

# Notified Reconsideration Concession Officer's Report to Decision Maker

**Officer's Report to Decision Maker:** Deputy Director-General, Operations

**Notified Application for an easement over Coromandel State Forest Park**

**Applicant:** Waitaia Forestry Limited

**Permission Record Number:** WK-28733-OTH

**File:** PAC-03-04-1052

The purpose of this report is to provide a thorough analysis of the reconsideration application within the context of the legislation, the statutory planning framework and actual and potential effects, so the Decision Maker can consider the application; and confirm that it should be notified; and make a decision in principle whether it should be granted or declined.

## 1.0 Introduction

In August 2010 the Department received an application for a right of way vehicle access easement over approximately 1,743 metres across the Coromandel State Forest Park (Otama Block). The easement was for commercial purposes to allow for transportation of logs from private plantation pine forest across the former Woodcock access track. See location of proposed access-way below.

The application was declined by the Waikato Conservator on 29 November 2011 with the reasons for decline being:

- a) When considering the impacts of the proposed activities on conservation values and whether those impacts can be appropriately mitigated it was considered that there would be some significant impacts on existing conservation values (s17U(2)(b)); and
- b) The application does not meet the test in s17U(4) of the Conservation Act -  
*"S17U(4) of the Conservation Act states "The Minister shall not grant any application for a concession to build a structure or facility, or to extend or add to an existing structure or facility, where he or she is satisfied that the activity—*
  - (a) *could reasonably be undertaken in another location that—*
    - (i) *is outside the conservation area to which the application relates; or*
    - (ii) *is in another conservation area or in another part of the conservation area to which the application relates, where the potential adverse effects would be significantly less; or*
  - (b) *could reasonably use an existing structure or facility or the existing structure or facility without the addition".*

It is assumed the reason under s17U(4) is (b); the structure/facility could reasonably use an existing formed access road, being the nearby Waitaia Road.

The applicant applied for a reconsideration pursuant to section 17ZJ(a) of the Conservation Act 1987 on 3 February 2014 in the form of a letter addressed to The Director, Conservation Partnerships, Northern North Island from Rob Taylor, Director of Waitaia Forestry Limited.

The Department formally accepted the application for reconsideration on 1 February 2015 by Marie Long - Director Planning, Permissions and Land. The Conservation Act delegations list 17ZJ states "*All reconsideration applications shall be determined at a higher level than the original decision maker*". As the Waikato Conservator (Tier 3) was the original decision maker, the decision-maker for this reconsideration must be a Deputy-Director General (Tier 2). The Deputy-Director General Operations has the delegation to consider this reconsideration application under section 17ZJ of the Conservation Act.

**Information about the applicant:** The applicant is Waitaia Forestry Limited who owns the mature pine plantation to be harvested near Waitaia Bay. The pine plantation is on the land owned by W S Wilson and Woodcock Valley Limited.

**Type of concession sought:** Non-notified Easement

**Term sought:** 30 years

**Description of the proposed activity:** To reform a right of way vehicle access easement over approximately 1743 linear metres across the Coromandel State Forest Park (Otama Block) to transport felled logs from private plantation pine forest.

**Description of locations where activity is proposed:**

The activity is located in part of Coromandel State Forest Park between Kuaotunu and Whitianga. The entire Coromandel State Forest Park has a NaPALIS ID of 2794255. The legal description is part lot 1 DPS 4778 described in Certificate of Title 112494 (South Auckland Registry). Coromandel State Forest Park is 71,899 hectares more or less and the easement area is 1743 metres long by 8 metres wide which is 1.3944 hectares more or less.



Fig 1. Showing proposed route (red) and alternative Waitaia Road (yellow)

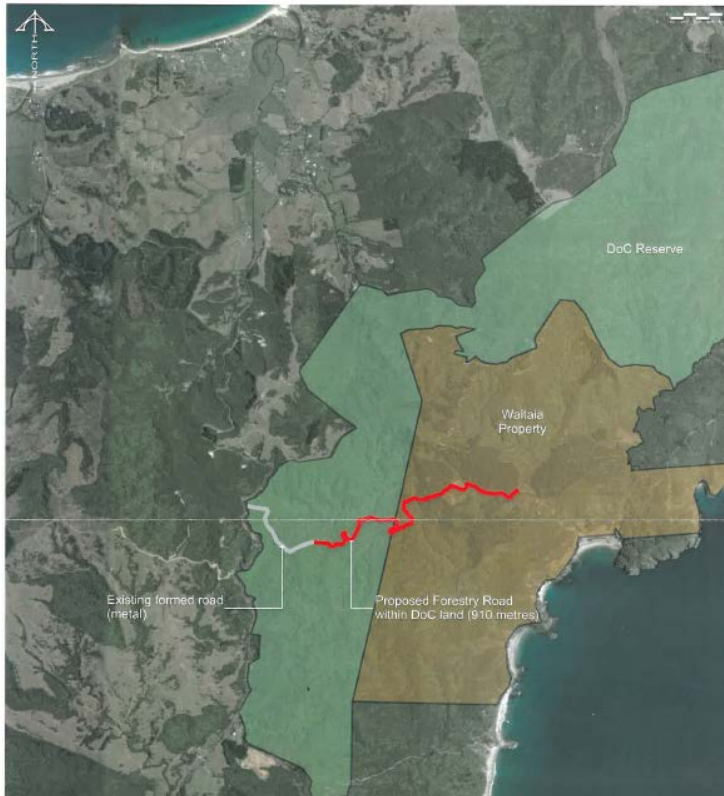


Fig 2. Plan of entire proposed route

## 2.0 The Reconsideration Application

### Reconsideration process

The relevant parts of Section 17ZJ of the Conservation Act states:

#### ***“Reconsideration of decisions***

*Without limiting any other provision in this Part of this Act, upon application by an applicant for a concession,—*

*(a) where the Minister has declined to grant a concession to the applicant, the Minister may reconsider that decision:*

Waitaia Forestry Limited have applied for reconsideration under section 17ZJ (a) on the basis that the Minister has declined to grant the concession.

