

SECTION 42A REPORT

Rebuttal Evidence

Hearing H9: Business and Business Town Centre Zones

Report prepared by: Alan Matheson (Consultant Planner)

Date: 10 February 2020



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I Introduction

I.1 Background

1. My full name is Alan Ross Matheson.
2. I am the writer of the original S42A report for Hearing 9: Business and Business Town Centre Zones.
3. In the interests of succinctness, I do not repeat the information contained in section I.1 to I.4 of that S42A Hearing Report and request that the Hearings Panel take this as read.

2 Purpose of the report

4. In the directions of the Hearings Panel dated 26 June 2019, paragraph 18 states:

If the Council wishes to present rebuttal evidence it is to provide it to the Hearings Administrator, in writing, at least 5 working days prior to the commencement of the hearing of that topic.
5. The purpose of this report is to consider the primary evidence and rebuttal evidence filed by submitters and provide rebuttal evidence to the commissioners.
6. Evidence was filed by the following submitters within the timeframes outlined in the directions from the Hearings Panel¹:
 - a. Hugh Green Limited [392, FS1078]
 - b. Greig Metcalfe [602, FS1142]
 - c. KiwiRail Holdings Limited (“KiwiRail”) [986]
 - d. Ministry of Education [781]
 - e. Havelock Village Limited [FS1377]
 - f. Kāinga Ora (formerly Housing New Zealand Corporation) [749, FS1269]
 - g. Woolworths NZ Ltd [588]
 - h. ‘Oil Companies’ [785]
 - i. Lakeside Development Limited [FS1371]
 - j. The Surveying Company Limited [746]
 - k. The Department of Corrections [496]
 - l. Waikato Regional Council [81]
 - m. Ports of Auckland Limited [578, FS1087]
 - n. New Zealand Transport Agency [742, FS1202]
 - o. Synlait Milk Ltd [FS1108]
 - p. Transpower New Zealand Limited [FS1350]
 - q. Z Energy Limited [589, FS1029]
 - r. Fire and Emergency New Zealand [378, FS1114]
7. No rebuttal evidence was filed.

¹ Hearings Panel Directions 21 May 2019

3 Consideration of evidence RECEIVED

3.1 Matters addressed by this report

8. The main topics raised in evidence and rebuttal evidence from submitters that has been addressed in this rebuttal evidence include:
 - a. Recognition of large scale retail in Policy 4.5.10 – Retail;
 - b. Flexibility in the location of residential and office activities;
 - c. Reverse sensitivity – setbacks and activities;
 - d. Differentiation between retail activity and commercial activity in the two zones;
 - e. Activity status and subdivision conditions for multi-unit development;
 - f. Minor corrections and alignment with recommendations from other s42A reports to earthworks, daylight and signs;
 - g. Activity status for setbacks; and
 - h. No complaints covenant – Horotiu Acoustic Area.
9. I have structured this report in the same order as that contained in the Section 42A Report for Hearing 9: Business and Business Town Centre Zones. I have only addressed those sections and evidence where I consider additional comment is required.
10. Where submitters raise issues as to whether their submission has been correctly addressed in the s42A report or should have been coded to and addressed in this or an other s42A report, I consider those matters under the relevant section of the s42A report.
11. In order to distinguish between the recommendations made in the s42A report and Appendices 2 – 6 and the recommendations that arise from this report:
 - a. s42A recommendations are shown in red text (with red underline for new text and and ~~strikethrough~~ for deleted text); and
 - b. Recommendations from this report are shown in blue text (with blue for new text and ~~strikethrough~~ for deleted text).

4 Policy 4.5.10 – Retail: Business Town Centre Zone and Business Zone (Section 17 of the s42A Report)

4.1 Analysis

12. The evidence from CivilPlan Consultants (Aaron Grey) on behalf of Hugh Green Limited [FS1078] at paragraphs 5.32 – 5.39, discusses the intent of this policy and provides proposed amended wording of Policy 4.5.10 at paragraph 5.37, which is a development of the wording contained in the submission from Woolworths NZ Ltd [588.33].
13. The wording of Policy 4.5.10 is aligned with complementary Policies 4.5.2, 4.5.3, 4.5.4 and 4.5.8, all of which seek to differentiate the role and function of the Business Town Centre (smaller scale activities) from the Business Zone (wider range and larger scale of activities).
14. I have carefully considered the wording proposed in the evidence from CivilPlan Consultants. However, I do not consider such amendments are required. The word ‘discourage’ in Policy 4.5.10(a) provides flexibility at the policy level to enable consideration of a large scale development. The other policies referred to in paragraph 13 above along with the policies set out under Objective 4.5.12, already contain the matters set out in (c)(i) – (iii) of the CivilPlan proposed wording.

