Memorandum

To	Commissioner
From	Colin McLellan, Consents Manager, Taranaki Regional Council and Kathryn Hooper, Consultant Planner, Landpro Limited
Consent	**Application 17-0429.1.0(A)-(E)**
Document	**Final Summary - TRC**
Date	30 July 2018

1. Introduction

1. The New Zealand Transport Agency (NZTA) lodged applications with the Taranaki Regional Council ('TRC') for a total of 58 consents associated with the proposed Mt Messenger Bypass on 15 December 2017. The TRC's s42A report was provided on 18 May 2018.

2. This additional report provides an update to the Commissioner on progress and changes made as a result of further information provided and further discussions with NZTA since the original s42A report was completed, and in response to their evidence and that of submitters.

3. It is considered appropriate to start by revisiting the key issues identified in the TRC's original report. These are listed and progress made since the s42A report was prepared is discussed briefly in Table 1 below.

Table 1: Summary of progress on key issues identified in original report

Key Issue Identified in Original Report	Progress since s42A report	Discussion
Undertaking earthworks of this scale in the location proposed, the challenges presented by the topography and the climate of the area and the need to address these by way of clear and enforceable consent conditions that are consistent with other earthworks consents in the Taranaki Region.	Discussions between TRC and NZTA erosion and sediment control experts have occurred, including a site visit.	TRC remain concerned about monitoring of sediment discharges, in particular the proposed baseline monitoring. Our comments on proposed conditions relating to sediment discharges reflect this.

Key Issue Identified in Original Report	Progress since s42A report	Discussion
Clearing vegetation and diverting streams in the headwaters of two catchments, which relies significantly on offsetting to address adverse environmental effects. The offsetting works are proposed to occur on land that is not controlled by NZTA which makes conditioning these activities difficult to achieve in order for conditions to be valid and certain.	Regular updates on progress with DoC, Ngati Tama and NPDC ecology experts relating to the offset calculations and final area.	The offsetting requirements are inherent in the mitigation offered by NZTA. The land areas involved and their ownership are shown in Figure 1 of Mr Roger MacGibbons Supplementary Evidence and shows that the majority of the PMA land is either owned by Ngati Tama, DoC or the NZTA. We would like to hear how the NZTA is progressing with securing access to the areas of private land indicated in Figure 1, along with a discussion about what the area may look like if the private land access cannot be secured, and hear from DoC in relation to accessing DoC land. The riparian planting and fencing proposed has not been discussed in great detail, with an obvious focus on the PMA. The TRC notes that the riparian management proposed is one of the key mitigations for the culvert and diversion activities, and some indication from NZTA on how progress with securing access to this land would also be helpful. We anticipate that our initial concerns, which included what enforcement action may look like should the NZTA be unable to secure the land to offset the effects of the activities, will be able to be worked through, if the need arises.
The need to formalise the agreements made with Te Runanga O Ngāti Tama, of which few details are known at the time of writing this report, but upon which the project is reliant in terms of mitigating the potential adverse cultural effects associated with the project.	Significant progress has been documented in the evidence.	The TRC notes Te Runanga o Ngati Tama has changed their submission from neutral to support. We therefore consider that this indicates that agreements with Ngati Tama are well underway, and this largely addresses our concerns.
The applications have a heavy reliance on the generation of plans to manage various aspects of the activities, and while considered important in achieving environmental	All management plans have been provided, with a mind to approving these through the consenting process.	Performance standards are outlined in the management plans. TRC retain some concerns with how the NZTA will demonstrate compliance with these

Key Issue Identified in Original Report	Progress since s42A report	Discussion
performance, the level of environmental performance and standards that these plans are intending to achieve is important.		standards, which are detailed further in this report. Where the TRC has concerns about any of the management plans, we have detailed these in this report also.

DRAFT CONDITIONS

4. There has been significant discussion in relation between TRC and NZTA in relation to proposed activities and proposed consent conditions and in large part the TRC and NZTA has agreed on these. The only outstanding issues that remain are detailed in Table 2.

