

# **SECTION 42A REPORT**

Report on submissions and further submissions on the  
Proposed Waikato District Plan

## **Hearing 25: Zone Extents Mercer & Meremere**

Report prepared by: Yvonne Legarth  
on behalf of Waikato District Council

Date: 12 April 2021



## TABLE OF CONTENTS

1	Introduction .....	4
2	Scope of Report.....	5
3	Statutory framework .....	9
4	Mercer Village extension: Lot 9 DP 461781 on Koheroa Road; Mercer .....	14
5	Meremere Industrial/Business: 25 Island Block Road; Meremere .....	29
6	Hampton Downs Motor Sport and Recreation Zone (HDMP) extension (Lot 6 DP 411257 at Hampton Downs Road.....	40
7	Special Zone: Mercer Airport .....	50
8	Special Zone: Corrections.....	70
9	Conclusion .....	76
	Appendix 1: Table of submission points.....	78
	Appendix 2: Recommended amendments.....	78
	Appendix 3: Technical Reports .....	78
	Appendix 4: Letters from land owners in respect of the Mercer airport zone sought by submitter 921 .....	78

**Table 1: List of submitters and further submitters addressed in this report**

Original Submitter	Submission number		Further Submitter	Submission number
<b><i>Mercer Village extension:</i></b>				
TKDM Farms Limited	351.1		Waikato Regional Council	FS1277.16
			Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)	FS1108.171
			Mercury NZ Limited for Mercury C	FS1386.505
<b><i>Meremere Industrial/Business</i></b>				
Peter Ward for Ward Demolition	385.1		Auckland/Waikato Fish and Game Council	FS1045.17
			Department of Conservation	FS1293.25
			Mercury NZ Limited for Mercury E	FS1388.82
			Perry Group Limited	FS1313.10
			Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)	FS1108.170
			Waikato Regional Council	FS1277.23
<b><i>Hampton Downs Motorsport and Recreation zone extension</i></b>				
Hampton Downs Motorsport Park	657.33		Reid Investment Trust	FS1279.15
Reid Investment Trust	783.5		HD Land Limited and Hampton Downs (NZ) Limited	FS1194.5
			Mercury NZ Limited for Mercury D	FS1387.1236
<b><i>Specific zone: Mercer Airport</i></b>				
Mercer Residents and Ratepayers Committee	367.15			
Mercer Residents and Ratepayers Committee	367.30		Mercer Airport	FS1302
Mercer Airport	921.1			
<b><i>Special Zone: Corrections</i></b>				
Department of Corrections	496.10		Department of Corrections	FS1210

***Please refer to Appendix I to see where each submission point is addressed within this report.***

# **I Introduction**

## **Qualifications and experience**

1. My name is Yvonne Legarth. I am employed by Waikato District Council as a Principal Policy Planner.
2. My qualification and experience are as follows:
  - (a) I hold a Bachelor of Regional Planning from Massey University, and I have over 30 years' experience in planning and policy development, predominantly under the Resource Management Act 1991.
  - (b) My background includes planning and policy development with both local and central government, and as a planning consultant. I have been involved in the development of government policy for legislative amendments, National Policy Statements, and the preparation and implementation of the New Zealand Coastal Policy Statement 1994.
  - (c) My experience includes the development and analysis of plan provisions at both the regional and district level, the preparation and implementation of Notices of Requirement for Designations, and the assessment and preparation of applications for resource consents and the implementation of plan provisions. I also have experience with developing and implementing non-regulatory tools aimed at achieving sustainable management.
  - (d) Organisations that I have worked for, and provided planning advice to, include the Department of Corrections, NZ Defence Force, the Department of Conservation, Ngāi Tahu and various other individuals and organisations. I have appeared as an expert witness before the Environment Court and Boards of Inquiry, and provided affidavits for the High Court on planning matters. I am a certificate holder under the Ministry for the Environment Making Good Decisions Programme.
  - (e) Prior to the enactment of the RMA I held contract positions with a local authority monitoring compliance with resource consents, and analysing the effectiveness of plan provisions prepared under the Town and Country Planning Act.

## **Code of Conduct**

3. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
4. I am authorised to give this evidence on the Council's behalf to the hearings commissioners.

## **Conflict of Interest**

5. I confirm that I have no real or perceived conflict of interest. While I have provided planning advice to both the Department of Corrections and the Department of Conservation, that was more than eight years ago.

## **Preparation of this report**

6. I am the author of this report which has been prepared on behalf of Waikato District Council in accordance with section 42A of the Resource Management Act 1991 (RMA).
7. The Mercer and Meremere topic addresses submissions and further submissions made on the proposed zoning of land in the vicinity of Mercer and Meremere. Five separate rezoning proposals are addressed in this report.



8. The section 42A reports and decisions on submissions made on the Rural, Industrial, Business, Village, and Urban Environment provisions that are considered in other Hearings may also be relevant to this hearing topic and are referenced where necessary in this report.
9. A list of all submitters and a summary of all decisions requested for the zone changes dealt with in this report is in Table I above and in Appendix I of this report. I understand that the Hearing Panel has full copies of the submissions available to them, therefore I have not included these in full as part of this report.
10. The information, facts, and assumptions that I have considered in forming my opinions are set out in my evidence. Where I have set out opinions in my evidence, I have given reasons for those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
11. Prior to preparing this RMA section 42A report, I have not had any previous involvement with the preparation of the proposed Waikato District Plan or variations to that plan.
12. In addition to reading the submissions coded to a change of zone sought for the Mercer and Meremere hearing topic, I have read the Hearing 3 section 42A report: Strategic Objectives, parts of the Hearing 6 section 42A report: Village Zone; and have read the Framework report dated 19 January 2021 prepared by Dr Davey in response to the Hearing Panel Minute 12 May 2020<sup>1</sup> and the Hearing Panel Minute and Directions dated 15 March 2021.
13. In preparing this report I have read the evidence lodged by:
  - (a) Submission 351: S Nairn (planning) for TKDM farms
  - (b) Submission 783 and FS1279: A White (planning) for Reid Investments Limited
  - (c) Submission 657 and FS1194: P Rolfe (planning) for HD Land Limited and Hampton Downs (NZ) Limited
  - (d) Submission 921 and FS1302: Chris Dawson (planning), Dave Park (aeronautical engineering), Rhys Hegley (Engineering - acoustics), and Dee Bond (shareholder and pilot) for Mercer Airport.
  - (e) Sub 496 and FS1210: S Grace (planning) for the Department of Corrections.
14. I have also read the correspondence from Kopuera Land Company Limited ("KLCL") and the landowners and residents on Koheroa Road and surrounds, dated 31 March 2021 about the submission seeking a special zone for Mercer Airport.

## 2 Scope of Report

### Matters addressed by this report

15. This report considers and makes recommendations in response to submissions and further submissions that were received by the Council to change the proposed zones within the Waikato Proposed District Plan for areas near Mercer and Meremere. Five separate rezoning proposals are assessed in this report. These have nothing in common, apart from their location in the general Mercer-Meremere vicinity.

---

<sup>1</sup> Hearing Panel Minute dated 19 May 2020 [https://wdsitefinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/hearings/hearings-panel-directions/directions-for-rezoning-hearings-12-may-2020.pdf?sfvrsn=89b188c9\\_2](https://wdsitefinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/hearings/hearings-panel-directions/directions-for-rezoning-hearings-12-may-2020.pdf?sfvrsn=89b188c9_2)

## Key Issues

16. The key issues raised in the submissions discussed in this report on the zoning of properties in the Mercer / Meremere area relate to changing the zone sought that provides for subdivision, use and development through a:
  - (a) Mercer Village extension: seeking a change to the zone of a property near Mercer from Rural Zone to Village Zone to provide for low-density residential development.
  - (b) Meremere Industrial/Business: seeking a change to the zone of a property at Meremere from Rural Zone to Industrial Zone and Business Zone to support a structure-planned business precinct.
  - (c) Hampton Downs motor sport and recreation zone extension: seeking a change to the zoning of land adjoining Hampton Downs Motor Sport and Recreation Zone from Rural Zone to Hampton Downs Motorsport and Recreation Zone Precinct E, to allow for industrial activities.
  - (d) Specific zone: Mercer Airport - seeking a new special zone: Mercer airport together with objectives, policies, rules, obstacle limitation surface, and noise insulation provisions.
  - (e) Special Zone: Corrections - seeking a new special zone (over Springhill Corrections Facility).

## Overview of the topic

17. The topic of this report is submissions concerning changing the proposed zone for specific properties located around Mercer and Meremere. Mercer and Meremere are located towards the northern boundary of the Waikato District. The area is predominantly rural, with the exceptions being the small urban areas in the villages of Mercer and Meremere, the Hampton Downs Motorsport Park, and the designated Springhill Corrections Facility.

## Rural Zone provisions

18. All of the submissions considered in this report state that they are seeking a change from the Rural Zone<sup>2</sup> to another zone. Each of these is considered separately in this report.
19. The focus of land in the 'Rural Environment' is on maintaining rural character and providing for subdivision, use and development where high class soils are protected for productive rural activities. The proposed objectives in Chapter 5: Rural environment are to protect productive rural activities, the versatility of rural resources and rural character and amenity. Urban subdivision, use and development in the rural environment are to be avoided<sup>3</sup>.
20. The rural provisions in the proposed plan deal with matters such as intensive farming activities, density of buildings, reverse sensitivity, industrial and commercial activities, and other non-rural activities such as temporary events, home businesses, the Meremere dragway site and extractive industries.
21. Other objectives that provide context but are not directly relevant to the submissions in this report, address the protection of land for future urban development within Hamilton's Urban

---

<sup>2</sup> the submissions made by P Ward states that he is seeking a change from the rural zone to industrial /business, but his property has a slip zone, with a very small portion shown as an Industrial zone on the proposed plan maps

<sup>3</sup> Strategic Objective 5.1.1

Expansion Area and maintaining or enhancing character and amenity in the Country Living Zone.

### Specific zones

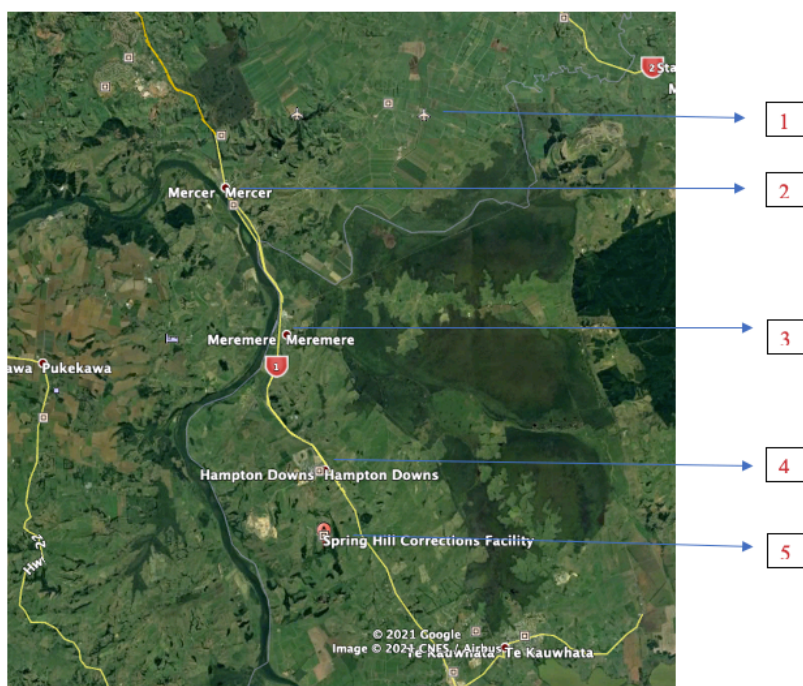
22. The proposed plan includes a number of specific zones. Submissions discussed in this report raise matters that apply to the Hampton Downs Motorsport and Recreation Zone (HDMP). A submission on the Mercer Airport provisions includes a submission point to align the provisions for Mercer Airport with the Te Kowhai Specific Zone.
23. The objectives and policies for each specific zone are located in Chapter 9. The rules that apply to Hampton Downs Motor Sport and Recreation Zone are in Chapter 26, with a development plan in Appendix 12. The provisions in the proposed plan that apply to Te Kowhai Airfield are in Chapter 27, Appendix 1 Acoustic insulation, and Appendix 9, which deals with the proposed obstacle limitation surface.

### Designations

24. The further submission and planning evidence lodged on behalf of the Minister of Corrections seeks a Special zone: Corrections. A Notice of Requirement for a Designation has also been issued for corrections activities on the land.
25. The proposed plan includes the Notices of Requirement for Designations in Section E. The operative Waikato District Plan has a designation (PI) for the Springhill Corrections Facility (SHCF). The Minister of Corrections' Notice of Requirement is to retain the designation over SHCF with some minor modifications. No change is sought to the spatial extent of the designation.

### Location map: overview

26. The map below shows the approximate locations of the five sites that are the subject of submissions to rezone from rural to another zone.



Map Site index:

1. Specific zone: Mercer Airport

2. Mercer Village extension (Lot 9 DP 461781)
3. Meremere Industrial/Business (25 Island Block road)
4. Hampton Downs motor sport and recreation zone extension (Lot 6 DP 411257)
5. Special Zone: Corrections (Springhill Prison, Hampton Downs Road).

### Overview of submissions in this report

27. There are five separate sites that are the subject of submissions to change to a different zone. The issues raised are different for each rezoning proposal, and I set this out in my analysis in each section.

### Structure of this report

28. I have structured this report by grouping the primary submissions on the zoning of a property together with the further submissions that they relate to. The report contains the following sections:

#### Section 4 - Mercer Village extension:

- Zoning of Lot 9 DP 461781 on Koheroa Road - Mercer

#### Section 5 - Meremere Industrial/Business:

- Zoning of 25 Island Block Road – land to the north of Meremere Village, specifically Lot 2 DPS 14402, Sec 8, 12, 14, SO 459323, Sec 6 SO 41728926, SO 383114, Allot 679 Whangamarino PSH SO 41542 and PT Allot 427 Whangamarino PSH DP 21294)

#### Section 6 – Hampton Downs Motor Sport and Recreation zone extension

- Zoning of the land adjacent to Hampton Downs Motor Sport and Recreation Zone / Lot 6 DP 411257 at Hampton Downs Road

#### Section 7 – Specific Zone: Mercer Airport

- Seeking a Special zone (Airport Zone), Obstacle Limitation Surface (OLS) for land around Mercer Airfield at Koheroa Road, Mercer

#### Section 8 – Special Zone: Corrections (Springhill Corrections Facility)

- Seeking a Special zone (Corrections) over land at Springhill Corrections Facility, Hampton Downs Road, Te Kauwhata

#### Appendix I Table of submission points

### Amendments to plan text

29. Where amendments to plan text are recommended, the relevant text is presented after the recommendations with new text in red underlined, and deleted text in ~~red struck through~~. All recommended amendments are brought together in Appendix 2.

### Procedural matters

#### Hampton Downs Motor Sport and Recreation zone

30. Conferencing around the plan provisions applying to the Hampton Downs special zone was directed by the Hearings Commissioners in their Minute dated 20 March 2020. I did not attend the conferencing. I understand that a representative of Reid Investment Trust [783] attended, but there was no substantive discussion between the parties on the merits of the rezoning submission. There were no pre-hearing meetings held on the topic of re-zoning, meetings with submitters, or further consultation with submitters after notification.

## **Mercer Airport**

31. Council staff have made site visits, accompanied by the submitter's representatives, but there was no substantive discussion of the merits of the rezoning submission between the parties.
32. The Council has received correspondence from Kopuera Land Company Limited ("KLCL") and Balle Bros Group after the submission periods closed and evidence had been received from submitters. KLCL and Balle Bros Group, and landowners and residents on Koheroa Road and surrounds raise concerns about the Mercer Airport submission, and refer to the legal advice provided to the Hearing Panel by Ms Parham on 19 August 2020. Ms Parham's advice is in the context of provisions in respect of Maaori sites and areas of significance; and that Council shall have regard to the actual or potential effect on the environment, which includes the landowner and the land itself, in determining whether to accept the submissions to change the proposed district plan.

## **3 Statutory framework**

33. The statutory considerations that are relevant to the content of this report are largely set out in the opening legal submissions by counsel for Council (23 September 2019) and the opening planning submissions for Council (23 September 2019, paragraphs 18-32). The opening planning submissions from the Council also detail the relevant iwi management plans (paragraphs 35-40) and other relevant plans and strategies (paragraphs 41-45). The following sections identify statutory documents with particular relevance to this report.
34. The Framework report deals with the matters below in more detail.

## **National Policy Statements**

35. The district plan must give effect to national policy statements. Only two national policy statements are directly relevant to the submissions dealt with in this report.

## **National Policy Statement for Urban Development (NPS-UD 2020)**

36. The National Policy Statement on Urban Development (NPS-UD 2020) is relevant to the decision sought in the submission from TKDM Farms Limited (351.1) that seeks a change to provide for low-density housing; and the submission made by Peter Ward for Ward Demolition [385.1] seeking a change to an industrial/business zone.
37. The purpose of the NPS-UD 2020 is for local authorities to provide sufficient development capacity in their region or district to meet expected demand for housing<sup>4</sup> and business land<sup>5</sup>. The NPS is also to assist the integration of planning decisions under the Act with infrastructure planning and funding decisions.<sup>6</sup> The objectives for a zone in an urban environment are to describe the development outcomes intended for the zone<sup>7</sup> and the policies and rules are to be consistent with the development outcomes<sup>8</sup>.
38. The five properties are in a rural setting and are not identified as growth areas in the strategies for planned growth. NPS-UD 2020 Policy 8 applies to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is not anticipated by RMA planning documents; or is out-of-sequence. I

---

<sup>4</sup> NPS-UD 2020 3.2

<sup>5</sup> NPS-UD 2020 3.3

<sup>6</sup> NPS-UD 2020 3.13(1)(b)

<sup>7</sup> NPS-UD 2020 3.35

<sup>8</sup> NPS-UD 2020 3.35

have dealt with any relevant NPS-UD 2020 provisions under the section dealing with the submissions made in respect of a change of zone.

39. The National Policy Statement on Electricity Transmission (NPSET 2008) is relevant to the decisions sought in the submissions from TKDM Farms Limited (351.1) seeking a Mercer village zone, and Peter Ward for Ward Demolition (385.1) seeking a Meremere Industrial/Business zone. Both properties are within the overhead transmission line corridor.
40. A portion of Mr Ward's property is also mapped in the proposed plan as a Significant Natural Area (SNA). A draft National Policy Statement for Indigenous Biodiversity was notified and submissions closed in March 2020. While the objectives and policies in that draft may be relevant to the portion of the property identified in the proposed plan as an SNA, at the time this report was prepared the draft NPS has little weight.

### **National Environmental Standards**

41. The only National Environment Standard that is directly relevant to submissions in this report is the National Environmental Standards for Electricity Transmission Activities.
42. It is likely that the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESC) is relevant to the use and development of at least one of the sites that are the subject of submissions. The NES controls activities such as removing or replacing fuel storage system, sampling soil, or disturbing soil and a change of use where a site is identified as being likely to be contaminated.
43. Apart from the property at 25 Island Block Road, I am not aware of any other properties being the subject of a technical report that identifies the land as an industry or activity on the Hazardous Activities and Industries List (HAIL)<sup>9</sup>. The NES prescribes rules for removing or replacing fuel storage systems. I am aware of fuel storage on, or adjacent to, two of the subject sites.

### **Waikato Regional Policy Statement / Te Tauāki Kaupapa here ā-Rohe May 2016 (RPS)**

44. The district plan must give effect to the regional policy statement. In this report I have only identified the objectives and policies in the Waikato Regional Policy Statement/Te Tauāki Kaupapa here ā-Rohe (RPS) that specifically deal with the built environment as it relates to the appropriateness (or otherwise) of a zone in a district plan.
45. Objective 3.12 of the RPS states that "*Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by ...*"
46. Chapter 6 of the RPS contains the policies that implement RPS Objective 3.12, and focus on a number of matters, of which the most directly relevant is to co-ordinate growth and infrastructure. RPS Policy 6.1 is that subdivision, use and development of the built environment, occurs in a planned and coordinated manner. RPS Policy 6.1.7 is to ensure that before land is rezoned for urban development, urban development planning mechanisms are produced to facilitate proactive decisions about the future location of urban development; and RPS Policy 6.3 is that the nature, timing and sequencing of new development is co-ordinated

---

<sup>9</sup> <https://www.mfe.govt.nz/sites/default/files/hazards/contaminated-land/is-land-contaminated/hazardous-activities-industries-list.pdf>

with the development, funding, implementation and operation of transport and other infrastructure.

47. Policies in the RPS are to adopt a Future Proof land use pattern, and density targets for Future Proof areas. Policy 6.17 is to manage rural-residential development in a Future Proof area, and recognise the pressure from potential adverse effects, including the high demand for rural-residential development; the high potential for conflicts between rural-residential development and existing and planned infrastructure and land use activities; and the additional demand for servicing and infrastructure created by rural-residential development. RPS Policy 6.17.1 directs the district council to include provisions in district plans and growth strategies to give effect to Policy 6.17.
48. While these provide some context, Meremere and Mercer are not included in the growth management areas in Section 6.2 of the Future Proof Strategy<sup>10</sup>.

### **Vision and Strategy for the Waikato River**

49. It is my understanding that the Vision and Strategy for the Waikato River was inserted directly into, and forms part of, the RPS, and the RPS is subject to the Vision and Strategy for the Waikato River.
50. In the context of the submissions, the Vision and Strategy for the Waikato River is particularly relevant to consideration of whether there is adequate three waters infrastructure, and any change in zone that enables certain types of industry to be located where managing discharges to the river or its catchment might become an issue.

### **Waikato Regional Plan August 2007**

51. The district plan must not be inconsistent with a regional plan for any matter in RMA section 30(1), which includes controlling the use of land for water quality. The Waikato Regional Plan contains objectives, policies and rules that manage discharges of domestic sewage from on-site systems. The permitted activity rule requires a “.. *effective disposal area for any one treatment and disposal system to be not less than 2500m<sup>2</sup>...*”. This influences the minimum lot size on subdivision where reticulated infrastructure is not available.

### **Other relevant Council policies / documents / Strategies / Future Proof**

52. The district plan is to have regard to strategies prepared under other acts. Mercer and Meremere are located outside of the growth areas identified in the proposed plan and the following strategies.

### **Future Proof 2017**

53. The 2017 Future Proof Strategy used a 2010 review to identify strategic industrial nodes, broad land allocations and staging. Meremere is mentioned in the context of a future strategy update that might allow for development as a possible future employment hub. The Strategy goes on to say that any development must not compromise the efficiency of the transport network and must give effect to the Regional Policy Statement provisions in relation to new industrial development.
54. The Strategy includes tables that are intended to give a general long-term indication of where the strategic industrial nodes for the sub-region are likely to be now and into the future. No

---

<sup>10</sup> Future Proof Strategy Planning for Growth He Whakakaupapa Whanaketanga November 2017 at pages 29 and 30 <https://www.futureproof.org.nz/assets/FutureProof/Documents/Future-Proof-Strategy-Nov-2017-Final-271117.pdf>



specific mention is made of Meremere in the industrial land allocations that are set out in Tables 5 and 6 of the Strategy<sup>11</sup>.

## Waikato 2070

### Waikato District Council Development Strategy (Waikato 2070)

55. The strategy envisages structure plans being developed to provide direction on extent and type of development, and that re-zoning of an area would follow the structure plan approach and process<sup>12</sup>. Structure plans would take into account matters such as infrastructure.
56. Section 03.2 is about building businesses. Broadly, the approach is to promote the role of *agriculture* and primary industries, and to build on existing industrial clusters and promote clustering of complementary businesses. Section 03.3 is about community identity, celebrating history, and includes protecting the environment by clustering industrial activities in industrial zones and restricting them in rural zones.
57. Several development plans outline the future settlement pattern and provide indicative areas and timing for when and where growth and development may occur in the district. The series of maps in Waikato 2070 have labels that identify development timeframes for growth over a 50 year span. Section 04.5 deals with Mercer, Meremere and Hampton Downs. The map that deals with a Meremere, Mercer and Hampton Downs development plan signals potential future commercial and industrial growth, but unlike the other maps, does not identify any timeframe in the 50 year period<sup>13</sup>.

