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 New Zealand 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.

STATEMENT OF EVIDENCE BY GREG JOHN CARLYON

ON BEHALF OF TE KOROWAI TIAKI O TE HAUAURU INCORPORATED

24 July 2018

QUALIFICATIONS AND EXPERIENCE

1. My name is Greg John Carlyon.

2. I am the Practice Lead - Planning, and Director of, The Catalyst Group.

3. I hold a Bachelor's Degree in Regional Planning from Massey University, and have practiced as a planner for 26 years. I have held senior planning roles with the Department of Conservation and Manawatu-Whanganui Regional Council, and founded The Catalyst Group in 2011, to develop a multi-disciplinary planning and science company, for which I lead the planning output.

4. My experience with implementation of the Resource Management Act 1991 (RMA) is broad-ranging. It includes being the planning lead and involvement with negotiations for large-scale consent renewal projects for state owned enterprises in the central North Island, the preparation and leadership of a number of district plan processes, oversight and leadership for full plan review programmes, and strategic advice to a large number of regional councils in respect of second-generation plan development.

5. I have extensive involvement with tangata whenua interests in respect of resource management processes, including technical and leadership roles with hapu and iwi in the lower North Island and upper South Island. This has recently included negotiations and settlement of issues with the New Zealand Transport Agency (NZTA) in respect of Patricia Grace and associated hapu and trust interests with the Kapiti Expressway on the Kapiti Coast. I have been extensively involved in Taranaki with projects over the past five years, including roles as a Hearing Chair and Commissioner for oil and gas activities; assisting parties with appeals in respect of district plan reviews; development of biodiversity provisions within plans; and preparation of cultural impact assessments for large-scale infrastructure projects.

6. I confirm that I have read the 'Code of Conduct' for expert witnesses, contained in the Environment Court practice note 2014. My evidence has been prepared in compliance with that Code. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

7. I note for the record, that Dr Fleur Maseyk, who leads the Conservation Science practice within The Catalyst Group, has assisted the NZTA team for the Mt Messenger project, with review work in respect of biodiversity offsets. I was not involved in the development of her programme of work in any way, and have not addressed biodiversity matters in any detail in my statement of evidence.

SCOPE OF EVIDENCE

8. The purpose of my evidence is to address the notice of requirement (NoR) and resource consent applications sought by the NZTA in respect of the interests of Te Korowai Tiaki o te Hauāuru Incorporated (Te Korowai), with a particular focus on cultural impacts. 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. My evidence is based upon the best information available to me, and I reserve my ability to update my evidence at the hearing, in response to any new information that may arise from an initial engagement hui being held between NZTA and Te Korowai Executive members on 25th July 2018.

Submission from Te Korowai

9. Te Korowai submitted in opposition to the entire proposal. It noted that the runanga originally set out a position that there would be significant adverse cultural effects associated with the proposal, and that there were no options which would address impacts on those cultural effects. Te Korowai further identified that there

would be no clarity or transparency in respect of cultural mitigation and offsetting. Te Korowai noted that any outcomes determined through offsetting or compensation would need to benefit both the runanga and affected hapu, and noted that there was no framework or methodology to ensure this outcome could be achieved. While Te Korowai's first preference in respect of a decision on the application is for a decline in total, its second preference is to impose conditions on the NoR and resource consents to address effects on culture, landscape and biodiversity, and where those effects cannot be avoided, remedied or mitigated, that they be compensated.

SUMMARY

10. It is my opinion that the NoR and resource consents do not meet the purpose of the Act at section 5, and fail the relevant expectations in sections 6(e), 7(a) and 8 RMA.[1] Based on current information, the work undertaken by NZTA has not concluded discussions or negotiations on cultural mitigation and offsetting, either with Ngāti Tama or Te Korowai.

11. The evidence of Mr Dreaver and Mr Dixon for the applicant, reflect on the potential for significant adverse effects on cultural values. The conclusions drawn by these witnesses (and witnesses for the regulatory authorities), conclude on a suppositional basis that the effects can be avoided, remedied, mitigated, offset or compensated when at the time of writing, it is inappropriate to draw that conclusion. I understand that substantial effort is being made by Mr Dreaver and others to bring these matters to a conclusion prior to hearing.

