

OUR REF David Bullock / Kaitlin Calder
DDI 64 9 912 7121 / 64 9 913 0163
EMAIL david.bullock@lsl.co.nz / kaitlin.calder@lsl.co.nz

LEVEL 16 VERO CENTRE 48 SHORTLAND STREET
PO BOX 2026 SHORTLAND STREET AUCKLAND NEW ZEALAND
TELEPHONE 64 9 912 7100

31 October 2022

Department of Conservation
18-32 Manners Street
Wellington 6011
NEW ZEALAND

Waka Kotahi / NZTA
The Majestic Centre
100 Willis Street
WELLINGTON

BY EMAIL

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Wildlife Act Authority for Mt Messenger Bypass Works

1. We act for the Environmental Law Initiative (**ELI**).
2. ELI is an incorporated charitable trust board. Its charitable purposes include the preservation, conservation, protection and enhancement of natural and cultural resources in order to prevent their harm, misuse, depletion, unsustainable use and destruction.
3. In October 2021, ELI made an official information request for materials relating to Wildlife Act Authority 91389-FAU (**Authority**). Despite that response saying that the provision of the authority could be facilitated once a decision was made, the Authority was never provided to ELI.
4. ELI has recently received a copy of the Authority, which DOC granted to NZTA on 22 December 2021. Among other things, this Authority authorises NZTA to kill protected wildlife during road construction for the Mt Messenger bypass. The list of wildlife authorised to be killed by this Authority (contained in Schedule 5) comprises 46 species, including critically endangered species absolutely protected by the Act.
5. As the Department will be aware, Supreme Court authority holds that the power to authorise killing under s 53 is constrained by the purpose of the Act, which is wildlife protection.¹ In that case, the Department accepted that it could not authorise shark cage diving under s 53.
6. In our client's view, permitting wildlife to be killed to facilitate road building does not accord with the protective purpose of the Wildlife Act. The apparent lack of proper risk assessments to species referenced in the Authority also does not accord with the Act's purpose. Our client's position is that the Authority is unlawful and ultra vires.
7. Our client considers that the Authority granted to NZTA is unlawful and that it is very likely that a court will take the same view. Any works done by NZTA founded on an unlawfully granted or ultra vires Authority may also constitute offences under the Wildlife Act.

¹ See *Shark Experience Limited v PauaMac5 Incorporated* [2019] NZSC 111, [2019] 1 NZLR 791 at footnote 72 and [6], [44]–[46] respectively.

8. Our client requests the immediate cancellation of the Authority. We also request copies of any other active Wildlife Act Authorities issued under s 53 that authorise the killing, destruction or disturbance of wildlife and any authorities terminated or amended following the decision in *PauaMac5* (including prior and subsequent versions where amended).
9. Our client understands that works on the site are imminent. Should our client fail to receive a reply to this letter by 5pm on Thursday 3 November 2022 we anticipate instructions to commence judicial review proceedings, including seeking urgent interim measures to restrain the killing of wildlife under the authority, without further notice to you.

Yours faithfully

[sgd:David Bullock/Kaitlin Calder]

David Bullock / Kaitlin Calder
Partner / Solicitor