



## Federated Mountain Clubs of NZ

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Lynette Trewavas  
Permissions Advisor  
Department of Conservation  
Dunedin

Dear Ms Trewavas

### **FMC Submission on the proposed private road through Coromandel Forest Park**

(DOC File: PAC-03-04-1052./ Reference WK-28733-OTH)

#### **FMC and our interest in this matter**

FMC represents 20,000 trampers and climbers throughout New Zealand. FMC advocates for the promotion of outdoor recreation and the wise management of public conservation land.

FMC has campaigned over the last 84 years for greater legal protection for New Zealand's natural landscapes. This includes the successful formation of National Parks, but we also have a particular interest in specially protected areas managed under Part 4 (s19) of the Conservation Act 1987. These include a network of wilderness areas, a range of high country conservation parks and a selection of Forest Parks, which are the least disturbed native forests once held by the New Zealand Forest service. The Coromandel State Forest Park is one of these special forests alongside such places as the Tararua, Ruahine and Kaimanawa Forest Parks.

FMC opposes the proposed private road through the Coromandel State Forest Park enabled by this concession.

FMC submits that the decision to inform an intent to grant this concession was guided by a report incorrect both in substance and in law and we respectfully request the decision-maker to consider our submission and decline the concession application for the reasons outlined.

#### **The proposed concession is not consistent with the purpose for which the land is held**

The Minister has much discretion to grant concessions under s17(U) of the Conservation Act 1987, but she has no discretion in regards to s17(U)3, which states that the Minister "shall not grant an application for a concession if the proposed activity is contrary to the provisions of this Act or the purposes for which the land concerned is held."

Forest Parks are held so that their "natural and historic resources are protected" and providing this requirement is met, the facilitation of recreation and public enjoyment.

The proposed private road bisects a block of forest that has a rich array of biodiversity. The 8500m<sup>2</sup> of Forest to be cleared includes mature specimens of Kauri, Rata, Puriri, Tanekaha and Kanuka, but

equally important includes an intact forest understorey and soil, with a rich array of ferns, fungi and the other less noticeable but equally important species. The forest is a hot-spot for the nationally vulnerable North Island Brown Kiwi and provides ever-improving habitat for a number of other endemic bird species.

The proposed private road would permanently remove 8500m<sup>2</sup> of forest and replace it with a corridor of a broad gravel road suitable for articulated logging trucks. As well as the destruction of the intrinsic value of this forest, the proposed road will open up a permanent gap in the forest canopy, drying out the surrounding forest and allowing the invasion of weeds and potentially diseases such as Kauri Dieback.

The proposed private road also bisects one of the least disturbed freshwater catchments in this part of the Coromandel. Freshwater values of this catchment include the presence of native species of fish and Hochstetter frogs. The proposed culvert and associated works may well, especially if any erosion results, disturb the functioning of the freshwater system, including the transit of frogs and fish up and down the stream.

FMC suggests that while these values are largely identified in the Environmental Impact Assessment, the summation of these effects in the reconsideration report prepared for the decision-maker, (exemplified by the conclusion that "Once the access-way has been constructed it is expected that there will be minimal ongoing adverse effects") is manifestly inadequate.

Would it be appropriate to clear fell, bulldoze and gravel an 8500 square metre parcel at the edge of this land? To do so would have less impact than the proposed private road.

Furthermore, the proposed private road provides no benefits to conservation, recreation or the public. Its purpose is simply the maximising of economic benefit to the applicant. The proposed private road would permanently destroy significant natural values on public conservation land in the pursuit of private profit.

The proposed private road is inconsistent with the purpose for which the land is held and the special conditions suggested do nothing to mitigate this inconsistency. FMC requests that the Minister decline the application pursuant to s17U(3).

**The reconsideration report's interpretation of s17U(3), enabling this provision to be disregarded, is incorrect and a decision based on it would be unlawful.**

The reconsideration report admits (somewhat incoherently) that the proposed private road is inconsistent with the purposes for which the land is held. It goes on though, to sidestep s17U(3), thwarting the clear meaning of the words and the intention of parliament in putting it there in the first place.

The relevant text from the report is as follows:

*"The mandatory nature of the wording in Part 1, section 2(1) of the Conservation Act 1987 suggests that the proposed activity would be contrary to the provisions of the Act or the purposes for which the land is held under s19. However, the land is held subject to factors ("as far as is practicable") which in this case, includes concessions, which the Act provides for at Part 3B."*

The logic appears to go as follows:

- i. Part 3B, s17U(3) provides that concession applications inconsistent with the **purposes for which the land is held** shall not be granted.
- ii. s19(1) provides that every conservation park shall be managed that its natural and historic resources are **protected**
- iii. s2(1) protection, in relation to a resource, means its maintenance, **so far as is practicable**, in its current state;
- iv. The power to authorise concessions in **Part 3B** means that it is not practicable to protect the resource in its current state.
- v. The concession application should be assessed against the provisions of Part 3B, **excluding** s17U(3).