12. 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.

[1] I acknowledge that there may be a legal issue around reference to Part 2 RMA, in light of *King Salmon* and outstanding case law relating to the *Davidson* appeal. Counsel for Te Korowai has indicated that this is an evolving area in case law, and the position may be different for designations and resource consents. My references to Part 2 RMA provisions are also intended to include the related planning provisions that address these statutory provisions.

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

14. 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.

15. 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.

16. 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.

STATUTORY FRAMEWORK AND ASSESSMENT

Overview of the Notice of Requirement and Resource Consent Applications

17. The NoR and resource consent applications address a large-scale infrastructure project to upgrade and realign a section of SH3 between Ahititi and Uriti, north of New Plymouth.

18. The NoR is well described in the Mt Messenger bypass project Assessment of Environmental Effects (AEE), at section 2.2[2], and is summarised by Mr Dixon for NZTA. In summary, the designation sought covers approximately 90 hectares of land, of which 77.18 hectares affects 16 privately owned parcels of land. Nearly half of this land is owned by Ngāti Tama on behalf of their beneficiaries. This land has been returned to the tribe as a key element of their recently concluded Treaty settlement process. Ngāti Tama refer to the Mt Messenger lands returned (as part of the Treaty settlement) as parininihi. This is also referred to as Te Matua Kanohi o Ngāti Tama whanui (the parent face of Ngāti Tama.

19. The applications for resource consents are set out at section 2.3 of the Mt Messenger bypass AEE[3]. While a number of the proposed activities are permitted in the relevant statutory plans, consents are required in respect of the National Environmental Standard for Assessing and Managing Contaminants in Soils to Protect Human Health (2011); the operative Freshwater Plan for Taranaki (2001); the Regional Soil Plan for Taranaki (2001); and the Regional Air Quality Plan for Taranaki (2001). I also note the requirement to give effect to the Ngāti Tama claims Settlement Act (2003)(in respect of conservation matters).

20. Mr Dixon has set out the rationale for the application of a designation process, supported by resource consents, which allows for strategic planning in respect of public works.[4] The consents sought allow physical implementation of the project. I agree with Mr Dixon's assessment in this regard and note that there is a high degree of concurrence between the reporting officers for Taranaki Regional Council, New Plymouth District Council, Mr Roan as author of the Mt Messenger bypass AEE, and Mr Dixon for the NZTA.

[2] Mt Messenger Bypass AEE, 2017
[3] Mt Messenger Bypass AEE, 2017
[4] Paragraphs 39-40, Statement of Evidence of Mr Dixon

RELEVANT PROVISIONS OF THE RMA IN RESPECT OF THE APPLICATIONS SOUGHT

Part 2 of the RMA

21. I agree with the analysis prepared by Mr Dixon in respect of the framework of the NoR and resource consent applications. In respect of the NoR, a Part 2 assessment is required. However, the implication of the Davidson Trust case[5] for resource consents, is that reference to Part 2 is only undertaken on the basis that the provisions of the Act have been inappropriately read down into plans, there is inconsistency, or lack of clarity in the plans. On the basis that the analysis is required for the NoR and given the status of the test to the case law in this regard, it is appropriate to assess the resource consent sought in the light of Part 2.

22. I agree with Mr Dixon's proposition at his paragraph 47-48, that there is a cascading requirement through section 6, 7 and 8 to recognise and provide for, have particular regard to, and take into account.

23. In respect of the submission of Te Korowai, the requirements of section 6(e) are particularly relevant in achieving the purpose of the Act –

> *"all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance, (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga."*

24. In respect of section 7, the relevant matters are –

> *"in achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to, (a) kaitiakitanga"*

and section 8 Treaty of Waitangi –

> *"in achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o* Waitangi)".