### Framework Report three lenses assessment

58. The framework includes a three-lens method for s42A authors to employ as a guide when assessing and making recommendations on zoning submissions. The Panel issued a minute and directions dated 15 March 2021 following a pre-hearing conference that discussed the Framework report, and directed the following:
  - (a) The Framework Report is a guide only, not an inflexible rule book;
  - (b) Lens 1 is the incorrect legal test;
  - (c) Lens 1 should not be applied as a gateway or threshold test;
  - (d) Lens 1 is not a standalone test and, as such, should not be seen as the first step in the assessment. Elements of Lens 1 may be of assistance to section 42A report authors in their section 32AA evaluations, if one is required.
59. The Framework report discusses the role and weighting of Waikato 2070<sup>14</sup>, and states that growth outside of growth areas is not contemplated by the Council for zoning or servicing<sup>15</sup>. In my analysis of submissions I have considered the location and characteristics of the subject

---

<sup>11</sup> Future Proof Strategy Planning for Growth He Whakakaupapa Whanaketanga November 2017 at page 39

<sup>12</sup> Waikato 2070 Implementation at page 44 <https://openwaikato.co.nz/wp-content/uploads/2020/06/Waikato-2070.pdf>

<sup>13</sup> Waikato 2070 section 04.5 at page 32 <https://openwaikato.co.nz/wp-content/uploads/2020/06/Waikato-2070.pdf>

<sup>14</sup> Zone Extents Framework report, prepared by Dr Mark Davey Date: 19 January 2021: Role and weighting of Future Proof and Waikato 2070 at paras 114 to 139 on pages 32 to 38

<sup>15</sup> Zone Extents Framework report, prepared by Dr Mark Davey Date: 19 January 2021 at para 134 on page 38



sites, and whether the change in zone sought by submitters gives effect to the higher-order statutory instruments, which include the NPS-UD, the RPS, and the relevant NES.

60. I have also used the information in the Framework report about the growth strategies to confirm whether the potential for a change of a zone could enable an increase in growth that is not supported by adequate or appropriate infrastructure, or whether such services are planned in the future. The Framework report suggests that the 30+ timeframe was used in Waikato 2070 to denote long-term possible areas for future development<sup>16</sup>. The guidance in the Framework report is also that *“If a submission necessitates a privately owned and operated water and wastewater scheme and is outside of the growth areas and existing reticulated networks do not exist, then this is likely to be considered ‘urban’ and would not meet the relevant policy tests.”*<sup>17</sup>

### **National Planning Standards Nov 2019**

61. The National Planning Standards seek to provide a standard format for district plans across New Zealand. The Hearings Panel has indicated that it wishes to adopt the National Planning Standards approach where possible during the current hearings. The Hearing Panel issued a direction on the National Planning Standards dated 20 February 2020<sup>18</sup>. This report relies on the National Planning Standards defined terms (14 – Definitions) that were recommended for adoption in Hearing 5. I have also considered the definitions in the RMA and in NPS where relevant.
62. The National Planning Standards (The Standards) prescribe the zone names that may be used in a district plan, with a description of those zones<sup>19</sup>. I have identified those that are most closely aligned to the type of zone sought by submitters.
- (a) Rural
 

The Standards include three types of rural zone. Each enables primary productive activities to occur, including a rural lifestyle zone; and one that provides for a cluster of non-rural activities in a rural environment. ‘Rural industry’ and ‘primary production’ are defined.
  - (b) Industrial
 

The Standards include three types of industrial zone that provide for a range of industrial activities and associated or ancillary activities. ‘Industrial activity’ and ‘ancillary activity’ are defined.
  - (c) Residential
 

The Standards include five specific residential zones, loosely based on density. ‘Residential activity’ is defined.
  - (d) Commercial / retail
 

Business zones are not included, however there are a number of ‘Commercial’, ‘Retail’, ‘Mixed use’ and ‘[named] centre zones’ that would provide for the type of activities traditionally located in a business zone. ‘Commercial activity’ is defined, and includes any ancillary activity.
  - (e) Special Purpose Zone: Airport Zone and Special Purpose Zone: Corrections

<sup>16</sup> Zone Extents Framework report, prepared by Dr Mark Davey Date: 19 January 2021 at para 133 on page 37

<sup>17</sup> Zone Extents Framework report, prepared by Dr Mark Davey Date: 19 January 2021 Urban zoning outside of the Future Proof settlement pattern: Executive summary at para 7v on page 7

<sup>18</sup> [https://wdsitefinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-by-laws/plans/district-plan-review/hearings/hearings-panel---minutes/commissioners'-directions-re-implementing-the-national-planning-standards-20-february-2020.pdf?sfvrsn=303286c9\\_2](https://wdsitefinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-by-laws/plans/district-plan-review/hearings/hearings-panel---minutes/commissioners'-directions-re-implementing-the-national-planning-standards-20-february-2020.pdf?sfvrsn=303286c9_2)

<sup>19</sup> National Planning Standard Table 13 at page 36 and 37

The Standards have provision for a number of special purpose zones, including an Airport Zone and a Special Purpose Zone: Corrections. Other Special Purpose Zones may be included, provided these meet the criteria set out in the Standards.

#### **RMA section 32 evaluation reports**

63. Section 32 of the RMA requires that the objectives of the proposal be examined for their appropriateness in achieving the purpose of the RMA, and the provisions (policies, rules or other methods) of the proposal to be examined for their efficiency and effectiveness in implementing the objectives, and an evaluation of the risk of not acting. Section 32 reports were published when the Proposed Waikato District Plan (PWDP) was notified in 2018. This report updates that earlier analysis in “section 32AA evaluations”, where material changes to the plan are recommended.
64. The Hearings Panel issued a direction for rezoning hearings dated 12 May 2020 that refers to the Council's section 32 report published at the time the proposed plan was notified, and that it does not provide an evaluation of the submitters' rezoning requests, and anticipates that technical information will be needed to support the zoning proposals sought in submissions.<sup>20</sup>

#### **4 Mercer Village extension: Lot 9 DP 461781 on Koheroa Road; Mercer**

##### **Submissions**

65. There is one submission and three further submissions made on the zoning of Lot 9 DP 461781 on Koheroa Road, Mercer.

<b>Submission point</b>	<b>Submitter</b>	<b>Decision requested</b>
351.1	TKDM Farms Limited	Amend the zoning of the property at Lot 9 DP 461781 on Koheroa Road from Rural Zone to Village Zone.  The site contains minimal development constraints, close to the existing settlement area of Mercer, rezoning the land from Rural Zone to Village Zone will provide for low-density residential development.
FS1277.16	Waikato Regional Council	Oppose. Retain zoning. H2A project, and the Hamilton- Waikato Spatial Plan, the Huntly Spatial Plan, and the Pokeno Spatial Plan should inform decisions about future development. Decisions on the rezoning of land within the H2A corridor should be deferred to avoid undermining strategic planning process.
FS1108.171	Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)	Oppose in principle

<sup>20</sup> Hearing Panel Directions on rezoning hearings dated 12 May 2020 at paragraphs 3 and 4

FS1386.505	Mercury NZ Limited for Mercury C	Oppose. It is not clear how effects from a significant flood event will be managed, or whether the land use zone is appropriate from a risk exposure in the Waikato River Catchment.
------------	----------------------------------	--

66. The submission made by TKDM Farms Limited [351.1] is to change the zoning of the property from Rural Zone to Village Zone. The submission states that the site contains minimal development constraints, is close to the existing settlement area of Mercer, and that rezoning the land from Rural Zone to Village Zone will provide for low-density residential development.
67. The further submissions made by *Waikato Regional Council* [FS1277.16]; *Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)* [FS1108.171] and *Mercury NZ Limited for Mercury C* [FS1386.505] oppose the zone change. The concerns raised in the further submissions are:
- (a) that the strategic instruments (H2A project, and the Hamilton-Waikato Spatial Plan, the Huntly Spatial Plan, and the Pokeno Spatial Plan) should inform decisions about future development; and that decisions on the rezoning of land within the H2A corridor should be deferred to avoid undermining strategic planning process<sup>21</sup>;
  - (b) that the change to a Village Zone is opposed in principle<sup>22</sup>, and
  - (c) management of effects from a significant flood event and whether the land use zone is appropriate with a risk exposure in the Waikato River Catchment<sup>23</sup>.

#### Evidence lodged

68. Sarah Nairn of The Surveying Company has provided planning evidence, together with an RMA section 32 evaluation, on behalf of TKDM Farms Limited (submitter 351.1). Ms Nairn advises that since lodging the submission the extent of the Village zone within the subject site has been revised, and the submitter now seeks rezoning of only a 10ha area fronting Koheroa Road; with the potential for 20 new sites<sup>24</sup>. The planning evidence included a map of the revised area (copy inserted below).

---

<sup>21</sup> Waikato Regional Council [FS1277.16]

<sup>22</sup> Te Whakakitenga o Waikato Incorporated (Waikato-Tainui) [FS1108.171]

<sup>23</sup> Mercury NZ Limited for Mercury C [FS1386.505]

<sup>24</sup> Sarah Nairn planning evidence for TKDM Farms Ltd at paragraphs 1.2 and 1.3 on page 1



Figure 2 Plan Showing Revised Extent of Village Zone

69. Ms Nairn's planning evidence is that the change of zone to Village Zone is consistent with the proposed plan objectives and policies. At paragraph I.6 Ms Nairn sets out a list of reasons for drawing that conclusion.
70. A geotechnical report prepared by Ground Consulting Limited is included in the planning evidence. The report includes a section on development feasibility that advises that there are some engineering challenges arising from the variety of topographical relief, ground conditions and geological units with varying engineering and geotechnical properties<sup>25</sup>. The report states that the ground model does present some engineering challenges, but that basic low-density residential development is achievable with appropriate planning, detailed design and the employment of a competent earthworks and civils contractor implementing good engineering practice; and that there are no significant geotechnical constraints that cannot be suitably managed, mitigated or designed out of the proposed development over parts of the site.

### Analysis

71. I disagree with the planning evidence of Ms Nairn that a Village zone is consistent with the objectives and policies of the proposed plan that are designed to implement the RPS provisions that manage future growth. The subject site is not located in a growth area, and there are other site constraints that make the type of urban development enabled under a village zone inappropriate. I also consider that the change of zone to Village Zone would fail to give effect to the higher-order planning instruments.

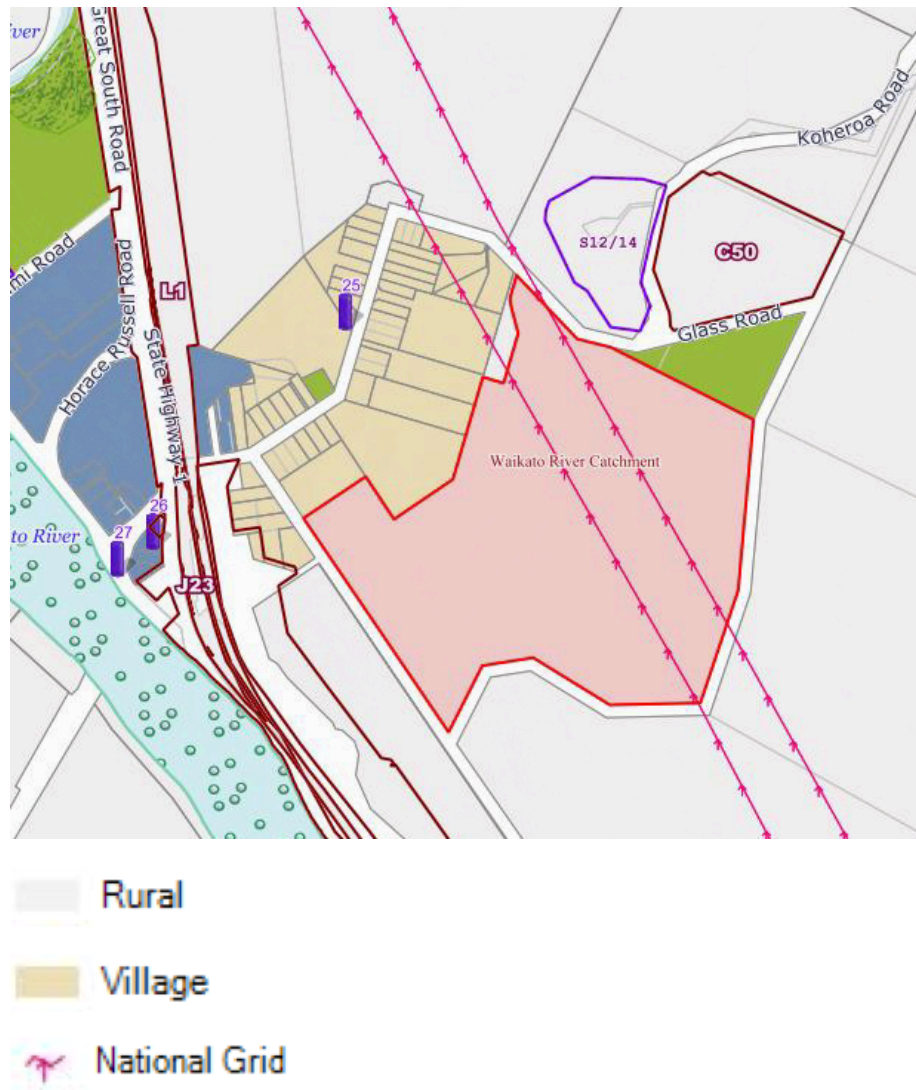
### Higher-order planning instruments

72. The NPS-UD Objective 6 states that decisions on urban development are integrated with infrastructure planning and funding. The link between planning and future growth patterns and infrastructure is also a theme in the RPS.

<sup>25</sup> GCL geotechnical report at section 6 on pages 15 and 16

73. NPS-UD Objective 3 is that district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment, and considers matters such as employment opportunities, existing or planned public transport, and a high demand for housing relative to other areas within the urban environment. There is development capacity available within the existing proposed village zone, between the subject site and the developed parts of the village.
74. The location of Lot 9 DP 461781 on Koheroa Road, Mercer (approx. 28 ha) is shown in Map 2. There are as yet undeveloped lots that are zoned 'Village Zone', located between the subject property, and Mercer Village, as shown on Map 3.

Map 2: Lot 9 DP 461781 shown in pink, with proximity to the proposed Mercer Village zone in tan





Map 3: Indicating development capacity on the larger sites within the proposed Mercer Village zone



75. NPS-UD Objective 6 promotes urban development that is integrated with infrastructure planning and funding decisions; strategic and responsive. There are minimal reticulated services in Mercer, and the village is not specified as a growth area in the proposed plan, therefore the expectation is that services will not be provided by Council. There are no Council-owned reticulated services provided to the residential areas of Mercer (zoned Village and Village Growth Area C). Wastewater is disposed of via private onsite methods such as septic tank.
76. At a strategic level, Objective 4.1.2 of the proposed plan responds to the NPS-UD and RPS with the outcome of consolidating urban growth around existing towns and villages. The location of development is dealt with in proposed Policy 4.1.3 to locate urban growth areas only where these are consistent with the Future Proof Strategy Planning for Growth 2017.
77. The described potential for 'low density residential development' means that NPS-UD Policy 6 is not applicable; and as the village and subject site are not in a growth area, the policies in the RPS to adopt a Future Proof land use pattern would not be given effect to.
78. NPS-UD Policy 8 is *"Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:*
  - (a) *unanticipated by RMA planning documents; or*
  - (b) *out-of-sequence with planned land release."*

79. In my opinion, the NPS-UD Policy 8 does not apply, because the submission to change the zone from rural to Village Zone is not a plan change; and rezoning to Village Zone would not add significantly to development capacity or create a well-functioning urban environment.

### RPS and Future Proof

80. The further submission made by *Waikato Regional Council [FS1277.16]* opposes the change of zone, and refers to the strategic tools being used to inform decisions about zoning. I agree that the strategic layer is a matter that should be considered when managing urbanisation and growth. I have used the guidance in the Framework report as a reference to identify the strategic direction intended by the local authorities; and considered whether the change of zone would give effect to the RPS; and whether the change of zone would implement the Urban Environment and Strategic objectives and policies in the proposed plan. I broadly agree with the general submission point that zones in the district plan should be designed so that these do not undermine the strategic planning process.
81. The focus of Chapter 6 in the RPS is on planned development, adopting a Future Proof land use pattern, and co-ordinating growth and infrastructure. Mercer Village is not identified as an area for growth in the RPS, Future Proof 2017, or Waikato 2070.
82. RPS Policy 6.1.5 is that the district plan should direct rural-residential development to areas identified in the district plan for rural-residential development. RPS Policy 6.1.5 also directs district plans to ensure that rural-residential development is directed away from electricity transmission. As there are transmission lines crossing the property, this is a relevant consideration.
83. RPS Policy 6.1.7 deals with rezoning for urban development and planning for the future location of urban development, and directs that planning mechanisms be put in place before re-zoning for urban development to facilitate pro-active decisions. RPS Policy 6.1.8 sets out the information requirements to support new urban development and subdivision, including how potential natural hazards and the related risks will be managed<sup>26</sup>; how stormwater will be managed, having regard to a total catchment management approach and low impact design methods; anticipated water requirements necessary to support development and ensure the availability of volumes required, which may include identifying the available sources of water for water supply<sup>27</sup>; how the design will achieve the efficient use of water<sup>28</sup>; and the location of any existing or planned electricity transmission network or national grid corridor and how development will be managed in relation to that network or corridor, including how sensitive activities will be avoided in the national grid corridor<sup>29</sup>.

### Consistency with provisions in the proposed district plan

84. Proposed Policy 4.1.3(b), together with other provisions, gives effect to the provisions in the RPS<sup>30</sup> and NPS-UD<sup>31</sup> that co-ordinate growth and infrastructure. Proposed Policy 4.1.3(b) uses directive wording, and states that urban growth areas are **only** (my emphasis) located where they are consistent with the Future Proof Strategy Planning for Growth 2017; and proposed Policy 4.1.4(a) is that new urban areas are located, designed and staged to adequately support existing or planned infrastructure and integrated into the infrastructure networks. I consider

---

<sup>26</sup> RPS 6.1.7 (e)

<sup>27</sup> RPS 6.1.7 (j)

<sup>28</sup> RPS 6.1.7 (k)

<sup>29</sup> RPS 6.1.7 (n)

<sup>30</sup> Waikato RPS Policies 6.1, 6.1.7, 6.3 and 6.17

<sup>31</sup> NPS-UD 2020 Objective 3 and Objective 6(a)

that the Village Zone in this location would fail to give effect to the provisions in the NPS-UD and RPS that are to co-ordinate growth and infrastructure; and RPS Policy 6.1.5 which is to ensure that rural-residential development is directed away from the National Grid, and that the change of zone sought by the submitter is not consistent with, and would not implement, the objectives and policies of the proposed plan.

85. Detailed design would need to be available to be certain about whether the development can be integrated into and reflect the existing character of the village. The topography means that the location of the site is at a distance from the existing village, and does not appear to lend itself to a compact form. Based on the geotechnical evidence, I consider that the design and layout of a subdivision, and how that is influenced by the topography, would need to be the subject of a resource consent assessment.
86. The suggested yield of 20 lots would need to consider the National Policy Statement on Electricity Transmission. Section 6.2 in the proposed plan deals with the National Grid, and proposed Objective 6.2.1 is intended to recognise and protect the national significance of the National Grid. To be a permitted activity, the design and layout would need to meet the minimum separation distances contained within the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP:34: 2001), the setback distances for buildings, structures and sensitive uses, and the earthworks conditions in permitted activity Rules 14.4.1 P1(2) and P3.

### **Proposed District Plan policy direction**

87. The submission made by TKDM Farms Limited [351.1] seeks a change in zone for the property at Lot 9 DP 461781 from Rural Zone to Village Zone.
88. As a planning tool, a zone is a method that identifies the spatial extent of the planning methods that implement the objectives and policies that are relevant to a zone. The parts of the proposed plan that are relevant to the submission to change the zoning of Lot 9 DP 461781 are the Rural Environment Zone proposed objectives, policies and rules; and the Urban Environment /Village Zone proposed objectives policies and rules. I have also considered the characteristics of the site, and whether the proposed rural zone is the more appropriate tool to ensure that the site constraints can be fully considered and managed in a future subdivision or development proposal.

### **Rural Zone**

89. I have provided a broad outline of the policy approach in the Rural Environment Zone provisions in the proposed plan in the Overview of the Topic at paragraphs 17 to 20 above.

### **4.3 Village Zone**

90. TDKM Farms Ltd seeks the rezoning of a 10ha portion of part of Lot 9 DP 461781 area fronting Koheroa Road from rural to village zone.<sup>32</sup>
91. The Village Zone in the proposed plan is an urban zone. The objectives and policies for the Village Zone are contained in Chapter 4.3 and 4.4 in the Urban Environment chapter of the plan. The objectives for that zone are to maintain village character, built form and neighbourhood residential amenity. Policies are that buildings and activities within the Village Zone are low density; maintain the semi-rural character; and recognise that the provision of on-site water supply, wastewater and stormwater disposal is limited or absent.

---

<sup>32</sup> Planning evidence of Ms Nairn on behalf of TDKM farms ltd at paragraph 6.2 on page 6



92. The RMA section 42 report prepared by Mr Clease<sup>33</sup> states that the proposed plan provides for existing low-density settlements in the district through the Village Zone, along with using the Village Zone as an urban growth tool in the two larger townships of Tuakau and Te Kowhai. Mr Clease also describes the character of Village Zone as being primarily for residential accommodation rather than productive farming activities.<sup>34</sup>
93. The RMA section 42 report prepared by Mr Matheson recommended that Objective 4.1.2 be amended to refer to the villages specified in Policies 4.1.10 to 4.1.18 that identify where urban growth is to be directed.<sup>35</sup>
94. Mercer is not included in those existing towns and villages where the future settlement pattern is to be located. If the Panel is of a mind to accept the submission and amend the zone to facilitate growth in Mercer, there may need to be a consequential amendment to the urban growth policies that specify growth in named townships.

## **Chapter 24 Village Zone (rules)**

95. The rules that apply in the Village zone are contained in Chapter 24 of the proposed plan. Activities that may be expected in a Village Zone are predominantly of a residential character. In the Village Zone, residential activity is a permitted activity - one dwelling within a site (with some specified exceptions), with one additional minor dwelling where the net site area is 1000m<sup>2</sup> or more. The activity-specific standards include daylight admission/height control planes, building coverage, building setbacks, and maximum height controls. Other permitted activities include community activities, temporary events, home occupation, farming, and marae complex / papakaainga, subject to conditions. There are also provisions that deal with storage, outdoor lighting, and earthworks.
96. The minimum subdivision lot size is generally 3000m<sup>2</sup>. The proposed plan includes restricted discretionary activity Rule 24.4.1 that manages 'General Subdivision', subject to compliance with the conditions, including that proposed lots must have a minimum of 3000m<sup>2</sup>, except where the proposed lot is an access allotment, utility allotment or reserve to vest.
97. I have considered whether the site is appropriate for a change of zone from Rural to a Village zone. Key matters are whether the change in zone enables urban activities in a manner that gives effect to the RPS and are consistent with the growth strategies, and whether a Village zone is appropriate, given the site-specific constraints that apply to the site. The planning constraints include a lack of planned or existing infrastructure, the distance from the village and the topography of the site, the location of the transmission lines through the site, and the resulting low capacity for intensified urban development.

---

<sup>33</sup> Section 42A Hearing 6 Village Zone - Subdivision prepared by: Jonathan Clease, dated 8th November 2019 at paragraph 27 on page 13

<sup>34</sup> Section 42A Hearing 6 Village Zone - Subdivision prepared by: Jonathan Clease, dated 8th November 2019 at paragraphs 37 to 40 on pages 16 and 17

<sup>35</sup> Section 42A Report Hearing 3 Strategic Objectives, prepared by Alan Matheson dated 30 September 2019, 14.1.3 Recommended Amendments at paragraph 106

### Planning constraints

98. I consider that there are planning constraints that have an influence on whether the zoning of Lot 9 DP 461781 should provide for more intensive development than the rural zone in the proposed plan.
99. The subject property has rolling to hilly topography and is traversed by high voltage power lines. The practical access is off Koheroa Road on the eastern boundary, so the land cannot be regarded as a particularly convenient or logical extension to the village.
100. The map in Figure 1 (below) shows the location of the subject property and that it is adjacent to the existing village zone. This appears to show that the site may provide growth potential with connectivity between the village, the cemetery and school. However, there are properties closer to the village that are already zoned Village Zone that are as yet undeveloped.