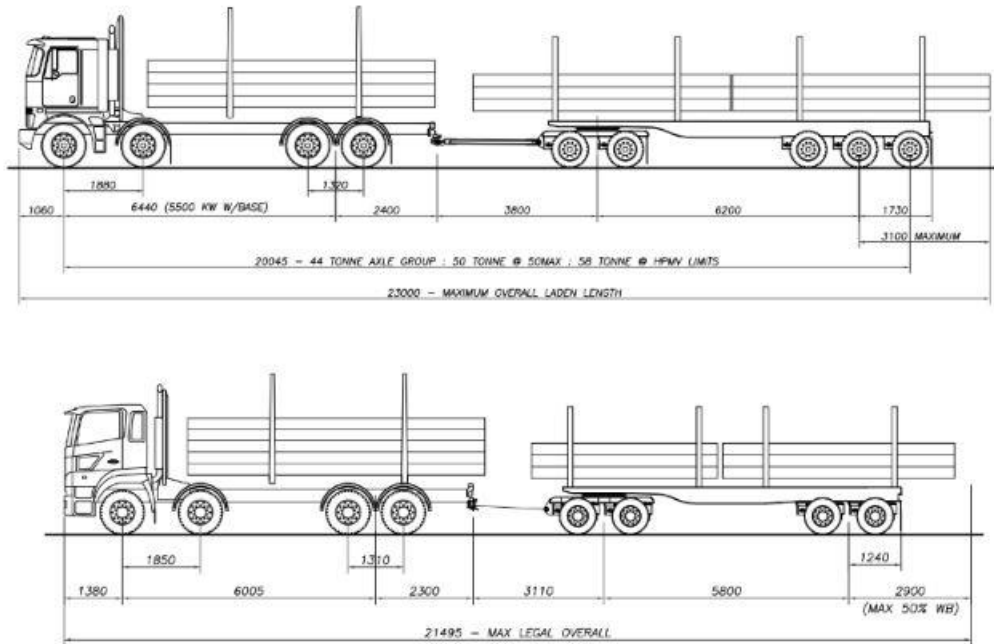
This argument is circular and nonsensical. By its logic the mandatory s17U(3) would be completely irrelevant in the consideration of every single concession application considered by the Department of Conservation, which is clearly not the statutory intent. FMC submits that making a decision on the basis that s17U(3) can be sidestepped in this way would be unlawful.

FMC also notes that the definition of protection in s2(1), read in its entirety, should primarily be considered as limiting the Department of Conservation's **active** duty to maintain the resource in its current state (eg there is a limited duty to control pests or prevent the spread of weeds), not its **passive** duty to prohibit damage by others.

**The assessment of "reasonable" in s17U(4), is predicated upon an assumption that "reasonable" means the same as "profitable", this needs to be reconsidered.**

The 2011 Decision to decline the private road proposal was based on s17U(3) and the following provision s17U(4), which provides that a concession shall not be granted to build a structure or facility if the activity can reasonably be undertaken in another location. It was decided in 2011 that the log extraction could reasonably be undertaken through the existing Waitaia road access.

The applicants case for reconsideration is largely centred on disproving the "reasonableness" of the Waitaia Road access, principally through providing the road engineering report through PF Olsen. It needs to be pointed out that all the information provided was predicated upon an assumption that articulated trucks like these were required:



Using such vehicles may help profitability, but the reasonableness of this expectation for a remote pine forest might be questioned. The use of smaller vehicles would no doubt reduce the required work to be undertaken to bring Waitaia Road up to a suitable standard. FMC has inspected Waitaia road and believes it can be readily upgraded to allow commercial traffic.

Whether the Waitaia road access is “reasonable” as opposed to “profitable” needs to be reassessed.

**An assessment of effects under s17(U)1, must consider only information relevant to the application in question, and must give proper regard to conservation values.**

In the event that s17(U)3 or s17(U)4 aren’t applied to halt this project an assessment of effects under s17(U)1 should, because of the significant loss of natural values discussed previously.

We are frustrated at the assessment of this issue both by the DOC project manager and reconsideration report writer. Too often the narrative slips into a consideration of, ‘what is the best way to get these logs out?’, rather than proper assessing the questions posed under the Conservation Act. The public is under no duty to pay with public property for the private gain, and past mistakes of the forestry owner. There is also repeated consideration of a completely irrelevant factor, that perhaps there may have been an intent to form and legalise the proposed private road. People either have a legal right or they don’t. Waitaia Forestry has no more right to build a road through public conservation land than the public have to walk through the Waitaia Forest to the coast.

The reconsideration report also consistently downplays the damage to the specially protected area. For example, stating that there will be no increase in edge effects (despite the previous 2011 report noting a complete canopy) and stating that 8500m<sup>2</sup> of vegetation “may be required to be removed” and that the vegetation is only “mostly regeneration kanuka forest well-represented in the area”. This is not acceptable. Despite the obvious issues of forest fragmentation, and threat from development, in the Coromandel, recognised by the Waikato Conservation Management Strategy, there seems to be a pervasive culture of not valuing or caring for the Coromandel State Forest Park.

This private road proposal would not be accepted in any of New Zealand's other specially protected areas, it should not be accepted here.

**No justification is provided for a 30year term, this should not be granted**

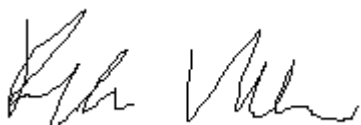
In the event that considerations of s17(U)3, s17(U)4 or s17(U)1 don't halt this proposed private road, we can see no need for the granting of a 30 year easement. A 30 year term both prevents regeneration and suggests to us an underlying objective, unjustified by all information provided to date, to provide improved access for the landowners, this at the permanent expense and exclusion of the public.

The proposed private road access is in the context of the landowner's long dispute with the local District Council about who should pay for the maintenance of the existing Waitaia Road. We can only assume that the Council has operated according to the law, and its own best interest in refusing to accept this obligation, the Department of Conservation should likewise serve the purposes of the Conservation Act 1987 by not allowing the proposed private road.

It may well be, as hinted at in earlier concession application documents, that there is an in-confidence deal to covenant some of the land-owners own re-generating forest in return for the proposed private road. We are unable to judge that though, and regardless, these dealings are best done in the open in full public view.

FMC is grateful for the opportunity to submit in regards to this application, and would like to be heard on this matter in the event of a hearing

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Wilson', written in a cursive style.

Peter Wilson  
FMC President