[5] R J Davidson Family Trust v Marlborough District Council [2017] NZHC 52

25. Mr Dixon for NZTA, Mr Dreaver in his statement of evidence for NZTA, and the section 42A reports for both Taranaki Regional Council and New Plymouth District Council, identify the adverse effects of the project on Ngāti Tama's cultural and spiritual values. In particular, Mr Dixon states *"In my opinion the key adverse effects of the project include (a) Ngāti Tama's cultural and spiritual values have the potential to be effected during the construction of the project."*[6] He further identifies *"from my very first involvement in the project in early 2016, it was evident to me that any options for the project would have potentially significant positive transportation benefits, but would also have significant potential adverse cultural and ecological effects without comprehensive mitigating and offsetting."*[7]

The initial cultural values assessment prepared by Tama Hovell, identified relevant historical and cultural associations that apply to members of Te Korowai, as well as the significant adverse cultural effects arising from the proposal. The description of effects is clear, but not the outcomes, in particular recommended cultural mitigation and offsetting to address the adverse cultural effects to Te Korowai and its members.

Section 5

26. It is my opinion that the purpose of the Act *to promote the sustainable management of natural and physical resources* is not met in respect of Te Korowai's interests in Mt Messenger. At the point that evidence was produced by officers for Taranaki Regional Council and New Plymouth District Council, that the evidence of Mr Dreaver and Mr Dixon was produced (including supplementary statements of evidence dated 17 July 2018), there was no comprehensive package of methods to avoid, remedy or mitigate effects. This outcome affects more than 500 descendants of Ngāti Tama, represented through Te Korowai.

27. I acknowledge that settlement of these matters is complex and that the investment of time and resource to bring matters to a conclusion is significant. However, there is no record within these proceedings to demonstrate that has occurred with Te Korowai.

[6] Paragraph 52, Statement of Evidence of Mr Dixon
[7] Paragraph 53, Statement of Evidence of Mr Dixon

Matters of National Importance

28. The requirements of section 6(e) are set out at my paragraph 23. NZTA has engaged with the runanga, having recognised that manawhenua lies with Ngāti Tama. It has belatedly engaged with the descendants of Ngāti Tama, represented by Te Korowai. NZTA, at the early stage, recognised the relationship that tangata whenua have with this land (return of raupatu lands through the Treaty settlement process), by clearly stating it would not compulsorily acquire Ngāti Tama's land. In the light of Tribunal reports (in respect of the Crown's treatment of Ngāti Tama), to have compulsorily acquired this land would have been an egregious error. The recognition of tangata whenua rights and interests in respect of the lands covered by the NoR, goes part way to meeting the requirements of section 6(e). In the absence of any concluded agreements with Ngāti Tama or Te Korowai, it cannot be claimed that their interests are provided for. Ngāti Tama's position, at a runanga level, in respect of the conclusions drawn by NZTA via its witnesses, is not clear. The position of Te Korowai's witnesses is clear –

> *"Te Korowai remains opposed to this application in its entirety and seeks it to be declined.*
>
> *(a) there are serious breaches of the Treaty of Waitangi in the consultation with iwi,*
>
> *(b) inadequate and incomplete cultural values assessments,*
>
> *(c) failure to get agreement from iwi as to access to land,*
>
> *(d) failure to identify and address impacts from an iwi point of view."*[8]

Section 7

29. The requirements of this provision direct decision makers to address other matters to which particular regard must be had. The interests of Te Korowai are provided for by section 7(a) Kaitiakitanga. I accept the position of NZTA and its agents in respect of the role of Ngāti Tama as kaitiaki of the project area. This appears to be accepted by a number of other iwi with overlapping rohe in the project area, including Ngāti Mutunga and Ngāti Maniapoto. However, it is my opinion that the application of kaitiaki status is not an exclusive undertaking. The descendants of

[8] Summary of lay witness positions presented by Te Korowai

Ngāti Tama, represented by Te Korowai, have demonstrated their whakapapa to the lands covered by the application, and are therefore kaitiaki.