*Figure 1 - Property outlined in pink, showing the proximity to Mercer village and the location of powerlines*

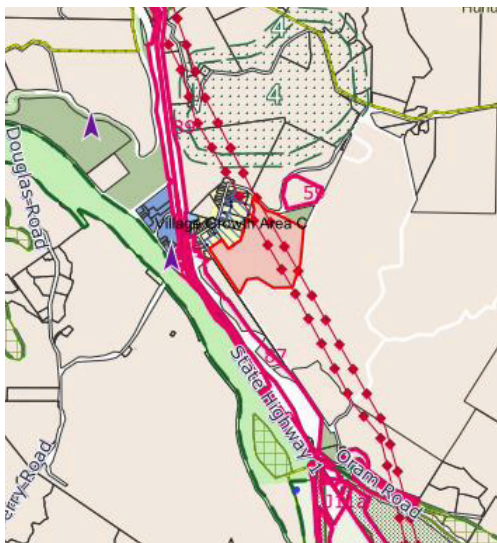
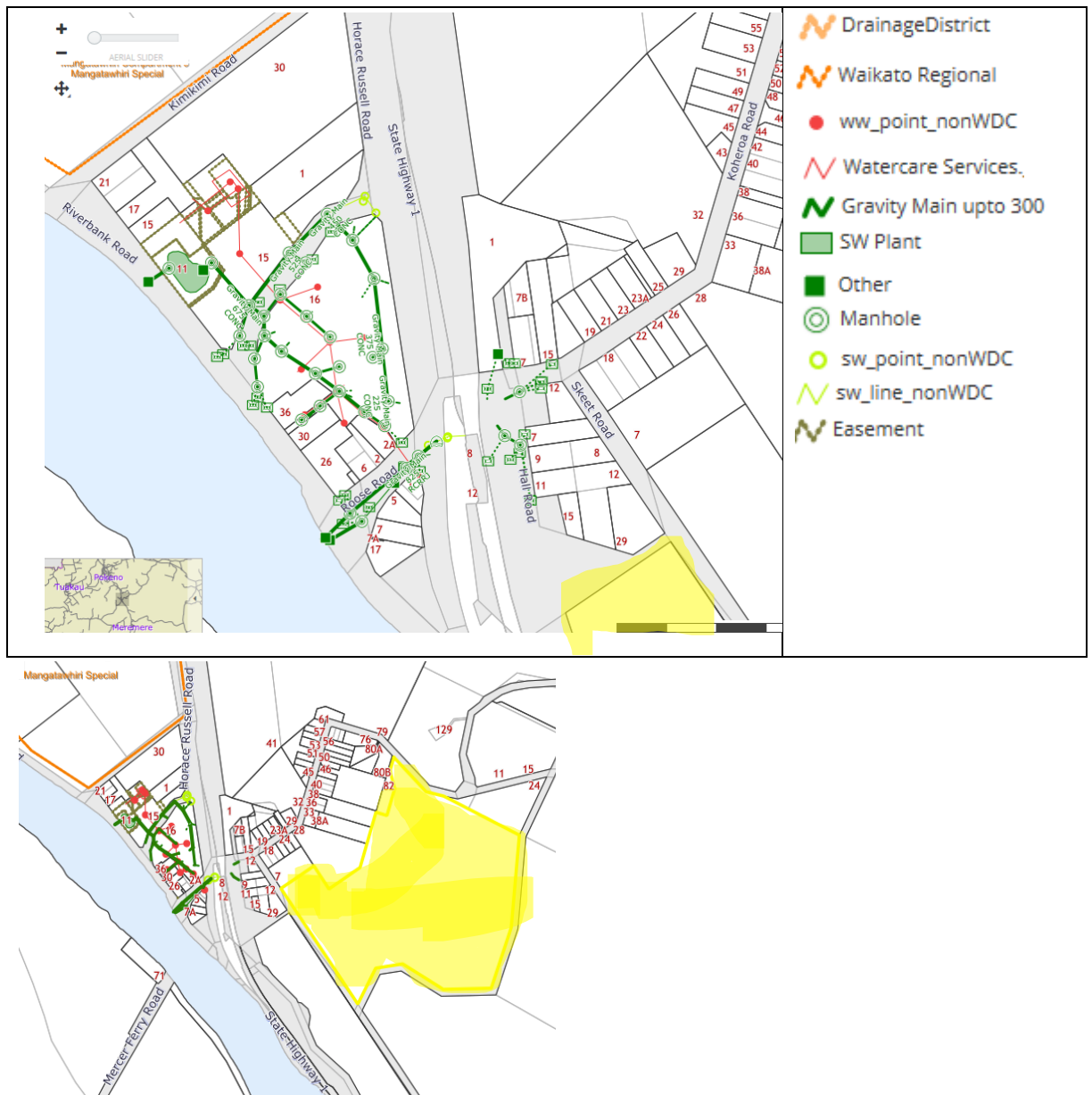


Figure 2 - Proposed district plan zones and overlay



- I01. The physical separation from the existing village, topography of the site, and high voltage power lines, constrain the development potential, as does the lack of access to reticulated infrastructure.
- I02. Council reticulated services in Mercer are minimal. Business-zoned properties on the western side of the expressway have Council stormwater reticulation with a limited number of properties to the east accessing this service. No Council-owned wastewater reticulation is available, but the business-zoned properties have wastewater reticulation provided by Watercare Services.
- I03. The residential areas of Mercer (Village and Village Growth Area C) have no reticulated services of any sort. Wastewater is disposed of via private onsite methods such as septic tank.

Figure 2: Reticulated services available in Mercer, with subject site highlighted in yellow



104. The minimum net site area for subdivision in the proposed district plan is 3000m<sup>2</sup> for the village zone. Any subdivision design and layout of the site would need to be carefully designed with the topography, any geotechnical issues and planning constraints in mind. The proposed planning provisions include setbacks from high voltage power lines<sup>36</sup>, roading and access requirements<sup>37</sup>. The planning evidence is that it is expected that approximately 18-20 sites could be created when allowance is made for topography, access and the transmission lines/pylons located on the site<sup>38</sup>.

<sup>36</sup> Proposed Waikato District Plan rule 14.4.1.

<sup>37</sup> Proposed Plan Chapter 14 infrastructure and Energy Table 14.12.5.14 requires a road to be constructed to access more than 8 lots

<sup>38</sup> Planning evidence of Ms Nairn on behalf of TDKM Farms Ltd at paragraph 6.3

105. The planning evidence is that the yield on subdivision will be in the order of 18-20 lots. The potential yield on subdivision is difficult to estimate in the absence of detailed design and technical advice about land stability. In my opinion, 18-20 lots on a 10 ha site is not likely to be of a character or density that is similar to that which is envisaged in a Village zone.
106. In addition to topography and access matters, the property that is the subject of submissions is not currently serviced, and the capacity of wastewater treatment services for the Mercer township is limited. Infrastructure servicing is dealt with in the Zone Extents Framework report (Framework report)<sup>39</sup> and under the heading 'Private water and wastewater systems'. The executive summary of the Framework report states that Waikato District Council does not support the concept of private water and wastewater schemes outside of the growth areas and where existing reticulated networks do not exist, *"then this is likely to be considered 'urban' and would not meet the relevant policy tests"*.
107. In the absence of reticulated infrastructure, and based on the estimates in the planning evidence, the lot sizes are likely to be large enough for onsite wastewater systems, such as those expected for subdivision in a rural or country living zone.
108. Reticulated services are not planned for the future. The Framework report discusses the difficulty and expense of servicing infrastructure and growth demands with a relatively small rating base<sup>40</sup>; and the disproportionate costs to Council of smaller water and wastewater schemes; and favouring larger integrated schemes, where the costs and benefits are more widely shared<sup>41</sup>. The Framework report identifies Meremere and Matangi as having schemes that have previously failed<sup>42</sup>.
109. The planning evidence includes an assessment against the 'lenses' and concludes that "the Village zone is the most appropriate as it will enable a form of growth that is needed and sought by the relevant planning documents and most importantly will enhance the Mercer settlement by creating a quality urban form and by enhancing the viability of the school and retail and business activities."<sup>43</sup>
110. The summary of the RMA section 32 evaluation states that "The option of retaining the Rural zone was considered but it was discounted on the basis that it did not generate any significant benefits for the community or the environment." <sup>44</sup>
111. I disagree with Ms Nairn's conclusions in evidence and in the RMA section 32 report<sup>45</sup>. There is no evidence that the change to a Village zone to enable subdivision of a further 18-20 lots would result in a well-connected urban form, or enhance community services and business opportunities. I consider that the change in zone to a Village zone would not be an efficient or effective method of implementing the relevant rural or Village zone objectives, because the site identified would divide a parcel into a rural and a village zone, with the rural zone placing the settlement pattern at a distance from the existing built form and services in the village

---

<sup>39</sup> **Zone Extents Framework report**, prepared by Dr Mark Davey Date: 19 January 2021 at pages 5 and 6 and paragraphs 228 to 298 at pages 60 to 62

<sup>40</sup> **Zone Extents Framework report**, prepared by Dr Mark Davey Date: 19 January 2021 at paragraphs 228 to 298 at pages 60 to 62

<sup>41</sup> **Zone Extents Framework report**, prepared by Dr Mark Davey Date: 19 January 2021 at paragraphs 291 on page 60

<sup>42</sup> **Zone Extents Framework report**, prepared by Dr Mark Davey Date: 19 January 2021 at paragraph 294 on page 61

<sup>43</sup> Planning evidence of Ms Nairn for TDKM Farms Ltd at paragraph 11.2 on page 26

<sup>44</sup> Planning evidence of Ms Nairn for TDKM Farms Ltd at paragraphs 10.1 to 10.3 on pages 25 and 26

<sup>45</sup> Planning evidence of Ms Nairn for TDKM Farms Ltd at paragraph 11 and Appendix 4 on pages 18 and 19

centre. Urban growth would not be consolidated near the existing urbanised areas of the village. Enabling sporadic urban growth in an area not identified in the RPS fails to give effect to those policies about managing growth in targeted areas. Identifying areas and planning where growth will occur assists local authorities to manage the costs of providing services. Consolidating growth in identified areas allows the benefits from investment in transport and other infrastructure to be maximised.

- I12. I have considered whether extending the Village Zone to include the subject property would be appropriate given the site constraints. I have concluded that urban development on this site would need to be the subject of a detailed assessment of design, layout and effects, and that the character of the resulting development is unlikely to be of a scale that is envisaged in a Village Zone. In addition, there appears to be development capacity within the proposed Village Zone that is located closer to Mercer Village than the subject property.

## Conclusions

- I13. Based on the location of Lot 9 DP 461781 outside of an area planned for growth, where infrastructure is not available and where transmission lines cross the property, my opinion is that a Village Zone would fail to give effect to the RPS Policy 6.1.7 and 6.1.8.
- I14. The topography of the site, high voltage power lines, and lack of access to reticulated infrastructure, limit the nature and scale of development.
- I15. In my opinion, a Village Zone promotes urban density and a more urban character. The current proposal is not formulated with a clear programme to provide reliable infrastructure, and it would fail to give effect to the future planning approach in Chapter 6 of RPS. Evidence would be needed to demonstrate how high-density growth on the subject site can be integrated into the form and character of the existing village, that the infrastructure needed to support intensification is feasible and affordable, and that subdivision into more lots would not have adverse effects on the transmission lines.
- I16. While, on the face of it, extending the Village Zone is consistent with Objective 4.1.2 of the proposed plan in promoting urban development in an around existing towns and villages, it is my opinion that the practical access to the land is at a distance from the Village. The policies under that objective set out how the objective is to be achieved. Policy 4.1.3 of the proposed plan is to locate urban growth only where that is consistent with the Future Proof Strategy Planning for Growth 2017. I consider that extending the Village Zone to enable more urban and residential development would undermine the implementation of Policy 4.1.3 of the proposed plan.
- I17. I recommend that the submission made by TKDM Farms Limited [351.1] to change the zoning of Lot 9 DP 461781 (Koheroa Road, Mercer) from Rural Zone to Village Zone be rejected, because the constraints on development of the site could not result in a character that is in keeping with the Village Zone, and the urbanisation of the site is not supported by infrastructure. The area is not part of the future planning for growth and additional urbanisation.
- I18. I recommend that the further submissions made by *Waikato Regional Council* [FS1277.16]; *Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)* [FS1108.171] be accepted, and the further submission made by *Mercury NZ Limited for Mercury C* [FS1386.505] be rejected.
- I19. The further submission made by *Mercury NZ Limited* [FS1386.505] makes a general submission about flood risk. I am not aware of any risk in this area, therefore recommend that the submission be rejected because it is not relevant to this site.

### Framework Report Three Lenses Assessment

- 120. The framework report includes a three-lens method for s42A authors that can be used as a guideline when assessing and making recommendations on zoning submissions.
- 121. The 'first lens' is an analysis of the proposal against the intent of the PWDP (the intent being indicated through relevant objectives and policies). The Panel directions record that "*Lens 1 is the incorrect legal test*<sup>46</sup>.
- 122. Accordingly, I have considered whether the zone and characteristics of the subject land, along with the other considerations referred to in this report, would give effect to the higher-order planning instruments, and would assist the council to perform its functions and be efficient and effective in implementing the relevant objectives and policies in the PWDP, but do not use the three lens assessment in the Framework report as a stand-alone or gateway test.

### Decisions on other parts of the plan

- 123. I have considered all 'three lenses', and have only considered Lens 1 in terms of internal consistency and the RMA section 32 requirement for the zone (as a method) to implement the objectives and policies of the plan as notified, and in light of the recommendation made at another hearing to amend Objective 4.1.2, as there may be a need for a consequential amendment to those provisions.
- 124. I have considered the planning constraints and site-specific issues associated with the subject site and a change of zone from Rural to Village Zone. I have concluded that the change of zone would fail to implement proposed Policies 4.1.3 and 4.1.4, and Objectives 4.1.1 and 4.1.2, particularly if the Panel are of a mind to accept the recommendation made by Mr Matheson in Hearing 3 to amend Objective 4.1.2 to refer to the specific towns identified as growth areas to manage growth in the district<sup>47</sup>.

### Higher-order planning instruments

- 125. The proposed plan must give effect to the higher-order planning instruments, including the NPS-UD and the RPS. NPS-UD 2020 has a theme that requires a well-functioning urban environment<sup>48</sup> and planning for and integrating growth with infrastructure<sup>49</sup>. The NPS is intended to assist the integration of planning decisions under the RMA with infrastructure planning and funding decisions.<sup>50</sup>
- 126. NPS-UD Policy 8 applies where there may be a significant yield as a result of a plan change. In my opinion, neither the plan change nor the significant yield test is met by this submission to apply a Village Zone to this site. The provisions in the RPS are discussed in more detail in the analysis above.
- 127. I have concluded that the change of zone sought by the submitter fails to give effect to the NPS-UD provisions that are to integrate urban development and infrastructure, and the RPS provisions that manage future growth.

---

<sup>46</sup> Panel Minute and directions dated 15 March 2021

<sup>47</sup> Proposed Policies 4.1.10 to 4.1.18

<sup>48</sup> NPS-UD Objective 1

<sup>49</sup> NPS-UD Objective 6

<sup>50</sup> NPS-UD 2020 3.13(1)(b)

## Good planning practice

128. Mercer Village is a service centre with a small cluster of businesses and dwellings. In 2016 the population was estimated to be 140, with little change predicted by 2045. Mercer is located in the northern sector of the Waikato District situated along the banks of the Waikato River, approximately 74km north of Hamilton and 124km south of Auckland. The Waikato Expressway and the North Island Main Trunk Line run parallel to each other and bisect the area, and high voltage powerlines traverse the area. Land surrounding the village is rural, consisting mostly of farms with a scattering of lifestyle blocks.
129. If the subject site was to be zoned as a 'Village Zone', there would be a reasonable expectation that urban development would be appropriate. There are planning constraints. These raise questions about the potential to achieve connectivity with the existing Mercer village, good urban design and the viability of urbanised land use on the subject site. The characteristics of this site include the physical separation from the existing village, the transmission corridor, potential geotechnical issues, difficult access and a lack of infrastructure. The lack of infrastructure raises concerns around planned urban growth, and while the geotechnical evidence suggests it may be possible to design a suitable subdivision, there is uncertainty around the design and potential yield.
130. I have concluded that urban development and residential use on the subject site, particularly in the vicinity of the National Grid, should be the subject of a detailed consent and assessment by a decision-maker through the consent process. I consider that a rural zone and a non-complying activity status in the proposed plan is appropriate, given the site constraints and inconsistency with the urban growth strategic approach. In this instance, the lack of planned infrastructure, distance from the formed urban centre, and inconsistency with the proposed objectives and policies that manage growth, signals that a rural zone is more appropriate to implement the objectives, and achieve the purpose of the RMA. There remains some development capacity within the Mercer Village zone as notified. I have concluded that a Village Zone over a part of Lot 9 DP 461781 Koheroa Road, Mercer (the subject property) would fail to give effect to the relevant higher-order planning instruments.

## Recommendations

131. For the reasons above, I recommend that the Hearings Panel:
- (a) **Reject** the submission made by TKDM Farms Limited [351.1] to change the zoning of Lot 9 DP 461781 (Koheroa Road, Mercer) from Rural Zone to Village Zone.
  - (b) **Accept** the further submissions made by *Waikato Regional Council* [FS1277.16] and *Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)* [FS1108.171].
  - (c) **Reject** the further submission made by *Mercury NZ Limited for Mercury C* [FS1386.505], as the flooding is not a significant issue or relevant to the site that is the subject of this submission.

## Recommended amendments

132. No amendments are recommended to the rural zone in the proposed plan that applies to Lot 9 DP 461781 (Koheroa Road, Mercer) as a result of submissions.



## 5 Meremere Industrial/Business: 25 Island Block Road; Meremere

### Submissions

133. There is one submission and six further submissions made on the zoning of a property at 25 Island Block Road, Meremere, being Lot 2 DPS I4402, Sec 8, 12, 14, SO 459323, Sec 6 SO 41728926, SO 383114, Allot 679 Whangamarino PSH SO 41542 and PT Allot 427 Whangamarino PSH DP 21294.

**Table 2**

Submission point	Submitter	Decision requested
385.1	Peter Ward for Ward Demolition	Amend the zoning of the property at 25 Island Block Road, Meremere, and the property to the east of 25 Island Block Road, Meremere from Rural Zone to Industrial Zone and Business Zone. Changing the zoning would support employment, integrated infrastructure, integrated structure planned business precinct, sustainable environmental outcomes, deals with land otherwise sterilised by overhead power line corridors, works in partnership with Council and iwi.
FS1045.17	Auckland/Waikato Fish and Game Council	Oppose the proposed change in zoning due to the proximity to sensitive wetlands and potential impact on recreational opportunities, and wildlife.
FS1277.23	Waikato Regional Council	Retain zoning as notified. The H2A project, including the Hamilton-Waikato Spatial Plan, the Huntly Spatial Plan, and the Pokeno Spatial Plan, should inform decisions about future development. Decisions on the rezoning of land within the H2A corridor should be deferred until the corridor plan is completed to avoid undermining strategic planning process.
FS1293.25	Department of Conservation	Seek that the submission point is disallowed. The change in zoning would be inappropriate due to the property's proximity to lakes and the potential flood hazard risk. The areas flow into Lake Waikare and into Whangamarino wetland which is a significant RAMSAR wetland site, and the change in zoning may cause an increase in industrial contaminants and other adverse effects for the catchment.
FS1313.10	Perry Group Limited	Support. Sufficient industrial land is needed to allow for growth Submission seeks further land zoned for industrial and business purposes.

<i>FS1388.82</i>	Mercury NZ Limited for Mercury E	Oppose. Not clear how effects from a significant flood event will be managed, or whether the land use zone is appropriate from a risk exposure. Flood hazard assessment needed prior to designing the district plan policy framework in the Waikato River Catchment.
<i>FS1108.170</i>	Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)	Oppose amendment in principle.

134. The submission made by Peter Ward for Ward Demolition [385.1] seeks a change in zone from rural zone to industrial and business zone. This is supported by the further submission made by *Perry Group Limited* [FS1313.10] that further land should be zoned for industrial and business purposes, and that more industrial land is needed to allow for growth.
135. Submission 385.1 is opposed by the further submissions of Auckland/Waikato *Fish and Game Council* [FS1045.17]; *Waikato Regional Council* [FS1277.23]; the *Department of Conservation* [FS1293.25] and *Mercury NZ Limited for Mercury E* [FS1388.82]. The concerns raised in the further submissions are:
- (a) the proximity to sensitive wetlands and potential impact on recreational opportunities, and wildlife.
  - (b) that the strategies and spatial plans should be used to inform decisions about future development; and that decisions on the rezoning of land within the H2A corridor should be deferred until the corridor plan is completed to avoid undermining strategic planning process.
  - (c) the property's proximity to lakes and the potential flood hazard risk.
  - (d) the potential impact on Lake Waikare and the Whangamarino wetland (a significant RAMSAR wetland site), and the potential for increased industrial contaminants and other adverse effects for the catchment; and
  - (e) that it is not clear how the effects from a significant flood event will be managed, or whether the land use zone is appropriate from a risk exposure. A flood hazard assessment needed prior to designing the district plan policy framework in the Waikato River Catchment.
136. The further submission made by *Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)* [FS1108.170] opposes the change of zone on the subject site "in principle".

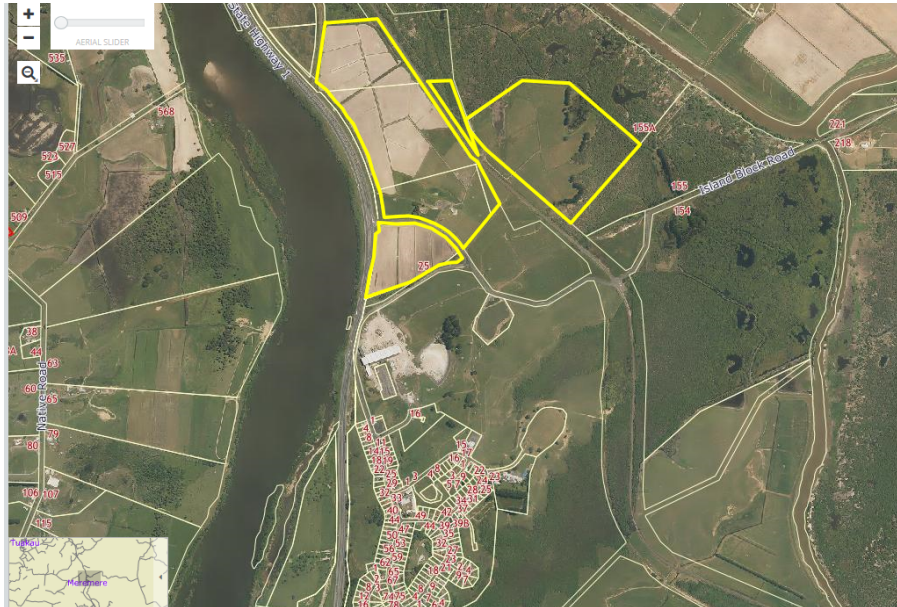
### Evidence lodged

137. No evidence was received from submitters or further submitters.

### Introduction to Meremere

138. Meremere is a small village located approximately 4.5km south of Mercer on the eastern side of the Waikato expressway. The Whangamarino Wetland borders the village to the east, curling around to the north. The southern area of the village is zoned predominantly for residential purposes, together with areas zoned as open space, and the northern area features a large area that is zoned 'Heavy Industrial'.
139. Land surrounding the village is mostly rural or designated as the Whangamarino Wetland. The village has Council-owned reticulated services for wastewater, stormwater and water supply.

140. Waikato 2070 identifies an adjacent site for industrial use in 50+ years. The strategic documents and the relevant policies in the proposed plan do not identify Meremere as an area for growth.
141. The map below shows the parcels of land that are the subject of submissions marked in yellow.



## Analysis

142. Submission 385.1 is that the change of zone from Rural to Industrial and Business zone would support employment, integrated infrastructure, integrated structure-planned business precinct, and sustainable environmental outcomes. The submission is that a Business / Industrial zone would deal with land otherwise sterilised by overhead powerline corridors.
143. The map below (Figure 3) shows the location of the powerlines across the site, the small area of Significant Natural Area on a portion of the site, and the proximity to the Waikato river and Whangamarino wetland. A very small area of heavy industrial-zoned land can be seen at the intersection of the two roads. I am unaware of the reasons for the small 'clip' across the bottom of the property being split, and zoned heavy industrial.