4.2 Recommendations

15. For the above reason, I recommend that the Hearing Panel retain Policy 4.5.10 as worded.

5 Policy 4.5.11 – Residential upper floors: Business Town Centre Zone and Business Zone (Section 18 of the s42A Report)

5.1 Analysis

16. The following evidence addresses this policy:
- a. CivilPlan Consultants (Aaron Grey) on behalf of Hugh Green Limited [FS1078] at paragraphs 6.3 – 6.7;
 - b. Cameron Wallace on behalf of Kāinga Ora (Housing New Zealand Corporation) [749] at paragraphs 3.1 – 3.8; and
 - c. Tattico Limited (Tom Morgan) on behalf of Lakeside Development Limited [FS1371] at paragraph 5.2.
17. In summary, the evidence is concerned that the wording of Policy 4.5.11 in conjunction with the non-complying activity status for residential development at ground floor, creates an inflexible and unnecessary policy hurdle to overcome for residential develop that may be suitable in the zones. Taking the “*King Salmon*” decisions into account, I concur that the use of the word ‘*Avoiding*’ in Policy 4.5.11(a)(ii) sets up a policy framework that would preclude residential development that may be suitable (such as large sites where the business activity is at the front and the residential use is set towards the rear of the site).
18. At page 8 of the evidence from Tattico Limited (Tom Morgan) provided alternative policy wording. I do not consider a new policy 4.5.11A to differentiate between the Business and the Business Town Centre zones is required as proposed in that evidence. Rather, I have incorporated the content from the evidence into the amended Policy 4.5.11 as set out below.

5.2 Recommendations

19. For the above reason, I recommend that Policy 4.5.11 be amended to provide policy support for suitable residential in both zones.

5.3 Recommended amendments

20. It is recommended that Objective 4.5.11 be amended as follows:

4.5.11 Policy - Residential upper floors: Business Town Centre Zone and Business Zone

- (a) Maintain the commercial viability of the Business Town Centre Zone and Business Zone while:
 - (i) Providing for mixed use developments, ensuring residential activities are preferably located above ground floor; and
 - (ii) Avoiding residential activity located at ground level where it could undermine commercial activity and retail frontage.

5.4 Section 32AA evaluation

21. The recommended amendments seek to align with the intent of the objectives and other policies that seek to promote mixed uses (such as Objective 4.5.12 – Business Town Centre

– Character) and an active town centres (such as Policy 4.5.13 – Town centre built form). Accordingly, no s32AA evaluation has been required to be undertaken.

6 Policy 4.5.31 – Reverse sensitivity & Policy 4.5.33 – Reverse sensitivity (Section 38 of the s42A Report)

6.1 Analysis

22. The evidence from KiwiRail Holdings Limited [986] at paragraphs 3.3 - 3.11 addresses the provisions for the proposed “5m setback rule”.
23. The submission sought the following wording to be included in the policy:
“(b) Reverse sensitivity is managed by providing sufficient setbacks to provide for residents’ safety and amenity”.
24. As the policy change sought is specifically in relation to “residents’ safety and amenity” I connected that policy to the rules that provided for residents to be in the zone being:
 - a. Rule 18.1.2 P2 (Residential Activity), which requires the residential activity to be above ground floor level; and
 - b. Rule 18.1.3 RDI (Multi-unit development), which requires a restricted discretionary activity consent.
25. Accordingly, no 5m setback rule needs to be included in the PWDP as the residential activity is either above ground floor or requires resource consent approval where any issues in relation to reverse sensitivity can be considered. The evidence appears to seek that the rule apply to all buildings regardless of whether there are residents there or not.
26. The submission points from KiwiRail Holdings Limited that are accepted and rejected are clearly set out in the s42A report and no changes to the recommendations is required.

6.2 Recommendations

27. For the above reason, I recommend that no change to the recommendations at 38.1.3 (paragraphs 250 – 252) is required to be made.