30. On the basis that the kaitiaki status is not contested by the application, but simply disregarded for Te Korowai, the requirements of section 7(a) are not met.

31. The first substantive meeting between Te Korowai and NZTA is occurring on 24 July 2018. Just six working days prior to the start of the hearing. It appears that the framework for this meeting is to better understand the positions of parties. However, the same courtesies extended to Ngāti Tama in respect of support, resourcing, time to reconcile matters and the application of Treaty principles in respect of engagement, have not been applied to Te Korowai.

Principles of the Treaty of Waitangi

Section 8

32. Those parties exercising powers or functions under the RMA are required to take into account the principles of the Treaty of Waitangi. I do not dispute the evidence of Mr Dreaver, reporting officers for New Plymouth District Council and others, that NZTA has engaged with Ngāti Tama in a thorough and considerate way. However, I disagree with the conclusions drawn by Ms McBeth for NPDC in her section 42A report, where she expresses the view, "Overall I consider NZTA has engaged with tangata whenua in accordance with the principles of the Treaty of Waitangi, and council has taken these principles into account."[9] Ms McBeth then goes on to confirm at paragraphs 357, 366 and 382 that the significant adverse effects on cultural matters, as identified in her report, have not been satisfactorily addressed.

33. This view accords with my opinion that the requirements of section 6 and 7 are not provided for, and that the purpose of the Act is not provided for. In this respect I agree with Ms McBeth's conclusion at paragraph 385, that "if the above matters are not addressed satisfactorily in evidence, I consider the NoR should be withdrawn."

[9] Paragraph 370, NPDC Section 42A Report

34. This position is further reinforced in the TRC section 42A report prepared by Mr Colin McLellan and Ms Kathryn Hooper, which reinforces the position outlined above, in respect of resolution of matters prior to granting of the NoR and resource consents being sought, where they state "We emphasise up front, that the offset package proposed by NZTA is critical to the granting of the consent. There is a need for a very high degree of certainty around the proposed offsets to ensure sustainable management."[10]

National Policy Statement for Freshwater Management (NPSFM)

35. The relevant provisions of the NPSFM in respect of cultural matters are Objective AA1 –

> "To *consider and recognise te mana o te wai in the management of freshwater"*

and its accompanying policy AA1, and Objective D1 -

> *"To provide for the involvement of iwi and hapu, and to ensure that tangata values and interests are identified and reflected in the management of freshwater, including associated ecosystems, and decision making regarding freshwater planning, including on how all other objectives of this NPS are given effect to."*

36. These objectives and supporting policies denote a clear requirement to reflect iwi, hapu and tangata whenua values and interests in policy making and decision making, in respect of freshwater and freshwater ecosystems. TRC's section 42A report identifies that the project is consistent with the NPSFM.[11] It is my opinion that the objectives of the policy statement would not be provided for in a decision that grants the resource consents sought, when the matters that would address cultural concerns are outstanding (agreed by all parties), and the interests of hapu and tangata whenua, in respect of Te Korowai's interests, are explicitly not provided for.

[10] Page 7, paragraph 3, TRC Section 42A Report
[11] Paragraph 269, TRC Section 42A Report

New Zealand Coastal Policy Statement 2010 (NZCPS)

37. The TRC section 42A report recognises the status and relevance of the NZCPS at paragraph 271. It further identifies that the NZCPS has been given effect to in the Regional Coastal Plan and is relevant in assessing some parts of the application. The NZCPS identifies the rights and interests of tangata whenua at Policy 2(d) –

> *"provide opportunities in appropriate circumstances for Maori involvement in decision making, for example when a consent application or NoR is dealing with cultural localities or issues of cultural significance, and Maori experts, including pukenga, may have knowledge not otherwise available."*

38. I have previously commented on the exclusion of the interests represented by Te Korowai, in respect of the membership, whakapapa to the resource and knowledge held by its members. In respect of this application the determination by NZTA to deal with Ngāti Tama exclusively leads to a view that the requirements of Policy 2(d) are not met.