Figure 3 - Property (id 2017700) outlined in pink, with the location of powerlines and significant natural areas on the subject land

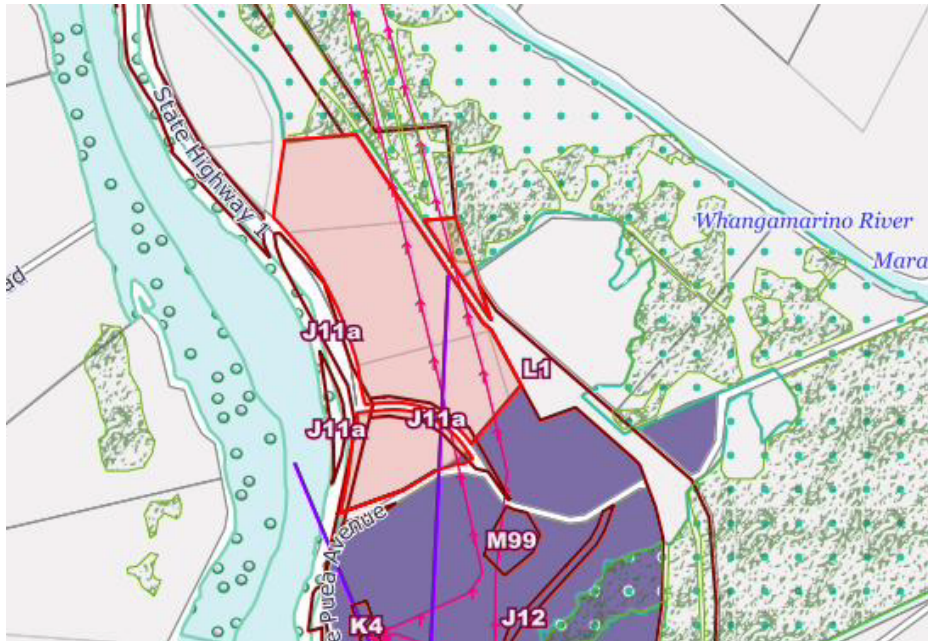


Figure 4 - Property (id 2017699) outlined in pink, with significant natural areas on the subject land

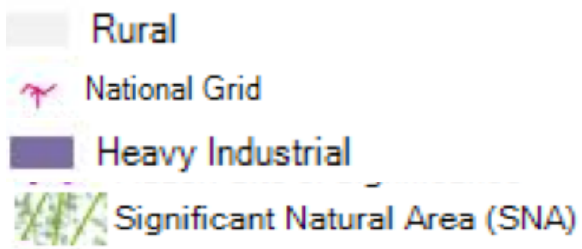
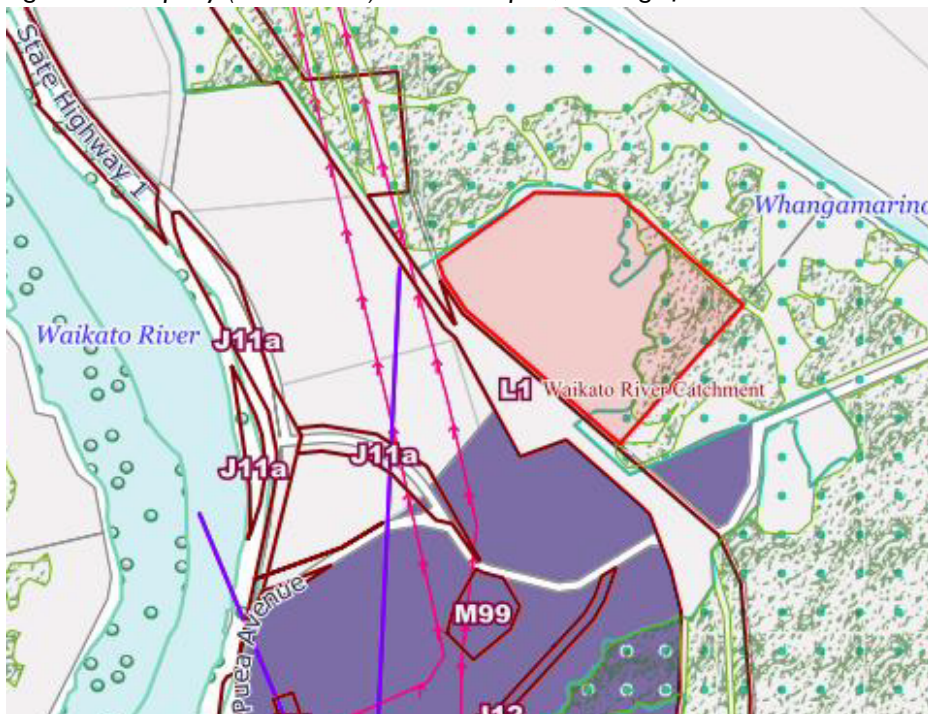
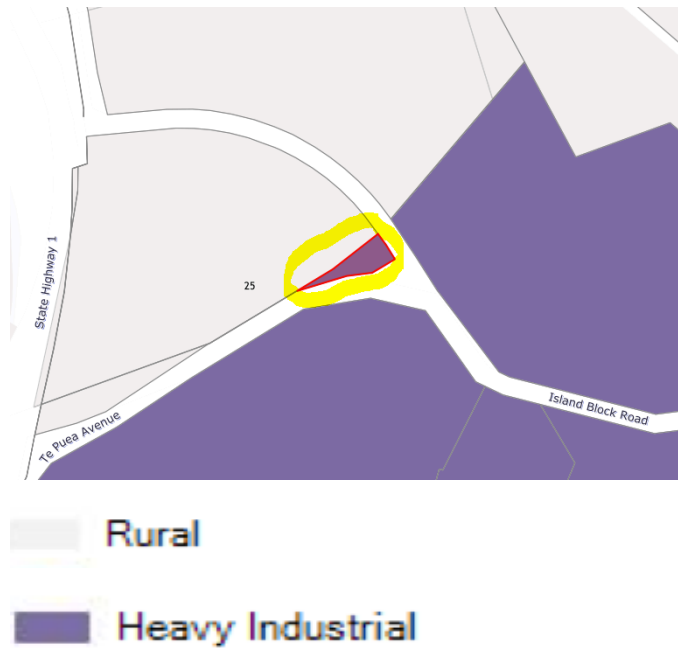
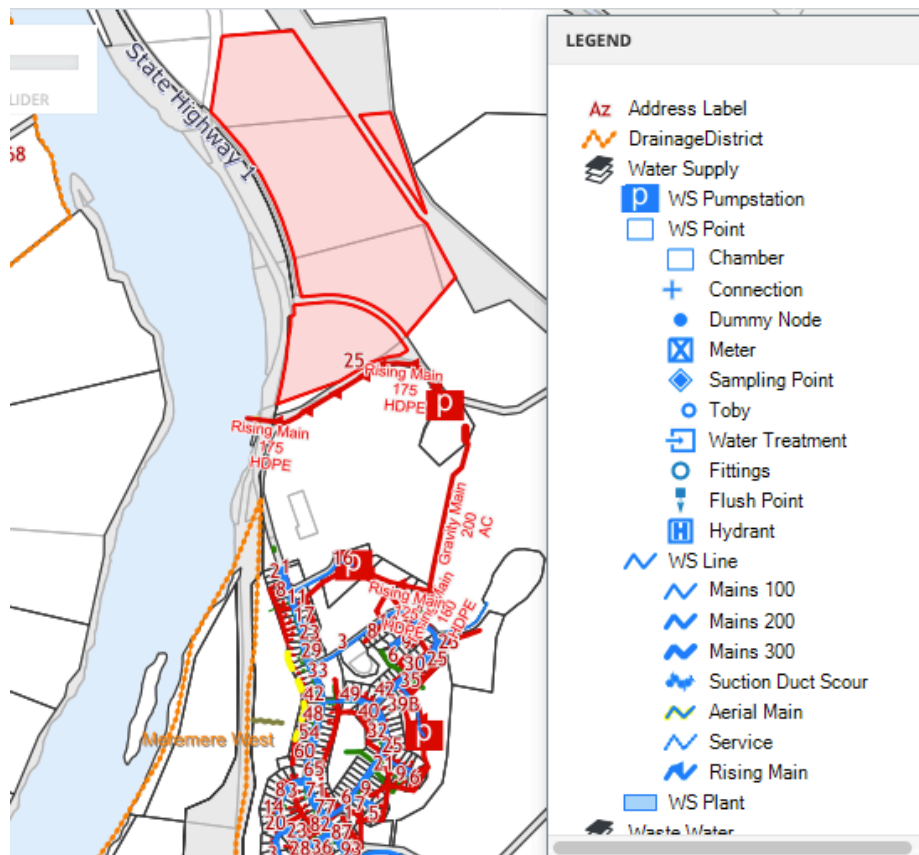


Figure 4 - an enlargement showing the location of proposed heavy industrial zone on the subject land (id 2017700)



144. Reticulated services are not available on the subject sites. Figure 5 below shows the location of infrastructure to the south of the subject sites.

Figure 5 - Showing the proximity to the urban area, the river and the lack of reticulated services in the vicinity of the subject land



## Higher-order planning instruments

145. NPS-UD Objective 1 promotes a well-functioning urban environment. I consider that a change of zone that enables industrial or business activities on land where there is a lack of reticulated infrastructure, and which is at a distance from serviced areas, would be out of step with the outcome of an integrated, well-functioning urban environment.
146. NPS-UD Objective 6 is that decisions on urban development that affect urban environments are to be integrated with infrastructure planning and funding decisions; and strategic over the medium term and long term. The site that is the subject of the submission is not in an area identified for future growth or infrastructure servicing<sup>51</sup>. The lack of reticulated services (particularly trade waste infrastructure) that would be needed to address the potential risk from industrial activities on the rivers and wetland is a significant constraint in my opinion. There are potentially high financial and environmental costs of enabling industrial activities occur on a site that lacks essential services.
147. The further submissions of the *Auckland/Waikato Fish and Game Council [FSI045.17]* and the *Department of Conservation [FSI293.25]* raise a concern about the proximity of the site to sensitive wetlands, the proximity to lakes and the potential flood hazard risk, with water flowing into Lake Waikare and into Whangamarino wetland (a RAMSAR wetland site). The submission is that the change in zoning may cause an increase in industrial contaminants and other adverse effects for the catchment.
148. As the site that is the subject of the submissions is in the catchment of the Waikato River and the Whangamarino wetland, I consider that the precautionary approach in the RPS and Vision and Strategy for the Waikato River<sup>52</sup> should be applied when considering the appropriateness of planning controls for this site. The submitter has provided no evidence addressing the effects on the river and wetland, or indicating systems to manage those effects.
149. The RPS Policy 6.1.7 is that before land is re-zoned, tools such as structure plans should be produced. RPS Policy 6.1.8 sets out information requirements to consider before re-zoning for urban development. RPS Policy 6.1.8 deals with information requirements about potential issues arising from the storage, use, disposal and transport of hazardous substances in the area and any contaminated sites, and describes how related risks will be managed<sup>53</sup>; how stormwater will be managed having regard to a total catchment management approach and low impact design methods<sup>54</sup>; and the location of any existing or planned electricity transmission network or national grid corridor and how development will be managed in relation to that network or corridor, including how sensitive activities will be avoided in the national grid corridor.<sup>55</sup>

## Proposed District Plan policy direction

150. The submission made by Peter Ward for Ward Demolition [385.1] seeks a change in zone for 25 Island Block road from rural zone to industrial and business zone. The submission does not make clear whether all, or which parts of the land are envisaged for business and industrial zones.

---

<sup>51</sup> Zone Extents Framework report, prepared by Dr Mark Davey Date: 19 January 2021 Urban zoning outside of the Future Proof settlement pattern: Executive summary at para 7v on page 7

<sup>52</sup> RPS Chapter 2

<sup>53</sup> RPS Policy 6.1.7(f)

<sup>54</sup> RPS Policy 6.1.7(g)

<sup>55</sup> RPS Policy 6.1.7(n)

151. The parts of the proposed plan that are relevant to the submission to change the zoning of 25 Island Block Road are the Rural Environment Zone objectives, policies and rules; and the Urban Environment / Industrial Zone and Business Zone objectives, policies and rules.
152. I have provided a broad outline of the policy approach in the Rural Environment Zone provisions in the proposed plan in the Overview of the Topic at paragraph 18 to 20 above.
153. The property is in the vicinity of the Waikato River and Whangamarino rivers and wetland catchment. As discussed in paragraph 148 above, and paragraphs 164 to 166 below, a precautionary approach should be taken to development near the Waikato river.
154. In my opinion, there is a lack of consistency with the strategic approach in both the RPS, and the provisions in proposed Policy 4.1.6 in the proposed plan that give effect to the RPS.
155. There are a number of planning constraints to be considered if the more intensive development is to be facilitated by a zone providing for business or industrial activities. The properties that are the subject of Submission 385.I are near the Waikato River and the Whangamarino river and wetland. Portions of the land are identified on the planning maps as significant natural areas, and the route of the National Grid passes through part of the site. The RPS requires information on how development will be managed in the vicinity of the National Grid<sup>56</sup>, and the proposed plan responds with a policy approach to protect the National Grid<sup>57</sup>.
156. I consider that an appropriate zone should provide sufficient control to allow a decision-maker to assess potential effects on the Grid, and to manage activities such as the scale, height and location of buildings and location of vegetation through a consent process; and to decline inappropriate activities if need be.
157. One of the two subject sites is located between a designated rail corridor and SH1 (Waikato Expressway). While proximity to these services may be desirable for industrial or some types of business activities, the feasibility of providing suitable access and infrastructure is not addressed in any detail in the submission. Road access is from Island Block Road, which joins the expressway through an at-grade intersection. The submitter has not provided any traffic modelling evidence to demonstrate that the roading infrastructure is adequate for traffic generated by industrial and business development of the site.
158. In seeking a change to an industrial or business zone, Submission 385.I does not provide details about how the planning constraints might be addressed. There is insufficient information about the provisions sought through Submission 385.I. In my opinion there is uncertainty about the provisions, and about whether or not the potential effects of activities that are enabled in an alternative to the Rural Zone can manage the potential effects on the environment from a diverse scale and range of activities provided for in a business or industrial zone.

### **Flood risk and uncertainty of provisions**

159. The further submissions from the *Department of Conservation [FS1293.25]* and *Mercury NZ Limited [FS1388.82]* raise a concern about flood risk.

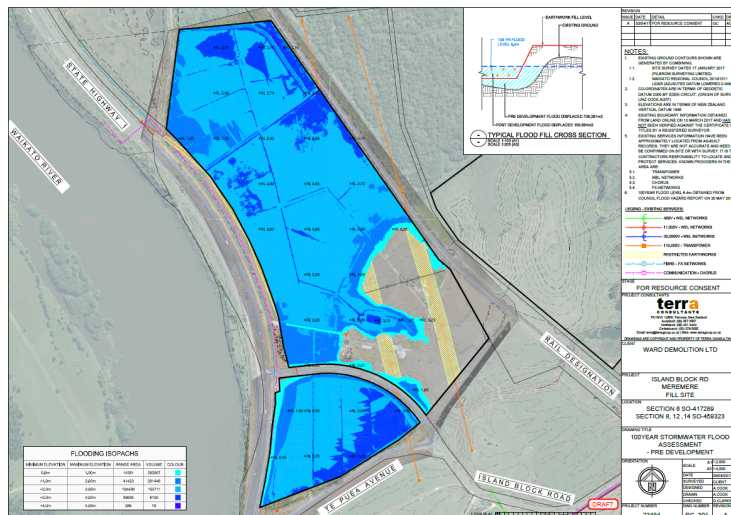
---

<sup>56</sup> RPS Policy 6.1.8 (n)

<sup>57</sup> proposed plan chapter 6.2

160. I am advised that a resource consent was lodged with Council in May 2018 LUC0492/18 for approximately 1,000,000m<sup>3</sup> of cleanfill to be deposited over a period of 10 years on the land that is the subject of Submission 358.I.<sup>58</sup>
161. I understand that, as part of the consent application, a geotechnical report was submitted by Terra Consultants, who completed a 100 year-flood assessment of the site under existing and post-development site conditions. The plans included with the application identify the land in question and illustrate potential flooding prior to and after development of the site as a landfill, are shown in Figures 6 and 7 below.
162. Prior to development of the site for a cleanfill activity, approximately 75% of the site is susceptible to flooding under a 1 in 100-year flood event. The consented height of the fill ranges from 1m to 5m above existing ground levels. The plans submitted with the resource consent application indicate that approximately 25% of the site will be susceptible to flooding under the same event after the works are completed.
163. The two maps below show the potential flood extent, before and after the consented development proposal.

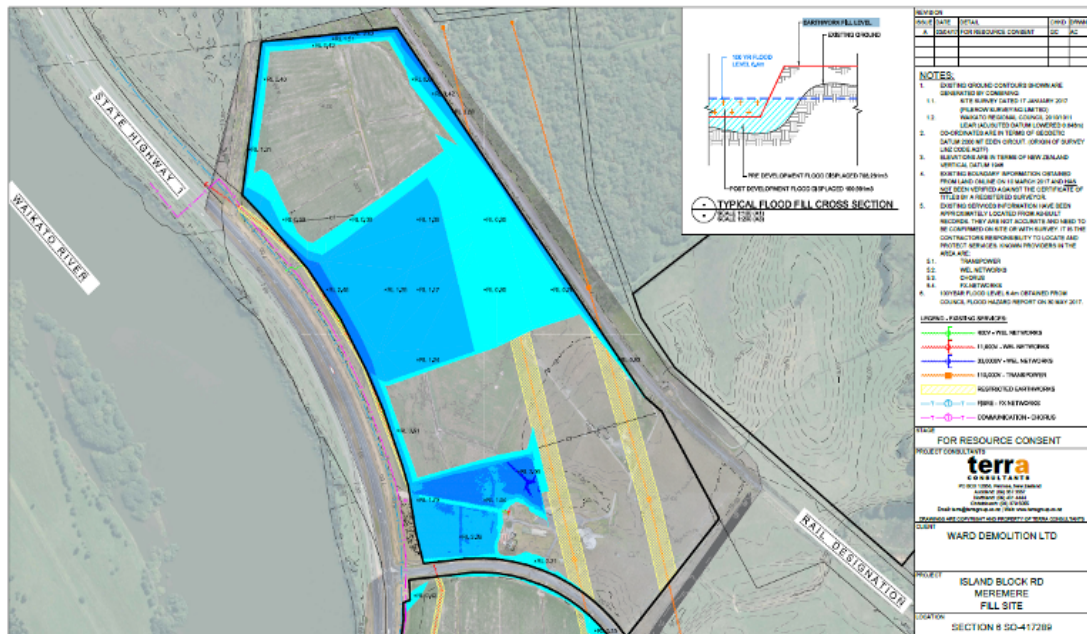
Figure 6 (below) – 100 year stormwater flood assessment – pre development



<sup>58</sup> Section 6 SO 417289 and Sections 8, 12 & 14 SO 459323



Figure 7 (below) – 100 year stormwater flood assessment – post development



164. I am not aware of whether the application has been given effect to or if Terra Consultants took into account the potential effects of increased flooding and storm events as a consequence of climate change. It would be consistent with the Vision and Strategy for the Waikato River to take a precautionary approach,<sup>59</sup> and assess the potential flood risk associated with locating industrial activities on the property, and whether a change in zone may increase the potential for any contaminants to be mobilised in stormwater runoff into the river.
165. The proposed plan responds to the Settlement Act and Waikato Vision and Strategy in a number of strategic objectives; including PWDP Objective 1.7.2.5 (a) vi, vii, and viii that deal with a precautionary approach, cumulative effects, and further degradation of the river by human activities.
166. The framework report states that “*The precautionary approach involves consideration of the effects on the river of the development likely to follow any rezoning. The risks to the river will be most direct for urban development and activities close to the riverbanks (including tributaries), but activities further away may also raise issues, especially if stormwater, wastewater or sediment flows to the river occur.*”<sup>60</sup>
167. There is insufficient information on the benefits and costs of the environmental, economic, social, and cultural effects that can be anticipated from a change to a business or industrial zone. In the absence of information, in my opinion a change from the rural zone in the proposed plan to an industrial or business zone for this site could enable activities that pose a risk to the river, due to the potential for soil saturation and flood risk.
168. In the absence of evidence from the submitter about whether provisions in the plan might be effective and efficient in managing the effects of business or industrial activities and implementing the relevant objectives, I consider that the risk to the environment of acting to

<sup>59</sup> **Zone Extents Framework report**, prepared by Dr Mark Davey Date: 19 January 2021 at paragraph 157 on page 35

<sup>60</sup> **Zone Extents Framework report**, prepared by Dr Mark Davey Date: 19 January 2021 at paragraph 157 on page 35

change the zone is high. An RMA section 32 evaluation of the costs, benefits and the risk of acting is needed to inform a decision to change the zone from the rural zone in the proposed plan and reliably manage the risks to the environment.

169. The maps above show that the land would remain subject to a degree of flood risk. Even after the fill has been deposited on the land in accordance with the cleanfill consent, there remains a potential flood risk and a risk that contaminants might be mobilised in stormwater runoff (particularly from industrial activities and storage areas).

## Conclusions

170. Given the proximity to the Waikato river and wetlands, and the lack of infrastructure, particularly trade waste servicing, I have concluded that the plan should retain the ability to assess the potential effects from any industrial and business activities through a consent process. A business or industrial zone enables the types of activities that may be a concern in that location. Therefore, I recommend that the submission seeking a change in zone to business or industrial be rejected.
171. I recommend that the submission made by Peter Ward for Ward Demolition [385.1] and the further submission made by *Perry Group Limited* [FS1313.10] be rejected, because the zones sought are not consistent with the strategic approach in the proposed plan, adequate infrastructure is not available, and rural activities are more compatible with the National Grid and natural values in the area. A zone that enables business or industrial activities would not be integrated with infrastructure planning and funding decisions, and as such would fail to give effect to NPS-UD Objective 6, and the RPS to requirements to implement the Future Proof strategy. These include RPS Policy 6.17 and Implementation Method 6.17.1 that contain requirements for the district plan and growth strategies to give effect to Policy 6.17.
172. I recommend that the further submissions made by Auckland/Waikato *Fish and Game Council* [FS1045.17]; *Waikato Regional Council* [FS1277.23]; *Mercury NZ Limited for Mercury E* [FS1388.82]; and the *Department of Conservation* [FS1293.25] be accepted because I consider that a Rural Zone provides for land use that is based on primary production, and better provides for the values of the significant natural areas, rivers and wetland. I recommend that the further submission made by *Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)* [FS1108.170] that opposes the zone change to industrial or business zone, be accepted.

## Framework Report Three Lenses Assessment

173. The framework report includes a three-lens method for s42A authors to employ when assessing and making recommendations on zoning submissions. The Panel directions record that "*Lens 1 is the incorrect legal test.*"<sup>61</sup>
174. Accordingly, I have considered whether the zone and characteristics of the subject land along with the other considerations referred to in this report, would give effect to the higher-order planning instruments, and would assist the council to perform its functions and be efficient and effective in implementing the relevant objectives and policies in the PWDP - but do not use the three lens in the Framework report as a stand-alone or gateway test.

---

<sup>61</sup> Panel Minute and directions dated 15 March 2021

## **Planning constraints and site characteristics**

175. I have considered all three 'lenses', and I have only considered Lens 1 in terms of internal consistency and the RMA section 32 requirement for the zone (as a method) to implement the objectives and policies of the plan as notified. I have considered the planning constraints and site-specific issues associated with the subject site and a change of zone from Rural to Industrial and/or Business Zone. The majority of the property that is the subject of submissions has a flood risk. Neither of the two properties is identified as an area for growth, and these are not serviced by trade waste or other infrastructure.

## **Higher-Order Planning Instruments**

176. The proposed plan must give effect to the higher-order policy documents. NPS-UD Policy 8 is not relevant to this change of zone. NPS-UD Objective 6 is about integrating urban development with infrastructure planning and funding decisions; and promotes a strategic approach over the medium term and long term. There is lack of infrastructure and no planned future growth, therefore I have concluded that the change of zone would fail to give effect to the NPS-UD provisions that are to assist the integration of planning decisions with infrastructure planning and funding decisions.
177. The Vision and Strategy for the Waikato River forms part of the RPS, and a precautionary approach should be taken. In my opinion, industrial activities are inappropriate on a site that may be subject to inundation or flooding where the activity could introduce contaminants into the river. I have concluded that a zone that enables all industrial and commercial activities as a permitted activity would fail to give effect to the RPS.
178. The proposed plan contains provisions that are intended to implement the policy approach for managing growth in the RPS. I have concluded that the change of zone would fail to implement proposed Policy 4.1.6, which is that Industry is only to be located in identified Industrial Zones and the industrial strategic growth nodes of Tuakau, Pokeno, Huntly and Horotiu. If the Panel are of a mind to accept the submission seeking a change of zone to a business or industrial zone, proposed Policy 4.1.6 may also need to be amended.

