

# WAIKATO DISTRICT COUNCIL

## Hearings of Submissions on the Proposed Waikato District Plan

### Recommendations and Decisions of the Independent Commissioners

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#### Decision Report 31: Designations

17 January 2022

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#### Commissioners

Dr Phil Mitchell (Chair)

Mr Paul Cooney (Deputy Chair)

Mr Dynes Fulton

Ms Linda Te Aho

## Contents

1	Introduction .....	3
2	Hearings Arrangement and Evidence Presented.....	3
3	Statutory Considerations .....	4
4	Roll-over of Designations (without modifications and no submissions received).....	6
5	Submission on “Introduction” Section of Section E: Designations.....	6
6	Roll-over of Designations (without modifications and submissions received).....	7
7	Designations with Minor Modifications.....	8
8	Designations with Substantive Modifications .....	12
9	Removal of Designations .....	16
10	New Notices of Requirements .....	17
11	Overall Recommendations and Decisions .....	21

## Glossary of terms

Chorus	Chorus New Zealand Limited
Council	Waikato District Council
DoC	Ara Poutama Aotearoa (Department of Corrections)
HCC	Hamilton City Council
NESTF	National Environmental Standards for Telecommunication Facilities
NoR	Notice of Requirement
NZTA	Waka Kotahi New Zealand Transport Agency
OLS	Airport Obstacle Limitation Surface
PDP	Proposed Waikato District Plan
Transpower	Transpower New Zealand Limited
WEL	WEL Networks Limited
WRAL	Waikato Regional Airport Limited

## 1 Introduction

- 1.1 Hearing 15 related to all the submissions received by the Waikato District Council (Council) on the designations within the Waikato Proposed District Plan (PDP). A designation is a provision in a district plan that gives effect to a notice of requirement for a public work or project by a requiring authority.<sup>1</sup>
- 1.2 Section E of the PDP contains a schedule of designations, which sets out: the name of the requiring authority, designation number, purpose of designation, location, area, legal description, and to a limited extent the designations' conditions. All designations are annotated on the planning maps. The PDP identifies twenty-one organisations as having a requiring authority status that have designations in the PDP.
- 1.3 A district plan review process triggers a number of processes under the Resource Management Act 1991 (RMA) which are specific to designations. The statutory framework applying to designations is set out in section 3 of this Report.
- 1.4 With respect to designations, Council has dual roles and functions under the RMA. First, as a territorial authority, Council has a recommendatory role in relation to Notice of Requirements (NoR) of other requiring authorities notified as part of the PDP. Second, as a requiring authority, Council has decision-making powers in respect of its own designations notified as part of the PDP.
- 1.5 Both roles of Council have been delegated to us as the Waikato District Plan Hearings Panel (Panel). As such, we will make decisions on Council's own designations and make recommendations to all other requiring authorities on their respective designations.
- 1.6 A total of 21 original submissions and 14 further submission points were received on the designations' topic.<sup>2</sup>

## 2 Hearings Arrangement and Evidence Presented

- 2.1 Hearing 15 was held on 20 and 24 April 2020 via Zoom Conferencing. All of the relevant information pertaining to this hearing (i.e. Section 42A Report and evidence) is contained on Council's website.

Council	Jane Macartney (author of Section 42A Report)
Waikato Regional Airport Limited	Kathryn Drew, Planner
Chorus New Zealand Limited	Chris Horne, Planner
Ara Poutama Aotearoa (Department of Corrections)	Matthew Allott, Planner
Waka Kotahi New Zealand Transport Agency (NZTA)	Michael Wood, Planner

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<sup>1</sup> Introduction, Section E: Designations of PDP.

<sup>2</sup> Paragraph 48 of the Section 42A Report, dated 20 April 2020.

Transpower New Zealand Limited	Pauline Whitney, Planner Andrew Renton, Engineer
Reid Investment Trust	Alistair White, Planner
WEL Networks Limited (WEL)	Karleen Broughton (Counsel)
KiwiRail	Pam Butler, RMA Advisor
Waikato Regional Council	Mark Tamura, Manger Integration and Infrastructure

### 3 Statutory Considerations

- 3.1 Under clause 4, Schedule 1 of the RMA, a territorial authority is required, prior to the notification of a PDP, to invite requiring authorities who have existing designations under the Operative District Plan (but which have not lapsed) to give written notice to the territorial authority. That written notice must state whether or not the requiring authority will require the existing designation to be rolled over the PDP, with or without notification.
- 3.2 In addition to rollover designations, a requiring authority may also give written notice requesting a new site to be designated. The territorial authority can then include this requirement in the PDP in accordance with clause 4(5) of Schedule 1 of the RMA.
- 3.3 Clause 4(6) of Schedule 1 provides that a territorial authority may include, in its PDP, any requirement for a designation or existing designation that the territorial authority has responsibility for in its district.
- 3.4 With respect to clause 4, of Schedule 1, Ms Macartney set out the procedural matters completed by Council prior to the notification of the PDP in section 1.8 of the section 42A Report.

#### **Recommendations to requiring authority**

- 3.5 Clause 9(1) of Schedule 1 states that a territorial authority must make and notify its recommendations in respect of any provision included in a proposed district plan under clause 4(5) to the appropriate authority in accordance with section 171 of the RMA.
- 3.6 Under section 171(2), giving reasons, the territorial authority may recommend to the requiring authority that it:
- (a) Confirm the requirement;
  - (b) Modify the requirement;
  - (c) Impose conditions; or
  - (d) Withdraw the requirement.