Regional Policy Statement

39. The relevant provisions in respect of rights and interests of iwi are found at section 16 of the Taranaki Regional Policy Statement (January 2010). The first objective in respect of the Treaty of Waitangi is as follows:

TOW Objective 1 –

> *"To take into account the principles of the Treaty of Waitangi and the exercise of functions and powers under the RMA."*

This Objective is supported by Policy 2 –

> *"Management of natural and physical resources in the Taranaki region will be carried out in a manner that takes into account the principles of the Treaty of Waitangi, including the principles of kawanatanga, rangatiratanga, partnership, active participation, resource development and spiritual recognition."*

40. In relation to kaitiakitanga the RPS has:

KTA Objective 1 -

"To have particular regard to the concept of kaitiakitanga in relation to managing the use, development and protection of natural and physical resources in the Taranaki region, in a way that it accommodates the views of individual iwi and hapu."

41. With the relevant supporting policy, Policy 1, as follows -

"Iwi and hapu will be consulted on an individual basis to determine how kaitiakitanga can be recognised and integrated in the management of the use, development and protection of natural and physical resources in the Taranaki region."

42. The third relevant objective is relationship focused, REL Objective 1 -

"To recognise and provide for the cultural and traditional relationship of Maori with their ancestral lands, water, air, coastal environment wāhi tapu and other sites, and taonga within the Taranaki region."

43. The relevant policies in support of this objective are REL Policy 1 -

"The development, use or protection of iwi and hapu land will be supported in a manner which is consistent with the purpose of the Act."

44. The fourth objective relating to cultural and spiritual values is CSV Objective 1 -

"Management of natural and physical resources in the Taranaki region will be carried out in a manner that takes into account the cultural and spiritual values of iwi of Taranaki, and in a manner, which respects and accommodates Tikanga Maori."

45. CSV Policy 2 supports this objective:

"Procedures and approaches will be adopted to enable iwi to participate as a partner in water, air and coastal management decision making."

46. The assessment undertaken by Mr Dixon for NZTA addresses chapter 16 of the Regional Policy Statement (RPS) in brief, at his paragraph 97. I note he does not draw on the four objectives, or their supporting policies to develop his overall conclusion that the project is consistent with the objectives and policies. This is similarly the case for the section 42A report for TRC, which identifies the relevant

provisions of the RPS at paragraphs 277 and 278. The report authors form the conclusion that the RPS has been given effect in their analysis of the supporting regional plans, as they are not inconsistent with the RPS, without having undertaken an analysis of the RPS provisions. In my opinion, this approach is inconsistent with the requirements of Section 104(1)(b) of the Act, which requires the consent authority to have regard to the contents of a RPS. In the event, the assessment provides no review or acknowledgement of the objectives or policies contained in the RPS.

47. The absence of analysis challenges the conclusions drawn by the reporting officers.

48. In addition, in the absence of any settled position, either with Ngāti Tama or Te Korowai, the TRC staff position in respect of the certainty required for any approval of an application should prevail. It is clear from the lack of settled positions that the rights and interests of tangata whenua, iwi, hapu and Maori stakeholders is not provided for. The opportunities that the objectives and policies provide for, in respect of Maori participation in decision making, have not been applied in respect of Te Korowai's clearly expressed interests through expert analysis by the reporting authorities or hearing structure.

Regional Freshwater Plan

49. The relevant policy in respect of cultural matters is contained at Policy 4.1.1 of the Regional Freshwater Plan. The policy identifies that –

> *"Wāhi tapu and other features or sites of historical or cultural significance to iwi and hapu of Taranaki, and the cultural and spiritual values associated with freshwater, will be protected from the adverse effects of activities, as far as practicable."*

50. The conclusions drawn by the reporting officers are that the consultation with the runanga (Ngāti Tama), in relation to the mitigation measures, gives effect to this policy. In my opinion that conclusion cannot be drawn with the current status of discussions between the runanga and NZTA. Further, Te Korowai has demonstrated clear connection to the land through hapu and iwi affiliation, and at this point, the position of Te Korowai has not been accounted for. In my opinion, the cultural and spiritual values associated with freshwater, identified in the submission from Te Korowai, are not provided for.