As section 17ZJ does not provide guidance for how a reconsideration application is to be conducted, Departmental guidelines on the Reconsideration Process are provided in the Concessions Guidance Document [docdm-596529](#), chapter 4, pages 28-39. The process allows the applicant to elect a reconsideration using a panel. However, the applicant elected not to use a panel and therefore the application will be processed by a different service centre with a different decision-maker.

#### Principles as given in the Reconsideration Guidelines

A reconsideration is a re-assessment of the concession application “from scratch”, as if it were a new application. The Reconsideration process will be carried out by a separate service centre blind to the previous assessment, report, opinions on the original application and recommendations made. Scientific and technical advice and any outcomes from consultation with tangata whenua and the Conservation Board, provided for the original concession application assessment, will be available to the Permissions Advisor processing the reconsideration, and they may also seek peer review or alternative specialist advice. The applicant may put forward some additional new information or new suggestions for managing effects in the reconsideration process, which can be considered if the new information does not significantly change the original application.

It is however, not possible for the report writer to be completely blind to the actual decisions and reasons made in the decline report as it is these decisions that are being reconsidered, they are also discussed in the reconsideration application.

The purpose of this Reconsideration Report is to provide a thorough analysis of the application within the context of the legislation, the statutory planning framework and actual and potential effects, so the decision-maker can consider the reconsideration application and decide whether it should be approved or declined.

### **3.0 Information available for consideration**

#### **Information received:**

##### Original application

- From applicant
  - original application form received 9 August 2010 - [docdm-1554405](#)
  - Boffa Miskell report dated April 2008 – [docdm-1595867](#) and maps [docdm-1595871](#)
- From Iwi – no comments sought
- From Conservation Board – no comments sought
- From DOC staff (including Partnerships, technical and legal comments)
  - 2010 Hauraki Area Office comments report – [docdm-625868](#)

##### Additional information for reconsideration

- From applicant
  - Request for reconsideration letter dated 3 February 2014 – [docdm-1563755](#)
  - Further information in letter dated 11 December 2014 – [docdm-1563784](#)
  - Email confirming independent processing option – [docdm-1588724](#)
- From Iwi – comments included in the 2014 District Office report and have been received from
  - Ngati Maru on 8 September 2014
  - Ngati Tara Tokanui on 27 August 2014
  - Ngati Huarere on 21 October 2014
- From DOC staff (including Partnerships, technical and legal comments)
  - 2014 Hauraki District Office comments report – [docdm-1430985](#)
  - 2014 Report from Project Manager – [docdm-1402901](#)
  - 2015 Hauraki District Office comments – [docdm-1598854](#)
- From other sources
  - PF Olsen. Waitaia Forestry Limited. Waitaia Forest Access Scheme Assessment Report. December 2015 (pp 1-42) – [DOC-2669275](#) and [DOC-2669279](#)

Information from all the above sources has been incorporated into this report.

#### **Requested information not received:**

All requested information has been received.

### **4.0 Acknowledgement of complete application (s17S)**

An application is deemed complete once all information required under section 17S has been received. The Minister should be satisfied that this application is complete for the purposes of the Act.

### **5.0 Analysis of proposal (s17T, 17U, 17V, 17W, 17X, 17Y)**

In accordance with the principles of the Department's Reconsideration Guidelines, the application will be processed as though it were a new concession application.

Section 17T(2) requires the Minister to decline an application within 20 working days of it being deemed complete, if "...the application does not comply or is inconsistent with the provisions of this Act or any other relevant conservation management strategy or plan..."

This application appears to comply with and be consistent with s.17T(2). It is therefore not considered appropriate for the application to be declined within twenty working days.

**Public notification s17T(5):**

Under s17T(5) the Minister may give public notice of the intention to grant a concession easement, if having regards to the effects, he or she considers it appropriate. One factor to be considered when deciding if public notification is necessary is residual adverse effects or where potential adverse effects on the public during construction may be significant.

It is also noted that the reconsideration guidelines state the same concession process must be used as the original process. The original application was processed via the notified process as it was "*considered to be high impact*"; therefore this reconsideration must also follow the notified process.

It is considered that the decision maker in this case should be satisfied that public notification be required. Given that this matter will be of local or regional interest only, placing of notification in The Waikato Times, and local newspapers the Coromandel Chronicle, The Mercury Bay Informer, and Hauraki Herald will be appropriate pursuant to s49(1) of the Conservation Act.

**Analysis of Effects s17U(1) and (2):**

Applicant's comments

The applicant states the existing road to Waitaia (the Waitaia Road) was probably constructed in the 1880's and is likely to have preceded the Kuaotunu Hill Road (State Highway 25). The grades are largely acceptable on the Waitaia Road but it is convoluted and traverses the main range at a location containing hard rock. In the 1940's, as the existing Waitaia Road fell into disrepair, a new road was opened up from the top of the Kuaotunu hill on what is now Public Conservation land (pcl) [the Woodcock access]. This road fell into disrepair due to steeper gradients near the top, and the original existing road was used again. Early in 1967 the Coromandel County Council agreed to reopen the newer road (Woodcock access) and formed and metalled the first section of the road running from State Highway 25 but the road was never completed owing to a lack of funds. At that time New Zealand Forest Service managed the pcl. The Thames Coromandel District Council has refused to maintain the existing Waitaia Road for some years; the applicant states it is unwise to use any vehicle on it other than four wheel drive, tractor or farm bike, and on occasions it is not passable for any vehicle (winches are frequently required). The applicant claims this road is at risk of being totally washed out in the steep areas.

The applicant states if the easement is approved it could also benefit the Project Kiwi Charitable Trust. The applicant acknowledges there may be some detrimental effects [to conservation values] in upgrading either road option but the volume of earthworks that would be involved in upgrading the track would not be excessive. The applicant states the use of the route would be limited to land owners and their invitees. The road will be constructed according to road engineering requirements. Once construction of the road is completed the removal of the mature logs is expected to take three separate summer operations.

