

BEFORE THE INDEPENDENT HEARINGS PANEL
THE PROPOSED WAIKATO DISTRICT PLAN (STAGE 1)

UNDER the Resource Management Act 1991 (**RMA**)

IN THE MATTER OF A submission by the Ministry of Education on the
Proposed Waikato District Plan – **Hearing 7**
– **Industrial**

BY **THE MINISTRY OF EDUCATION**

Submitter

STATEMENT OF PRIMARY EVIDENCE OF KEITH FRENTZ ON BEHALF OF
MINISTRY OF EDUCATION

Planning

Dated: 9 December 2019

1. INTRODUCTION

- 1.1 My full name is Keith Frentz. I am a Technical Director (Planning) in the firm of Beca Limited (**Beca**).
- 1.2 I have the following qualifications:
- (a) Bachelor of Science in Land Surveying from Otago University; and
 - (b) Masters of Social Science (Honours) in Resource and Environmental Planning from Waikato University.
- 1.3 I am a full member of the New Zealand Planning Institute.
- 1.4 I have over 40 years' experience. My experience has included extensive experience in preparing and processing consent applications for both Councils and private clients. I have been responsible for the preparation of District Plans, Plan Changes and Structure Plans for local authorities and preparing Notices of Requirement, Outline Plans and Resource Consent applications for the Ministry of Education (**the Ministry**).
- 1.5 My statement sets out planning evidence on behalf of the Ministry in relation to the Ministry's submission points 781.24, 781.25 and 781.26 and sets out the Ministry's approach to the activity status provisions sought across the various zones of the Proposed Waikato District Plan (**PWDP**).
- 1.6 In preparing this evidence I have reviewed the s42A Report and Appendices relating to the Industrial Zone chapters of the PWDP.

2. CODE OF CONDUCT

- 2.1 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the 'Environment Court Practice Note' and that I agree to comply with it. I confirm that I have considered all material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

3. SCOPE OF EVIDENCE

- 3.1 My evidence will cover the following topics to assist the Hearings Panel in deliberations:
- (a) A short summary of the Ministry's submission; and

- (b) A planning assessment of the amendments sought by the Ministry to the activity status of educational facilities in the Industrial Zones and my response to the recommendations in the section 42A Report.

4. EDUCATION AS A HUMAN RIGHT

- 4.1 The New Zealand Human Rights Commission states¹ that:

“Education is both a human right in itself and an indispensable means of realising other human rights. Education is essential for the development of human potential, enjoyment of the full range of human rights and respect for the rights of others.”

- 4.2 It is fundamental to New Zealand society that education is able to be provided in a form and in a place that supports the human rights of our communities.
- 4.3 The Ministry is the Government’s lead advisor on the New Zealand education system, shaping direction for education agencies and providers and contributing to the Government’s goals for education. The Ministry has responsibility for all state and state-integrated property for the Crown. However, it is not the only provider.
- 4.4 The Ministry is a Requiring Authority under section 166 of the RMA and that section 9(3) of the RMA does not apply if a designation is in place. Nevertheless, the Ministry has submitted on rules where they are considered to impact on the provision of education facilities given that the rules are relevant if the Ministry does not use the designation process, or for private education providers.

5. SUMMARY OF THE MINISTRY’S SUBMISSION

- 5.1 The intent of the Ministry’s submission is to ensure that the provisions and planning tools of the PWDP facilitate the development of a range of educational facilities within the Waikato District that will enable the community to meet its educational needs.
- 5.2 I have summarised the changes sought as follows:
 - (a) The Ministry supports the principle that educational facilities are defined but seeks to replace the term ‘education facility’ with ‘educational facility’ to align with the prescribed National Planning Standards and to delete the definition for ‘childcare facility’ to ensure that the full range of activities that may be provided at an educational facility are recognised in the definition.