Regional Air Quality Plan and Regional Soil Plan

51. The Regional Air Quality Plan and Regional Soil Plan do not address cultural matters directly.

NEW PLYMOUTH DISTRICT COUNCIL

52. Ms McBeth has undertaken a substantive planning assessment of cultural effects as part of her section 42A hearing report. These matters are addressed through paragraphs 118-145 of her report. At the heart of the assessment undertaken by Ms McBeth, is the conclusion she draws at paragraph 122. She identifies the legitimacy of the three iwi authorities, who are either going through or have settled their Treaty settlement processes, and acknowledges that formal management bodies, constituted within these iwi, should be consulted with.

53. In respect of groups or individuals who do not align or agree with mandated iwi, she notes that the public notification and standard process, including presentation before the hearing, is sufficient to ensure cultural concerns raised can be addressed.

54. In my opinion, this conclusion is contrary to the requirements of the Act at section 6, 7 and 8. The policy directions contained in the NZCPS and NPSFM, and is equally in contest with the RPS in respect of Maori participation in resource management processes. Ms McBeth assessed the submission produced by Te Korowai, and recognises similarity with the positions taken by Ngāti Tama in their submission, which for example include statements that inappropriate taking of land may reinforce past raupatu, or undermine the mauri of the area. In respect to the Te Korowai submission, Ms McBeth states "Therefore in recognition of Ngāti Tama's kaitiakitanga responsibilities and mana over the project area, NZTA has endeavoured to work with the runanga to seek outcomes which avoid, remedy and mitigate cultural effects, and where this is not possible due to particular challenges of the environment, to discuss offsetting effects."[12]

[12] Paragraph 132, NPDC Section 42A Report

55. This consideration assumes a singular kaitiaki status for the area. It marginalises the legitimate interests of Te Korowai. Te Korowai submitted in good faith, have attempted to engage with NZTA and have received no support and resourcing to respond to challenges put to them by the applicant or decision making authorities. In response to the submission points made by Te Korowai, Ms McBeth forms the view that "I do not consider that an improved state highway, given all of the earlier identified position effects, is "inappropriate development", provided it is carried out in a manner which is sensitive to the environment it is located within."[13]

56. While Ms McBeth has drawn no conclusions in respect of the submission from Te Korowai, where similar submission points are made by Ngāti Tama, she recognises the runanga with the statement – "at the time of finalising this report, no update has been provided, and I therefore have reservations as to whether cultural effects relevant to Ngāti Tama have been mitigated or offset."[14] Ms McBeth reflects that iwi authorities are recognised and provided for through legislation. In my opinion, this is not an accurate reflection in respect of the RMA. Section 6 of the Act speaks to Maori and their culture and traditions. Section 7 speaks to kaitiakitanga, and section 8 makes no mention of iwi authorities in taking into account the principles of the Treaty of Waitangi. I do not disagree with the possibility that agencies find settled iwi authorities convenient to engage with.

57. I agree with Ms McBeth's conclusion that the matters in respect of cultural effects, have not been addressed to this point. I also agree with her view that if these matters are not addressed satisfactorily in the evidence, that the NoR should be withdrawn.[15]

58. In my opinion, addressing these matters relies on more than satisfying the interests of the runanga. The rights and interests of Te Korowai, via ancestral connection to the land is not in question, and the responsibility to consult, in order to attempt to avoid, remedy, mitigate, offset or compensate the losses they have identified, has not been taken up by the applicant, nor fully addressed in the officer reports from TRC and NPDC.

[13] Paragraph 133, NPDC Section 42A Report
[14] Paragraph 366, NPDC Section 42A Report
[15] Paragraph 385, NPDC Section 42A Report

OTHER MATTERS

Statement of Evidence and Supplementary Evidence – Mr Michael Dreaver

59. Statement of Evidence of Mr Michael Dreaver for NZTA (25 May 2018) and supplementary statement of evidence (17 July 2018).