## **Good planning practice**

179. There are planning constraints that include areas of an SNA. One of the properties is traversed by the National Grid, and is subject to potential flood risk. Neither property has adequate infrastructure services for urban development. The lack of infrastructure for managing trade waste, lack of any evidence about how trade waste might be managed, or any traffic modelling of the effects on the expressway, are also a concern.
180. I have concluded that, in the absence of a planned future growth area and a plan to provide associated infrastructure, industrial, commercial or business activities on the subject site should be the subject of a detailed consent and assessment by a decision made through the consent process, and should not be enabled by an industrial or business zone. It is unclear from the submission how the potential effects on the National Grid, the Waikato river and Whangamarino wetland, and on the portion of significant natural area that is located on parts of the sites, might be addressed through a zone that would have a presumption that enables a wide range of industrial activities.
181. In this instance, the lack of planned infrastructure and inconsistency with the proposed objectives and policies that manage growth, signals that a rural zone is more appropriate to implement the objectives, and achieve the purpose of the RMA.

## Recommendations

182. For the reasons above, I recommend that the Hearings Panel:

- (a) **Reject** the submission made by Peter Ward for Ward Demolition [385.1] and the further submission made by *Perry Group Limited* [FS1313.10] to change the zone from rural to a business or industrial zone.
- (b) **Accept** the further submissions made by *Auckland/Waikato Fish and Game Council* [FS1045.17]; *Waikato Regional Council* [FS1277.23]; *Mercury NZ Limited for Mercury E* [FS1388.82]; *Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)* [FS1108.170] and the *Department of Conservation* [FS1293.25] that oppose a change in zone from rural to business or industrial zone.

## Recommended amendments

183. No amendments are recommended to the rural zone in the proposed plan that applies to 25 Island Block Road as a result of the submissions.

## 6 Hampton Downs Motor Sport and Recreation Zone (HDMP) extension (Lot 6 DP 411257 at Hampton Downs Road)

### Submissions

- 184. Two submissions and three further submissions were received on the zoning of the land in close proximity to the Hampton Downs Motorsport Park (HDMP).
- 185. Hampton Downs Motorsport Park submission point [657.33] has been withdrawn, to the extent that it seeks re-zoning of an area of land if it is purchased<sup>62</sup>.

**Table 3**

Submission point	Submitter	Decision requested
657.33 (part withdrawn)	Hampton Downs Motorsport Park	Retain the boundaries of the Hampton Downs Motor Sport and Recreation Zone as shown on the planning maps, with amendments, and re-zone area (if purchased) to Hampton Downs Motorsport and Recreation Zone. The changes are required to correctly identify the boundaries of the Hampton Downs Motorsport and Recreation Zone.
FS1279.15 (no longer an original submission. The further submission falls away)	Reid Investment Trust	Allowed, with additional relief sought. RIT supports the inclusion of an area of land to the south of Hampton Downs Road into the Hampton Downs Motorsport Park Zone; and include Lot 6 DP411257 in Precinct E.

<sup>62</sup> Planning evidence of Paula Rolfe on behalf of HD Land Limited and Hampton Downs (NZ) Limited

783.5	Reid Investment Trust	Amend the zoning of the property with the legal description of Lot 6 DP 411257 at Hampton Downs Road from Rural Zone to Hampton Downs Motorsport and Recreation Zone, Precinct E which allows for industrial activities. Land is in close proximity to Hampton Downs Motorsport Park, has been earthworked and for overflow parking during the events. Operative District Plan includes the site in the Hampton Downs Motorsport Park subdivision scheme in schedule 25D. The site is intended to be developed for industrial purposes such as warehousing.
FS1194.5	HD Land Limited and Hampton Downs (NZ) Limited	Oppose amendment to the zoning of the Reid Investment Site from Rural to Hampton Downs Motorsport and Recreation Zone, Precinct E. There are already two existing Precinct Areas within HDMP that are specifically identified (and zoned) for Industrial development. They are - Precinct B; and -Precinct E. Precinct E: refers to the consented industrial units (12 units in total) that are shown on the existing Concept Plan (Figure 25DA of the ODP) and are located in the south-western corner of the HDMP site. The Industrial use is not directly associated with the motorsport and recreation activities at the adjacent HDMP. A resource consent application would be the most appropriate route for a site specific industrial development. Precinct B has an area of approximately 17 hectares and provides a sufficient supply of industrial land for the Motorsport and Recreation Zone. Oppose any proposal to amend the zoning of the Reid Investment Site from Rural. The existing and consented land use activities and development is in accordance with a suite of technical reports prepared for the existing resource consents and Concept Plan. An additional 1.3ha of land has the potential to impact on the existing servicing and utilities, including the storm water management.
FS1387.1236	Mercury NZ Limited for Mercury D	It is not clear how effects from a significant flood event will be managed, The policy framework should avoid, remedy and mitigate significant flood risk to ensure the level of risk exposure in the Waikato River Catchment is appropriate.

186. The submission made by Hampton Downs Motorsport Park [657.33 - now partly withdrawn] and Reid Investment Trust [783.5] are in respect of the zoning of Lot 6 DP411257, which is in close proximity to the Hampton Downs Motor Sport and Recreation Zone in the proposed plan.

187. The submission made by Reid Investment Trust [783.5] is to change the zoning of the property with the legal description of Lot 6 DP 411257 at Hampton Downs Road from Rural Zone to Hampton Downs Motor Sport and Recreation Zone, Precinct E, which allows for industrial activities. The further submissions made by *HD Land Limited and Hampton Downs (NZ) Limited* [FS1194.5] and *Mercury NZ Limited* [FS1387.1236] oppose the change of zone.

### **Evidence lodged**

188. Paula Rolfe lodged planning evidence on behalf of HD Land Limited and Hampton Downs (NZ) Limited (submitter 657.33) dated 17 February 2020. The planning evidence:
- (a) supports the Hampton Downs Motor Sport and Recreation Zone for the Hampton Downs Motorsport Park as proposed under the Proposed Waikato District Plan; and
  - (b) supports the rural zone of land adjacent to the Motorsport Park; and
  - (c) withdraws its submission to “amend the external boundaries of the Hampton Downs Motor Sport and Recreation Zone to include an additional piece of land located on the southern side of Hampton Downs Road (if HDMP are able to purchase this land)” as no further land has been purchased.
189. Planning evidence was also received from Alistair White on behalf of Reid Investment Trust (submitter 783 and FS1279), with a Traffic Modelling Assessment undertaken by Bloxam Burnett & Olliver (BBO) - an RMA section 32 evaluation is attached.
190. The planning evidence of Mr White is that the land is used for water supply and car parking for the Hampton Downs Motorsport Park, and that the owner wishes to develop the site for light industrial purposes such as warehousing and vehicle workshops, that are consistent with the use of the site on the opposite side of the road. The evidence of Mr White is that the rural zone does not reflect the nature and opportunity, and its close proximity and association to the motorsport park<sup>63</sup>.
191. At paragraph 8 Mr White states that there are two options - one is to change to an industrial zone, and the other to include the site in the Hampton Downs Motor Sport and Recreation Zone<sup>64</sup>, and at paragraph 9 Mr White deals with a matter of scope in the submission. The planning evidence identifies height and setback from another zone as the main point of difference<sup>65</sup>, and identifies the potential size of an industrial building at 6794m<sup>2</sup> Gross Floor Area (GFA), and asserts that the scale of an industrial building on the site would not disrupt the potential of other industrial areas.
192. The conclusion and recommendations of BBO are that the trip generation as a result of the submitter’s proposal would not have any have traffic effects that cannot be readily accommodated. Mr White does not deal with water supply, infrastructure capacity, or the absence of planned infrastructure.

### **Introduction to the Special Zone**

193. The Hampton Downs Motor Sport and Recreation Zone is situated approximately 57km north of Hamilton and 67km south of Auckland.
194. The regional significance of the Hampton Downs Motorsport Park is recognised in the proposed plan. Chapter 9 contains ‘Special Zones’. The Objective and Policies that apply to

---

<sup>63</sup> Planning evidence of Mr White on behalf of Reid Investments at paragraph 5 on page 2

<sup>64</sup> Planning evidence of Alistair White on behalf of Reid Investments at paragraph 8 on page 2

<sup>65</sup> Planning evidence of Alistair White on behalf of Reid Investments at paragraph 12 on page 3

the Motor Sport and Recreation Zone are contained in Chapter 9.1 of the proposed plan, with the proposed rules in Chapter 26 and Appendix 12 of the proposed plan including an overall Development Plan for the Hampton Downs Motor Sport and Recreation zone.

- 195. The policies in the proposed plan set out a precinct-based approach designed to enable the ongoing operation and development of the Hampton Downs Motorsport Park. The submission seeking a change of zone on an adjacent property refers to Precinct E, which is intended to provide for industrial activities associated with the Motorsport Park.
- 196. The National Planning Standard provides for Special Zones, provided these meet all of the criteria, which are that the land use activities or outcomes are significant to the district, region or country, and are impractical to be managed through another zone, or a combination of spatial layers.<sup>66</sup> The Proposed District Plan identifies the Hampton Downs Motorsport Park as having regional importance<sup>67</sup>. The motor sport park is a unique set of activities that in my opinion would be difficult to manage through the other zones in the national planning standards. The proposal to add more land to the special zone needs to be assessed using the same criteria.

### **7.3 Analysis**

- 197. The location of the land adjacent to Hampton Downs Motor Sport and Recreation Zone / Lot 6 DP 411257 [ref: 29 Hampton Downs Road] at Hampton Downs Road (approx. 1.35 ha) is shown in Map 4.

---

<sup>66</sup> National Planning Standards Part 8. Zone Framework Standard Mandatory Direction 3 on page 36

<sup>67</sup> Proposed Waikato District Plan Objective 9.1.1 Chapter 9.1 on page 4 and RMA section 32 report – Motorsport and Recreation Zone: Table 6 at page 11



Map 4: The location of land sought to be rezoned in proximity to Hampton Downs Motor Sport and Recreation Zone, shown in pink



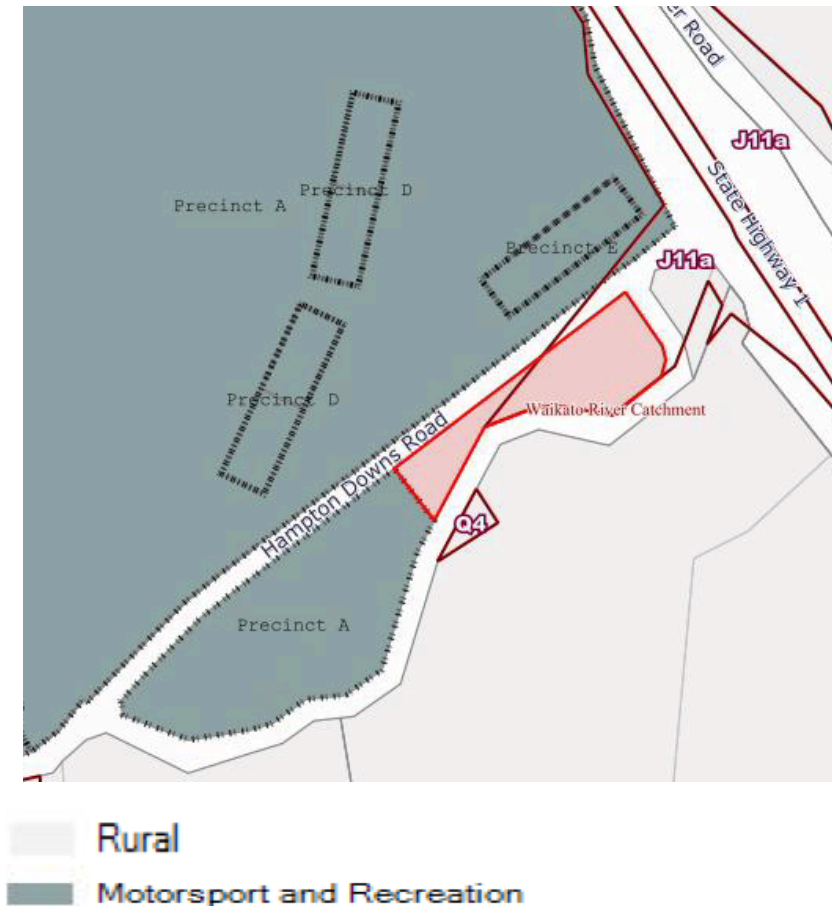
198. The above map shows the subject site across the road from the main developed area used for motorsport events. Access to the Waikato Expressway is through an existing grade-separated interchange a short distance to the east of the site. The site is narrow and an irregular shape, and is approximately 1.3 ha.
199. Lot 6 DP 411257 is located beside the proposed Precinct A in the motor sport zone. Precinct A provides for the operational motor sport area, including the main race track and associated facilities<sup>68</sup>. The land to the south of the motorsport park is zoned rural, and land to the south

<sup>68</sup> Proposed Waikato District Plan Chapter 9: Specific zones: proposed policy 9.1.1.2(a)(i)

west of the subject site, further along Hampton Downs Road is designated for corrections purposes.

200. The map below is the precinct-based approach in the proposed plan and shows the location of Precinct E (Industrial Units) across the road from the site that is the subject of the submission.

*Map showing the zone and precinct in the proposed plan*



201. A submission point made by Hampton Downs Motorsport Park [657.33] to change the rural zone to the motor sport zone if the site is purchased has been withdrawn. The submission [657.33] was to retain the extent of the Hampton Downs Motor Sport and Recreation Zone, and only add the land to the zone if the land was purchased. *Reid Investment Trust* [FS1 279.15] supported [657.33] to change the zone, however their further submission point [FS1 279.15] goes beyond the original submission and seeks a change to include Lot 6 DP41 1257 in Precinct E to allow for industrial activities. In the absence of submission [657.33], the further submission of *Reid Investment* [FS1 279.15] falls away.
202. There was also an original submission made by *Reid Investment Trust* [783.5] that seeks a change from Rural Zone to Hampton Downs Motor Sport and Recreation Zone, Precinct E which allows for industrial activities. The further submission by *HD Land Limited and Hampton Downs (NZ) Limited* [FS1 194.5] opposes the Reid submission, and is that the proposal for an industrial use is not directly associated with the motor sport and recreation activities at the adjacent HDMP.
203. The further submission of *HD Land Limited and Hampton Downs (NZ) Limited* [FS1 194.5] is that there are already two existing Precinct Areas within HDMP that are specifically identified (and zoned) for Industrial development. The concerns raised by the further submitter are that the

industrial use is not directly associated with the motor sport and recreation activities at the adjacent HDMP, and that a resource consent application would be the most appropriate route for a site-specific industrial development. The further submission is that Precinct B in the proposed plan has an area of approximately 17 hectares and provides a sufficient supply of industrial land for the Motor Sport and Recreation Zone, that the existing and consented land use activities and development are in accordance with a suite of technical reports prepared for the existing resource consents and Concept Plan; and that an additional 1.3ha of land has the potential to impact on the existing servicing and utilities, including the stormwater management.

## Analysis

### National Planning Standards

204. In the future, the zoning of the land will need to follow the Zone Framework Standard in the National Planning Standards, and meet the following criteria for an additional Special Purpose Zone:
  - (a) are significant to the district, region or country
  - (b) are impractical to be managed through another zone
  - (c) are impractical to be managed through a combination of spatial layers.
205. The development plans in Appendix 12 of the proposed plan show Lot 6 DP 411257 on the other side of a road in the Rural Zone, and identify the area as a car park and spectator area, with planned planting. The need to use the land in the proposed special zone for activities that are ancillary to the motor sport park is key to the appropriateness of the zoning proposal, in my opinion.
206. Based on the further submission [FS1194.5] I am not satisfied that industrial activities on Lot 6 DP 411257 would in itself meet the National Planning Standards criteria for a special zone, because the land use is not part of, or ancillary to, the motor sport park. Industrial activities are unlikely to satisfy the criteria in the NPS, as there is a prescribed zone for those activities. I have concluded that there must be a direct relationship between the proposed activity and the Hampton Downs Motor Sport and Recreation Zone for the land to be added to that zone, and that is not established in the submission or planning evidence.
207. The zone and precinct approach reflect the existing resource consent for the activities on the site. There are already two existing Precinct Areas within HDMP that are specifically identified (and zoned) for Industrial development. They are Precincts B and E. The further submission by *HD Land Limited and Hampton Downs (NZ) Limited* [FS1194.5] is that “Precinct B has an area of approximately 17 hectares and provides a sufficient supply of industrial land for the Motorsport and Recreation Zone.” I consider that there is no evidence of unsatisfied demand for additional industrial land in this area.
208. The RPS policy approach is for a planning and integrated approach to growth, and to adopt the future proof land use pattern<sup>69</sup>. New industrial growth is to be located in the strategic growth nodes<sup>70</sup>. As set out in the Framework report, “additional industrial zoned land should be located at the strategic industrial nodes of Tuakau, Pokeno, Huntly and Horotiu. Additional

---

<sup>69</sup> RPS Policy 6.14.

<sup>70</sup> RPS Policy 6.14 (c) and RPS Table 6-2.

business zoning is to be located within identified towns and villages”.<sup>71</sup> The zoning and precinct-based approach in the proposed plan is intended to implement the direction in the RPS to plan for growth and implement the Future Proof Strategy.

209. The Hampton Downs Motorsport Park is not in an industrial node recognised in the RPS. The unique Hampton Downs Motor Sport and Recreation Zone in the proposed plan is a specific zone that reflects the existing use and development. In my opinion, unrelated industrial activity should be consistent with the RPS policies about industrial growth being located in the strategic industrial nodes<sup>72</sup>. Policy 4.1.3 in the proposed plan contributes to the proposed plan giving effect to the RPS. Proposed Policy 4.1.3 is that development of an industrial nature should only occur in villages where services can be efficiently and economically provided.
210. The planning evidence is that the site is intended for light industrial activities, and does not deal with reticulated servicing requirements. If zoned Light Industrial, the provisions in the proposed industrial zone plan would allow a range of industrial and ancillary activities.
211. In discussing industrial nodes, the Framework report includes criteria for industry within those nodes (noting that the site does not appear to meet the criteria in (a) or (c) below). Although the subject site is reasonably flat, it is a small site, and the ease and affordability of providing water and wastewater (especially for wet industries) would need to be demonstrated.

#### *Industry*<sup>73</sup>

- (a) large, flat sites
- (b) ease of access to the regional road network (without passing through town and village centres or through residential areas)
- (c) ease and affordability of providing for water and wastewater (especially for wet industries)
- (d) geological stability to provide sound foundations
- (e) good buffering from residential and environmental areas and other areas likely to be sensitive to magnetic radiation, noise and vibration.

## **Conclusion**

212. I recommend that the Panel reject the submission made by Reid Investment Trust [783.5] because a change of zone to enable industrial land use would fail to give effect to the objectives and policies in RPS Chapter 6 that manage growth and require the district plan to adopt a Future Proof land use pattern. RPS Policy 6.17.1 directs the district council to include provisions in district plans and growth strategies to give effect to Policy 6.17. This policy direction in the RPS for planned growth is given effect to in the proposed district plan by Policy 4.1.3. Proposed Policy 4.1.3 is that subdivision and development of an industrial nature is to occur within towns and villages where infrastructure and services can be efficiently and economically provided. Those services are not available, and are not planned or funded by the Council. An industrial land use on Lot 6 DP 411257 would also be inconsistent with

---

<sup>71</sup> **Zone Extents Framework report**, prepared by Dr Mark Davey Date: 19 January 2021 Executive summary (e) at page 4

<sup>72</sup> Waikato Regional Policy Statement Policy 6.14(c), (e) and (f) at page 6-20 and criteria in Policy 6.14.3 at page 6-21 and Table 6-2 Future Proof land allocation on page 6-33

<sup>73</sup> **Zone Extents Framework report**, prepared by Dr Mark Davey Date: 19 January 2021 at paragraph 162 on page 43

proposed Policy 4.1.6 - that industry is only to be located in identified Industrial Zones and the industrial strategic growth nodes of: (i) Tuakau; (ii) Pokeno; (iii) Huntly; and (iv) Horotiu.

213. Further submission [FSI/194.5] is that a resource consent application would be the most appropriate route for a site-specific industrial development, and that Precinct B provides a sufficient supply of industrial land for the Motor Sport and Recreation Zone. The further submission is also that there is an existing resource consent that provides for land use activities and development in accordance with technical reports prepared for those resource consents and Concept Plan; and that an additional 1.3ha of land has the potential to impact on the existing servicing and utilities, including the stormwater management. I agree that the potential effects of other activities on the services and infrastructure should be the subject of a resource consent process.
214. I consider that the use of the land within the HDMP zone should be directly related to the purpose of that zone (in this case the motor sport activities). If Lot 6 DP 411257 was to be added into the HDMP special zone, it is my opinion that the Hearing Panel would need to be satisfied that the criteria in the National Planning Standard for a Special Zone can be met. There is no evidence that the activities or outcomes intended for the subject land would be:
- significant to the district, region or country;
  - are impractical to be managed through another zone; and / or
  - are impractical to be managed through a combination of spatial layers.
215. Rather than extending the special zone, I have concluded that the rural zone is appropriate for Lot 6 DP 411257. Extending the special zone - Hampton Downs Motor Sport and Recreation Zone - to include Lot 6 DP 411257 would need to have demonstrated that the land use is associated with the purpose of the Hampton Downs Motor Sport and Recreation Zone, and that the potential effects on the environment from an industrial activity can be adequately addressed. Discretionary activity Rule 22.1.5 D10 provides for industrial activities in the rural zone, and the consent process allows the potential effects on the motor sport zone and the capacity for stormwater or trade waste infrastructure to be considered.
216. I recommend that the submission made by Hampton Downs Motorsport Park [657.33] be accepted, to the extent that the submission be to retain the extent of the Hampton Downs Motor Sport and Recreation Zone. In the absence of a need for industrial use associated with motor sport, I recommend that the submission made by Reid Investment Trust [783.5] to include Lot 6 DP411257 in Precinct E to allow for industrial activities.

### **Framework Report Three Lenses Assessment**

217. The framework report includes a three-lens method for s42A authors that can be used as a guideline when assessing and making recommendations on zoning submissions.
218. The first lens is an analysis of the proposal against the intent of the PWDP (the intent being indicated through relevant objectives and policies. The Panel directions record that "*Lens 1 is the incorrect legal test*"<sup>74</sup>.
219. Accordingly, I have considered whether the zone and characteristics of the subject land, along with the other considerations referred to in this report, would give effect to the higher-order planning instruments, and would assist the council to perform its functions and be efficient and

---

<sup>74</sup> Panel Minute and directions dated 15 March 2021

effective in implementing the relevant objectives and policies in the PWDP, but do not use the three lens in the Framework report as a stand-alone or gateway test.

### **Special Zone: Hampton Downs Motor Sport and Recreation Zone**

220. The plan provides a special zone for activities within the Hampton Downs Motor Sport and Recreation Zone. I consider that extending the zone to include industrial activities on the adjacent land must also meet the criteria in the National Planning Standard, and be associated with the primary use of the zone for Hampton Downs Motor Sport and Recreation.
221. I have concluded that the change of zone would fail to implement proposed Policy 4.1.6, which is that industry is only to be located in identified Industrial Zones and the industrial strategic growth nodes of Tuakau, Pokeno, Huntly and Horotiu. If the Panel are of a mind to extend the zone to include the subject land, then a change may need to be made to proposed Policy 4.1.6. While there is no obvious scope in the submissions, I also consider that a policy and a rule would be needed to ensure that the activities on the site meet the purpose of the Hampton Downs Motor Sport and Recreation zone.
222. I have also relied on the further submission made by HD Land Limited and Hampton Downs (NZ) Limited that the proposed industrial use of the land is not directly associated with the motor sport and recreation activities at the adjacent HDMP. As a result, I have concluded that extending the zone to include the adjacent land is not consistent with the objectives and policies of the specific zone, that focus on developing a regionally-significant motor sport and recreation facility<sup>75</sup>; and the operation and development of motor sport-related activities, facilities and events and very specific land use with a set of precincts<sup>76</sup>.

### **Higher-order planning instruments**

223. The district plan is required to give effect to the higher-order policy documents. NPS-UD Policy 8 is not relevant to this change of zone, because this area could not be regarded as an “urban environment” within the NPS. Aside from the prescription in the National Planning Standards, there are no directly-relevant provisions that deal with a specific zone for motor sport activities. The submission to change the zone to an industrial zone is not in keeping with the RPS objectives for the built environment, which state that development occurs in an integrated and planned manner, or the RPS Policies 6.3 to co-ordinate growth and infrastructure, ensuring that the nature, timing and sequencing of new development is co-ordinated with the development, funding, implementation and operation of transport and other infrastructure. The strategic approach in Future Proof 2009 or 2017 and Waikato 2070 directs growth elsewhere. I have concluded that the change in zone sought by the submitter would fail to give effect to the higher-order planning instruments; and is also likely to fail the criteria in the National Planning Standard for a Special Purpose Zone.