The existing Waitaia road is winding, largely un-metalled and large amounts of sediment from run-off enter the Waitaia Stream due to frequent slips. The applicant states that the Waitaia Road adjoins pcl and if that road were to be upgraded, some detrimental effects would likely be suffered to the adjoining pcl, such as erosion and sediment affecting both the forest floor and stream running alongside road.

The applicant states a shortcoming to their original application may be due to the lack of a professional report on the feasibility (or otherwise) of logging using the Waitaia Road. The applicant states that it only needs to be driven to "*realise the dangerous nature of the road for logging trucks with steep grades, hairpin bends and soft-road edges above precipices, even if it were radically upgraded*".

Boffa Miskell report 2008

This report was commissioned by the applicant in 2008 prior to the applicant lodging its easement application. The purpose of this report is to consider the effects of upgrading the existing Waitaia Road compared to the Woodcock access. This report considered vegetation, herpetofauna, freshwater, avifauna, and other adverse effects.

The report found that while the vegetation in the Woodcock Stream area contains mature forest, the vegetation affected by the proposed upgrade of the Woodcock access track is secondary re-growth kanuka forest (the largest specimen was up to 16 metres tall in 2008). Apart from Kanuka, approximately 17 other larger trees would be required to be removed and includes six kauri, five tanekaha, two toro, two five-finger, one rewarewa and one karaka. All these species are reportedly well represented in the area. This report estimates that the vegetation clearance is approximately 4,550m<sup>2</sup>. There is more mature and semi-mature vegetation on the Waitaia Road, although the majority of this mature vegetation will not be affected in a road upgrade as it is mostly down-slope of the existing road. The number of larger trees expected to be affected by upgrading the Waitaia Road will be similar to the Woodcock access. The report states *"the volume of earthworks involved in upgrading the Woodcock access is not excessive (and from a qualitative visually-based assessment) would be far less than the volumes likely to be involved in any upgrading of the existing Waitaia Road."* The report states that there would be larger newly exposed cut faces on the Waitaia road which would result in higher erosion and run-off potential resulting in more sediment entering the Waitaia and Woodcock streams.

The abundance of herpetofauna (lizards and frogs) was searched on the Department of Conservation's database and on a site visit. Current records show three records consisting of two frog species, and one skink species (*Cyclodina aenea*) within 10 km of Waitaia Bay and two records of a gecko species (*Naultinus elegans elegans*) within 12.5km of Waitaia Farm. It is noted that the low records may indicate low sampling efforts in the past. A site visit found no species of frogs or lizards but lots of potential habitat. The report concludes that it is possible that the area supports herpetofauna populations and upgrading either road would have a similar effect on populations.

Freshwater species were searched for on the Woodcock access. Fish sampling, undertaken in January 2008, recorded three species; redfin bully (abundant at both sampling sites), banded kokopu (occasional at both sites), and a single longfin eel. This area is also high in macro-invertebrate values. The Woodcock stream freshwater habitat is high quality and it is important that any stream crossing minimises any potential adverse effects.

Avifauna was sampled by Boffa Miskell using three 5 minute bird counts with all species recorded. These counts found the mature kanuka forest had the highest records of bird counts including seven native species and three introduced species. There was one record of an at-risk species (kereru). The Ornithological Society of New Zealand database records 12 native species, 13 introduced species, and one coloniser in the wider Waitaia catchment. The area has been actively managed for North Island brown Kiwi since 1996 which includes pest and predator control, Operation Nest Egg and monitoring. It is known that multiple bird species including kiwi are present within both the Waitaia and Woodcock catchments but it is considered that the relatively minor loss of vegetation is highly unlikely to have any impact on any species. Adverse effects could be reduced by requiring works to be undertaken outside nesting season and/or use a kiwi dog to ensure there are no kiwi burrows within the works zone.

Other potential effects include edge effects, wildlife disturbance, construction effects, and stream crossings. Edge effects are not expected to be dramatically altered as they follow existing tracks for both options. There is not expected to be adverse effects resulting from the Woodcock access but there may be more effects from upgrading the Waitaia Road due to the steep cuttings required which may directly or indirectly affect kiwi and other ground-dwelling species. Direct effects on birds can be avoided by ensuring all vegetation clearance occurs outside bird breeding season, and also including a condition to check for nests in all trees marked for clearance. Search and salvage operations for skinks and geckos can also be included if deemed necessary.

The construction phase may result in large volumes of soil being mobilised which adversely affects flora. Sediment polluting streams is another potential adverse effect; the major waterway affected is the Woodcock stream. As the applicant proposes to use a culvert or bridge there are not expected to be adverse effects resulting in sedimentation. However, upgrading the Waitaia road would generate more sediment (through increased earthworks) and greater effects. Using culverts at the stream crossings will minimise adverse effects to waterways.

**Overall, the Boffa Miskell report concludes that there is little difference between upgrading the two options in terms of the adverse effects identified above but it is**

**considered that there will be greater earthworks associated with upgrading the existing Waitaia Road and therefore favours the Woodcock access through pcl.**

Hauraki Area Office comments 2010:

The original district comments were completed on 28 August 2010 by the Hauraki Area Office with contributions by two rangers from the area. It was found that the nearby landowners use the Waitaia Road regularly and on occasion need to winch their 4WD vehicles. The existing Waitaia Road is basic with no metal present for the last  $\frac{3}{4}$  but the gradient is steady and follows land contours. The road is not maintained by the Thames Coromandel District Council which has allowed ruts to appear from inadequate drainage and a lack of culverts.

The Area Office disagrees with some points in the Boffa Miskell Report dated April 2008. This is in relation to the tonnage of earth that could be expected to be excavated under the formation of a new access-way; visible effects of the new access-way and the values present. The Area Office note Boffa Miskell report concludes the maximum diameter of affected trees as 53cm dbh (diameter at breast height) for Kauri and do not mention Rata. The Area Office found Kauri trees in excess of 100cm dbh were present and within the affected 5m zone. They disagree with the statement that "*frogs have never been found in previous searches*". This is contradictory to Department survey results which place Hochsetters frogs in the Woodcock stream catchment.