7 Business Zone – 17.1.2 Permitted Activities (Section 47 of the s42A Report)

7.1 Analysis

28. The evidence from CivilPlan Consultants (Aaron Grey) on behalf of Hugh Green Limited [FS1078] at paragraphs 5.3 – 5.8 addresses the provision for retail activities in the Business Zone. I agree that the outcome sought is one of clarity where the rules align with Policy 4.5.2, which is that the Business Town Centre is the primary focal point for retail (amongst other activities), with the Business Zone being for larger scale commercial activities (no retail). The policy differentiation is included in other policies which seek to maintain the retail, administrative, commercial and civic purpose of the Town Centre Zone (such as Policy 4.5.3(a)(i)) and the complementary and supporting role of the Business Zones (such as Policy 4.5.4(a)(iii)).
29. Accordingly, Rule 18.1.2 (Business Town Centre Zone) lists ‘commercial activity’ as permitted activity P1 and ‘retail activity’ as permitted activity P4.
30. While Rule 17.1.2 (Business Zone) lists ‘commercial activity’ as permitted activity P1, but does not list “Retail activity” as a permitted activity.

31. Mr Grey's evidence at paragraph 5.8, concludes that the provision of retail activity as a permitted activity in the Business Zone would not be contrary to Policy 4.5.2(a)(i). I disagree with that conclusion, as it would not differentiate the two zones in the manner sought in the policies as discussed in paragraph 28 above.
32. As recommended in paragraph 118 of the Council Rebuttal Evidence for Hearing 5: Definitions, the definition of 'retail activity' should be revisited as part of the Business and Business Town Centre Zones hearing. For the sake of clarity, it is recommended that (subject to the Hearing Panel having scope), the definition of 'Retail activity' should be deleted (as shown in strikethrough) and replaced with the following:

~~Means the sale or hire of goods or services or equipment directly to the public.~~

Retail activity means the use of land and/or buildings where the primary business is displaying, offering and/or supplying goods for sale or hire of a kind ordinarily acquired for personal, domestic, or household use or consumption.

33. The evidence from Matthew Allot (Boffa Miskell Limited) on behalf of The Department of Corrections identifies that a consequential amendment is required to Rules 17.1.2 and 18.1.2 to give effect to the recommendations from Hearing 5: Definitions. This is agreed with.

7.2 Recommendations

34. Accordingly, no change to the recommended amendments in the s42A report are required, but an additional recommendation to include a definition of 'retail activity' is required.
35. It is recommended that 'Community corrections activity' be included in Rule 17.1.2 as a permitted activity.

7.3 Recommended amendments

36. It is recommended that the following definition be included in Chapter 13: Definitions:

~~Means the sale or hire of goods or services or equipment directly to the public.~~

Retail activity means the use of land and/or buildings where the primary business is displaying, offering and/or supplying goods for sale or hire of a kind ordinarily acquired for personal, domestic, or household use or consumption.

37. It is recommended that 'Community corrections activity' be included in Rule 17.1.2 as follows:

P20	Community corrections activity	Nil
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7.4 Section 32AA evaluation

38. The recommended amendments seek to align with the intent of Policy 4.5.2 to differentiate the activity status for retail activities between the Business and the Business Town Centre zones and give effect to the recommendation and s32AA analysis from Hearing 5: Definitions. Accordingly, no s32AA evaluation has been required to be undertaken.

8 Business Zone – 17.1.3 Restricted Discretionary Activities (Section 48 of the s42A Report)

8.1 Analysis

39. The evidence from Mark Arbuthnot on behalf of Ports of Auckland [578] (refer to paragraphs 4.1 – 4.8) and Nicola Rykers on behalf of Synlait Milk Limited [FS1110 and

FS1322] relate to an additional matter of discretion to address reverse sensitivity effects of concern outside the Business Zone, such as in the Heavy Industrial Zone.

40. Having considered that evidence, I agree that an additional matter of discretion (x) to multi-unit developments is required to address the reverse sensitivity matter. I do not agree that the additional words proposed by Ports of Auckland with respect to matter of discretion (vi) are required ('...*protection from external noise sources*...'), as the term 'noise' is clear.
41. In Sections 14 and 16 of this rebuttal evidence, I have discussed the preparation of a variation to address the activity status and conditions for multi-unit development activity status and subdivision.