Table 2: Comments on Draft Conditions

Condition Reference (NZTA Supplementary Evidence)	Condition Wording	Proposed Wording	Reasons
Definitions PREPARATORY WORKS	Initial works to enable Establishment Works and Construction Works, such as: • site surveys; • investigations (including geotechnical investigations); • monitoring; and • where the Permitted Activity standards in the operative Taranaki Regional Plans / New Plymouth District Plan are met a SCWMP has been prepared and the required controls are implemented, and vegetation clearance is in accordance with the ELMP and CWMP, land disturbance activities to establish site access, access tracks, construction yards, laydown areas and spoil disposal sites and associated erosion and sediment controls.	Initial works to enable Establishment Works and Construction Works, such as: • site surveys; • investigations (including geotechnical investigations); and • monitoring.	We agree with bullets 1-3. We have concern about bullet 4 and seek that this is removed. Permitted activities can be undertaken regardless, and a condition confuses this situation for enforcement officers and the public.

Condition Reference (NZTA Supplementary Evidence)	Condition Wording	Proposed Wording	Reasons
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, including cement, to a water body; and / or 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 incorporated into the Management Plans required under Condition GEN.9 and provided to the Chief Executive, TRC on request.	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 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 incorporated into the Management Plans required under Condition GEN.9 and provided to the Chief Executive, TRC on request.	We have added 'other contaminants' to cover the potential that contaminants that are not hazardous, but do cause environmental concerns in waterways, may be discharged and can cause as much harm.

GEN.10	The Consent Holder shall provide to the Chief Executive, TRC all of the management plans required under Condition GEN. 9 at least 5 working days prior to commencement of the relevant Works. 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	No Change proposed, see comment.	Comment: If the plans are NOT approved as part of the consent process, the conditions prepared on this premise will need revisiting to allow time for the necessary approval from TRC. We recommend 40 working days.
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) listed below, 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. The Consent Holder shall consider any comments received from the Chief Executive, TRC when finalising the SCWMP. If the Consent Holder has not received comments from the Chief Executive, TRC within 10 working days of providing the SCWMP, the Consent Holder may finalise the SCWMP and implement it accordingly.	a) With the exception of the three SCWMPs provided at the Hearing (being SCWMPs for: Fill Disposal Site 4; Construction Yard; Crossing at CH570) listed below, the Consent Holder shall provide all SCWMPs to the Chief Executive, TRC, for **approval** at least 10 working days before the commencement of Works to which the SCWMP will apply. **b) Works subject to SCWMP's shall not commence until the associated SCWMP is approved.**	The TRC considers it more appropriate to approve rather than certify. TRC seeks more certainty than proposed amendments being 'considered'. The TRC will either approve the SCWMP's or will not, and if not they will give reasons why, and require the plans to be changed and re-submitted. NZTA's suggestion that SCWMP's can be implemented without approval is tantamount to the consent holder writing the conditions after the consent is issued, which is clearly not appropriate.

GEN.13	The Consent Holder may make minor reasonable amendments to the finalised management plans at any time. A minor amendment is any amendment where the adverse environmental effect arising from the amendment is the same or less than the effect that would result in the absence of the amendment. In addition, any changes to the management plans shall remain consistent with the overall intent of the final management plan. The Consent Holder shall provide the Chief Executive, TRC with a copy of any amendment as soon as practicable and before Works associated with that amendment are implemented.	Delete GEN.13 and combine with GEN.14 as follows: The Consent Holder may make amendments to the management plans, subject to the **approval** of the Chief Executive, TRC. a) Any amendments to the management plans shall be consistent with the overall intent of the management plan. b) in the event of an amendment to a management plan under condition GEN.14(a), the Consent Holder must submit the amendment to the Chief Executive, TRC for certification 20 working days before the commencement of the relevant Works. Works unaffected by the amendment may continue.	Our concerns with GEN.13 and GEN.14 are that there is potential for disagreement between NZTA and TRC regarding what is minor and what is material, and that the TRC should be making this decision, not NZTA. Therefore it will be necessary to see all proposed changes. The TRC considers it more appropriate to approve rather than certify. If the TRC consider that the changes to the management plans are outside the scope of the originally submitted information, and are inconsistent with the overall intention of the management plans, then the change will trigger then need for a variation to consent.
GEN.14	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. a) Any material amendments to the management plans shall be consistent with the overall intent of the management plan. b) In the event of an amendment to a management plan under condition GEN.14(a), the Consent Holder must submit the amendment to the Chief Executive,		