The Area Office state the proposed easement (Woodcock access) for the first 300 metres is a well formed metalled walking track. "*This moves into a dirt walking track which is well formed approx 1.5m width and appears to have been used in the past by quad bikes. A trapping and bait station system is present on the track and would appear to be why the track has been kept open and used regularly. The track follows a ridgeline for approximately 1.5km where upon it moves into cuttings. The gradient is gentle. The mid section of the track crosses at the confluence of two streams where fish were sited. The streams present good frog habitat and these had been surveyed as present in the past namely Hoch setters frogs. The regeneration period of 65 years has allowed the bush to become well established and the presence of large Kauri, Tawa, Rata, Celery Pine, Five finger, Kanuka and Manuka all point toward the healing process of the bush to be well underway.*"

The final comments state: "*The adverse environmental effects would be deemed as **HIGH**. Although there is a current walking path and therefore track to follow if this activity was permitted to proceed the environmental effects of this current track are deemed as **LOW**. Landform, flora, fauna, freshwater biodiversity and habitat will all be affected in some way by allowing a road to be constructed. This road will have zero conservation benefit.*"

Hauraki/Coromandel District Comments 2014

A new district office comments report was obtained from a Partnerships Ranger and a Services Ranger. A separate report was also received from a Project Manager in the Hauraki Office.

Both reports note some significant errors and omissions in the 2010 Request for Comments Form. The Project Management report found the original Area Office comments report "*failed to provide an accurate comparison of the two access options being considered*". He also found the original Area Office comments statement "*the full 1743 metres of the road requiring widening by 5 metres on both sides of the existing track,*" is not factually correct. The Boffa Miskell report does provide comparisons between the two options but not to the extent of quantifying a comparison of earthworks involved.

These reports note that the physical features for the proposed Woodcock route are significantly more gentle relevant to land contour than the existing Waitaia Road. The project manager report states "*This route described in the 2010 Request for Comments Report as "1.5metre walk track of which the first 300 metres is metalled and gradient overall gentle", is actually a fully formed road including GAP40 crushed metal with a benched carriageway averaging six to seven metres wide.*" The first part of the track is located on the flat of the ridge and will require little more than the gorse/native re-growth swept off the road surface. Water management will require some culverts to be installed. Of the remaining one kilometre more work is required and approximately 400 metres will require widening by three or four metres. The only works of any significance will be the establishment of a box culvert or small bridge over the Woodcock Stream. The Department on the Coromandel Peninsula has constructed a number of like assets over similar and larger streams. The District Office states "*This work would appear in all facets to be of extremely lesser environmental impact than work required*"

on the Waitaia Road, particularly with regard to amount of cubic earth removed/moved and the potential to lose the road completely if the Waitaia Road option is decided upon." The District Office notes some vegetation will be lost; mostly small kauri, tanekaha and kanuka.

Special consideration, including on-site planning, will be required for components of a road upgrade, including for bridges and sediment control. It is recommended that Coromandel Operations rangers are involved with this discussion. The District Office recommends if this re-consideration application is approved it is imperative that the Department maintains close oversight of all activities associated with a road upgrade and construction at this location. Concession and resource consent conditions could be closely monitored by local staff. It is recommended that a special condition is included requiring an appropriate Works Officer and Ranger to attend pre-operational briefings and site monitoring throughout the period of operational activity.

#### PF Olsen Engineering Report – November 2015

The reports summarised above suggest there were a couple of key factors missing in the application; a qualified engineers report outlining road feasibility, and the approximate amount of earthworks expected. In order to rectify these deficiencies the applicant engaged PF Olsen, in mutual agreement with the Department, to undertake an engineering report in May 2015.

This Scheme Assessment Report addresses two key factors:

- 1) Can Waitaia Road be reasonably upgraded to provide a suitable logging access road?
- 2) What is the scope and extent of engineering works required to develop the alternative, Woodcock Valley Road, and what are the environmental impacts?

Road geometry has been designed in accordance with the NZ Forest Owners Association Forest Road Engineering Manual 2012 and the PF Olsen Limited Standard Specification for Road and Landing Construction (2014) – Part 1 Design Standards.

#### Waitaia Road

The design standards used when assessing the Waitaia Road are minimum design standards in terms of curve radii, sight distances and formation as the usual design standards cannot be met. The report states the first kilometre of the road is in excellent condition with a width of 4.7 metres. Over the second two kilometres to the summit the road standard and condition declines considerably with poor sight distance, steepness up to 18% and a narrow carriageway (3.2 metres). Some cross sections show near vertical rotten rock cut faces and downhill side slopes approaching 45 degrees. The road for the remaining two kilometres is a four wheel drive track with no water controls, poor pavement and is narrow. There are six 'pinch points' identified on the road that restrict heavy vehicle access including one switchback, 2 hairpin corners, 2 chicanes and one extremely narrow section. In total the volume of earth to be excavated to enable the minimum design standards within the six pinch points is 5,310m<sup>3</sup> and in total is estimated to be 13,860m<sup>3</sup>, with 560m<sup>3</sup> of fill also required (13,860m<sup>3</sup> total cut required). The steep slopes and rocky outcrops require a high level of technical difficulty and possible blasting.

There are some adverse effects identified in this report which would result in the upgrade of the Waitaia Road. It is expected that 7,860m<sup>2</sup> of vegetation will need to be removed in upgrading the road (a mixture of private land and pcl). The report notes "*there is a considerable risk of sedimentation and soil movement occurring from the upgrade of Waitaia Road*" due to the steep terrain and erosion risk classification [Waikato Regional Council classification]. Safety has also been identified as an important adverse effect as it is a public road with many narrow sections and blind corners.