8.2 Recommendations

42. It is recommended that a new matter of discretion be added to Rule 17.1.3 RD1 to address reverse sensitivity.

8.3 Recommended amendments

43. It is recommended that Rule 17.1.3 be amended as follows:

Activity		Matters of Discretion									
RD1	<p>(a) A multi-unit development that meets all of the following conditions:</p> <ul style="list-style-type: none"> (i) Land Use – Effects rules in Rule 17.2; (ii) Land Use – Building rules in Rule 17.3, except the following rules do not apply: <ul style="list-style-type: none"> (i) Rule 17.3.8 Dwelling; (ii) Rule 17.3.9 Living court; (iii) The multi-unit development must be located above the ground floor level; (iv) A detailed site plan depicting the proposed lot record of title boundaries for each residential unit and any common areas (including access and services) must be provided, ensuring that a freehold (fee simple) or unit title subdivision complies with Rule 17.4.2 (Subdivision of multi-unit housing developments); (v) Each residential unit must be designed and constructed to achieve the internal design sound levels specified in Appendix I (Acoustic Insulation), Table 14; (vi) A communal service court is provided comprising: <ul style="list-style-type: none"> A. a minimum of 20m²; and B. a minimum dimension of 3m; (vii) Living court areas are provided above ground floor level to meet the following minimum requirements for each residential unit: <table border="1" data-bbox="384 1626 991 1861"> <thead> <tr> <th>Residential Unit</th> <th>Minimum Area</th> <th>Minimum Dimension</th> </tr> </thead> <tbody> <tr> <td>Studio unit or 1 bedroom</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>2 or more bedroom</td> <td>15m²</td> <td>2m</td> </tr> </tbody> </table> 	Residential Unit	Minimum Area	Minimum Dimension	Studio unit or 1 bedroom	10m ²	2m	2 or more bedroom	15m ²	2m	<p>(a) Council's discretion is limited to the following matters:</p> <ul style="list-style-type: none"> (i) The extent to which the development is consistent with Town Centre Guidelines contained in Appendix 3.3; (ii) The extent to which the development is consistent with the Multi-unit design guidelines contained in Appendix 3.4; (iii) The extent to which the development contributes to and engages with adjacent streets and public open space; (iv) The extent to which the development creates visual quality and interest through the separation of buildings, variety in built form and architectural detailing, glazing, and materials; (v) The extent to which the design of the development incorporates energy efficiency measures such as passive solar principles; (vi) Amenity values for occupants and neighbours in respect of outlook, privacy, noise, light spill, access to sunlight, living court orientation, site design and layout;
Residential Unit	Minimum Area	Minimum Dimension									
Studio unit or 1 bedroom	10m ²	2m									
2 or more bedroom	15m ²	2m									

		<p>(vii) The extent to which staging is necessary to ensure that development is carried out in a coordinated and timely manner;</p> <p>(viii) Avoidance or mitigation of natural hazards;</p> <p>(ix) Geotechnical suitability for building.</p> <p>(x) Design measures to minimise reverse sensitivity effects.</p>
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8.4 Section 32AA evaluation

44. The recommended amendments seek to clarify the intent of Objective 4.5.30 - Business Zone and Business Town Centre Zones – Amenity and Policy 4.5.31 – Reverse sensitivity and. Accordingly, no s32AA evaluation has been required to be undertaken.

9 Business Zone – 17.2.5 Earthworks (Section 55 of the s42A Report)

9.1 Analysis

45. I refer to the evidence from Kahlia Thomas (4Sight Consulting Ltd) on behalf of the ‘Oil Companies [785] and apologise for missing the intent of the Oil Companies submission being to ensure there is no requirement to revegetate hardstand areas. I had considered that the recommended amendment to add the words ‘...stabilised to avoid runoff within 1 month...’ covered the situation where areas were in hardstand and as such there would be no earthworks contaminated runoff from those areas and hence no need for the area to be revegetated. I consider that the split between stabilisation and revegetation is still correct, but need to clarify that the revegetation does not apply to hardstand areas.