	TRC for certification 20 working days before the commencement of the relevant Works. Works unaffected by the amendment may continue. *Advice note:* *The Chief Executive, TRC will carry out best endeavors to consider the management plans within 20 working days, noting that expert input may be required from the Transport Agency before certification can be provided. TRC shall, within a reasonable timeframe either confirm in writing to the Consent Holder that the material amendment is certified, declined, or request that the Consent Holder incorporate changes suggested by the Council. Where the Consent Holder and TRC are unable to agree on the finalisation of material amendments to management plans, the resolution process stipulated under Condition GEN.17 shall be followed. To avoid any doubt, condition GEN.17 applies to this condition*.		
GEN.15	(a) Preparatory Works that are a Permitted Activity in the Taranaki Regional Plans can be carried out at any time, provided the Permitted Activity standards are met. (b) At least 5 days prior to the commencement of any Preparatory Works under this Condition, the	DELETE	See previous comments re. definition of preparatory works. This condition is not necessary and may cause confusion.

	Consent Holder shall notify the Chief Executive, TRC that it intends undertaking the Preparatory Works, and shall confirm that all measures required by the management plans described in Condition GEN. 9 will be implemented over the duration of the Works.		
GEN.17	a) In the event of any dispute, disagreement or inaction arising about the content or implementation of the management plans, 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 person, acceptable to both parties ('mediator'), setting out the details of the matter to be referred for determination and the reasons the parties do not agree. c) The mediator shall, as soon as possible, issue a decision on the matter. d) The decision of the mediator on the implementation of the management plan is binding and shall be implemented by the Consent Holder. e) The dispute resolution process above will be applied before any formal enforcement action is taken by TRC, except in urgent situations.	DELETE	This proposed condition needs to be deleted as it removes the TRC's regulatory authority and regulatory enforcement functions.

SED.2	The Consent Holder shall have in place until the Completion of Construction Works a Construction Water Management Plan (CWMP) that 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. *Advice note: The CEMP provides additional management details on personnel, training, emergency response, complaints management, construction activities, reporting and review procedures*	No Change proposed, see comment.	Comment: TRC cannot agree to this condition at this stage as we do not agree on the CWDMP attached to the CWMP.

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 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 500 m2 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. *Advice note: Any modifications to the above shall be subject to certification in accordance with Condition GEN.12.*	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 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 500 m2 shall be treated using a liquid flocculant and a rainfall activated dosing system. Flocculation shall be undertaken and managed in accordance with the **approved** 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.	The additional points listed are those that TRC monitoring staff and experts have identified as important to document upfront as consent conditions, so that we can have confidence that the standards that the sediment controls set out to achieve are achieved.

		e) All erosion and sediment control devices shall be located outside the 20 year Annual Return Interval (ARI) flood level, unless no other viable location exists; **f) 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;** **g) All DEBs shall have a volume no less than 3 m^3 for every 100 m^2 of contributing catchment;** **h) All SRPs shall have a volume no less than 3 m^3 for every 100 m^2 of contributing catchment and shall contain decant pulley systems and a forebay with a minimum volume of 10% of the pond volume;** **i) All dirty water diversion channels shall be designed and constructed with sediment sumps with a minimum volume of 2m^3 per sump and spaced at intervals of no more than 50m.** *Advice note: Any modifications to the above shall be subject to certification in accordance with Condition GEN.12.*	