#### Woodcock Valley access-way

The PF Olsen Standard Specifications for a 'Stub Road' (4.5 metre wide single lane carriageway) was used for the assessment of the Woodcock Valley Road. The first 800m of this road are in excellent condition, having been upgraded previously. The next 770m is approximately 2.5m wide and includes one large switchback before reaching the stream. Beyond the crossing the track ascends a prominent spur for 100m before levelling out. Portions of the last 100m show signs of instability with tension cracks existing however no drop outs were observed (the proposed road has been designed further back in this area to avoid possible slumps). Proposed earthworks result in a net volume of 11,140m<sup>3</sup> with 14,410m<sup>3</sup> cut required and 3,270m<sup>3</sup> of fill. The proposed route avoids large specimen trees as far as possible. The vegetation is secondary regenerating kanuka and is classified as rolling to steep. This



option also involves a stream crossing over the Woodcock Stream either using a box culvert or single span bridge, the authors of the report prefers the bridge option as it will avoid stream-bed disturbance.

The largest environmental effects identified in this report is the loss of approximately 8,490m<sup>2</sup> of native vegetation (mostly mature kanuka forest) from pcl and 1,320m<sup>2</sup> on private land. 11 kauri trees (3 with a DBH (diameter at breast height) over 300mm) will need to be removed on pcl with another 5 on private land. One significant rata and three significant tanekaha will also need to be removed. There is also a moderate risk of sediment loss from earthworks (especially within 20 metres of Woodcock Stream). The risk can be minimised through the installation of sediment controls and silt fencing. The forest owners have indicated that they will undertake regular maintenance of the road following completion of harvest. The road would be available for DOC to access the area i.e. for pest management. Resource consent will be required from Thames Coromandel District Council but not from Waikato Regional Council to construct the road.

The PF Olsen report concludes the upgrade of the existing Waitaia Road will require technically challenging excavation of rock bluffs and is not feasible to address the current geometric deficiencies without undertaking earthworks of an unrealistic scale that would leave very high cut batters that would extend well beyond the road boundary, The level of use and economic benefit does not support/justify the scale and complexity of the required works.

The Woodcock Valley Road route is a viable alternative. This route is 1700m long and although the last 900m will require more substantial earthworks, the proposed route follows relatively easy terrain and the preliminary engineering assessment shows it can be upgraded to logging truck standards with relative ease.

#### Dunedin Service Centre comments:

The reports above show that there is a risk for some adverse effects to be created during the construction of the Woodcock access. Up to 8,490m<sup>2</sup> of regenerating native vegetation may be required to be removed including 11 kauri trees, one rata and three tanekaha. Sedimentation may result from the excavation of earthworks required for the construction of the road and there is a risk of sediment entering the Woodcock stream (affecting freshwater values) during the construction of the bridge or culvert. There may be some adverse effects to fauna such as kiwi and herpetofauna.

Special conditions have been recommended requiring the applicant to provide detailed plans to the Grantor prior to construction and to minimise vegetation removal to the extent possible. It is accepted that there will be vegetation removal but is mostly regenerating kanuka forest which is well represented in the area. The applicant has stated they will avoid mature trees where possible. The proposed special conditions will require sediment controls to reduce the risk of sediment entering Woodcock Stream and will also ensure procedures are followed to reduce the risk of adverse effects to fauna. The District Office intends to closely monitor the applicant during the construction phase to ensure adherence to the proposed special conditions.

**It is considered that the special conditions outlined in section 7.0 below will ensure all potential adverse effects to the land can be reduced or avoided to the extent possible. Once the access-way has been constructed it is expected that there will be minimal on-going adverse effects.**

#### Consultation

The applicant undertook consultation with Ngati Hei Charitable Trust Board which was ongoing when the application was submitted in 2010. The applicant notes that the relationship between the landowners and Iwi is very amicable.

A response was received from Ngati Maru on 8 September 2014 stating "*Ngati Maru does not oppose this application*". Ngati Tara Toakanui - replied on 27 August 2014 and stated "*Ngati Tara Tokanui do not have any comments to make regarding the attached application*". Ngati Huarere responded on 21 October 2014, requesting contact with it should any artefacts or heritage sites be uncovered.

#### Monitoring Conditions

The standard monitoring condition will be included which allows for full cost recovery of any monitoring undertaken.

In addition to the standard monitoring condition, specific monitoring conditions will be required before construction of the access begins and regularly throughout the term of the concession. Specific monitoring of 8 hours per month will be required during construction of the road. A special condition has been included to reflect this.

**Purposes for which the land is held s17U(3):**

The land Coromandel State Forest Park and is held under section 19, Conservation Park, of the Conservation Act 1987. Conservation Parks shall be managed so: (a) that their natural and historic resources are protected; and (b) subject to (a), to facilitate public recreation and enjoyment. "Protection" in section 2 of the Act means "its maintenance, so far as is practicable, in its current state..."

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 Minister must also consider the conservation values to be protected, and to question whether the granting of the concession, with conditions, would provide protection of those resources. In considering the proposed activities impact on pcl at this location, it is considered that the concession is consistent with the purposes for which the land is held provided the activity is conducted in accordance with special conditions.

This report and the specific items referred to above should satisfy the Minister that the natural and historic resources are protected to the extent practicable. The effects of the proposed activity during the construction phase may be deemed more than minor, however, ongoing effects are minimal and the effects are understood and manageable, and any potential adverse effects and impacts can be adequately avoided, remedied or mitigated by the conditions in any concession (if granted). Public recreation use is not high in this area and there are many other places nearby where the public has access to. It is considered the public will not be unduly compromised.

**It is considered that the proposed activity is not contrary to the purposes for which the land is held.**

**Alternative Road s17U(4):**

Section 17U(4) states the following:

*The Minister shall not grant any application for a concession to build a structure or facility, or to extend or add to an existing structure or facility, where he or she is satisfied that the activity—*

*(a) could reasonably be undertaken in another location that—*

*(i) is outside the conservation area to which the application relates; or*

*(ii) is in another conservation area or in another part of the conservation area to which the application relates, where the potential adverse effects would be significantly less; or*

*(b) could reasonably use an existing structure or facility or the existing structure or facility without the addition.*

The Minister shall not grant this easement where the applicant could reasonably use the existing access road (the Waitaia Road) which is outside pcl. The PF Olsen report states the "*preliminary design has confirmed that it is not feasible to upgrade Waitaia Road to accepted geometric design standards within the legal road corridor... the mountainous terrain that the road traverses means that it is not possible/practicable to achieve a reasonable balance between earthworks and geometric design standards. To fit a road within such difficult terrain it is necessary to accept reduced design standards*". The report states that even major earthworks will not remove the blind corners and narrow roads and as this is a public road the logging trucks cannot rely on the use of radio call-up between vehicles. Therefore, the safety risk to other road users is also unacceptably high.