9.2 Recommendations

46. For the reasons set out above, changes to part (a)(v) of Rule 17.2.5.1 PI is recommended.

9.3 Recommended amendments

47. It is recommended that Rule 17.2.5 PI be amended as follows:

PI	<p>(a) Earthworks within a site must meet all of the following conditions:</p> <p>(i) Be located more than 1.5m from infrastructure including a public sewer, open drain, overland flow path or other public service pipe;</p> <p>(ii) Not exceed a volume of more than 250m³ and an area of more than 1,000m² within a site over any single consecutive 12 month period;</p> <p>(iii) The height of the resulting cut, filled areas or fill batter face in stable ground, not including any surcharge, does not exceed 1.5m, with a maximum slope of 1:2 (1 vertical to 2 horizontal);</p> <p>(iv) Earthworks are set back at least 1.5m from all boundaries;</p> <p>(v) Areas exposed by earthworks are stabilised to avoid runoff within 1 month and re-vegetated to achieve 80% ground cover within 6 months of the commencement cessation of the earthworks or finished with a hardstand surface;</p> <p>(vi) Sediment resulting from the earthworks is retained on the site through implementation and maintenance of erosion and sediment controls;</p> <p>(vii) Do not divert or change the nature of natural water flows, water bodies or established</p>
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	drainage paths. ;
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9.4 Section 32AA evaluation

48. The recommended amendment seeks to clarify the rule. Accordingly, no s32AA evaluation has been required to be undertaken.

10 Business Zone – 17.2.7 Signs (Section 56 of the s42A Report)

10.1 Analysis

49. The evidence from KiwiRail Holdings Limited [986] at paragraphs 2.4 – 2.6 identifies that the amendment recommended in the s42A report has been applied in error to the incorrect part of Rules 17.2.7.2 and 18.2.7.2 and this should be corrected. The first reference to “*or at a level crossing*” is in relation to the location of the sign which needs to be retained.
50. The evidence from New Zealand Transport Agency [742] at paragraph 6.1, identifies that one of the submission points was not referenced in the recommendations at paragraph 400 of the s42A report. This omission is covered in Appendix I as follows:

742.137	Mike Wood for New Zealand Transport Agency	Support	Retain Rule 17.2.7.1 PI Signs general as notified AND Retain Rule 17.2.7.1 RD1 Signs general as notified.	Rule 17.2.7.1 PI allows the submitter to erect signage as a permitted activity. The submitter supports the matters of discretion under RD1, particularly (b)(ii), (b)iii and (b)(iv).	Accept	56
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51. The evidence from New Zealand Transport Agency [742] at paragraphs 7.1 – 7.4 sets out additional areas where Business zoned land can be seen from state highways. However, I note the following applies:
- a. are small sites within towns with lower speed limits (Gordonton map 21.3, Te Kowhai map 26.2);
 - b. apply to sites that once the Huntly Bypass/Waikato Expressway is completed will no longer be state highways (Huntly East map 20.2 and Huntly South map 20.3);
 - c. are some distance from the state highway (Te Kauwhata West map 14.1);
 - d. are new parts of the Waikato Expressway that are at a lower contour than the surrounding land and/or have substantial landscape planting that will obscure views of surrounding land (Horotiu map 26.1); or
 - e. are a combination of a. – d. above.

52. In my opinion, no change to the recommendation arising from the New Zealand Transport Agency evidence is required.

53. The evidence from New Zealand Transport Agency [742] at paragraphs 8.1– 8.6 sets out a minor wording change to Rule 17.2.7.2 PI(iv) which is agreed with.

10.2 Recommendations

54. For the above reason, I recommend that the only change to the recommendations at 56.1.3 (paragraph 400) is to include the additional submission point for New Zealand Transport Agency as follows:

400. It is recommended that the submission from Waikato District Council [697.190, 697.191, 697.192 and 697.193], Oil Companies [785.137 and 785.59], New Zealand

Transport Agency [742.137, 742.138, 742.139 and 742.140], KiwiRail Holdings Ltd [986.117] and Van Den Brink Group [633.28] be **accepted**.

55. For the reasons set out above, changes to part (a)(ii) and (iii) of Rule 17.2.7.2 PI is recommended.

10.3 Recommended amendments

56. It is recommended that Rule 17.2.7.2 PI be amended as follows:

17.2.7.2 Signs - Effects on traffic

PI	<p>(a) Any sign directed at road land transport users must meet all of the following conditions:</p> <ul style="list-style-type: none"> (i) Not imitate the content, colour or appearance of any traffic control sign; (ii) Be located at least 60m from controlled intersections or at a level crossing, pedestrian crossings and any other sign; (iii) Not obstruct sight lines of drivers turning into or out of a site entrance and intersections or at a level crossing; (iv) Contain no more than 40 characters and no more than 6 words and/or symbols; (v) Have lettering that is at least 150mm high; and (vi) Where the sign directs traffic to a site entrance, the sign must be at least 130m from the entrance. <p>(b) Rule PI(a) does not apply to site identification signs.</p>
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10.4 Section 32AA evaluation

57. The recommended amendment seeks to correct an error. Accordingly, no s32AA evaluation has been required to be undertaken.