- 3.7 The requiring authority must notify the territorial authority as to whether it accepts or rejects the recommendations in whole or part within the statutory timeframes.

**Territorial authority as requiring authority**

- 3.8 Clause 9(2) of Schedule 1 states that the territorial authority must make its decision on provisions included in a proposed district plan under clause 4(6) in accordance with section 168A(3) of the RMA.

- 3.9 The matters to be taken into account under the RMA when considering whether or not to include a designation in a district plan are the same regardless of who the requiring authority is. The matters for consideration are listed in section 168A when the territorial authority is the requiring authority, and section 171 for other requiring authorities.

- 3.10 As mentioned above, where Council is the requiring authority, we have been delegated the legal authority to make decisions on Council's own designations. Under section 168A(4), we may make the decision to:

- (a) Confirm the requirement;
- (b) Modify the requirement;
- (c) Impose conditions; or
- (d) Withdraw the requirement.

**The Panel's approach in this Report**

- 3.11 We have divided this Report into the following categories:

- (a) Roll-over of designations (without modifications and no submissions received);
- (b) Submissions on "Introduction" section of Designations;
- (c) Designations with minor modifications;
- (d) Designations with substantive modifications;
- (e) Removal of designations; and
- (f) New Notice of Requirements.

- 3.12 Having considered the matters set out in section 171, we have made an evaluative judgement as to which of the options under sections 171(2) should be recommended.

- 3.13 Having considered the matters set out in section 168A (where Council is the requiring authority), we have made an evaluative judgement and a decision on the options available under section 168A(4).

- 3.14 Appendix 3 contains our recommended version of Section E Designations of the PDP. It incorporates all of our recommendations or determinations as the case may be.

#### **4 Roll-over of Designations (without modifications and no submissions received)**

- 4.1 The designations set out in Appendix 1 to this Decision were rolled-over in the PDP without modifications and no submissions were received on these. Clause 9(3) of Schedule 1 of the RMA reads:

“Nothing in this clause shall allow the territorial authority to make a recommendation or decision in respect of any existing designation or heritage orders that are included without modification and on which no submissions are received.”

Accordingly, the designations rolled-over without modifications do not warrant any discussion, therefore they are confirmed by us as set out in Appendix 1 (and incorporated into Appendix 3).

- 4.2 Chorus NZ Ltd (Chorus) sought the roll-over of its eight existing designations with amendments to correct the legal descriptions as well as to refer to the designations’ purpose as “telecommunication and radio communication and ancillary purposes”. In his planning evidence on behalf of Chorus, Mr Horne stated that the amendments sought to the designations are deemed to be “corrections” and not “modifications”. He stated that no changes were sought to the extent or purpose of the designations from those that currently exist in Operative District Plan.<sup>3</sup> Ms Macartney agreed with Mr Horne’s assessment, and further stated that the correction of minor errors is enabled through clause 20A of Schedule 1 of the RMA.<sup>4</sup> Based on the expert advice of Mr Horne and Ms Macartney, we accept that Chorus’ eight existing designations are deemed to be rolled-over without modifications, and as no submissions were received, are subject to Clause 9(3) of the RMA. Therefore, they are included in Appendix 1.

#### **5 Submission on “Introduction” Section of Section E: Designations**

- 5.1 Section E contains an introduction section, providing overview explanatory text relating to designations. This includes an advice note alerting to the need to obtain an authority from Heritage New Zealand Pouhere Taonga if an archaeological site is to be destroyed within an area subject to a designation. Heritage New Zealand sought to amend the advice note, to delete the word “damaged”.<sup>5</sup> We accept this submission and amend the advice note as follows:

“A designation does not exempt a requiring authority from first obtaining an authority from Heritage New Zealand Pouhere Taonga if an archaeological site is to be modified or destroyed, ~~damaged or modified.~~”

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<sup>3</sup> Paragraph 4 of Summary of Planning Evidence of Chris Horne, dated 14 April 2020.

<sup>4</sup> Paragraph 19 of Rebuttal Section 42A Report.

<sup>5</sup> Paragraph 59 of the Section 42A Report, dated 20 April 2020.

- 5.2 Watercare Services Ltd (Watercare) sought an inclusion of a new advice note as follows:<sup>6</sup>

“Any works undertaken in accordance with the purpose of a designation are not subject to the requirements of any district plan rules including any overlay rules”.

- 5.3 We agree with Ms Macartney that an advice note as sought by Watercare is not necessary, as in some contexts the PDP provisions, including overlays, may be relevant to the designation. If the requiring authority seeks the designation conditions to supersede particular district plan rules, including the overlay rules, then this should be considered at the NoR stage, to enable a thorough consideration of any adverse effects on the environment of doing so. Furthermore, as noted by Ms Macartney, under section 176A(3)(a) – (e), an outline plan must show “any other matters to avoid, remedy, or mitigate any adverse effects on the environment”.