NEW SED.X	Not Proposed	**Re-vegetation and/or stabilisation of all disturbed areas is to be completed in accordance with the measures detailed in the 'Erosion and Sediment Control Guidelines for State Highway Infrastructure – Construction Stormwater Management'; New Zealand Transport Agency 2014.**	This was a condition originally proposed, and had been deleted by NZTA in their final suite of conditions. TRC would prefer to see this documented upfront in the conditions (as opposed to it being solely addressed in the management plans). The reason for this is that this is one of the key criteria for consideration by the TRC for mitigation of sediment discharges from both the exposed earthworks, and the areas of vegetation clearance.
SED.11	The Consent Holder shall undertake monitoring of construction water related 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: (i) Baseline water quality monitoring undertaken prior to the commencement of Works; (ii) monitoring undertaken during the construction period including both qualitative and quantitative monitoring; (iii) real-time continuous turbidity (NTU) monitoring undertaken at a single location in the Mimi River and in the Mangapepeke Stream at a point downstream of the works. Provision shall be made in the Programme for data to be directly made available to	The Consent Holder shall undertake monitoring of construction water related 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: (i) Baseline water quality monitoring undertaken prior to the commencement of Works; (ii) monitoring undertaken during the construction period including both qualitative and quantitative monitoring; (iii) real-time continuous **telemetered** turbidity (NTU) monitoring undertaken at a single location in the Mimi River and in the Mangapepeke Stream at a point **upstream and** downstream of the works. **This telemetered information shall be made**	The changes we have suggested to this condition reflect the concerns we have regarding the CWDMP, which are detailed further below.

	the Chief Executive, Taranaki Regional Council on request. (iv) monitoring response triggers and to the methods for assessing effects on the receiving downstream environment; (v) chemical treatment monitoring requirements; (vi) procedures for responds to the spillage or accidental discharge of sediment or contaminants to an aquatic environment; and (vii) reporting requirements.	**directly available to the Taranaki Regional Council within 2 hours of being recorded.** **(iv) Telemetered turbidity (NTU) monitoring and flow in to and out of two SRPs (one in the Mimi River and one in the Mangapepeke Stream catchment). These SRPs must be receiving runoff from active earthworks catchment associated with the main bypass works (i.e. not associated with the disposal areas of the site yards or compounds). This telemetered information shall be made directly available to the Taranaki Regional Council within 2 hours of being recorded.** **(v)** monitoring response triggers and to the methods for assessing effects on the receiving downstream environment; **(vi)** chemical treatment monitoring requirements; **(vii)** procedures for responds to the spillage or accidental discharge of sediment or contaminants to an aquatic environment; and reporting requirements.	
NEW DIV.X		The new stream channel shall have a flow capacity no less than that of the existing stream channel. Where floodplain flow is interrupted, additional waterway capacity shall be provided in compensation.	The LEDF does not make specific statements about the hydrological requirements of new stream channels, and the TRC would be more comfortable with this being clear upfront in the conditions.

TCV.9	Where feasible, the temporary culverts shall allow for fish passage in accordance with the ELMP.	The temporary culverts shall allow for fish passage in accordance with the ELMP.	TRC seek more certainty than 'where feasible' implies.
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 new or exacerbating any existing more than minor adverse flooding effects on adjacent and upstream land.	No change – query only	TRC question the need for 'more than minor' in this condition. If it is to stay, definition of what constitutes 'more than minor' from NZTA's perspective as it relates to flooding would be appreciated.
BRG.1	Bridges shall be constructed generally in accordance with Condition GEN.1.	The bridge shall be constructed generally in accordance with Condition GEN.1.	Unsure why this has been changed to plural, when the application is for one bridge.

Comments on evidence

5. Sentence 13(b) of Mr Graham Ridley's evidence states that TRC is comfortable with the CWMP and it can therefore be approved through the hearing process. This is not the case as part of the CWMP is the monitoring programme appended to it, to which we disagree with in some areas. Of note the Department of Conservation have also identified this as not appropriate for the scope of the works.

6. We have reviewed the evidence from the Department of Conservation and note that they have raised similar concerns to TRC in relation to sediment controls and monitoring.

7. We note that Ngati Tama have changed their submission from neutral to support.

CWMP

8. Reflecting comments on conditions we note that throughout the management plans, TRC would like the word certification replaced with approval. In particular this appears on Page 38 – Figure 7.1 states that winter works will be assessed and will be notified to TRC for certification.

CWDMP

9. In table 4.1 *'Continuous Stream Monitoring'* it states that *'continuous turbidity meter installed on site. Ability to manually download data on a regular basis'*. TRC believe that this creates an unacceptable delay to react to trigger events and therefore real-time telemetered monitoring is necessary.

