

12 July 2018

Barrister

By email to

Dear

Simons Pass Station Limited – Baseline survey

I am writing in response to your letter of 4 July 2018 and our meeting last week.

I understand that your position is that the contents of the Baseline Survey contemplated by condition 86 of Simons Pass' water permit should be limited to the "population densities of the species and communities listed at condition 88". You therefore assert that there were errors in the instructions given to Environment Canterbury's experts who reviewed the Baseline Survey previously submitted to Environment Canterbury. This is because we had instructed them to assess the Survey against the objectives of the Dryland Recovery Management Plan (DRMP).

Environment Canterbury does not agree, for the following reasons.

First, the "Baseline Survey" is intended to do as its name describes, to provide a "baseline" against which subsequent changes in population densities can be measured, for the purposes set out in the water permit.

The consent conditions within CRC176720 that require the measurement and reporting of those changes are contained in conditions 87 to 95 of the permit. These conditions require (amongst other things) the following steps:

- Condition 87: the DRMP must be prepared "using the results of the Baseline Survey" and with the objective of "promoting and achieving the recovery of the indigenous dryland ecosystems...";
- Condition 89: the DRMP must set out the methods to implement restoration management of the listed species;
- Condition 90: the DRMP must be prepared by an appropriately qualified person who must certify that "the DRMP is fit for the purpose to achieve the objective identified at

condition 87...”; and then provided to Environment Canterbury for its assessment of whether it complies;

- Condition 93: Simons Pass is required to report on the “progress of the implementation of the DRMP” every five years; and
- Condition 94: Simons Pass is required to review the DRMP every five years.

It is clear that the overarching intention of these conditions is a package of work to provide an understanding of the current state of the listed species before irrigation starts; to implement and monitor restoration management of the listed species, on an ongoing basis; all with the objective of promoting and achieving the recovery of the indigenous dryland ecosystems.

The purpose of these consent conditions would simply not be met if the initial survey, the baseline against which everything else was to be measured, did not take account of that package of work and the purpose to which the survey was to be put.

It would also, in our view, not be possible for the DRMP to be prepared “using the results of the Baseline Survey” (as required by condition 87) unless the survey had been conducted on the basis of the express objective of the DRMP.

Secondly, you will note that condition 86 cross refers to the species and communities listed at condition 88. Condition 88 does not simply list those species and communities. Rather, it provides that “the indigenous species and communities of the indigenous dryland ecosystems which shall be the subject of the restoration management intervention shall include...” and then goes on to list examples of those species and communities. For this reason, it is also our interpretation that the baseline survey must include all species and communities found within the indigenous dryland ecosystem, rather than just those listed.

In our view, even if we were incorrect in our view that the DRMP conditions are intended as a package (which is not accepted), condition 88 also imports into condition 86 a broader purpose than simply “population densities”, stating as it does, that the listed species and communities are those that are “the subject of the restoration management intervention”.

Accordingly, we consider that condition 86 requires the Baseline Survey to be conducted with regard to restoration management intervention – which is the work to be described in, and carried out under, the DRMP. It is therefore necessary to incorporate the objective of the DRMP into the objective of the Baseline Survey.

We therefore conclude that the consent conditions require that the Baseline Survey should be carried out to meet the objective of the DRMP, with the objective of promoting and achieving the recovery of the indigenous dryland ecosystems within the dryland recovery area.

Other matters

We note your comments (your paragraph 8) about whether the Baseline Survey should demonstrate the extent to which adverse impacts have been mitigated. We accept that this

extends beyond the required scope of the Baseline Survey and the DRMP. However, our position is this extended scope has not formed the basis for the comments we have previously provided to you in relation to the Baseline Survey. That is, that the comments and additional content required for compliance are within the scope of Baseline Survey conditions so that the objectives of the Dryland Recovery Area can be achieved.

We also note your statement (at paragraph 7) about the condition 95 requirement to expend at least \$100,000 per annum on implementing the DRMP. For the avoidance of doubt, Environment Canterbury's position is that the funds expended on the preparation of the Baseline Survey and on drafting the DRMP should not be included in the calculation of the \$100,000.

We still consider that the most useful next step would be for the survey authors and Environment Canterbury's assessors to meet and would like to arrange that meeting as soon as possible. Could you please confirm whether you agree and, if so, propose some times that are acceptable to the Simons Pass team.

As we have previously discussed, Environment Canterbury's position is that Simons Pass cannot give effect to its resource consent until the Baseline Survey has been completed to Environment Canterbury's reasonable satisfaction in compliance with the consent conditions.

Yours sincerely



Catherine Schache
General Counsel