## **6 Roll-over of Designations (without modifications and submissions received)**

- 6.1 A number of requiring authorities sought the roll-over of existing designations contained in the Operative District Plan, without modifications, with submissions subsequently being received on these designations. These designations are discussed below.
- 6.2 Radio NZ sought the roll-over of Designation S1 without modification and lodged a submission to retain Designation S1 as notified.
- 6.3 First Gas Limited sought the roll-over of Designation R1 without modification and lodged a submission to retain Designation R1 as notified. In submission 74.1, Graham Hunkin questioned the necessity of the same designation, particularly at the property at 185 Brown Road, Tuakau. Mr Hunkin refers to section 184 of the RMA which relates to the lapsing of the designation. In submission 945.50, First Gas Ltd confirms that “*the designation ranges in width from 6m to 25m and is for the purpose of protecting the existing 400mm line. This designation has been given effect to and First Gas seeks that this designation be rolled over*”.<sup>7</sup> We reject the submission from Mr Hunkin on the basis that First Gas Ltd, as the requiring authority, has confirmed that the designation has been given effect to.
- 6.4 Waikato Regional Airport Limited (WRAL) sought the roll-over of their existing Designation N1, without modifications. This designation establishes an Airport Obstacle Limitation Surface (OLS) that controls the height of buildings and structures so that aircraft using Hamilton Airport can operate safely.<sup>8</sup> In submission 712.3, Bettley-Stamef Partnership sought to delete Designation N1 from twenty-five sites on Matangi Road and Yumelody Lane. In submission 769.2, Tamahere Eventide

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<sup>6</sup> Paragraph 58 of Section 42A Report, dated 20 April 2020.

<sup>7</sup> Paragraph 241 of Section 42A Report, dated 20 April 2020.

<sup>8</sup> Paragraph 195 of Section 42A Report, dated 20 April 2020.

Retirement Village sought to delete Designation N1 from the site at 158 Matangi Road.

6.5 Ms Drew presented planning evidence on behalf of WRAL. Ms Drew stated that:

- (a) Hamilton Airport (located in the Waipa District) is defined as Regionally Significant Infrastructure in the Waikato Regional Policy Statement;
- (b) The OLS as proposed to be rolled-over is consistent with that established in 2020 and matches the OLS required for the runway extension; and
- (c) The OLS is designated as it established a legal right for WRAL to keep its airspace clear of obstacles. The OLS is critical to the operation of the WRAL.

6.6 With respect to the submissions seeking to remove the OLS, Ms Drew stated that:<sup>9</sup>

- (a) The properties to the west of Yumelody Lane are affected by the Conical Surface, whereas all other properties are affected by the Main Strip Takeoff and Approach surface;
- (b) Designation N1 as it relates to the properties mentioned in the submissions only restricts obstacles from protruding above the OLS, which is likely to be very high for these properties and unlikely to impact on activities occurring on those sites;
- (c) Ms Drew agreed with Ms Macartney that in terms of actual effects on the properties, the maximum height of buildings, as provided by the PDP provisions is more restrictive than the OLS; and
- (d) For these properties the OLS sits at a level between 80m to 160m above the existing ground level. Designation N1 has no material effect on the use of these properties.

6.7 Accepting the advice of Ms Drew and Ms Macartney, we reject submissions 712.3 and 769.2, as OLS is required to be maintained to comply with the Civil Aviation Authority requirements for Hamilton Airport, a regionally significant infrastructure. We are satisfied that the OLS is unlikely to affect the activities occurring on the sites specified in the submissions.

6.8 We have included the abovementioned designations in Appendix 3, and recommend to the respective requiring authorities that these designations be confirmed.

## **7 Designations with Minor Modifications**

7.1 A number of requiring authorities sought the rollover of existing designations contained in the Operative District Plan, with minor alterations. These alterations were incorporated into Section E Designation provisions in the notified PDP. Council also received submissions that sought minor amendments to the notified designation provisions contained in the PDP. Designations falling within this category are set out in Appendix 2 and discussed below.

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<sup>9</sup> Paragraphs 20 to 23 of Statement of Evidence of Ms Drew, dated 26 March 2020.



- 7.2 The Minister of Education requested the roll-over of existing designations (as set out in Appendix 2) with the following modifications, which were incorporated into the notified PDP:
- (a) insertion of names of all existing educational facilities;
  - (b) correction of addresses, legal descriptions, and land areas;
  - (c) corrections to the spatial extent of some designations; and
  - (d) listing the purpose of each designation as “Educational Purposes”.<sup>10</sup>
- 7.3 Waikato Regional Council requested that its designations listed in Appendix 2 be modified to correct errors in the planning maps and to reflect the legal descriptions or the extent of existing stop banks used for water and soil conservations purposes.<sup>11</sup>
- 7.4 Hamilton City Council (HCC) requested that its designations listed in Appendix 2 be altered to amend the legal descriptions of Designations E1 and E3 relating to Hamilton Zoo and Taitua Arboretum.<sup>12</sup>
- 7.5 The Ministry of Justice requested that its designation listed in Appendix 2 be altered to correct the area of land that the designation applies to. The Ministry of Justice also sought to amend the existing purpose of the designation from “Court house” with a more comprehensive description of the activities commonly expected to occur in a courthouse.<sup>13</sup>
- 7.6 The Minister of Police requested its designations listed in Appendix 2 be altered to correct errors. The Minister of Police further sought to replace the purposes of existing designations from “police station”, “community policing centre” and “police purpose (TKU Police Patrol Base & Residence)” to more comprehensive descriptions of the activities commonly expected to occur in a police station, including ancillary purposes as detailed in the Policing Act 2008.<sup>14</sup>
- 7.7 Prior to the notification of the PDP, Kiwi Rail Holdings Limited (KiwiRail) requested that its designations listed in Appendix 2 be modified to replace the name of the requiring authority from “New Zealand Railway Corporation” in the Operative District Plan, with “KiwiRail Holdings Limited”.<sup>15</sup> KiwiRail lodged a submission to retain the KiwiRail designations as notified.
- 7.8 Prior to notification, Council (as requiring authority) requested the roll-over of all its designations without modifications. Following notification, Council lodged a submission requesting that all designations are correctly referenced in respect of property details and legal descriptions.<sup>16</sup> Ms Macartney recommended that Council’s

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<sup>10</sup> Paragraph 75 of Section 42A Report, dated 20 April 2020.