### **Good planning practice**

224. I have concluded that extending the Hampton Downs Motor Sport Park and Recreation zone to accommodate an unrelated activity would be poor planning practice, and the nature and scale of the industrial activity as described in the planning evidence would fail to meet the criteria for a special zone in the National Planning Standards. It is my opinion that industrial activities should not be enabled by an industrial zone on the subject site in the absence of a planned future growth area and a plan to provide associated infrastructure to support industrial activities. This is particularly so as the industrial activity is not directly linked to the

---

<sup>75</sup> Proposed Objective 9.1.1

<sup>76</sup> Proposed policy 9.1.1.1 and 9.1.1.2

motor sport activities that are provided for within the Special Zone. In my opinion, the extension of the zone would need to be associated with the use of the Motorsport park, and continue to meet the criteria in the National Planning Standard.

## Recommendations

225. For the reasons above, I recommend that the Hearings Panel:

- (a) **Accept in part** the submission made by Hampton Downs Motorsport Park [657.33], to the extent that the submission is to retain the Rural zone in the proposed plan.
- (b) **Reject** the further submission made by *Reid Investment Trust* [FS1279.15] that goes beyond the original submission and seeks a change to include Lot 6 DP411257 in Precinct E to allow for industrial activities.
- (c) **Reject** the submission made by Reid Investment Trust [783.5] to include Lot 6 DP411257 in Precinct E to allow for industrial activities.
- (d) **Accept** the further submission made by *HD Land Limited and Hampton Downs (NZ) Limited* [FS1194.5] that opposes the change to allow industrial activities.

## Recommended amendments

226. No amendments are recommended to the Rural Zone in the proposed plan that applies to Lot 6 DP411257.

## 7 Special Zone: Mercer Airport

### Submissions

Submission point	Submitter	Decision requested
367.15	Mercer Residents and Ratepayers Committee	Add Mercer Airport to Chapter 9 Specific Zones using Te Kowhai Airpark as a model, to create future proofing for potential users and for future growth within the area
367.30	Mercer Residents and Ratepayers Committee	Add Mercer Airport as its own appendix under Appendix I Acoustic Insulation
FS1302	<i>Mercer Airport</i>	Supports the submission for a special airport zone
921.1 and 921.2	Mercer Airport	Add a special zone for Mercer Airport and amend the zoning from Rural to Mercer Airport I Zone, and add a new section to Chapter 9.5

227. There were three submission points and one further submission made on the zoning of Mercer Airport. The submitters, Mercer Residents and Ratepayers Committee [367.15 and 367.30] and Mercer Airport [921.1] seek a change in zone from the rural zone to a special zone in the District Plan for Mercer Airport.



228. The submission made by Bloxam Burnett and Olliver (BBO) [921.1 and 921.2] on behalf of Mercer Airport is to create a new special zone for Mercer Airport called the 'Mercer Airport Zone'. The submission seeks to change the proposed zoning from Rural Zone to Mercer Airport Zone, with its own objectives, policies, rules, and appendices.
229. The Council also received an email from Submitter 921 dated 18 February 2019 that identifies and corrects a mistake in the heading sought in the submission point seeking an addition to the appendices in the proposed plan that deal with Acoustic Insulation by adding a new Section 7: Mercer Airport Zone. The error would not have affected the understanding of the original submission or the ability to make a further submission on that point.
230. The submission made by Mercer Airport [921.1 and 921.2] is to include a special zone in the district plan for the Mercer Airport, to recognise the activities of the Mercer Airport and the issues, objectives, environmental effects and community within which the Mercer Airport operates, now and in the future. In summary, Submission [921.1] is to:
- (a) rezone land owned, occupied and leased by Mercer Airport from 'Rural Zone' to 'Mercer Airport Zone'.
  - (b) amend Chapter 9 – Specific Zones to add Chapter 9.5 – Mercer Airport Zone and include the associated objectives and policies contained in the submission.
  - (c) add a new Chapter 29— Mercer Airport Zone to add rules contained in the submission relating to land use activities, land use effects and land use buildings.
  - (d) amend Appendix 1: Acoustic Insulation by adding a new 'Section 7 – Mercer Airport zone' and add an Air Noise Boundary (65 dBA Ldn contour) and Outer Control Noise Boundary (55dBA Ldn contour) for Mercer Airport<sup>77</sup>; together with rules regarding noise insulation (set out in the submission).
  - (e) add an Appendix 13 – Mercer Airport to include an Obstacle Limitation Surface (OLS) for Mercer Airport<sup>78</sup>, together with consequential rules regarding height control for buildings, structures and trees; and in Appendix 13 include aerodrome design characteristics (runway and runway strip dimensions)<sup>79</sup> with heights of existing structures and trees within the OLS to be confirmed by survey; and
  - (f) increase permitted vehicle movements<sup>80</sup>.
231. The submission made by Mercer Residents and Ratepayers Committee [367.15] and [367.30] supports the Mercer Airport and is to add Mercer Airport to Chapter 9 Specific zones, using Te Kowhai Airpark as the model; to provide for Mercer Airport and create adequate future-proofing for all potential users and for future growth in the area; and to add Mercer Airpark as its own appendix under Appendix 1: Acoustic Insulation. The submission is that Mercer airport is a fully operational business, including leisure activities and accommodation. The submitter has also identified Mercer Airport as a tourist attraction which is used for skydiving, has backpackers' accommodation and is currently undergoing construction to enlarge facilities and hangar availability. The further submission made by *Mercer Airport* [FS1302] supports the submission.

---

<sup>77</sup> Submission based upon the acoustic assessment by Hegley Acoustic Consultants dated October 2018

<sup>78</sup> Submission based upon the technical specification provided by Airbiz Consultants dated September 2018

<sup>79</sup> Submission refers to technical specification provided by Airbiz Consultants dated September 2018

<sup>80</sup> Mercer Airport Transport Assessment dated 14 August 2020 at page 8 of the attachment; and attached to the letter from BBO dated 21 August 2020

### **Additional information provided by Mercer Airport [submitter 921.1]**

232. There has been correspondence between the Waikato District Council<sup>81</sup> and representatives of the Mercer Airport as a submitter<sup>82</sup>, and site visits undertaken by Keryn Bond (Senior Planner, Waikato District Council) and myself.
233. On the 3rd of March 2020 Waikato District Council sent a memo to the submitter seeking clarification on some of the matters outlined in their submission, as listed below:
- (a) Access, carrying capacity, vesting and legal rights over the right of way to the area
  - (b) Information about the views of the neighbours about the rezoning proposal
  - (c) Rezoning of land not owned by the submitter
  - (d) Interpretation of the word 'access' in Rule 29.2.11 as proposed by the submitter
  - (e) The intended use of the land owned by Waikato District Council that is paper road
  - (f) A request for shape files with regard to the Obstacle Limitation Surface and Air Noise Boundary plan.
234. The response from BBO dated 21 August 2020 provides information on the access arrangement and the area of land over which the special zone is sought. In response to the question about the views of the neighbours, BBO states that Mercer Airport relies on the integrity of the RMA process to enable the views of any neighbours to be taken into account.<sup>83</sup>
235. The noise contours and OLS provisions sought by Submitter 921 would place planning constraints on land that is owned by the Council and land owned by neighbours. I read into the BBO response that the views of the community on the special zone: Mercer Airport, noise controls, and OLS, are either not known or have not been sought by the submitter or the Council outside of the RMA Schedule 1 submissions process.

### **Evidence lodged**

236. Chris Dawson lodged planning evidence together with the details of the specific plan provisions sought on behalf of Mercer Airport Limited [Submitter 921] and an RMA s32AA assessment.
237. Dave Park lodged engineering and aviation evidence on aerodrome design, operational requirements, and CAA certification requirements on behalf of Mercer Airport Limited [Submitter 921].
238. Rhys Hegley lodged acoustic-related evidence planning evidence on behalf of Mercer Airport Limited [Submitter 921]. Mr Hegley deals with methods to manage aircraft noise, provides suggested air noise contours, and comments on noise rules proposed by the submitter.
239. Dee Bond lodged evidence as a shareholder/ director and pilot on behalf of Mercer Airport Limited [Submitter 921]. Ms Bond outlines the background of the airport, and the businesses and flying clubs that now operate from it, and events and future vision for the airfield.

### **Correspondence from neighbouring property owners**

240. The Council received correspondence from Kopuera Land Company Limited ("KLCL") and the landowners and residents on Koheroa Road and surrounds. Both are dated 31 March 2021

---

<sup>81</sup> Memo Waide to BBO dated 3 March 2020

<sup>82</sup> Response from BBO to Waide dated 21 August 2020

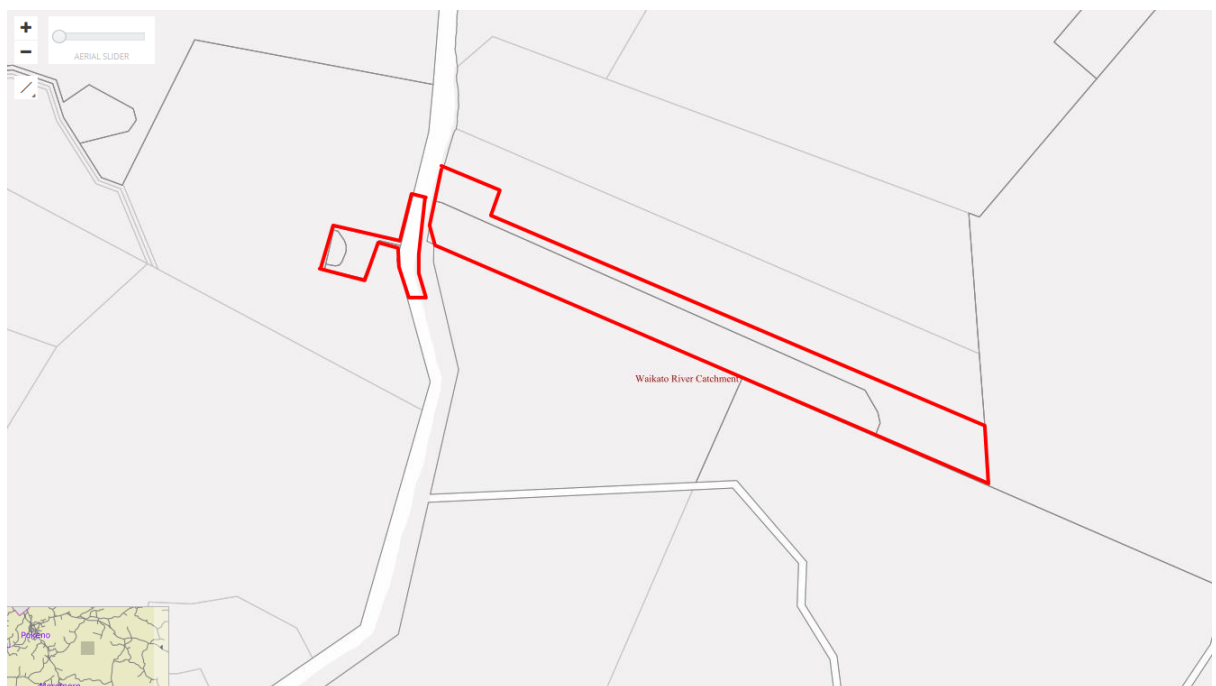
<sup>83</sup> Response from BBO to Waide dated 21 August 2020 at paragraph 4A at the bottom of page 2

and raise concerns about the submission seeking a special zone for Mercer Airport and the potential effects on them from the changes sought that provide for a potential increase in activities. Copies of these two letters are attached as Appendix 2.

### **Mercer Airfield**

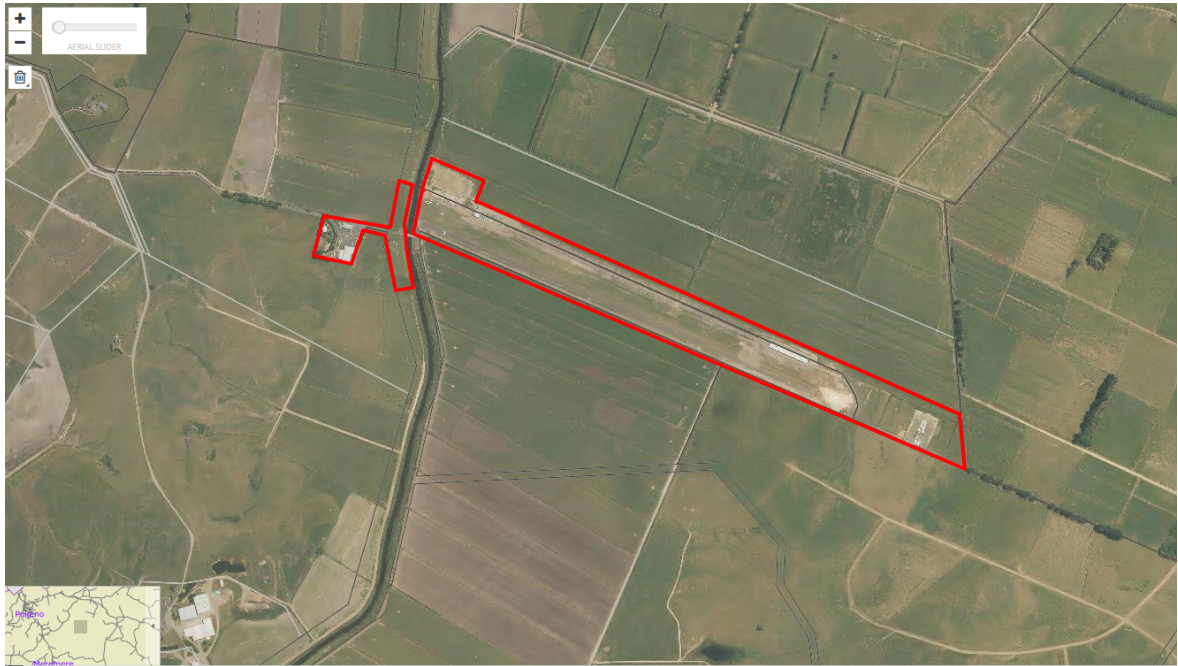
241. Mercer Airport is located approximately 6km northeast of Mercer Village, with Whangamarino Wetland to the east. Farming is the predominant surrounding land use, with a small number of dwellings in the immediate vicinity. The physical address of the site is 590B-D Koheroa Road, but is legally described as Lot 1 DP 485184, Lot 2 DP 485184 and Lot 1 DP 384812.
242. Mercer Airport is a combination of airport-owned land and leased land. The leased land occupied by the airport is located to the north and east of the existing runway. Approximately 100 metres of the eastern end of the 1190m runway extends onto leased land<sup>84</sup>. Development includes the runway, hangars (containing aircraft maintenance activities), administration buildings and a backpacker hostel.
243. Mercer Airport straddles the Kopuera stream, with buildings associated with the airport on the western side of the stream and the runway on the eastern side of the stream. The Airport is accessed via a multiple-use right of way off Koheroa Road before becoming a private right of way which connects to the airport. The multiple-use right of way is approximately 20m wide and is approximately 1km long. The maps below show the location and layout of the Mercer Airport.

*Figure 8 – Parcels of land outlined in red where a change of zone is sought from rural zone to ‘Mercer Airport zone’.*



<sup>84</sup> Submission 921 made by BBO at page 9

Figure 9 – Aerial photo of land requested where a change of zone is sought from rural zone to “Mercer Airport zone’.



244. Mercer Airport currently operates under resource consent (LUC0063/12) issued in May 1996 for the establishment and operation of an airfield and short-term accommodation on a rural property. A notified variation to the 1996 consent was the subject of two submissions, a Council hearing and an appeal to the Environment Court. The Environment Court issued a consent order dated the 3rd of March 2014 that provides for the following activities, subject to conditions:
- (a) Skydiving
  - (b) Flight training
  - (c) Light commercial air work
  - (d) Hangars for the garaging and maintenance of light aircraft
  - (e) Backpackers with accommodation, café and light meals
  - (f) Engine testing facility for Rocketlab.
245. Conditions imposed on the operation of Mercer Airport, include:
- (a) Aircraft activity is not to exceed an average of 100 movements per day averaged over a rolling 3-month period;
  - (b) Aircraft movements are to be confined between the hours of 7am to 10pm;
  - (c) The runway length is not to exceed 1360m; and
  - (d) The airfield is to operate in a manner which ensures that no aircraft will have to fly over any dwelling at a height of less than 250m.
  - (e) A requirement for aircraft noise not to exceed the 55dBA Ldn contour as stipulated by Hegley Acoustic Consultants in Figure 3 of Report 9387 dated July 2013.
  - (f) Traffic numbers limited to 60 vehicles per day (60 movements in and 60 movements out).
246. The submission made by Mercer Airport [921.1 and 921.2] is to change the zone of land owned, occupied and leased by Mercer Airport from 'Rural' to a specific 'Mercer Airport Zone', to insert objectives, policies and methods; to include requirements for acoustic

insulation, an Air Noise Boundary (65 dBA Ldn contour) and Outer Control Noise Boundary (55dBA Ldn contour) for Mercer Airport; and include an Obstacle Limitation Surface (OLS) for Mercer Airport, together with consequential rules regarding height control for buildings, structures and trees.

247. In analysing the submission I have considered the National Planning Standard (the Standards) criteria for a 'Special Purpose Zone' and the zone names and descriptions. The RMA definitions of 'airport' and 'network utility operator'; and the mandatory requirements for Airport noise management and land use planning<sup>85</sup> also provide context for the change sought.

### **RMA definition and National Planning Standards**

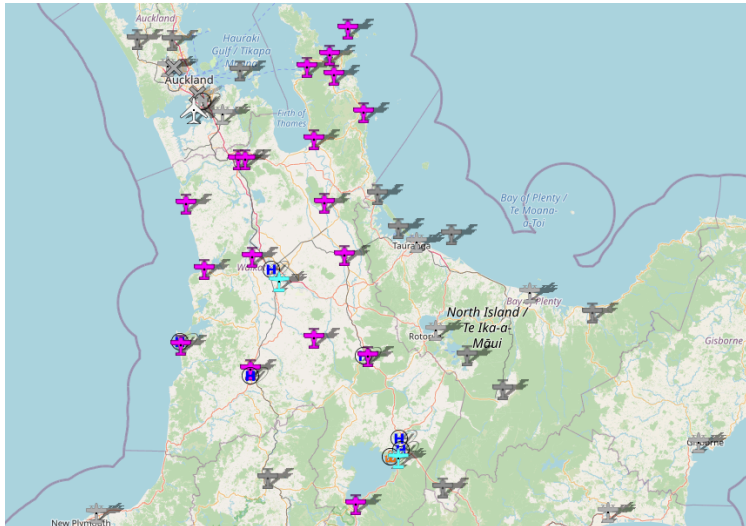
248. The RMA definition of an airport would include all airports and landing strips in the district irrespective of size. The RMA definition of 'airport' is "*any defined area of land or water intended or designed to be used, whether wholly or partly, for the landing, departure, movement, or servicing of aircraft*". This is a catch-all definition that includes everything from a farm topdressing strip to Auckland International Airport.
249. The National Planning Standards provide a standard format for district plans across New Zealand. The Hearings Panel has indicated that it wishes to adopt the National Planning Standards approach where possible during the current hearings. This report relies on the National Planning Standards defined terms (14 – Definitions) that were recommended for adoption in Hearing 5.
250. In addition to prescribing definitions that may be used in a plan, the National Planning Standards prescribes the zones that may be used in a district plan. These include a Special Purpose Zone: Airport Zone. The Special Purpose Zone is "*... Areas used predominantly for the operation and development of airports and other aerodromes as well as operational areas and facilities, administrative, commercial and industrial activities associated with airports and other aerodromes.*"
251. The 'Airport zone' in the Standards also identifies activities, which in themselves have very broad definitions. A commercial activity is defined in the Standards as "*... any activity trading in goods, equipment or services. It includes any ancillary activity to the commercial activity (for example administrative or head offices).*" An industrial activity is defined in the Standards as "*... an activity that manufactures, fabricates, processes, packages, distributes, repairs, stores, or disposes of materials (including raw, processed, or partly processed materials) or goods. It includes any ancillary activity to the industrial activity.*" Ancillary activities are defined as "*... an activity that supports and is subsidiary to a primary activity.*"
252. It is my opinion that a Council may use the 'special purpose airport zone' where that may assist the Council to carry out its functions to achieve the purpose of the RMA, and the RMA section 32 evaluation supports the proposed objectives, policies and methods of implementation in that zone. I consider that the Special Purpose Zone: Airport Zone in the Standards is more appropriate for airports servicing commercial aircraft that are large-scale and have a 'port' function that provides transport for freight and passengers. In my opinion, the special zone is not suitable for all areas used by aircraft, given the differences in the type of aircraft, and nature and scale of runways in rural environments that may be used for landing and take-off by aircraft.

---

<sup>85</sup> 'New Zealand Standard 6805:1992 – measurement only

253. In the context of the region, Mercer airfield is one of many. 'Our airport.com' identifies 27 airports of various sizes in the wider Waikato region that range from rural landing strips through to airports offering freight and passenger transport services.

*Figure 10: indication of the number of airfields and landing strips in the region*



254. In my opinion it would be useful to add a definition to distinguish between an airport and a smaller airfield, or landing strip, and only apply a Special Purpose zone: Airport zone to those airports that have satisfied certain certification and regulatory requirements of the CAA; or that serve a 'transport' function and are a complex of runways and buildings for the take-off, landing, and maintenance of civil aircraft, with facilities for passengers. There is no scope in the submissions to add a definition that differentiates between airports based on their public and commercial services, use for transit of people and goods, or scale.

## **Proposed District Plan policy direction**

### **Rural Zone**

255. The Mercer Airport is in the Rural Zone of the proposed plan. I have provided a broad outline of the policy approach in the Rural Environment Zone provisions in the proposed plan in the Overview of the Topic at paragraphs 17 to 20 above.

### **Noise and Vibration**

256. Noise levels are dealt with in the rules and activity-specific standards for each zone. Noise and vibration in the rural zone is dealt with in proposed Policy 5.3.15. The rules proposed for the rural zone are in Chapter 22 – Rules 22.2.1.1 to 22.2.1.3. The proposed permitted activity rules in the rural zone allow farming noise and noise generated by emergency generators and emergency sirens, and permitted activity Rule P2 has the standards allowing noise generated by land use activities.
257. I understand that the noise profile for rural land use is different in frequency and character from an airport, and also differs for different types of aircraft. There are specific noise mitigation measures associated with those airports that are identified in the proposed plan.
258. Appendix I in the proposed plan deals with acoustic insulation in areas with defined noise control boundaries and buffers, including Waikato Regional Airport and the Te Kowhai Aerodrome.

## Te Kowhai Airpark proposed plan and Variation I

- 259. The submissions make reference to the notified plan provisions for Te Kowhai Airpark and seek to follow that example.
- 260. Te Kowhai Airpark provisions were included in the PWDP when it was notified in 2018. Submissions were received which are dealt with in a separate RMA section 42A report. As notified, proposed plan Chapter 9 Specific Zones contains the objectives and policies for Te Kowhai Airpark, and Chapter 27 contains the relevant rules.
- 261. Appendix I deals with Acoustic insulation requirements for specific airports, based on the air noise contours generated by the aircraft.
- 262. Appendix 9 has the Obstacle Limitation Surfaces for Te Kowhai Airfield, based on the runway strip as described in that appendix. The maps in Appendix 9 establish a number of precincts that manage activities within the Te Kowhai Airfield zone: Precinct A - Runway and Operations, Precinct B – Commercial, Precinct C - Medium Density Residential and Precinct D - Residential Precinct.
- 263. The proposed plan deals with noise from the Te Kowhai airpark in the activity-specific conditions and rules in each of the relevant zones. The Te Kowhai Airpark Zone (Chapter 26), Rural Zone Chapter 22 and Village Zone (Chapter 24) contain rules requiring insulation of noise-sensitive activities and height restrictions under the OLS around that airfield. The section 42A report for Te Kowhai recommends modifications to many of these rules in response to submissions. To the extent that the submission seeks provisions that are modelled on Te Kowhai, any changes made to Te Kowhai might also be appropriate to the consideration of a special zone for Mercer Airport.

## Plan provisions sought

- 264. Submission 921.I sets out the detailed provisions sought for a Specific zone - Mercer Airport. These include objectives, policies, an Obstacle Limitation Surface (OLS) and air noise boundaries. I discuss those in my analysis below.