¹ <https://www.hrc.co.nz/our-work/social-equality/education/>

- (b) The policy framework in the PWDP does not refer to educational facilities in some zones. The Ministry seeks to include policy direction in all zones that will enable development of educational facilities that are compatible with the role, function and predominant character of the zones.
- (c) The Ministry opposes the activity status of non-complying (as a default activity status) and discretionary activities given to educational facilities across many of the PWDP zones, seeking instead restricted discretionary activity status. Of particular concern is that where educational facilities are not specifically provided for in a zone, they default to a non-complying activity status. For example, in the Industrial Zone (Chapter 20) Trade and Industry Training is a permitted activity but other educational facilities that may be needed in the area default to a non-complying activity status by virtue of Rule 20.1.3.
- (d) Similarly, in the Business Town Centre Zone, educational facilities are not provided for and default to a non-complying activity status. Examples of educational facilities that may be appropriate in the Business Town Centre Zone include early childhood education centres and vocational training centres.
- (e) The following table summarises the current situation in the PWDP and the Ministry's relief sought:

Zone	Current Activity Status	Activity Status Sought
	'Education Facility'	'Educational Facility'
Residential	Non-Complying	Restricted Discretionary
Business	Permitted	Restricted Discretionary
Business Town Centre	Non-Complying	Restricted Discretionary
Industrial	Non-Complying	Restricted Discretionary
Rural	Discretionary	Restricted Discretionary
Country Living Zone	An education facility, excluding a child care facility for up to 10 children is Discretionary	Restricted Discretionary
Village	Non-Complying	Restricted Discretionary
Reserve	Non-Complying	Restricted Discretionary

- (f) The Ministry supports the activity status of permitted activity where identified and submits that it is appropriate that where educational facilities are not provided for as a permitted activity they should be provided for as a restricted

discretionary activity with appropriate matters of discretion such as those relating to reverse sensitivity.

- (g) The Ministry supports in part where sub-categories of educational facilities, such as “trade and industry training” activity, are identified as a permitted activity but seeks for other educational facilities to be also identified as a restricted discretionary activity to support a range of educational opportunities needed in that community.

6. AMENDMENTS SOUGHT TO 20.1 LAND USE ACTIVITIES – INDUSTRIAL ZONE

Submission Point 781.24

- 6.1 The Ministry’s submission 781.24 requests that provision be made for educational facilities as a Restricted Discretionary activity in the Industrial Zone. While trade and industrial training activities are provided for as a permitted activity under rule 20.1.1, educational facilities that are not incidental to trade and industrial training activities are not currently provided for in the Industrial Zone, defaulting to a non-complying activity status. The Ministry seeks the addition of a new Restricted Discretionary activity rule to provide for educational facilities as follows. Note I have provided a minor amendment to the suggested qualifier in the Permitted Activity section, 20.1.1.:

20.1.1 Permitted Activities

P2: Trade and industry training activity.

Any education facility which is not incidental to a trade and industry training activities is a restricted discretionary activity.

AND

20.1.2 Restricted Discretionary Activities

(1) The activities listed below are restricted discretionary activities

(2) Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in the following table:

Activity

RD1 Education facilities

Council’s discretion shall be restricted to the following matters:

- a. The extent to which it is necessary to locate the activity in the Industrial Zone.
- b. Reverse sensitivity effects of adjacent activities.
- c. The extent to which the activity may adversely impact on the transport network.
- d. The extent to which the activity may adversely impact on the streetscape.
- e. The extent to which the activity may adversely impact on the noise environment.

AND

Amend Rule 20.1.3 Non-Complying Activities as follows:

NC1 Any activity that is not listed as a permitted, restricted discretionary or discretionary activity.

Section 42A Report Comment regarding Submission 781.24

- 6.2 The section 42A Reporting Officer has recommended that the Ministry's original submission is **rejected**. The section 42A Reporting Officer considers that it is important to retain industrial land for industrial activities unless there is a compelling reason not to. The section 42A Report considers that it is particularly important to manage the location of all sensitive activities, otherwise providing for them as either a restricted discretionary activity or discretionary activity would send a signal that industrial activities and the management of reverse sensitivity effects within the Industrial Zone (particularly noise, odour and dust) are not prioritised. The section 42A Reporting Officer therefore considers it appropriate to retain a non-complying activity status for education facilities in the Industrial Zone.
- 6.3 This same concern with non-compatible activities was noted during the hearing for Hearing 3 (Strategic Objectives), where the Ministry outlined their request for specific objectives and policies that provide for education facilities as a restricted discretionary activity for all zones as a Strategic direction for the District.
- 6.4 I disagree with the section 42A Reporting Officer's recommendation that providing for educational facilities as either a restricted discretionary activity or discretionary activity would send a signal that industrial activities and the management of reverse sensitivity effects within the Industrial Zone are not prioritised.
- 6.5 In the Ministry's experience, it is not common, but reasonable to expect educational facilities in the Industrial Zone for the convenience of parents, students, employers

and employees in relation to the studies provided and that these need to be provided for. These facilities may include schools, tertiary facilities, specialised training facilities and early childhood education, all of which are included in the definition of Educational Facility. I do note however, that there is no definition of trade and industry training as provided for in the permitted activity list.