<sup>11</sup> Paragraph 89 of Section 42A Report, dated 20 April 2020.

<sup>12</sup> Paragraph 95 of Section 42A Report, dated 20 April 2020.

<sup>13</sup> Paragraph 101 of Section 42A Report, dated 20 April 2020.

<sup>14</sup> Paragraph 106 of Section 42A Report, dated 20 April 2020.

<sup>15</sup> Paragraph 170 of Section 42A Report, dated 20 April 2020.

<sup>16</sup> Paragraph 179 of Section 42A Report, dated 20 April 2020.

- designations listed in Appendix 2 be modified to correct errors relating to their location and legal descriptions.
- 7.9 Watercare requested the roll-over of its existing designations, with modifications, to alter the purposes to reflect modern terminology for the facilities. It further sought amendments to the planning maps to correctly reflect the designated areas. These designations are listed in Appendix 2.
- 7.10 WEL Networks Ltd requested a roll-over of their existing designations listed in Appendix 2, with modifications, to amend the designations' purposes and further amendments to the site addresses, site areas and legal descriptions.
- 7.11 Auckland Council sought the roll-over of Designation T1 (part of Hunua Regional Park), with modifications, to amend the designation's purpose and legal descriptions, as well as to remove an area held by the Department of Conservation. Designation T1 is listed in Appendix 2.
- 7.12 Counties Power sought the roll-over of their existing designations, with modifications, to change the purpose of the designations from "Substation" to "Electricity substation" and to also correct the legal descriptions. These designations are listed in Appendix 2. In submission 405.86, Counties Power sought that the mapping of Designation I1 (McKenzie Road, Mangatawhiri) be amended to align with the property boundaries. In submission 405.87, Counties Power sought that the mapping of Designation I5 (217 Whangarata Road, Tuakau) be amended to cover the entire area owned by Counties Power. We accept these submissions to ensure that Designations I1 and I5 are correctly shown on the planning maps.
- 7.13 NZTA sought the roll-over of their existing designations (listed in Appendix 2), with modifications, to amend the purposes for each section of the state highway to accurately reflect their intent.<sup>17</sup> NZTA lodged submissions to re-order and renumber each designation in the Designations Schedule so that the designations generally coincide with locations that run north to south. It also sought to amend the planning maps to correctly show the boundaries of all its designations.
- 7.14 Ms Macartney informed us that the NZTA designations shown on the planning maps as notified were not based on the most current GIS shape files held by NZTA. Mr Wood stated that updating of the information shown on the planning maps does not result in the designation extending over private land which has not already been identified in the PDP. Mr Wood stated that where a designation's extent was proposed to be different, the land is legally classified as road and/or the land is owned by NZTA as a result of prior or proposed projects.<sup>18</sup> We have NZTA's amended designations as shown on the planning maps based on the updated GIS shape files provided by NZTA. We have also amended the Designations Schedule to re-order the NZTA's designations to coincide with locations that run north to south.
- 7.15 In submission 588.58, Woolworths NZ Ltd (Woolworths) sought the deletion of Designation J14 that applies to the frontage of 16-18 Tumate Mahuta Drive, Huntly

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<sup>17</sup> Paragraph 124 of Section 42A Report, dated 20 April 2020.

<sup>18</sup> Paragraph 4.3 of Statement of Evidence of Mr Wood, dated 20 March 2020.

to allow unrestricted access to and from the affected frontage for the supermarket site. NZTA opposes this submission. Mr Wood stated that the existing SH1 designation through Huntly will not be removed until the time that the state highway revocation process (this relates to the old alignment of SH1 through Huntly) has been completed. Mr Wood stated that the revocation process may require further improvements (works) to this section of the SH1 prior to transferring ownership and operations to Council. The existing designation would provide for these works if required. Mr Wood confirmed that the revocation process is expected to be concluded in 2021. Based on the advice from Ms Macartney and Mr Wood, we reject the submission from Woolworths. We note that uplifting a designation is a simple process which can be completed in due course after the full revocation process is completed as outlined by Mr Wood.

- 7.16 In submission 761.3, Lyndendale Farms Limited sought to retain Designation J17 running alongside the southern boundary of property at 180 Horsham Downs Road, Horsham Downs. Ms Macartney stated that Designation J17 remains unchanged as it is located beside the property at 180 Horsham Downs Road.<sup>19</sup>
- 7.17 In submission 783.13, Reid Investment Trust sought to amend Designation J11, as it relates to their property in the vicinity of the Hampton Downs SH1 interchange. Mr Wood supports the removal of this designation from the submitter's property as shown in paragraph 137 of the section 42A Report. Mr Wood stated that the designation extent for this section of SH1 reflects the work area that was required for the construction, but not for the ongoing operation of the Hampton Downs Interchange. Mr Wood confirmed that the requested amendment is to be incorporated into the updated GIS shape file data as provided to us.<sup>20</sup>

### **Panels Assessment and Recommendations**

- 7.18 We will deal with any requests for minor alterations in general accordance with section 181 of the RMA, which relates to the alteration of an existing designation. A requiring authority that is responsible for a designation may give a notice of requirement to the Council to alter an existing designation. The process is subject to sections 168 to 179 of the RMA, as if it were a new NoR.
- 7.19 In assessing the above alterations, we have applied the following assessment:
- Does the modification:
- (a) involve no more than minor change to the effects on the environment associated with the use or proposed use of the land or any water concerned?
  - (b) involve only minor changes or adjustments to boundaries of the designation?
  - (c) involve correction of errors, address minor matters, or assists with clarification of the purpose of the designation (in designation description, location, area, legal description, mapping)?