## Analysis

- 265. Submission 921.I is that a Specific zone: Mercer Airport is needed to make more sustainable use of the Mercer facility and to undertake additional activities in the future that are not currently authorised by the existing resource consent or permitted in the Rural Zone. The submission is that a Specific Zone: Mercer Airport is consistent with the approach taken in the proposed plan for the Te Kowhai aerodrome, to the extent that it supports and protects the aviation community.
- 266. The planning tools in the proposed plan that apply in the proposed Specific Zone Te Kowhai Aerodrome have been the subject of a notified variation to the proposed plan, and the details of the proposed provisions are the subject of submissions and recommended amendments by the RMA section 42A report writer.
- 267. There were no further submissions made on the submission made by Mercer Airport [921.I and 921.2]. There was one further submission made by *Mercer Airport [FS1302]* on the submissions made by Mercer Residents and Ratepayers Committee [367.15] and [367.30].
- 268. The ability for the neighbouring landowners and the community to express their views on the 'Special zone: Mercer Airport' and provisions sought in submissions [921.I, 921.2, 367.15 and 367.30] was limited to the opportunity to make a further submission. Other than a further submission made by Submitter 921, there were no further submissions received. In my



opinion, the lack of further submissions is not an indication of support or opposition of the community.

269. Based on the regulatory history of the airport, there are indications that land owners and potentially the wider community may have a view on the activities, scale and operation of the Mercer airport and relevant planning controls needed to manage adverse effects. I consider that the concerns raised through the notified consent process and the level of regulation arising from the Environment Court consent order can inform the regulatory approach needed to manage effects on the community in the proposed plan.
270. After the submissions on the proposed plan had closed and evidence was received from the submitters, the Council received letters from landowners and residents on Koheroa Road and surrounds in the districts of Mercer and Mangatāwhiri; and from the Kopuera Land Company Limited ("KLCL") that raise the concerns about the potential effects from an increase in activities at the airfield.
271. The letter from the landowners and residents on Koheroa Road and surrounds raise the following concerns:

#### **Number and frequency of planes**

- (a) that any increase will affect the noise and amenity of their properties
- (b) there is no limit on any other plane or helicopter movements
- (c) there is no limitation on circuit training
- (d) the range of aircraft is much broader, including fixed wing, helicopters, jets and rockets, which have considerably different acoustic characteristics and flight paths from the Catalina and the current consented fixed wing aircraft using the airport
- (e) that any extension to the consented hours will affect sleep
- (f) weather-related safety risk for aircraft operations, and this risk is intensified with the increase in aircraft movements
- (g) proximity to the wetland and that an increase in aircraft movement and noise risks scaring the birds, which heightens the risk of bird strike
- (h) that any increase in the number of flights will affect the quiet enjoyment of living in the countryside.

#### **Vehicle movements**

- (a) that an increase in traffic movements will have safety effects on Koheroa Road. Increased movements will affect the safety of users of Koheroa Road, in particular, school buses which collect and drop off children along Koheroa Road.
- (b) increases in non-rural road users, and in particular tourists to the airport, creates significant additional safety concerns, as Koheroa road is regularly used by farm vehicles including tractors and machinery.

#### **Obstacle limitation surface area**

- (a) Concerns that existing trees would need to be substantially trimmed to accommodate the obstacle limitation surface area. There is currently no obstacle limitation surface embedded in the District Plan for the Airport. The obstacle limitation surface area substantially affects the development of any trees or structures on the adjacent properties to varying degrees depending on location. This has a negative economic impact and constrains any further development we may wish to undertake.

- (b) Duck shooting is both a recreational and necessary activity, that may intrude into the obstacle limitation surface and/or conflict with aircraft safety and movements.
- (c) The ability to use drones for every day jobs on the surrounding farms would be impossible under the proposed height limitation surface area and has the potential to be at risk from interfering with aircraft flightpaths. This prevents the use of such tools to future proofing the management and monitoring of the farms.
- (d) The height above Moturiki Datum for the obstacle limitations surface area is missing from Appendix 13 of the proposed provisions, making it impossible to understand exactly how this affects our properties.
- (e) The imposition of obstacle limitation surface area and noise contours will decrease the value of our properties significantly.

### **Groundwater and flooding**

- (a) The additional development proposed for the Airport will require onsite wastewater treatment systems in an area with a very high groundwater level, and there is potential for contamination of the groundwater and the risk of contamination of the Kopuera Stream.
- (b) Additional impermeable surface associated with additional buildings on the airport will decrease the level of infiltration and increase the frequency and duration of flooding. It is common for the Motukaraka drainage area to be affected by high water levels due to a large catchment area being channelled to the single pump station at the end of the Kopuera stream creating backlog flooding.
- (c) Concerned at the increased risk to people and property from flooding, in terms of the planes housed in the hangars, as well as any additional dwelling accommodation the Airport may construct.
- (d) Concerned that essential Mechanical cleaning of the drainage canal (Kopuera stream) will intrude into the obstacle limitation surface, current Resource consent condition Schedule 1 k.
- (e) Notified Proposed Waikato District Plan (Stage 2) planning maps due to the presence of an existing stop bank for flooding and is still subject to flooding which will worsen with effects of climate change. If there was a breach to the stopbank flood waters up to 3.6m in depth could occur across the area. We do not consider that the airfield operation such that as proposed by the expansion and new rules by Mercer airport would be a suitable or compatible activity in such a high risk flooding area and given the depths of potential floods.
- (f) We are concerned at the increase in the storage of aviation fuel that the rules enable and the increase in combustion risk, as well as increased potential for contamination of groundwater.

### **Cumulative effects**

- (a) Concerned at the large number of people affected by the obstacle limitation surface
- (b) That there are all adverse effects, and no positive effects for the neighbours arising from the submission.

272. The letter received from Kopuera Land Company Limited (“KLCL”) raises similar concerns, and the following matters:

### **Noise-related amenity effects**

- (a) That the evidence produced by Mr Hegley has shown modelling for significant higher noise limits and has included modelling for types of aircrafts which are significantly different to the consented activities.
- (b) The proposed “Outer Contour Boundary” is just clear of a cluster of dwellings.
- (c) Any increase in noise from the limits set by the resource consent will create adverse effects on the amenity of the KLCL property and any ambient noise levels experienced. The use of a “notional boundary” to measure noise limits, does not take into account noise experienced when working outside, and only ensures noise at the dwelling house is appropriate.
- (d) That there appears to be no limit on aircraft (or Rocket Lab) activities in the PMAZ.
- (e) That unlimited noise from MAL is inconsistent with section 16 and 17 of the RMA which place a duty to avoid, remedy or mitigate against any unreasonable effects (including noise).

### **Traffic concerns, ownership and use of the Right of Way**

- (a) KLCL are joint owner of the access used by MAL. For clarity MAL do not access their property directly from a public road. MAL have a “right of way” (“ROW”) easement over KLCL land. The proposed increase in traffic is substantial (more than double) the consented limit.
- (b) The increase in traffic movements will generate additional noise which will create adverse effects on KLCL property.
- (c) Any works to create a suitably standard of access would be significant and well beyond what is being proposed in terms of passing bays and speed signs etc.

### **Cumulative effects on amenity**

- (a) The combined increase in aircraft movements, hours of operation and removal of noise limitations (or even using the contours as a predicted noise limitation) will significantly impact on amenity. Furthermore, there is no restriction imposed on the hours of operation of any other activity which is permitted to occur on the MAL site.
- (b) The current consent limits the height of aircraft over dwellings to no less than 250m, but there are no similar limitations nor is there any justification for deletion of this provision or the effects on properties associated with it. The loss of this restriction combined with the proposed increased in aircraft movements, types of aircrafts and lack of any restriction on hours of operation creates further potential for cumulative effects on the amenity of KLCL land.
- (c) Concerns that night time vehicle movements and flights will have adverse effects.

### **Loss of development rights and noise contours**

- (a) The noise contours will place additional costs on the landowner and will sterilise part of the land when deciding on appropriate places to construct dwellings and/or farm workers accommodation.
- (b) Increased regulatory costs from any construction.

### **Obstacle Limitation Surface (“OLS”)**

- (a) KLCL is significantly concerned that it is unable to determine the full extent of any effects created by the proposed OLS as the evidence package does not include the height above Moturiki Datum for the obstacle limitations surface area in the proposed provisions, which makes it impossible to understand exactly how the OLS affects our property above the natural ground level.
- (b) There is currently no OLS in the resource consent approved by the Environment Court for the Airport.

**Other matters** raised include:

- (a) Use of future technology
- (b) Rural Character / Reverse Sensitivity on existing rural operations
- (c) Hazardous substances and discharge of contaminants
- (d) Impervious surfaces and stormwater management
- (e) Cumulative effects from the range of temporary activities on the site and safety risk
- (f) Existing Consent Compliance
- (g) Concerns with the proposed Mercer Airport provisions
- (h) Gaps in the section 32AA assessment.

### **Provisions sought in submissions for a Special Zone: Mercer Airport**

- 273. Submitter 921 (Mercer Airport) has provided detailed information in their submission on the provisions sought for a Specific Zone: Mercer Airport, land ownership and lease arrangements, operational background and existing physical environment of the airport.
- 274. Submission 921 is that the consent under which the airport currently operates imposes a number of operational constraints which are no longer appropriate for the ongoing use of the site; and that the limitation on vehicle movements is no longer considered appropriate relative to the aviation-related activities.

### **Objectives sought**

- 275. There are two objectives sought through Submission 921.  
 Objective 1 is *“Mercer Airport is able to operate safely and efficiently and is developed to meet the current and future needs of the aviation community.”*  
 Objective 2 is *“The adverse effects of airport activities are managed to ensure acceptable amenity outcomes.”*
- 276. The provisions of the plan are to assist the Council to carry out its functions, and the objectives in the plan are to achieve the sustainable management purpose of the RMA. In my opinion, this means that the outcomes expressed in the objectives should address both the operational needs of the airfield, and the actual and potential effects on people and the environment.
- 277. In my opinion, a special zone would place an emphasis on the operational requirements of the airport. The Specific Zones in the proposed plan are areas that contain unique facilities or distinctive values of RMA significance. In the case of the Te Kowhai Airpark zone, the provisions are tailored to the operation and development of Te Kowhai Airpark and are

needed as urban intensification occurs<sup>86</sup>, so that the aviation and aviation-related activities can co-exist with residential activity<sup>87</sup>.

278. I consider that the operational requirements of the airfield are reflected in the objectives sought by the submitter, but the potential effects are only managed "to an acceptable level". This is open to interpretation, and is likely to be read in light of the policies and rules sought by the submitter that establish a priority for the operational needs of the airfield, rather than having a focus on avoiding, remedying or mitigating effects on people and the rural environment.
279. If the outcomes were to control the potential effects on the rural environment in which the airfield is located, the outcomes that are expressed in the objectives should be to maintain the rural amenity and character, and control the potential effects on people and the environment from the operation of the airfield.

### Air Noise boundaries

280. The objectives sought by the submitter are implemented by an Obstacle Limitation Surface (OLS), and Air Noise boundaries that link to acoustic insulation requirements imposed on neighbouring properties. The submitter has provided technical evidence in support of the provisions sought.
281. Mr Hegley has provided detailed evidence on behalf of the submitter about the methodology and requirements for the air noise boundary. Mr Park has provided aviation-related evidence on aerodrome design, operational requirements, and CAA certification requirements for the safe operation of the airfield. Both Mr Hegley and Mr Park support the proposal for a Specific Zone, and the targeted rules and standards identified in the evidence of Mr Dawson.
282. The Air Noise boundary sought by the submitter increases the potential noise levels experienced in the surrounding rural area, when compared with the levels authorised by resource consent. I have set out the resource consent condition for noise, and the noise levels sought in the submission in the table below:

March 2014 resource consent order conditions	Submission 921.1
Aircraft noise is not to exceed the 55dBA Ldn contour as stipulated by Hegley Acoustic Consultants in Figure 3 of report 9387 dated July 2013.	Seeking an Air Noise Boundary (65 dBA Ldn contour) and an Outer Control Noise Boundary (55dBA Ldn contour) for Mercer Airport based on acoustic assessment by Hegley Acoustic Consultants dated October 2018

283. Terms used in the table above:

**dBA** is the unit of sound level which has its frequency characteristics modified by a filter (A- weighted) so as to more closely approximate the frequency bias of the human ear.<sup>88</sup>

<sup>86</sup> RMA section 32 report Te Kowhai Airpark Zone at page 4 [https://wdesitefinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/section-32-reports/s32---24-te-kowhai-airpark-section-notification-18072018.pdf?sfvrsn=9ded80c9\\_2](https://wdesitefinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/section-32-reports/s32---24-te-kowhai-airpark-section-notification-18072018.pdf?sfvrsn=9ded80c9_2)

<sup>87</sup> RMA section 32 report Te Kowhai Airpark Zone at page 5

<sup>88</sup> Marshall Day Acoustics Limited: Kapiti airport noise 2018 compliance monitoring report

**L<sub>dn</sub>** is the day night noise level which is calculated from the 24 hour L<sub>Aeq</sub> with a 10 dB penalty applied to the night-time (2200-0700 hours) L<sub>Aeq</sub><sup>89</sup>.

## Strategic direction

284. There are no strategic direction objectives and policies that specifically deal with airports or the special zones. The land uses associated with the airfield include aircraft maintenance and re-fuelling, which I consider to be industrial in nature. The airfield is not located in an area identified for industrial activities.
285. The airport is located in a rural environment. Submission 921.1 is that the special zone is needed to both provide for and manage the effects of the airport<sup>90</sup>. The airfield is currently consented, and conditions have been imposed to address the effects of the airport on the rural community. I have considered the two objectives sought in the submissions in light of the strategic direction in Chapter 5 Rural Environment in the proposed plan, rather than the strategic direction in Chapter 5 Urban Environment.
286. The strategic outcomes sought for the rural environment are to protect high class soils, support productive rural activities, and avoid urban subdivision use and development<sup>91</sup>. Rural character and amenity are to be maintained.<sup>92</sup> The list of consented activities at the airport do not directly support rural productive activities. The plan provisions sought in the submissions facilitate a potential increase in the nature and scale of effects, and seek a higher level of regulation over neighbouring rural properties to facilitate a non-rural use of the land.
287. Objective 1 sought in the submission promotes the needs of the aviation community. In my opinion, the submitter's Objective 1 clearly states the outcome sought for the airport. The submitter's Objective 2 is unclear about the outcomes sought for the amenity of neighbouring rural properties, and appears inconsistent with the strategic objective to maintain rural character and amenity.
288. Section 32 of the RMA requires an evaluation of whether the submitter's Objectives 1 and 2 are the most appropriate way to achieve the purpose of that Act. Section 5 of the RMA is to promote the sustainable management of natural and physical resources, which, among other things, is to enable 'people and communities' to provide for their well-being while meeting the requirements of subsections (a) to (c) of the Act. The airfield provides services to the flying community, but not to people and the community in general, and the effects on the environment are only avoided, remedied or mitigated to a degree.
289. The policies sought by the submitter to implement Objective 1 enable the safety, operation and development of the airport. The policies sought in the submission that implement Objective 1 include controlling development in the surrounding rural environment that may impact on the airport, which appear to me to be inconsistent with enabling the rural community to provide for its wellbeing and avoiding, remedying and mitigating effects on the environment. The OLS and noise mitigation measures proposed by the submitter would be imposed on the nearby landowners.

---

<sup>89</sup> Marshall Day Acoustics Limited: Kapiti airport noise 2018 compliance monitoring report

<sup>90</sup> Submission 921 'Objectives, Policies and Rules for Mercer Airport Zone' at page 13

<sup>91</sup> Proposed Objective 5.1.1

<sup>92</sup> Proposed Objective 5.3.1

290. The planning evidence provided on behalf of the submitter sets out a permitted activity rule, which includes a number of non-aviation related activities<sup>93</sup>. The controlled activities in that table include activities such as fuel storage, accommodation and water, stormwater and wastewater management. Controlled activities cannot be declined, and conditions may not be imposed that have the effect of declining an activity. Water supply, wastewater and stormwater discharges are matters for the regional plan, unless there are connections to Council reticulated services. In my opinion, these activities have the potential for adverse effects on the environment that are potentially significant and should be controlled by a restricted discretionary or discretionary activity. There is no clear link between the non-aviation and temporary activities in the rules, and the objectives and policies that they must implement. There is little guidance in the policies or objectives to assist decision-makers to manage the potential effects of non-aviation activities.
291. Objective 2 is limited to 'acceptable amenity outcomes', and the policies that implement Objective 2 are to mitigate the scale and intensity of onsite activities, noise, lighting and hazardous substances. There is no clear link between all of the matters in the submitter's Policy 2a and 2b and the submitter's Objective 2 in the submission that deals with amenity.
292. I have not further considered the submitter's policies or methods of implementation. As the policies and methods of implementation follow the objectives, I have concluded that the special zone sought for the Mercer Airport is inconsistent with the strategic direction for the surrounding rural zone. The land use is for an airfield of a relatively small scale, and current activities are provided for by way of a resource consent in the rural zone. In my opinion, the scale and significance of the activity does not suggest that a specific zone to recognise the land use is appropriate. The rural zone objectives and policies appropriately describe the outcomes sought for rural character and amenity, and productive land use, and can manage the potential effects on the community, as the environment court decision demonstrates. The change of zone as sought in the submission would increase the scale and nature of effects allowed through the district plan, and impose a higher level of regulation on the neighbouring properties.
293. The special zone and methods of implementation apply to the land use on the site, which is not rural in character. I understand that these are intended to include an increase in the activities associated with maintenance of light aircraft, flight training, and refuelling, as well as housing the Catalina aircraft with some interpretation/promotional material.
294. If the Panel are of a mind to accept the submission for a Specific Zone: Mercer Airport, it is my view that the objectives, policies and methods should align with those proposed for the Te Kowhai Airport, with the exception of the Te Kowhai precincts that allow for urbanised residential development. Te Kowhai is located in a more urbanised setting, while the Mercer Airfield is in a rural environment, therefore it is my view that a precinct for residential land use is not appropriate.

## Methods of implementation

295. Through the specific zone, and methods of implementation, Submission 921 seeks a higher level of regulation for activities on the neighbouring rural properties than the proposed plan. The submission is that the special zone: Mercer Airport, as sought in submissions, is to manage the effects of the airport on neighbouring properties, to provide for current and future aviation

---

<sup>93</sup> Planning evidence made by Mr Dawson on behalf of Mercer Airfield 29.1.1 Activity Status Table on page 3 of attachment 5



activities, and seeks to manage the effects of the airport through regulating activities on properties within an outer and inner noise boundary, an Obstacle limitation Surface (OLS), and acoustic insulation requirements.

296. Implementation of the objectives and policies sought in the submission rely on rules and an Obstacle Limitation Surface (OLS) and noise insulation requirements being imposed on neighbouring properties to manage some of the potential effects of the airfield operation. The OLS and noise insulation proposals can be considered independently of the proposal for a special zone. The operative District Plan has OLS and noise contours for Te Kowhai in the rural zone.

### **Obstacle limitation surfaces**

297. Submission 921 includes OLS design requirements for Mercer Airport. The OLS assessment by Airbiz Aviation Consultants is in Appendix 5 of the submission.
298. Obstacle limitation surfaces (OLS) enable aircraft to maintain a satisfactory level of safety in the vicinity of an airfield. In a district plan, these are expressed as rules that control the height of structures and vegetation on properties within the landing and take-off path.
299. Mercer Airfield has not operated with an Obstacle Limitation Surface to date, and the effect of including an OLS in the plan would place costs on the neighbouring properties while the benefits accrue to the airfield operators. Such constraints are usually justified by the services and public benefits that a facility confers. In the case of a private airfield, a public benefit is difficult to identify. I consider that the current operation of the airport is adequately provided for through the resource consent. The expansion of activities, or changes in the nature and scale of the activities can be provided for through the resource consent process, where more details of the potential effects can be identified and considered. I have concluded that the OLS should not be imposed through rules in the plan because the costs to the community of regulatory controls appear to outweigh the benefits of the airfield.

### **Air Noise Boundary**

300. The district plan cannot manage aircraft in flight, but it can control noise on landing and takeoff, and land use activities associated with the airfield such as the maintenance of aircraft. RMA section 16 contains a general requirement to avoid unreasonable noise, and is to adopt the best practicable options to ensure that the emission of noise from land does not exceed a reasonable level. The section 16 duty applies to the land use causing the noise, and there is no similar obligation to mitigate the effects of noise when new residential dwellings are placing in the receiving environment. The district plan can include provisions that regulate activities in order to address noise-related effects. The amendments recommended for the Te Kowhai Airfield Zone include noise-attenuating measures by the airport and similar provisions could be considered by the Panel if they are of a mind to accept the Special Zone.
301. In the proposed district plan noise levels associated with activities within specified precincts in the Te Kowhai Airpark zone are contained in Rules 27.2.6 and 27.2.7. Requirements for insulation for noise-sensitive activities and in the Waikato Regional Airport Outer Noise Boundary are contained in Appendix I: Acoustic insulation.
302. Submission 921 refers to New Zealand Standard NZS 6805 as the widely-accepted best practice for the control of airport noise and for establishing maximum acceptable levels of noise for the protection of community health. Two noise contours are used to identify noise exposure levels - an inner noise contour of 65 dB Ldn and an outer noise contour of 55dBA Ldn. The diagram below was provided in Submission 921 and shows the location of those noise exposure contours for the runway at Mercer Airport.

The proposed air noise contours for Mercer Airport are illustrated in Figure 4 below.

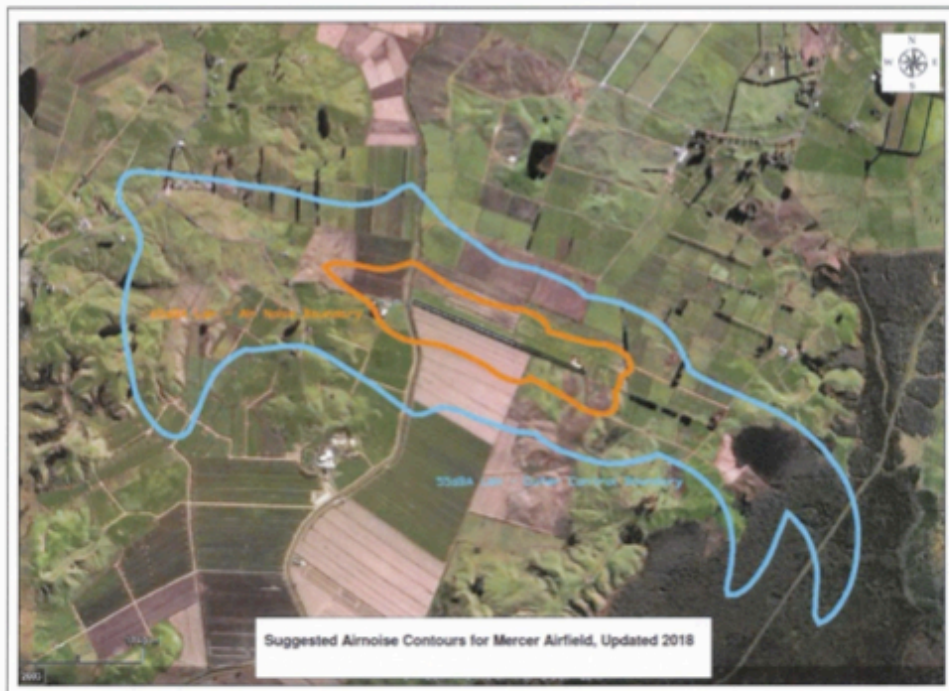


Figure 4: Proposed Noise Contours for 1360m Runway

303. Submission 921 also proposes a 65 dBA Ldn air noise boundary (the 'Air Noise Boundary') within which it is proposed that a Restricted Discretionary consent is required before a habitable building is constructed within that boundary<sup>94</sup>.
304. The 'public good' aspect of planning regulations should be considered. Based on the evidence provided, I am not satisfied that the degree of regulation over neighbouring properties is justified, in order to address a significant resource management issue and achieve the sustainable management purpose of the RMA. The costs and benefits fall unevenly on the community. The costs to the neighbouring land owners do not appear to outweigh the benefits provided to that community.

## Conclusions

305. My conclusion in relation to the request for noise contours is that the conditions imposed on the resource consent that deal with noise that have been tested in the Court should be retained.
306. I recommend that the submissions made by Mercer Residents and Ratepayers Committee [367.15 and 367.30] and Mercer Airport [921.1] be rejected, and the further submission made by Mercer Airport [FS1302] also be rejected, because the objectives and policies and methods of implementation in the submission for a Specific zone: Mercer Airport that require noise insulation and OLS impose a level of regulation on the rural community that is inappropriate in light of the strategic outcomes for the industrial and rural environment.
307. I have concluded that, even if it can be demonstrated that the OLS and noise insulation measures are appropriate and the costs to the community can be justified, it does not follow that a Special zone: Mercer Airport should be added to the plan to assist the Council to carry

<sup>94</sup> Submission 921 made by BBO at page 13

out its functions in order to achieve the purpose of this Act. The airfield is located in a rural zone, and it is evident that a resource consent can consider and manage the adverse effects, and can be obtained to provide for aircraft-related activities. I consider that retaining the rural zone in the plan will ensure that the activities in that zone are rural in character, in the event that the private airfield relocates elsewhere.