The Hauraki/Coromandel District Office states there are unacceptable safety risks with upgrading the Waitaia Road. "*Heavy traffic will put the near vertical roadside down slopes at an unacceptable risk to failure.*" The Coromandel District Council has identified their opposition to the use of this road for the extraction of logs from the Waitaia Forest. They noted during the site visit that in many places

along the Waitaia Road there was evidence that the upslope side loses vegetation and sediment with any average to heavy rainfall. A detached land mass of approximately 130m<sup>2</sup> was clearly evident above the road at the time of the site inspection. The report concludes the upgrade and use of the Waitaia Road for the extraction of exotic log material is not a viable option.

The applicant does have existing access to the forestry, therefore it already has access to the land, and this application breaches s17U(4)(b) whereby the applicant “*could reasonably use an existing structure or facility*”. However, it is considered that the operative wording is “*could reasonably*”, therefore the Minister could be satisfied that there are issues associated with the current access i.e. extreme steepness, physical condition of the surface, unable to be reasonably upgraded to acceptable standards, risk of failure, and reliable access during, in particular, winter months. The applicant stated in the letter dated 11 December 2014 that the existing road does not give reasonable access to landlocked land as per section 328 of the Property Law Act 2007. Therefore, the Minister could be satisfied that the applicant in this case could not reasonably be expected to use the current road for the purposes that it seeks. It is considered that there is sufficient evidence in support of the need to improve future access from an alternative route, which in this case is over p.c.l. Further to this, the Woodcock access was intended to be a public road and follows a logical route.

**It is therefore considered that this application for a new easement access (the Woodcock access) is not considered to be inconsistent with section 17(U)(4) of the Conservation Act 1987.**

#### **Consistency with Relevant Management Strategies and Plans s17W:**

##### Conservation General Policy (CGP) May 2005

It is recognised in the CGP that there are a variety of activities undertaken by people and organisations on public conservation lands and waters that require authorisation [Section 11 Activities requiring Specific Authorisation (not covered elsewhere)]. Utilities are defined in the Glossary section of the CGP as “*includes but not limited to: structures and infrastructure for telecommunications ... roads and airstrips...*”. Section 11.3 covers the policy on utilities and states that “*utilities may be provided for on public conservation lands and waters where they cannot be reasonably located outside public conservation lands and waters, or if specifically provided for as a purpose for which the place is held. For this particular proposed easement it is an access road which is defined as a utility in the glossary of the CGP and cannot reasonably be located outside p.c.l.*”

##### Waikato Conservation Management Strategy 2014-2024 (CMS)

Part Three, section 16, Specific policy requirements for Waikato are relevant to the application. General authorisations are covered under 16.2 “*the Department has granted, under delegation from the Minister of Conservation, authorisations for a range of activities, including filming, grazing, telecommunications, utilities, access/easements, ...*” (underline added for emphasis).

Under section 16.3 motorised vehicle use has the potential to adversely affect conservation values. Use of motorised vehicles on public conservation lands can have effects on the enjoyment of others, as well as direct impacts on ecosystems, historic and cultural sites and wildlife. Policy 16.3.1.1 states that such use should allow motorised vehicles only on roads purposely formed and maintained for vehicle use. Policy 16.3.1.3 states the Department may allow motorised vehicles on public conservation lands and waters for the construction, operation and/or maintenance of authorised utilities, farming operations, and restoration activities. This application is for a private utility to harvest a pine forest plantation (very similar to a farming operation). Vehicle easements are provided for under section 16.2 and 16.3.1.3 where it states that easements may be authorised by way of a concession.

**It is considered that the proposed activity is consistent with the CGP and CMS.**

#### **Any other relevant information:**

Resource consents may be required to undertake the activity. No new consent has yet been applied for, pending the outcome of this reconsideration application. Standard conditions in Schedule 2 of the easement document (if granted) require the applicant to have all relevant resource consents before they undertake the activity.

**Having regard to all the analysis in section 5.0 above, the Department is now recommending the 2011 decision to decline the application be overturned. It is recommended appropriate to approve in principle the granting of a Notified Easement concession to Waitaia Forestry Limited subject to the proposed operating conditions outlined in section 7.0 below.**

## **6.0 Relevant information about the applicant**

### **Convictions on any charge related to the activity applied for or on any conservation related issue:**

The Department is unaware of any convictions or charges relating to the applicant.

### **Past compliance with concession conditions:**

The applicant has not previously held a concession with the Department.

### **Credit check result:**

A credit check was undertaken when the applicant applied in 2010 and no financial issues are noted.

## **7.0 Proposed operating conditions**

### **Concession Activity:**

Right of way vehicle access easement concession over approximately 1743 lineal metres across the Coromandel State Forest Park (Otama Block) for the purpose of transporting felled logs from private plantation pine forest.

### **Term:**

A term of 30 years is appropriate and in accordance with s17Z(3) of the Conservation act where an easement may be granted for a term not exceeding 30 years.

### **Fees:**

#### Concession Processing Fee:

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#### Concession Activity Fee

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#### Concession Management Fee:

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### Bond:

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### **Summary of special conditions as listed in effects assessment above:**

1. The rights implied in easements of vehicular right of way in the 5<sup>th</sup> Schedule of the Property Law Act 2007 as set out in Schedule 5 of this document are amended by:
  - (a) replacing the word, "grantee" with "Concessionaire"; and
  - (b) adding to Clause 2(a) the words, "after first obtaining the prior consent of the Grantor as required in clauses 7 and 8 of Schedule 2 of this easement.