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<sup>19</sup> Paragraph 135 of Section 42A Report, dated 20 April 2020.

<sup>20</sup> Paragraph 6.2 of the Statement of Evidence of Mr Wood, dated 20 March 2020.

- 7.20 We conclude that the modifications sought to the designations listed in Appendix 2 (and incorporated into Appendix 3) meet the above criteria and are either for the correction of errors or deemed to be minor in nature. We consider that no further explanation or justification is required in this regard.

## **8 Designations with Substantive Modifications**

### **Minister of Education**

- 8.1 The Minister of Education sought that the “purpose of designation” in the Designations Schedule be stated as “Educational Purposes”, to ensure that the education-related activities on these sites are protected for that purpose. This was notified as part of the PDP.

- 8.2 The Minister of Education also sought that the following definition of “Education Purposes” be noted within the Designation Schedule of the PDP:

“Education Purposes” in this designation purpose means:

- a. Enable the use of the facilities on the site by and for the educational benefit of any school age students (Years 0 – 13) and early childhood children regardless of whether they are enrolled at the institution located on the site.
- b. Enable the provision of supervised care and study opportunities for students outside school hours in school facilities.
- c. Enable the provision of community education (e.g., night classes for adults) outside school hours in school facilities.
- d. Include but not limited to the provision of academic, sporting, social and cultural education including through:
  - i. Formal and informal recreation, sporting and outdoor activities and competitions whether carried out during or outside school hours;
  - ii. Formal and informal cultural activities and competitions whether carried out during or outside school hours;
  - iii. The provision of specialist hubs and units (including language immersion units and teen parenting units) for children with particular educational requirements or special needs.
- e. Enable the use of facilities for purposes associated with the education of students including school assemblies, functions, fairs and other gatherings whether carried out during or outside school hours.
- f. Enable the provision of associated administrative services; car parking and maneuvering; and health, social services and medical services (including dental clinics and sick bays).
- g. Enable housing on site for staff members whose responsibilities require them to live on site (e.g., school caretakers).”

- 8.3 We acknowledge that school infrastructure is an integral resource to the community and is generally utilised as a multi-use facility, as sought by the Minister of Education. We consider that the definition of “Education Purposes” specific to the identified designations in the schedule is appropriate, as it encompasses the range of activities that generally occur on school sites. We are comfortable that any adverse effects on the environment associated with the activities on the designated sites are able to be addressed via the Outline Plan process under section 176A of the RMA. We consider that the insertion of the definition as requested, allows for flexibility about the future uses on the sites whilst protecting these designated sites for educational purposes.

### **Transpower**

- 8.4 Transpower sought the roll-over of its Designations K1 to K8, with amendments to legal and location descriptions. Transpower also requested corrections and the alteration or deletion of conditions. In the section 42A Report, Ms Macartney recommended that these designations be confirmed but without the alteration or deletion of the conditions. Ms Whitney presented planning evidence on behalf of Transpower. Having considered the evidence filed on behalf of Transpower, Ms Macartney subsequently revised her recommendations and supported the amendments sought by Transpower.
- 8.5 When the hearing reconvened on 24 April 2020, we directed Transpower and Council to prepare a memorandum outlining the agreement reached on the designations and accompanying conditions. The parties filed a memorandum on 4 May 2020, confirming that all matters had been agreed between the Council and Transpower. The memorandum provided a summary of the agreed amendments for the specific designations and the agreed conditions. In brief, these included:
- (a) Corrections of minor errors;
  - (b) Amendments to location references, and legal site descriptions;
  - (c) The deletion of conditions specific to construction work which have been completed;
  - (d) Updating conditions where they refer to documents which have been superseded by updated regulations and guidelines;
  - (e) Inclusion of conditions requiring an Outline Plan for new construction works that have not been addressed in an earlier approved Outline Plan of Works but remain within the scope of the designation; and
  - (f) Refining the existing, ongoing compliance conditions to make it clear that these continue to apply.
- 8.6 Noting that the National Grid is recognised as a matter of national significance, we are satisfied that the modifications requested by Transpower are appropriate to enable the operation, maintenance and upgrade of existing infrastructure aligned with the purpose of the designations and policy direction provided in the National Policy Statement on Electricity Transmission 2008.

- 8.7 In submission 341.9, Tainui Group Holdings Limited (Tainui) seeks to reduce the extent of Designation K4 (Meremere Switching Station) as far as practicable. The reasoning provided in the submission was that Tainui wish to maximise the ability to develop their land at Meremere, which includes the removal of any redundant assets and that Tainui understand from previous correspondence with Transpower that some or all of the transmission assets within the Meremere site and across Tainui's land at Meremere are no longer active<sup>21</sup>.
- 8.8 Mr Renton provided engineering evidence on the Meremere Switching Station on behalf of Transpower. Mr Renton stated that:
- (a) The Meremere Switching Station is operational, and it enables electricity supply to be maintained between the Waikato and South Auckland.
  - (b) Transpower has dismantled some assets at this Station, following the closure of the Meremere Power Station. No further assets can be removed without further project work elsewhere on the Grid, to ensure security of supply. Such project work is not currently planning (although is under investigation).
  - (c) The long-term use of Meremere Power Station is uncertain.
- Mr Renton stated that it would be premature to either remove or reduce the extent of existing designation given the provision for a connection that already exists, secure electricity supply is required, and there is uncertainty as to the long-term use of the site.<sup>22</sup>
- 8.9 In light of the submission from Tainui, Ms Whitney advised the Panel that Transpower has investigated the designation footprint and has been in communications with Tainui in regards to the potential options available to respond to the relief sought and to maximise land usage by Tainui. Ms Whitney stated that two options (in addition to status quo) have been identified and shared with Tainui for feedback, but given the associated costs and uncertainties and wider network issues, no agreement has been reached between Transpower and Tainui on this matter. Ms Whitney stated that Transpower has confirmed with Tainui that in the interim, it will seek to roll-over the designation. However, discussions will continue and Transpower will continue to review the options as wider Grid reconfiguration projects and needs evolve.<sup>23</sup>
- 8.10 Noting that the National Grid is recognised as a matter of national significance, we are satisfied that the modifications requested by Transpower are appropriate to enable the operation, maintenance and upgrade of existing infrastructure aligned with the purpose of the designations and policy direction provided in the National Policy Statement on Electricity Transmission 2008.
- 8.11 Having considered the evidence of Mr Renton and Ms Whitney, we are satisfied that Transpower has sufficiently investigated the matter of the reduction of the footprint of Designation K4. We accept Mr Renton's evidence that it would be premature to either remove or reduce the extent of existing designation given the provision for a