10. In relation to the downstream monitoring sites proposed in the CDM, TRC are satisfied with the site on the Mangapepeke Stream, but not the site south of the alignment on the Mimi River. This is shown at WQ5. TRC would like this moved to WQ3, to avoid the influence of a tributary which enters the Mimi River between WQ3 and WQ5. This tributary provides a significant inflow that is from a catchment that is not affected by construction works. The data recorded at this site would therefore not be representative of flow from the construction works.

11. TRC don't believe that there is any relationship between the downstream sites and the allocated 'control sites' and therefore the triggers associated with these comparisons are not appropriate. TRC is of the opinion that the correct approach is to have upstream sites identified and monitored.

12. NZTA has committed to a trigger level in the streams of greater than 20% increase in turbidity from control sites in 6.1.1 of the CDWMP. TRC have concerns about how the monitoring proposed will be able to demonstrate this, as follows;

    a) While the provision of baseline data from the downstream monitoring sites is noted, this may not provide the data required to give confidence in the mitigation put in place. Having an upstream site to compare to, in the opinion of the TRC, is best practice and we would like this applied on this project.

    b) We note that upstream sites for ecological monitoring (EM1 and EM4) have been identified. Could these sites be suitable for upstream continuous monitoring?

13. We note the DoC evidence suggesting that other stakeholders are given access to the real time telemetered data. As the regulator, TRC can require this. While we stop short of recommending this as a condition, we would like to encourage the NZTA to make the data freely available.

14. TRC do not consider grab samples provide confidence that the standards identified in the CWMP are being complied with. TRC want to see the monitoring of these ponds with real time telemetry to give confidence that the performance standard (as identified in 6.1.1 of the CWMP) for the ponds is being met, and to enable confirmation that they are performing as anticipated on a continuous basis, particularly during high rainfall events.

15. Grab sampling at appropriate times during rainfall events is likely to be hampered by delays due to the remote location, and by health and safety concerns (particularly at night).

16. To further describe why the TRC have these concerns, our site erosion and sediment control expert, Campbell Stewart – Southern Skies, makes the following comments:

In regard to the CDWMP, the grab sampling proposed by the NZTA is only triggered once a "trigger event" has occurred. Rain and storm events are variable and complex in intensity and duration. To achieve the stated objectives and outcomes in the CDWMP, to improve the ability to manage and fine tune onsite sediment management and to gain a better understanding of SRP performance, continuous data logging and telemetered reporting in my opinion need to be undertaken.

That way the turbidity of inflows and outflows from a SRP can be monitored and analysed through all discharge events. Acknowledging the cost of such systems, it would be useful to establish at least one continuous inflow and outflow monitoring system within each catchment (Mimi and Mangapepeke), supplemented with hand held monitoring of those SRPs (for calibration) and other SRPs during trigger events.

The grab sample that is proposed be taken at each monitoring location will be used to test TSS and establish a TSS – turbidity relationship. Such relationships can be difficult to develop and in the absence of continuous turbidity monitoring of outflow, cannot reasonably be used to extrapolate the likely sediment yield from a pond during a storm (as noted, the TSS at the time of the sample is only a snapshot of the variability that will occur throughout the storm).

17. We emphasise this is not a 'data gathering' exercise for the TRC and in our minds there is a need for transparency and accountability to the public, given the concerns they have raised. This would give us significantly more confidence that the sediment discharge effects are being effectively managed. The provision of real time telemetry enables the possibility of providing this data to other stakeholder groups.

Dust Management Plan

18. TRC's air quality expert has review this and generally has no concerns. One item however which TRC would like to see is further detail with regards to how NZTA intend to liaise with the sensitive dust receptors that they have identified in the receptor plan (3 dwellings).

Conclusion

19. We maintain our original position that we consider that the proposed activities can occur in a manner which is consistent with the purpose and principles of the RMA, providing certain standards and conditions are met. Our recommendation therefore remains to grant the consents sought, subject to conditions which are intended to address the effects identified and formalise the mitigation measures (including offsetting) proposed by NZTA. We have provided comments on draft conditions which we believe will ensure this is able to occur.