### **Establishment of the easement facility:**

2. Prior to construction, the Concessionaire must:
  - (a) Arrange a pre-operational briefing on-site with local Department of Conservation staff including the Woodcock stream crossing site.
  - (b) Mark the centre line of the easement with tape on the ground, for the written approval of the Grantor. The Concessionaire must use its best endeavours to conform to that approved route. Any deviation or variance from the approved route requires the prior

written consent from the Grantor. For the avoidance of doubt, at any point the easement width must not exceed a width greater than 8 metres.

- (c) Further to b) above, the Concessionaire must provide plans, approved by a registered engineer, to the Grantor of any culvert or bridge over Woodcock Stream, prior to construction being undertaken on the culvert or bridge over Woodcock Stream. This plan must include (but is not limited to) bridge materials, work spaces, and sediment control purposes.
  - (d) Provide to the Grantor for written approval, a work plan detailing the contractors to be used, commencement dates, timelines, construction methods and standards.
  - (e) Prepare an annual maintenance programme for the approval of the Grantor.
  - (f) The Concessionaire must implement an on-going weed control programme to the satisfaction of the Grantor, to keep the Easement Land free from all introduced weeds, resulting from the Concessionaire's use of the Easement Land.
3. Any vegetation removal and soil disturbance necessary to install and establish the easement facility must be kept to a minimum.
  4. All efforts must be made by the Concessionaire to prevent earthworks and construction material and sediment contamination into any waterway during the establishment works.
  5. The Concessionaire must ensure that all machinery, tools and equipment used in undertaking the Concession Activity is steamed cleaned and weed free prior to being taken onto the Easement Land.
  6. The Concessionaire must ensure that all gravel and other materials used in undertaking the Concession Activity are from a weed free source.
  7. The Concessionaire must not store fuel or refuel vehicles on the Land. Any spillage of fuel onto the Land must be reported to the Grantor no later than by the end of the following business day.
  8. Machinery and equipment used in the activity shall be maintained at all times to prevent leakage of oil and other contaminants into the Easement Land.
  9. The Concessionaire must ensure that the Easement Land is constructed and maintained in accordance with New Zealand Forest Road Engineering Manual 2012 and New Zealand Environmental Code of Practice for Plantation Forestry 2007.
  10. The Concessionaire must ensure that the access way remains sufficiently gravelled.

#### **Wildlife**

11. The Concessionaire must check the Easement land for nesting birds, kiwi burrows or herpetofauna before removing any vegetation or undertaking approved construction works. If any birds are found the Concessionaire, at its cost, must arrange a Department of Conservation employee or qualified ecologist to relocate the wildlife to sites approved by the Grantor.
12. Prior to the establishment works, the concessionaire, at its cost, must arrange a qualified ecologist to undertake a lizard salvage programme to relocate lizards to sites approved by the Grantor. All consents/permits relating to the transfer of lizards under the Wildlife Act 1953 and Conservation Act 1987 must be obtained by the Concessionaire.

#### **Additional costs requirements**

13. The Concessionaire is responsible for:

- (a) the reasonable cost of and incidental to the Grantor's on site visits or monitoring prior to, during and after construction as required to confirm the Concessionaire's compliance with the conditions contained herein and:
  - (b) the reasonable costs of the Grantor's Quality Conservation Management (QCM) standards/safety inspections of the improvements to the Easement Land Area.
14. If the Grantor determines that the conditions of this Document or the effects of Concession Activity should be monitored, the Concessionaire shall meet: either the full costs of any monitoring programme that is implemented; or, if the Grantor determines that the costs should be apportioned among several Concessionaires who use the same locations, part of the costs of the costs of the monitoring programme. These costs will include the Department's standard charge-out rates for staff time and the mileage rates for vehicle use associated with the monitoring programme.
15. Further to Schedule 3 special condition 14, monitoring by the Department will include, but is not limited to, 8 hours of monitoring per month during the construction period with all costs to be recovered from the Concessionaire.

### **Other Special Conditions**

16. The Concessionaire must take all reasonable care to avoid any archaeological values on the Land which includes (not limited to) historic sites and protected New Zealand objects on the Land. In the event that archaeological sites or other features with heritage values are found during any approved earth disturbance work on the Land:
- (a) Work must cease immediately until further notice and advice must be sought from the Grantor;
  - (b) If it is an archaeological site under the definition of the Historic Places Act then Heritage New Zealand must be contacted and their advice also sought;
  - (c) If it is an archaeological site relating to Māori activity then the Papatipu Rūnanga must be contacted and their advice sought;
  - (d) If artefacts are found as defined by the Protected Objects Act then the Ministry for Culture and Heritage must be notified within 28 days;
  - (e) Where human remains are found the NZ Police should also be notified;
  - (f) In the event of cessation of approved work because of discovery of potential historical artefact or archaeological site the Concessionaire must not recommence work until permitted to do so by the Grantor.
17. The Concessionaire must maintain the easement in good repair and arrange for all bridges to be inspected at intervals not exceeding 5 years by a registered structural engineer. The Concessionaire must provide evidence of these inspections to the Grantor within a month of the inspection.
18. Nothing contained or implied in this easement requires the Grantor or the Concessionaire to supply services on or under the Easement Land or entitles the Concessionaire to interfere with the services of any other user of the Easement Land.
19. Nothing contained or implied in this easement enables the Concessionaire whether by subdivision or by any means whatsoever to have the within easement available for additional users.
20. No alterations to the Easement Land requiring earth disturbance must be undertaken without prior written consent of the Grantor.
21. The Concessionaire must allow the Grantor access over the land for management purposes when requested by the Grantor.

### **Freshwater pests**

22. The Concessionaire must comply and ensure its clients comply with the Ministry for Primary Industry (MPI)'s "Check, Clean, Dry" cleaning methods to prevent the spread of didymo (*Didymosphenia geminata*) and other freshwater pests when moving between waterways. "Check, Clean, Dry" cleaning methods can be found at – <http://www.biosecurity.govt.nz/cleaning>. The Concessionaire must regularly check this website and update their precautions accordingly.