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<sup>21</sup> Paragraph 12 of Statement of Evidence of Ms Whitney, dated 14 April 2020.

<sup>22</sup> Paragraphs 2 to 5 of Statement of Evidence of Mr Renton, dated 14 April 2020.

<sup>23</sup> Paragraph 30 of Statement of Evidence of Ms Whitney, dated 14 April 2020.

connection that already exists. Further, secure electricity supply would be required and there is uncertainty as to the long-term use of the site. Accordingly, the submission is rejected. We acknowledge Transpower's commitment to continue discussions with Tainui on this matter.

### **Minister of Corrections**

- 8.12 The Minister of Corrections (Corrections) sought the roll-over of its existing Designation P1 (Spring Hill Corrections Facility) with modifications to the conditions, including amendments and the deletion of those which were redundant. In the section 42A Report, Ms Macartney recommended that Designation P1 be confirmed but without the requested amendments or deletions of the various conditions. Ms Macartney had reservations regarding those amendments and stated that some conditions should remain because they set out obligations that need to be met on an ongoing basis.<sup>24</sup>
- 8.13 When the hearing reconvened on 24 April 2020, we directed Corrections and Council to prepare a memorandum outlining the agreement reached on the designations and accompanying conditions. The parties filed a memorandum on 4 May 2020, confirming that all matters had been agreed between Ms Macartney and Corrections. The memorandum provided a summary of the agreed amendments to the conditions of Designation P1, and the agreed set of conditions. In brief, the key amendments included to:
- (a) Clarify that landscaping is to be implemented on an ongoing basis in accordance with plans that were approved following the original confirmation of the designation, and that these plans may be modified in the future;
  - (b) Refer to the ongoing coordination, rather than establishment, of the Community Liaison Group;
  - (c) Require consultation with the Waikato Raupatu Lands Trust and a nominated Ngāti Naho hapū representative (or their successor/s) for any construction work and associated earthworks contemplated beyond the scope of the NoR;
  - (d) Clarify that an encumbrance instrument or covenant in gross is to be registered against the title to ensure that any person having a controlling interest in the operation of the Spring Hill Corrections Facility is made aware of their obligations to ensure the fencing and protection of the puna (spring);
  - (e) Clarify that tāngata whenua shall be allowed ongoing access to the puna, subject to the prior approval of the manager of the corrections facility;
  - (f) Update the conditions to refer to Heritage New Zealand Pouhere Taonga;
  - (g) Clarify that lighting is to be based on design plans as contained in the NoR;
  - (h) Remove references and conditions that refer to road, traffic, or engineering works already completed; and.

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<sup>24</sup> Paragraph 33 of Executive Summary Statement of Ms Macartney, dated 20 April 2020.

- (i) Clarify that the wastewater flows from the Corrections Facility shall not exceed 300m<sup>3</sup>/day, unless otherwise agreed with Council.

8.14 We are satisfied that the modifications to Designation P1 conditions are appropriate and enable an efficient and effective planning framework for the Spring Hill Correction Facility.

### **Waikato District Council**

8.15 In submission 831, Raglan Naturally sought to amend the purpose of Council's Designation M51 Local Purpose (Aerodrome) Reserve to provide for alternative uses, such as sports fields.<sup>25</sup>

8.16 We note that only Council, as the requiring authority for Designation M51, can give a NoR to alter the purpose of Designation M51. Prior to the notification of the PDP, Council requested the roll-over of all its designations without modifications.<sup>26</sup> For this reason, we cannot recommend or confirm alteration to Designation M51 as requested by Raglan naturally, therefore the only option available to us is to reject this submission.

## **9 Removal of Designations**

9.1 In the Section 42A Report, Ms Macartney informed us that Council has reviewed its designations following notification of the PDP. She advised that the following eleven designations are considered to be redundant.<sup>27</sup>

- (a) M19: Road to be stopped – McVie Road, Huntly;
- (b) M23: Esplanade reserve and proposed service lane;
- (c) M42: Public car park for 20 cars – Council building on Galileo Street, Ngaruawahia;
- (d) M58: Local Purpose Reserve (public utility) and esplanade – Greenslade Road, Raglan;
- (e) M62: Local Purpose Reserve – Butcher Road, Matangi;
- (f) M67: Narrows Recreation Reserve – Airport Road, Tamahere;
- (g) M68: Local Purpose Reserve – Tai Patena Place, Tauwhare Paa;
- (h) M69: Local Purpose Reserve – Kahui Road, Tauwhare Paa;
- (i) M81: Proposed Reserve – Duke Street, Ngaruawahia;
- (j) M103: Road (Local Road) – Onion Road extension and alignment; and
- (k) M105: Road – Tamahere Link Road, Tamahere.

