesterday and a joint witness statement of the planning experts dated today.

### **Resumed hearing**

3. In relation to the resumed hearing on 24 October 2018, the Transport Agency considers there to be merit in keeping the hearing date for the reasons below.
4. However, further information from the experts (both ecological and planning) will be provided on Tuesday 23 October. Counsel for the Transport Agency will provide a further update to the Commissioner following that information being received.

### **Ecological matters**

5. In terms of ecological matters, while there are a few issues outstanding following the initial hearing (as explained in the Joint Witness Statement), the only outstanding issue regarding bats and the PMA is between the Transport Agency and the District Council. That issue relates to the conditions on the use of, and investigations into, Waitaanga if it is to become the PMA.<sup>1</sup>
6. Further to Dr Ogilvie's email to the Commissioner yesterday, an updated ELMP will be provided on Tuesday morning. This will shed some light on where issues stand but presently counsel for the Transport Agency see benefit in Mr MacGibbon, Mr Shaw and Dr Barea (as necessary) 'hot-tubbing' on Wednesday 24 October.

### **Conditions**

7. In relation to planning matters, a final condition set will not be available until Tuesday morning. However, as set out in the planning joint witness statement, the planners have made very good progress towards resolving issues.
8. Further to paragraph 5 of the Commissioner's Minute Six, and the joint memorandum of counsel for the Transport Agency and DoC dated 17 October, the Transport Agency and DoC have not been able to agree wording for condition 29A regarding the acquisition of legal rights for the PMA and other planting/mitigation land.
9. As stated in paragraph 7 of the joint memorandum, counsel for DoC will file written submissions setting out DoC's position next Tuesday 23 October.


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<sup>1</sup> See paragraph 11 of the Planning JWS dated 19 October 2018.

Counsel for DoC does not seek to present to those submissions but will attend and be available at the hearing on 24 October to answer any questions or points of clarification should that assist the Commissioner. Counsel for the Transport Agency will respond in closing submissions.

10. On this basis, and as set out in paragraph 12 of the planning joint witness statement, the Transport Agency and DoC do not consider 'hot-tubbing' of the planning witnesses to be necessary. However, the planners will be available and counsel for the Transport Agency propose, should it be of assistance to the Commissioner, that Mr Roan steps through the condition changes (at least at a high level) and answers any questions.
11. Counsel for DoC has read this memorandum and agrees with it but has been in Environment Court mediation so has not been able to sign it.

**DATED this 19<sup>th</sup> day of October 2018**



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

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**S J Ongley**  
Counsel for Director-General of  
Conservation