60. Mr Dreaver was engaged by NZTA to advise on iwi and Māori engagement, to determine the scope of engagement with tangata whenua, and where necessary, lead negotiations on a mitigation and compensation package for Ngāti Tama interests, affected by the project.

61. I have assumed, for the purposes of my examination, that when Mr Dreaver speaks of Ngāti Tama interests he is talking about the Ngāti Tama runanga, not the legitimately formed Te Korowai, or its membership who whakapapa to both the land and runanga.

62. Mr Dreaver sets out an extensive record of the Treaty of Waitangi claim settlement process, which ultimately led to the Ngāti Tama Claim Settlement Act of 2003. The position taken at the outset of negotiations with Maori is set out in paragraph 46 of Mr Dreaver's evidence, where he identifies that in June 2016 he advised that Te Runanga o Ngāti Tama should be the key point of contact for Ngāti Tama interests. He noted at that point that there was some division within Ngāti Tama, but that the runanga was the mandated body. He also sets out in paragraph 49 that the negotiation strategy adopted the need for inclusivity and maintenance of contact with iwi and Maori groups who wished to have their views heard.

63. I again note that with the exclusion of some information exchange sessions, through the first third of 2018, that the first meeting of any substance between Te Korowai and the NZTA (for the purposes of addressing substantive matters), is occurring six working days prior to the beginning of the hearing.

64. I have previously identified in my evidence, the efforts undertaken by NZTA and their representatives to engage with Ngāti Tama on complex issues, and to reconcile and resolve matters to the mutual satisfaction of parties. Mr Dreaver shared his opinion on the lack of participation of Te Korowai representatives (including suspended Trustees from the runanga), in hui and other events organised by NZTA. Mr Dreaver acknowledges, at his paragraph 71, that three of seven Trustees of the runanga have been suspended from office, and acknowledged that

they would rely on the runanga leadership (which had suspended those Trustees) to continue to brief and engage those Trustees in respect of the project.

65. In my opinion, Te Korowai has engaged in the NoR and resource consent process, where other iwi have not. They have articulated a range of legitimate concerns through their submission and engagement (where this opportunity has been provided). The membership has demonstrated whakapapa links to the land affected by the roading proposal, and they have made these undertakings in the light of a dysfunctional runanga, which the NZTA has chosen to deal with in preference to other Maori or hapu interests. Mr Dreaver concludes his expert statement by identifying that NZTA will continue to work with the runanga to refine and agree consent conditions.

66. It is difficult to contemplate how an exercise of this nature provides for the rights and interests of Te Korowai, in respect of the Part 2 requirements of the Act. In addition, this approach is contrary to the negotiation strategy set out by the NZTA to operate on an inclusive basis.

67. The opportunity being provided to Te Korowai at the upcoming hearing, is expressed by the reporting officers for TRC, NPDC and the applicant's representatives (Mr Dreaver and Mr Dixon), as being one where Te Korowai as a submitter, makes their case before the single independent commissioner, in competition with the views of the experts ranged against them. This contrasts substantially with the high quality engagement that is occurring with the runanga.

CONCLUSIONS

68. I have not addressed the conditions proposed by the applicant, along with the subsequent review and feedback from the authors of the section 42A reports. It is my opinion that the position in respect of unresolved cultural matters affecting the rights and interests of Te Korowai (as descendants of Ngāti Tama), are not appropriately provided for. In the absence of recognition of these values it is problematic to create conditions to provide for them.

69. I recognise that the submission and lay witness statements for Te Korowai offer approaches which may be capable of being the subject of conditions. As the applicants and other parties have set out for Ngāti Tama the potential for conditions needs to be addressed in a collaborative way with the applicant.

70. In my opinion, resolution of the outstanding matters with Te Korowai is possible. Underlying that resolution is a statutory requirement to recognise and provide for the interests of Te Korowai.

71. As the NoR and resource consent applications currently stand, it is my view they should be declined, as the purpose of the Act has not been met.

Greg Carlyon

24 July 2018