308. If the Panel are of a mind to accept the submission to add a Special Zone for Mercer Airport, I recommend that changes be made to the objectives and policies and rules to better align with Te Kowhai Airfield, and to ensure that the outcomes for rural amenity are maintained, the relationship with the rural zone provisions is clear, the policy gap for airport expansion is addressed in the policies and rules, and the permitted activity rules and standards re-enforce the consent order issued by the Environment Court, with the activity-specific standards requiring similar conditions for a permitted activity, set out below:

Activity	Activity-specific conditions
Aircraft operations including: <ul style="list-style-type: none"> <li>a. Skydiving</li> <li>b. Flight training</li> <li>c. Light commercial air work</li> <li>d. Engine testing facility for Rocketlab.</li> </ul>	<ul style="list-style-type: none"> <li>a. Aircraft activity is not to exceed an average of 100 movements per day averaged over a rolling 3-month period;</li> <li>b. Aircraft movements are to be confined between the hours of 7am to 10pm;</li> <li>c. The runway length is not to exceed 1360m; and</li> <li>d. The airfield is to operate in a manner which ensures that no aircraft will have to fly over any dwelling at a height of less than 250m.</li> <li>e. A requirement for aircraft noise not to exceed the 55dBA Ldn contour as stipulated by Hegley Acoustic Consultants in Figure 3 of report 9387 dated July 2013.</li> <li>f. Traffic numbers limited to 60 vehicles per day (60 movements in and 60 movements out).</li> </ul>
Aircraft maintenance and storage, including <ul style="list-style-type: none"> <li>a. Hangars for the garaging and maintenance of light aircraft.</li> </ul>	<ul style="list-style-type: none"> <li>a. The activity meets the building height and density standards in rural zone.</li> <li>b. Traffic numbers limited to 60 vehicles per day (60 movements in and 60 movements out).</li> </ul>
Non-airport related activities, including <ul style="list-style-type: none"> <li>a. Backpackers with accommodation, café and light meals.</li> </ul>	<ul style="list-style-type: none"> <li>c. Traffic numbers limited to 60 vehicles per day (60 movements in and 60 movements out).</li> </ul>

309. It may also be appropriate to include activity-specific conditions that control industrial activities, as well as non-airfield-related activities.
310. As there are no further submissions, there is a question as to whether there is any scope to amend the provisions as suggested in my paragraphs 269 and 270 above.

### Framework Report Three Lenses Assessment

311. The framework includes a three-lens method for s42A authors that can be used as a guideline when assessing and making recommendations on zoning submissions.

312. The first lens is an analysis of the proposal against the intent of the PWDP (the intent being indicated through relevant objectives and policies). The Panel directions record that "*Lens 1 is the incorrect legal test*"<sup>95</sup>.
313. Accordingly, I have considered whether the zone and characteristics of the subject land, along with the other considerations referred to in this report, would give effect to the higher-order planning instruments, and would assist the council to perform its functions and be efficient and effective in implementing the relevant objectives and policies in the PWDP, but do not use the three lens in the Framework report as a stand-alone or gateway test.

### **Decisions on other parts of the plan**

314. I have considered all three 'lenses', and have only considered Lens 1 in terms of internal consistency and the RMA section 32 requirement for the zone (as a method) to implement the objectives and policies of the plan as notified. The proposed plan includes a Specific Zone: Te Kowhai Airfield. The decisions on submissions on that zone may be relevant to the decisions sought for the Mercer Airfield.
315. I have considered the site-specific issues associated with the subject site and a change of zone from Rural to a Specific Zone: Mercer Airfield, together with OLS and noise insulation requirements. I have concluded that the change of zone would be inconsistent with the policies around urbanisation of rural properties outside of a growth area. The airfield is currently consented, and I agree that its current location is suitable for the nature and scale of activities currently occurring there under the conditions of a resource consent. It is not uncommon for activities such as an airfield to be 'out of zone' activities in the rural environment.

### **Higher-order planning instruments**

316. The district plan must give effect to the higher-order planning instruments. None of the higher-order planning instruments specifically deal with the unique characteristics of an airfield. The National Planning Standards allow a Special Purpose Zone: Airport Zone to be included in the plan. NPS-UD Policy 8 is not relevant to this change of zone. The RPS does not specifically deal with activities associated with an airfield (including commercial and industrial activities) in the rural environment that may be difficult to locate in other zones. The RPS deals with the productivity of rural land, and a special zone: airport is not incompatible with that outcome, depending on the nature of the services provided. While I consider that the activities enabled by the Special Zone: Mercer Airfield are like commercial and industrial activities in a number of ways, the zone is not inconsistent with any specific provisions in the RPS.

### **Good planning practice**

317. A Specific Zone: Mercer Airfield imposes costs and a higher degree of regulation on neighbouring rural properties. Consultation with the rural community and a cost benefits analysis needs to be addressed by the submitter. Good planning practice would usually result in a consistent approach between the objectives and policies that apply in the Special Zone: Te Kowhai Airfield, if the same outcomes are intended. A Specific Zone is not necessarily the most efficient way of enabling or controlling the effects of land use. In the event that safety concerns associated with the operation of the airfield need height controls through an OLS, and insulation requirements to manage noise effects, these can be included in the plan without a zone change from rural to a specific zone.

---

<sup>95</sup> Panel Minute and directions dated 15 March 2021

318. I consider that the costs and benefits fall unevenly. The costs to the local community do not outweigh the benefits to that community, and in my opinion the risk to the environment of acting to change the zone is high.
319. The airport is able to continue its current activities under its resource consent without special zoning. The zoning that is sought through the Mercer Airport submission would enable growth of the existing activities, such as flight training, maintenance and servicing aircraft, and potentially hours of operation. Including an OLS and acoustic insulation to manage noise contours, as sought by the submitter, would (to a degree) combat reverse sensitivity effects arising from future growth, but also impose costs on neighbours. Evidence does not justify these outcomes.
320. I have concluded that the operation of the airfield should be the subject of a detailed consent and assessment by a decision-maker through the consent process, and should not be enabled by a Specific Zone: Mercer Airfield. More detail is needed to justify the level of regulation over neighbouring properties as proposed by the submitter.
321. I consider that a rural zone is more appropriate to implement the objectives of the rural and urban environments, and achieve the purpose of the RMA.

### Other section 42 reports

322. In the event that the Panel accept the submissions seeking a Special Zone for Mercer Airport, consequential amendments would be needed to add references to the Mercer Airport provisions to ensure that the definitions, chapters and appendices are appropriately referenced.

### Hearing 5 – Chapter 13 Definitions

323. The definitions for the following terms were addressed within the s42A report for Hearing 5, and may be relevant to the additional Special Zone sought in submissions for Mercer Airport.

*Circuit training and flight training school*

*General aviation and recreational flying*

*Noise-sensitive activity.*

### Recommendations

324. For the reasons above, I recommend that the Hearings Panel:
- (a) **Reject** submissions made by Mercer Residents and Ratepayers Committee [367.15 and 367.30].
  - (b) **Reject** the submission made by Mercer Airport [921.1 and 921.2] and the further submission made by Mercer Airport [FS1302] to include a Specific Zone: Mercer Airfield together with an OLS and noise insulation requirements.

### Recommended amendments

325. No amendments are recommended to the rural zone in the proposed plan that applies to the Mercer Airport.

## 8 Special Zone: Corrections

### Submissions

Submission point	Submitter	Decision requested
496.10	Department of Corrections	Retain the provisions in the proposed District Plan as notified, other than the provisions addressed in the submission
FS1210	Department of Corrections	Allow submission 496.10 but add a Corrections Zone to replace the rural zone over the Springhill Corrections Facility (SHCF)

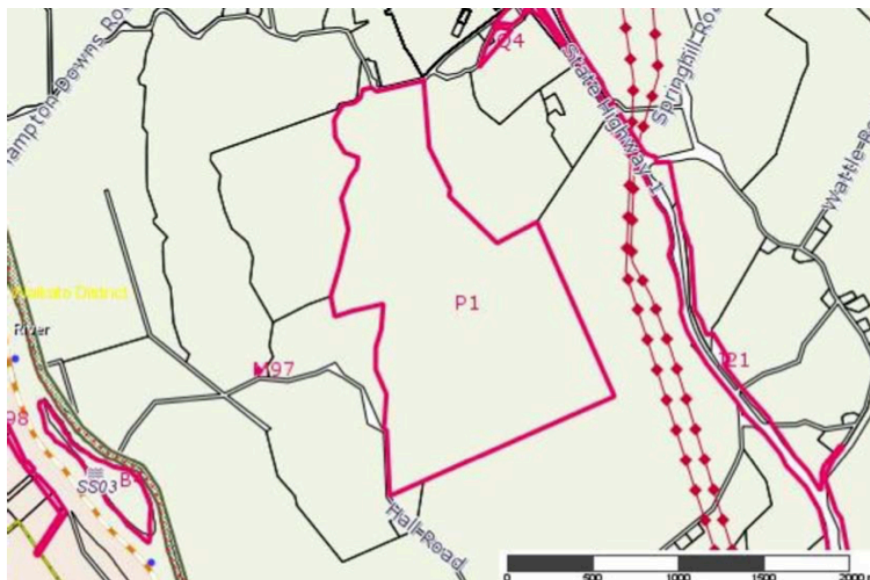
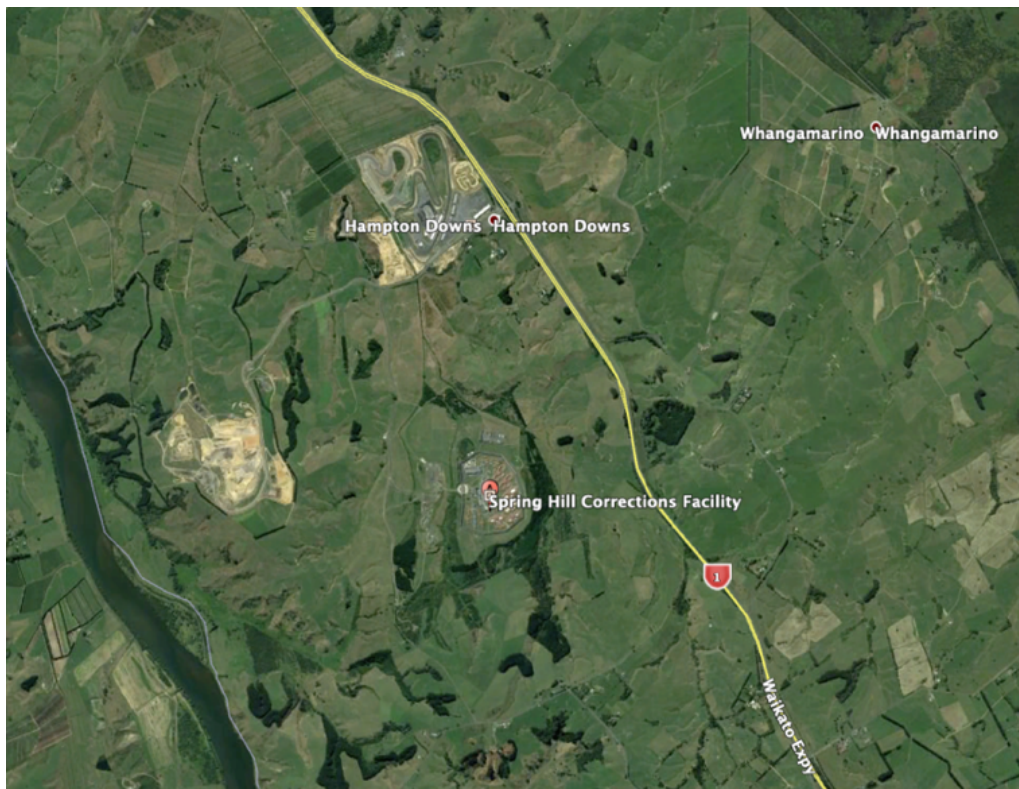
326. This report only deals with the submission and further submission that seeks a Special Zone: Corrections.
327. Submission 496.10 made by the Department of Corrections is to retain the provisions in the proposed plan, other than those made in the Department's submission.
328. The further submission made by *Department of Corrections [FS1210]* is to add a Special Zone: Corrections to replace the Rural Zone over the Springhill Corrections Facility (SHCF). The further submission outlines the plan approach, but does not include the Objectives, Policies, or Methods of Implementation.
329. Springhill Corrections Facility (SHCF is located on a 215 hectare site near Meremere). The land that is the subject of the Department's submissions is designated in the operative district plan also the subject of a Notice of Requirement for a Designation rolling it over into the proposed plan. I understand that the Department of Corrections sought that the existing designation be inserted into the proposed plan with modifications. The Notice of Requirement for a Designation is dealt with in the section 42A report prepared by Ms Macartney in Hearing 15 section 19 on pages 72 to 75<sup>96</sup>.

---

<sup>96</sup> RMA section 42A report for hearing 15 prepared by Jane Macartney dated 20 April 2020 at paragraphs 213 to 230 on pages 72 to 75 [https://wcdsitetfinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/hearings/hearing-15/section-42a/proposed-district-plan-hearing-15---designations-s42a-report.pdf?sfvrsn=aebd89c9\\_2](https://wcdsitetfinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/hearings/hearing-15/section-42a/proposed-district-plan-hearing-15---designations-s42a-report.pdf?sfvrsn=aebd89c9_2)



Map 5: Location of Springhill Corrections Facility



Extent of Spring Hill Corrections Facility Designation (P1)

330. As shown in the maps above and below, the area of land held by the Department of Corrections that is the subject of the Notice of Requirement for a Designation is much larger than the area within the secure parameter of Springhill Prison.
331. The red outline on the map below shows land held by the Crown for Corrections purposes.



Source: Planning evidence of Mr Grace



### Evidence lodged

332. Planning evidence was received from Ara Poutama Aotearoa (The Department Of Corrections) dated 17 February 2021. The planning evidence outlines the designation for SHCF, the potential for a Special Zone: Corrections identified in the National Planning

Standards, and contains the planning provisions sought by the Department through the Corrections Zone, together with an RMA section 32 evaluation. The Department of Corrections evidence is that there are similarities between SHCF and Rolleston Prison, and identifies a house refurbishment programme as an existing activity teaching building trade skills to inmates. The Department of Corrections does not provide information about the area of, or number of inmates at, each prison, or the proximity to other residential areas to assist with a comparison.

333. The Department of Corrections discusses the building coverage and noise, light and glare requirements in the rural zone<sup>97</sup>, and states that the special zone is “*To provide certainty for the Department around the continuing ability to undertake such activities, a permitted activity status is sought, subject to meeting the Rural Zone standards as well as specific standards around the hours that deliveries can occur and machinery operated*”<sup>98</sup>.
334. Other land uses that are discussed by the Department of Corrections include the potential for future community corrections facilities and housing, rehabilitation and support in residential accommodation. The evidence is that the Department is seeking a permitted activity classification for those activities within a Special Zone. The evidence of the Department of Corrections does not discuss the objectives and policies sought, however this is evaluated in the RMA section 32 report attached to his evidence. The option of amending the Notice of Requirement for a Designation to specify future community corrections facilities and housing, rehabilitation and support in residential accommodation, is not evaluated.

## Analysis

### Scope and Natural Justice matter

335. The original submission [496.10] is a general ‘catch all’ submission in support of retaining the proposed plan as notified. The further submission goes beyond the original submission, particularly in the scope of the relief sought, and rather than supporting or opposing the original submission, the further submission seeks the addition of a Special Zone: Corrections.
336. The further submission made by the Department sought a new Special Zone: Corrections. I consider that it is arguable whether there is scope in the submission and further submission to include a Special Zone: Corrections in the plan; and I also have a natural justice concern.
337. It is my understanding that the submission and further submission process in RMA Schedule 1 is to allow people an opportunity to make a submission and present their case where their interests and rights may be affected by a decision-maker. The introduction of a Special Zone: Corrections through the further submissions process has not provided people with the ability to engage in the planning process on the matter. The detail of what is being sought was provided in planning evidence dated 17 February 2021. Only people that have made a submission may speak on that matter at the hearing, and apart from the development of the National Planning Standards, there has been no opportunity for the public to comment on a Special Zone: Corrections.

### Risk of acting where there is uncertainty or insufficient information about the provisions (RMA s32(2)(c))

338. In my opinion, the further submission made by the Department does not include sufficient detailed drafting of the objectives, policies and methods being sought in order for a further

---

<sup>97</sup> Planning evidence of Sean Grace for the Department of Corrections at para 5.4 on page 7

<sup>98</sup> Planning evidence of Sean Grace for the Department of Corrections at para s5.9 and 5.10 on page 8

submitter to evaluate or understand the efficiency and effectiveness of the new zone. Detailed objectives, policies and rules sought by the submitter are presented in Appendix I in the evidence of the Department of Corrections.

339. In my experience, the land use in and around SHCF can be understood in two parts. One part where corrections activities occur in a secure environment that fit squarely within the Notice of Requirement for a Corrections facility, and the other part where activities such as training for work and less clearly-defined activities require resource consents under the relevant provisions of a district (and regional) plan. The rural zone provisions in the proposed plan apply to those activities that are not clearly within the relevant Notice of Requirement for a Designation for Corrections activities. The land use that occurs on the surrounding Crown-held land outside of the secure fence tends to be of a rural nature, including work experience related to farming, such as crops and dairying; and more recently has included other trade-related activities.
340. The corrections facility is located in a rural area, and activities undertaken for corrections purposes are provided for in the Notice of Requirement for a Designation. I consider that the proposed rural zone provisions remain appropriate for the other activities that are not for 'Corrections purposes'.
341. I recommend that the Panel accept submission [496.10] made by Ara Poutama Aotearoa (Department of Corrections) and reject the further submission [FS1210] to add a Special Zone: Corrections to replace the Rural Zone over the Springhill Corrections Facility (SHCF).

### **Framework Report Three Lenses Assessment**

342. The framework includes a three-lens method for s42A authors that can be used as a guideline when assessing and making recommendations on zoning submissions.
343. The first lens is an analysis of the proposal against the intent of the PWDP (the intent being indicated through relevant objectives and policies). The Panel directions record that "*Lens 1 is the incorrect legal test*".<sup>99</sup>
344. Accordingly, I have considered whether the zone and characteristics of the subject land along with the other considerations referred to in this report, would give effect to the higher-order planning instruments, and would assist the council to perform its functions and be efficient and effective in implementing the relevant objectives and policies in the PWDP, but do not use the three lens in the Framework report as a stand-alone or gateway test.

### **Decisions on other parts of the plan**

345. I have considered all three 'lenses', and have only considered Lens 1 in terms of internal consistency and the RMA section 32 requirement for the zone (as a method) to implement the objectives and policies of the plan.
346. A Notice of Requirement for a Designation provides for the SHCF, and the rural zone provisions only apply to those activities that do not fall within the designation. The recommendation of the Panel, and the final decision of the Requiring Authority on the designation, may have implications for activities provided for, and the effectiveness or otherwise of a Special Purpose Zone: Corrections (SHCF).

---

<sup>99</sup> Panel Minute and directions dated 15 March 2021

347. Neither the plan as notified nor the original submission include details of the objectives, policies and rules sought for a Special Zone: Corrections. I consider that there is a natural justice matter that needs to be considered, particularly as the types of activities occurring on the site were known to Corrections when the plan was notified, and there are alternatives such as modifying the Notice of Requirement for SHCF to include those activities.

### Higher-order planning instruments

348. The proposed plan must give effect to the higher-order planning instruments. The National Planning Standard does make provision for a Special Zone: Corrections, but does not contain the detailed objectives, policies and methods. As there was no mandatory direction, I assume that the intention was for these to be developed and tested through the RMA Schedule 1 process. The NPS-UD Policy 8 is not relevant to this change of zone. The strategic approach in Future Proof and Waikato 2070 directs growth elsewhere.

### Good planning practice

349. I consider that the natural justice aspect needs to be considered with the Special Zone and associated provisions being introduced through evidence rather than the RMA Schedule 1 process, or providing for the activities through modifying the designation.
350. I have concluded that introducing a Special Zone: Corrections through a future plan change process would provide time to refine the objectives, policies and rules sought by the submitter, and would be more appropriate and good planning practice.
351. I consider that the scope to include a Special Zone Corrections relies on a weak submission point, and that the community has not had an opportunity to make submissions on the provisions. I consider that the NOR provides for Corrections purposes, and that the proposed rural zone is appropriate for managing the activities that require consent because they are not included in the NOR.

### Recommendations

352. For the reasons above, I recommend that the Hearings Panel:
- (a) **Accept in part** the submission [496.10] made by Ara Poutama Aotearoa (Department of Corrections) to retain the provisions in the proposed plan that are not specifically addressed in the submission.
  - (b) **Reject** the further submission made by Ara Poutama Aotearoa (Department of Corrections) [FS1210] to add a Special Zone: Corrections to replace the Rural Zone over the Springhill Corrections Facility (SHCF).

### Recommended amendments

353. No amendments are recommended to the rural zone in the proposed plan that apply to the Springhill Corrections Facility (SHCF).

## 9 Conclusion

354. I consider that the submissions that seek a change from the Rural Zone to another zone should be accepted, accepted in part or rejected, as set out in **Appendix I** for the reasons set out above.
355. In summary, I have concluded that :
- (a) an extension to the Mercer Village to include Lot 9 DP 461781 Koheroa Road, Mercer, as discussed in Section 4 of this report, is not the most appropriate zone, given the distance from the village, physical characteristics of the site, the planning constraints that include transmission lines, and the lack of planned growth and infrastructure. I have also concluded that there remains capacity within the Village Zone that has the potential to achieve the positive outcomes identified in the submitter's evidence. I have not recommended a change from the proposed Rural Zone as a result of the submission and further submissions.
  - (b) a change to a Business or Industrial Zone for 25 Island Block Road, Meremere, as discussed in Section 5 of this report, is not the most appropriate zone, given the characteristics of the site that include a flood risk, the distance from the urbanised area of the village, a lack of planning for trade waste and other infrastructure, and risk of a discharge of containments and proximity to a RAMSAR wetland and the Waikato River. I also consider that a change in zone would fail to give effect to the RPS, and the Vision and Strategy for the Waikato River. I have not recommended a change from the proposed Rural Zone as a result of the submission and further submissions.
  - (c) an extension to the Hampton Downs Motor Sport and Recreation Zone to include Lot 6 DP 411257 at Hampton Downs Road, as discussed in Section 6 of this report. I have concluded that a Special Zone should have a clear relationship with the purpose of the zone (in this case the motor sport park), and that a change in zone would fail to give effect to the RPS provisions that deal with growth strategies and are to manage the location of industrial activities in strategic hubs. I have not recommended a change from the proposed Rural Zone as a result of the submission and further submissions.
  - (d) a Special Zone: Mercer Airport, together with Obstacle Limitation Surface (OLS) and noise insulation requirements for activities on land surrounding Mercer Airfield at Koheroa Road, Mercer, as discussed in Section 7 of this report, has the potential to impose unreasonable regulatory costs on the owners of the neighbouring properties, and changes to the range, nature and scale of activities associated with the use of the airfield can be provided for by the Rural Zone through the consent application process. I have not recommended a change from the proposed rural zone as a result of the submission and further submissions. I have not recommended a change from the proposed Rural Zone as a result of the submission and further submissions.
  - (e) a Special Zone: Corrections for land at the Springhill Corrections Facility, as discussed in Section 8 of this report, because the further submission and evidence goes further than the original submission made by the same submitter, and activities for corrections purposes at the corrections facility are provided for through the NOR. Only activities that require consent are subject to the relevant zone. I have concluded that as the corrections facility is located in a rural environment, and a significant proportion of the site is used for farming and ancillary activities, a rural zone is appropriate. I have not recommended a change from the proposed Rural Zone as a result of the submission and further submissions.
  - (f) I have concluded that the above recommendations provide for subdivision, use and development that are within the functions of the district council, that the Rural Zone

and the Specific Zone: Hampton Downs Motor Sport and Recreation Zone, as notified, give effect to the higher-order planning instruments, and the zones as notified are efficient and effective in implementing the relevant objectives.

Yvonne Legarth

**Appendix 1: Table of submission points**

See separate Appendix 1 document.

**Appendix 2: Recommended amendments**

No change from the rural zone is recommended as a result of the submissions

**Appendix 3: Technical Reports**

There are no technical reports prepared for the Council.

**Appendix 4: Letters from land owners in respect of the Mercer airport zone sought by submitter 921**

See separate Appendix 4 document.