- 6.6 Literacy and numeracy are essential aspects of learning in all walks of life including trade and industry training. How these are provided may vary depending on the provider and the training qualification required. For example, the private tutoring business NumberWorks'nWords or a local polytechnic may be engaged to support BCITO (the Building and Construction Industry Training Organisation) to provide specialist numeracy, accounting, business or literacy training that may not be interpreted as being directly related to trade and industry training.
- 6.7 As another example, some of the larger industries in these zones may wish to provide childcare and early childhood education services for their employees on-site thus providing a benefit to both families, employees and the business. However, the PWDP classifies this as a non-complying activity, effectively denying them this opportunity.
- 6.8 As outlined above, the Ministry is seeking a restricted discretionary activity status in the Industrial Zone to ensure that Council has the discretion over what activities are deemed acceptable to be located in these zones on a case-by-case basis. The matters of discretion covering; necessity, reverse sensitivity, traffic/transport network, noise and amenity would, in my opinion, appropriately address any actual or potential effects on the environment that may be of concern to the Council or to neighbours and the consent authority can then decide whether to grant consent, grant consent with conditions or decline consent – as provided for in S104C, RMA.
- 6.9 Should the restricted discretionary activity status requested in the submission not be accepted for the Industrial Zone then a discretionary activity rule enabling the provision of educational facilities should be included in the PWDP supported by appropriate objectives and policies.
- 6.10 The Ministry has also sought provision for educational facilities in the Industrial Zone and Heavy Industrial Zone in Chapter 4 that contains the strategic direction objectives and policies for the districts urban environment. The Ministry has submitted on the strategic objectives and policies and I have addressed these matters at Hearing 3: on 7 November 2019.

7. AMENDMENTS SOUGHT TO 20.5 LAND USE ACTIVITIES – NAU MAI BUSINESS PARK SPECIFIC AREA

Submission Point 781.25

7.1 The Ministry's submission 781.25 requests that provision be made for educational facilities as a Restricted Discretionary activity in the Nau Mai Business Park. While 'education facility' for no more than 10 students is provided for as a permitted activity under rule 20.5.2, any education facility which exceeds this number of staff or students defaults to a non-complying activity status. The Ministry seeks an amendment to the wording of permitted activity rule 20.5.2 and the addition of a new Restricted Discretionary activity rule to provide for educational facilities which exceeds 10 students as follows:

7.2 20.5.2 Permitted Activities

P10: Education facilities

Activity-specific conditions: for no more than 10 students.

Any education facility which exceeds this number of staff or students is a restricted discretionary activity.

AND

20.5.3 Restricted Discretionary Activities

(1) The activities listed below are restricted discretionary activities.

(2) Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in the following table.

RD1: Education Facilities

Matters of discretion:

1. The extent to which it is necessary to locate the activity with the Nau Mai Business Park Specific Area.

2. Reverse sensitivity effects of adjacent activities.

3. The extent to which the activity may adversely impact on the transport network.

4. The extent to which the activity may adversely impact on the streetscape.

5. The extent to which the activity may adversely impact on the noise environment.

AND

Rule 20.5.4 Non-Complying Activities.

The activities listed below are non-complying activities.

NC1: Any activity that is not listed as permitted activity Rule 20.5.2 or restricted discretionary.