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<sup>25</sup> Paragraph 185 of Section 42A Report, dated 20 April 2020.

<sup>26</sup> Paragraph 178 of Section 42A Report, dated 20 April 2020.

<sup>27</sup> Paragraph 180 of Section 42A Report, dated 20 April 2020.



9.2 We note that other than the requiring authority giving notice, no other steps are needed to remove designations. We have removed the designations listed above from the Designations Schedule and the planning maps.

## **10 New Notices of Requirements**

10.1 Clause 4(5) of Schedule 1 of the RMA requires that Council, as a territorial authority, include any new NoR as part of the PDP. The following requiring authorities lodged new NoRs which were notified as part of the PDP:

- (a) Minister of Education;
- (b) Chorus; and
- (c) NZTA.

10.2 We are satisfied that the NoRs received and included in the PDP address all the considerations of section 171 and most do not require a detailed discussion as they are not contentious.

10.3 We confirm that we have considered the effects on the environment, having particular regard to:

- (a) any relevant provisions of planning instruments;
- (b) whether adequate consideration has been given to alternative sites, routes, and methods;
- (c) whether the work and designation are reasonably necessary to achieve the objectives of the requiring authority for which the designation is sought;
- (d) any other matters; and
- (e) of the above matters being subject to Part 2 of the RMA.

10.4 The new designations are summarised below and where submissions were received, they are also discussed.

10.5 We recommend to the abovementioned requiring authorities that the new designations be confirmed.

### **Minister of Education**

10.6 Ministry of Education has lodged a NoR to include three existing schools into the Designations Schedule in the PDP, without conditions:

- (a) C59 St Andrews Catholic School;
- (b) C60 St Paul's Catholic School; and
- (c) C61 Hamilton Seventh-day Adventist Primary School.

10.7 The NoR for the three new schools was included in the notified PDP. A description of the abovementioned schools is set out paragraph 83 of the Section 42A Report.

- 10.8 The NoR sought to formalise the three established schools as designated sites for educational purposes. The schools are already constructed and operational, and therefore, the effects on the environment are well understood and expected. There were no submissions received on this NoR. The Minister of Education has sought the NoR without conditions. We are comfortable that should further development occur on these sites, any adverse effects on the environment are able to be addressed via the Outline Plan process under section 176A of the RMA.
- 10.9 After reviewing the NoR, subject to Part 2 and with particular regard to the matters in section 171, we recommend to the Minister of Education that Designations C59, C60 and C61 be confirmed without conditions as out in Appendix 3.

### **Chorus**

- 10.10 Chorus has lodged a NoR to include twenty-five existing sites currently used for telecommunication and radiocommunication works into the Designations Schedule in the PDP, with conditions. The NoR for the sites was included in the notified PDP.
- 10.11 In his planning evidence on behalf of Chorus, Mr Horne stated that:<sup>28</sup>
- (a) Chorus has a policy of designating its strategic sites such as exchanges and backbone radio and microwave sites throughout New Zealand;
  - (b) Chorus is seeking to designate these sites with a suite of conditions that reflect those being sought in other district plans for similar designation exercises for existing sites;
  - (c) Chorus seeks the same designation purpose nationally, which is “telecommunication and radiocommunication and ancillary purposes”. Equipment associated with these activities may include hardware such as cables or antennas, as well as support structures and equipment buildings or cabinets and so on. Ancillary equipment may also include infrastructure such as air-cooling units and backup generators.
  - (d) The proposed conditions cover:
    - (i) Restrictions on masts and antennas;
    - (ii) Circumstances where outline plans are not required for minor works;
    - (iii) Noise controls; and
    - (iv) Radiofrequency fields.
  - (e) The proposed designations are grouped into zone sensitivity (e.g., rural, business, living), with differences in conditions, such as the allowable height of masts and antennas and relevant noise controls between the zone groupings. Height in relation to boundary controls apply for sensitive adjoining sites.
- 10.12 Having considered the requirements of section 171 of the RMA, Ms Macartney agreed with Chorus’ analysis, and stated that most of the conditions proposed are appropriate to manage the effects on the environment from future development of the

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<sup>28</sup> Paragraphs 5 to 9 of Summary Statement of Evidence of Mr Horne, dated 14 April 2020.

sites.<sup>29</sup> Ms Macartney recommended the following key amendments to the conditions, which were supported by Mr Horne:

- (a) Designation U20 (9 Wainui Road, Raglan): this designation is directly under the sight line of Raglan Navigation Beacons. Chorus had proposed a condition that any building or structure must not protrude into the Raglan navigation beacon's height restriction plane. Ms Macartney recommended a change to this condition, requiring a survey to be undertaken prior to constructing any building or structure to confirm that it will not protrude into the height restriction plane, along with an advice note confirming that the sightlines for the navigation beacon is a coastal protection rule in terms of Regulations 51 of the National Environmental Standards for Telecommunication Facilities (NESTF). Mr Horne stated that in order to avoid unnecessary surveys for minor works, the requirements for survey should only apply for buildings and structures exceeding 8m in height above ground level,<sup>30</sup> which Ms Macartney supported;
- (b) Designation U15 (608 Matangi, Matangi): this site is located under the Waikato Regional Airport Obstacle Restrictions. Chorus proposed a condition that any building or structure must not protrude into the obstacle limitation surfaces of the Waikato Regional Airport. Ms Macartney recommended that a survey be undertaken prior to the construction of any building or structure to confirm this. Mr Horne confirmed that at the time of the preparation of the NoR, no specific investigations into this matter had been undertaken.<sup>31</sup> Following further detailed assessment of this matter, Mr Horne stated that it was unnecessary to survey compliance for any work enabled by the designation given the large margin of clearance.<sup>32</sup> Mr Horne and Ms Macartney agreed that the subject condition should be deleted;
- (c) Mr Horne stated that the NoR included some drafting notes for the benefit of Council staff assessing the NoR, which were not intended to be included as part of the designations. Ms Macartney supported the deletion of these drafting notes; and
- (d) Chorus sought a condition for upgrades to existing masts and antennas requiring that such structures comply with NESTF or any successor standards. Ms Macartney recommended that the reference to any successor standards be removed, which was supported by Mr Horne.