### **Kauri Dieback**

23. The Concessionaire must comply and ensure its clients comply with all guidelines and notices issued by the Kauri Dieback Programme (lead by Ministry of Primary Industry) to prevent and avoid the spread of the pest organism *Phytophthora taxon Agathis* (PTA) Kauri Dieback Disease as specified by the website <http://www.kauridieback.co.nz/>. The Concessionaire and clients must comply with the [general guidelines](#) and for specific concession activities the relevant guidelines as specified on <http://www.kauridieback.co.nz/publications>. The Concessionaire must update itself on these websites on a regular basis.
24. The Concessionaire must ensure that all vehicles and equipment are thoroughly cleaned of all visible soil and that footwear once cleaned is sprayed with SteriGENE (formally known as Trigen) solution before entering and when moving between areas where there are kauri. This is to reduce the potential for spread of PTA. Contact details for suppliers of SteriGENE may be obtained through the Department of Conservation.

### **Concession Fee Review**

25. Further to clause 5.2(b) of Schedule 2, the Concessionaire (at its cost) will commission an Independent Valuer approved by the Grantor to assess a market value for the constructed easement on the Land and this valuation is to be used to determine the Concession Activity Fee to be agreed to by both parties to take effect for the first three yearly Concession Fee Review Date in Item 9 of Schedule 1. The decision of this Valuer shall be binding on both parties. Should the choice of Valuer not be acceptable to the Grantor then a Valuer shall be appointed by the President of the Waikato Bay of Plenty branch of the New Zealand Law Society, such choice (and decision made by that Valuer) to be binding on both parties.
26. The second three yearly Concession Fee Review Date in Item 9 of Schedule 1 will be in accordance with the provisions of clause 5 in Schedule 2.

## **8.0 Applicant's comments on draft Officers report**

The applicant received a copy of the report on 3 March 2016 and the applicant responded on 16 March 2016. The full comments can be found at [DOC-2753013](#). These comments mostly relate to minor grammatical changes. They do request that the earthworks not be restricted within the months of October to January inclusive as this is in the middle of the construction period. As special condition 11 requires the land to be checked before vegetation is removed or earthworks undertaken, it is considered there will be no risk to wildlife by removing this special condition.

## **9.0 Summary and Conclusions**

This application is for the reconsideration for a right of way access for forestry purposes through part Coromandel State Forest Park. The easement is to be 1,743 lineal metres long more or less and 8 metres wide.

Section 17U(2) states the Minister may decline any application if the minister considers there are no adequate or reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity. The contents of this report should satisfy the Minister that the impacts and effects of the construction phase of the proposed activity may be deemed to be more than minor, but are understood and manageable, and the on-going effects are considered minor. All potential adverse effects and impacts can be adequately avoided, remedied or mitigated by the conditions in this concession, as outlined in this report above.

Section 17U(3) states the Minister shall not grant an application for a concession if it is contrary to the provisions of the Act of the purpose for which the land is held. This proposed activity is not contrary to the Conservation Act as shown in this report. The land is conservation park which shall be managed so: (a) that their natural and historic resources are protected; and (b) subject to (a), to facilitate public recreation and enjoyment. Protection means *“its maintenance, so far as is practicable, in its current state”*. This report should satisfy the Minister that the natural and historic resources are protected to the extent practicable. It is considered that the activity is not contrary to the purposes for which the land is held.

Section 17U(4) states the minister shall not grant an application to build a facility where he or she is satisfied that (b) *“could reasonably use an existing structure or facility”*. The operative wording is *“could reasonably”*, and the Minister should be satisfied that there are issues associated with the current access i.e. extreme steepness, physical condition of the surface, it is unable to be reasonably upgraded to acceptable standards, risk of failure, and reliable access during, in particular, winter months. The Minister should be satisfied that there is sufficient evidence in support of the need to improve future access by finding an alternative route, and the proposal to carry out the activity over pcl will afford the best possible alternative in achieving a more reasonable, safe, practical and viable option.

Section 17W states a concession shall not be granted unless the concession is consistent with conservation management strategies or plans. The application is consistent with the Waikato Conservation Management Strategy 2014, specifically the following sections: Hauraki-Coromandel Place policy 9.2.2.21. Vehicle easements are provided for under section 16.2 and 16.3.1.3 where it states that easements may be authorised through a concession. It is considered that the proposed activity is consistent with the Waikato Conservation Management Strategy 2014 and Conservation General Policy 2005.

**It is considered that the reconsideration application meets all the tests under the Conservation Act 1987 and therefore there are no reasons not to approve the proposed activity and grant the easement concession.**

## **10.0 Recommendations to decision maker**

Pursuant to the delegation dated 8<sup>th</sup> September 2015/9<sup>th</sup> September 2015 it is recommended that the Deputy-Director General, Operations:

- 1. Deem this application to be complete in terms of s17S of the Conservation Act 1987; and**
- 2. Agree that is considered appropriate to give public notice of the intention to grant the easement; and**
- 3. Consider that the applicant is unable to reasonably use the existing access and new access is required; and**
- 4. Approve in principle the granting of a Notified Easement concession to Waitaia Forestry Limited subject to the standard concession contract; and the special conditions identified in this report; and**
- 5. Having regard to s49(1) of the Conservation Act 1987, be satisfied that any intent to grant the concession would be of local or regional interest only, in which case the publication of the public notice on this matter be limited notice in The Waikato Times, Coromandel Chronicle, The Mercury Bay Informer and The Hauraki Herald.**





Name: Lynette Trewavas  
Permissions Advisor

Date: 27 April 2016

**Recommendation:**

- 1 Approved/Declined
- 2 Approved/Declined
- 3 Approved/Declined
- 4 Approved/Declined
- 5 Approved/Declined

If the recommendation is declined please discuss here why this is so:



Signed: \_\_\_\_\_  
Michael Slater  
Deputy-Director General  
Operations

Date: 21 June 2016