Section 42A Report Comment regarding Submission 781.25

- 7.3 The section 42A Reporting Officer has recommended that the Ministry's original submission is **rejected**. The section 42A Reporting Officer considers that it would be helpful for the Ministry to provide further detail at the hearing as to what type of larger-scale education facilities would seek to locate within Nau Mai Business Park.
- 7.4 The section 42A Reporting Officer considers that a discretionary activity status is an appropriate default to signal the importance of managing the nature and scale of specific permitted activities at this particular industrial location.
- 7.5 The section 42A Reporting Officer noted that an education facility proposed for a site in the Industrial Zone, outside of the Nau Mai Business Park, is a non-complying activity. A discretionary activity test that applies within the Nau Mai Business Park is therefore less onerous, but the merits of a larger-scaled education facility would still need to be considered.
- 7.6 I disagree with the section 42A Reporting Officer's recommendation based on points 6.5 to 6.7 above. Nau Mai Business Park large scale light industrial zone in the Raglan area is a local industrial area designed to support the Raglan community.
- 7.7 While it may be unlikely for an education facility to be established in the Business Park, the imposition of a limit of 10 students on such a facility significantly constrains the community providing for a facility when it may be needed in the future.
- 7.8 Larger facilities may include childcare facilities, private training facilities such as NumberWorks'nWords, or tertiary education facilities associated with permitted research and technology activities.
- 7.9 A limit of 10 students is not supported by an assessment of the difference in effects on the environment of 10 students or more than 10 students. Such an assessment

could be provided through the restricted discretionary activity status as requested in the submission.

8. AMENDMENTS SOUGHT TO 21.1 LAND USE ACTIVITIES – HEAVY INDUSTRIAL ZONE

Submission Point 781.26

- 8.1 The Ministry's submission 781.26 requests that provision be made for educational facilities as a Restricted Discretionary activity in the Heavy Industrial Zone. While 'trade and industrial activity' is provided for as a permitted activity under rule 21.1.1, education facilities are not currently provided for in the Heavy Industrial Zone. Therefore, any education facility which is not incidental to trade and industrial training activity defaults to a non-complying activity status. The Ministry seeks a new Restricted Discretionary activity rule to provide for educational facilities as follows:

21.1.1 Permitted Activities

P2: Trade and industry training activity.

Any education facility which is not incidental to a trade and industry training activity is a restricted discretionary activity.

AND

21.1.2 Restricted Discretionary Activities

(1) The activities listed below are restricted discretionary activities.

(2) Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in the following table.

RD1: Education Facilities

Matters of discretion:

1. The extent to which it is necessary to locate the activity with the Industrial Zone Heavy.

2. Reverse sensitivity effects of adjacent activities.

3. The extent to which the activity may adversely impact on the transport network.

4. The extent to which the activity may adversely impact on the streetscape.

5. The extent to which the activity may adversely impact on the noise environment.

Rule 21.1.3 Non-Complying Activities.

1. The activities listed below are non-complying activities.

NC1: Any activity that is not listed as a permitted, restricted discretionary or discretionary activity.

Section 42A Report Comment regarding Submission 781.26

- 8.2 The section 42A Reporting Officer acknowledges the importance of trade and industry training activity in the Heavy Industrial Zone and considers that a permitted activity as notified is appropriate. However, the section 42A Reporting Officer considers that this is very different from more general education facilities which may include an early childhood education centre, primary school or secondary school.
- 8.3 Given the location and nature of existing activities within the Heavy Industrial Zone, it is the section 42A Reporting Officer's view that a non-complying activity remains appropriate and considers that it would be highly undesirable to signal that sensitive activities, such as schools, are enabled in the Heavy Industrial Zone with a less stringent activity status. This zone is intended for heavy industrial activities that typically create noise, odour and high levels of truck movements. For example, the development of an education facility within the Huntly Power Station site would not be expected, nor would it be appropriate to co-locate such non-compatible activities because of reverse sensitivity concerns.
- 8.4 The section 42A Reporting Officer considers any change in activity status would create a conflict with Policy 4.6.4, which states that industrial land needs to be retained for industrial activities. This same concern with incompatible activities was noted during the hearing for Hearing 3 (Strategic Objectives), where the Ministry outlined their request for specific objectives and policies that provide for education facilities as a restricted discretionary activity for all zones. This supports New Zealand's position regarding the provision of Education as a fundamental Human Right.
- 8.5 The section 42A Reporting Officer understands the need for workers in the industrial areas to have access to close and convenient childcare facilities, however do not consider education facilities are appropriate in the Heavy Industrial Zone and therefore a non-complying activity is the most appropriate activity status for education facilities other than trade and industry training.

- 8.6 This to my mind does not support the provision of education as a human right but in the Heavy Industrial Zone I would accept that a full discretionary activity status may be more acceptable.
- 8.7 I disagree with the section 42A Reporting Officer's recommendation based on points 6.5 to 6.7 above.

A handwritten signature in blue ink, appearing to read "K Frenz", with a stylized flourish at the end.

Keith Frenz

9 December 2019