10.13 Two submissions were received from Chorus: to amend the legal description and planning map for Designation U17 and amend the planning map for Designation U10.<sup>33</sup> We accept these submissions.

10.14 In submission 165.1, Janice Boot sought to amend Designation U23 to exclude the possible future cell phone transmitter/tower because of concerns with radiation.<sup>34</sup> Mr Horne stated that Chorus is not a cell phone network operator, but does use radio

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<sup>29</sup> Paragraph 272 of Section 42A Report, dated 20 April 2020.

<sup>30</sup> Paragraph 28 of Statement of Evidence of Mr Horne, dated 27 March 2020.

<sup>31</sup> Paragraph 31 of Statement of Evidence of Mr Horne, dated 27 March 2020.

<sup>32</sup> Paragraph 31 of Statement of Evidence of Mr Horne, dated 27 March 2020.

<sup>33</sup> Paragraph 266 of Section 42A Report, dated 20 April 2020.

<sup>34</sup> Paragraph 266 of Section 42A Report, dated 20 April 2020.

links on many sites which are the same generic technology. He stated that the proposed designation conditions would limit the scale of any mast and antennas in relation to adjoining residential or rural residential properties via height in relation to boundary control and maximum height of 15m. Mr Horne further stated that radiofrequency exposures must comply with NESTF's mandatory standards and the same requirement is replicated in the designation conditions. We accept the advice of Mr Horne and Ms Macartney that the requirement to comply with the NESTF standard adequately protects the community from radio frequency exposures.<sup>35</sup> Accordingly, the submission is rejected.

### **NZTA**

- 10.15 NZTA has lodged a NoR to designate existing State Highway 39 (SH39) which forms a western bypass of Hamilton City between Ngaruawahia and Otorohanga, without conditions. This NoR was included in the notified PDP (Designation J23). We were informed that this route was not designated earlier because when it was Gazetted in 1999, it was envisaged that it would be a state highway on a temporary basis pending the construction of the Waikato Expressway. NZTA stated that it will be reviewing the function of SH39 but wishes to designate it now so that NZTA can achieve its objective to maintain a safe and efficient state highways system on a district-wide basis, while reflecting the current ownership and maintenance responsibilities.<sup>36</sup>
- 10.16 Mr Wood provided planning evidence on behalf of NZTA. He stated that the extent of the NOR should only extend to a portion of SH39, not the whole corridor as stated in the NOR (i.e., only part of SH39 is located within Waikato District).<sup>37</sup>
- 10.17 Ms Macartney recommended that the NoR be confirmed, as the designation of SH39 is administrative in nature, rather than involving any change in environmental impact.<sup>38</sup>
- 10.18 We agree that the NOR seeks the formalisation of a designation over an existing formed state highway route. NZTA confirmed in the NoR that it owns the land to be designated, and there are no physical works proposed as part of the NoR.

### **Waikato District Council**

- 10.19 In submission 367, Mercer Residents and Ratepayers Committee sought that the following sites be included in Section E: Designations: Mercer Cemetery, Mercer Reserve/Domain and wastewater treatment plant in Mercer Township.<sup>39</sup>
- 10.20 We note that only a Minister of the Crown, a local authority or a network utility operator, approved as a requiring authority under section 167 of the RMA can give a NoR to designate land for a particular purpose. For this reason, we cannot

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<sup>35</sup> Paragraphs 40 and 41 of Statement of Evidence of Mr Horne, dated 27 March 2020.

<sup>36</sup> Paragraph 25 of Executive Summary of Ms Macartney, dated 20 April 2020.

<sup>37</sup> Paragraph 5.2 of Statement of Evidence of Mr Wood, dated 20 March 2020.

<sup>38</sup> Paragraph 142 of Section 42A Report, dated 20 April 2020.

<sup>39</sup> Paragraph 177 of Section 42A Report, dated 20 April 2020.

recommend or confirm the submitters' proposed designations as requested, and the only option available to us is to reject these submissions.

## **11 Overall Recommendations and Decisions**

- 11.1 Having considered all the information before us and being satisfied subject to Part 2, pursuant to section 171(2) of the RMA we recommend to each of the relevant requiring authorities (except Council) that they confirm their relevant designations and conditions (if any) as presented in Appendix 3.
- 11.2 After considering all the information before us, pursuant to section 168A(4), we confirm and modify Council's designations and conditions (if any) as presented in Appendix 3.

**For the Hearings Panel**



**Dr Phil Mitchell, Chair**

**Dated: 17 January 2022**

**Appendix 1: Rolled Over Designations Without Modifications**

**Appendix 2: Rolled Over Designations with Minor Modifications**

**Appendix 3: Panel's Recommendations and Decisions**