11 Business Zone – 17.3.2 Daylight admission (Section 60 of the s42A Report)

11.1 Analysis

58. The evidence from The Surveying Company [746] and Brendon John & Denise Louise Strong [871] identifies that the 45 degree control plane sought in their submission has been supported for the Village Zone. I have also recommended that the 45 degree angle replace the 37 degree control plane in the s42A report for Hearing 10: Residential Zone (refer Section 8, Topic 5 paragraphs 121 – 144), as the 45 degree angle affords adequate daylight and would continue to minimise visual dominance.

11.2 Recommendations

59. For the reasons set out above, changes to Rule 17.3.2 PI(a) is recommended.

11.3 Recommended amendments

60. It is recommended that Rule 17.3.2 PI be amended as follows:

17.3.2 Daylight admission

PI	<p>(a) Any building must not protrude through a height control plane rising at an angle of 37 45 degrees commencing at an elevation of 2.5m above ground level at the site boundary where it adjoins a:</p> <ul style="list-style-type: none"> (i) Residential Zone; (ii) Village Zone; (iii) Country Living Zone; or (iv) Reserve Zone.
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11.4 Section 32AA evaluation

61. The change to the rule aligns with the standard in the relevant zones. The s32AA evaluation provided in the s42A report for Hearing 10: Residential Zone (refer Section 8.6, Topic 5 paragraphs 140 – 144) is adopted as follows:

Effectiveness and efficiency

62. *Based on my experience of processing resource consents across different plans, it is my view that a 45 degree angle affords adequate daylight and would continue to minimise visual dominance. Accordingly, the recommended amendment will more effectively achieve Objective 4.2.9 and Policy 4.2.10 while enabling efficient use of the land resource for residential development.*

Cost and benefits

63. *With respect to the amendment to Rule P1 from 37 degrees to 45 degrees, consistency across a region generally makes it less confusing for the public. As indicated, typically roofs are built at a 45 degree pitch. There may be increases in shading levels and these may impact home owners' use of outdoor living spaces. The rule provides control over the visual aesthetics of a building and controls its dominance on the site when viewed from adjacent sites. A more relaxed height control plane will be more enabling for urban development and potentially enable more efficient development. It will also reduce the likelihood that a building will be subject to a resource consent.*

Risk of acting or not acting

64. *There are no additional risks of not acting. There is sufficient information on the cost to the environment, benefit to people and communities to justify the amendment to the rule.*

Decision about most appropriate option

65. *The amendment still gives effect to the relevant objective and policies of Chapter 4.2. In my opinion, the recommended amendment is more effective in achieving the purpose of the RMA than the notified version.*
66. Accordingly, no s32AA evaluation is required to be undertaken.

12 Business Zone – 17.3.4 Building setbacks (Section 61 of the s42A Report)

12.1 Analysis

Water bodies

67. The evidence from The Surveying Company [746] and Brendon John & Denise Louise Strong [871] identifies that the s42A report recommends the retention of the 10 metre setback rule from the bank of a perennial or intermittent stream in the Industrial and Heavy Industrial zone.
68. Rule 17.3.4 of the Business Zone does not contain an equivalent 10 metre setback rule. I remain of the view expressed in paragraph 427 of my s42A report that “Streams come within the definition of ‘river’, and as such are already subject to the rule”.
69. The evidence from Tom Morgan on behalf of Lakeside Development Limited [FS1371] at paragraph 5.4, notes that although Lakeside Development Limited originally supported the submission from Brendon John & Denise Louise Strong [871], they now accept the recommendation in the s42A report. Thus I do not consider any changes are required.

Zone Boundaries

70. I note that in the s42A report at paragraph 424, I did not address the matter in the submission from Woolworths New Zealand Limited [588] with respect to the change in activity status from discretionary to restricted discretionary for non-compliance with the zone setback rule 17.3.4.1. I agree that the restricted discretionary activity status and the matters of discretion proposed are appropriate and have set those out in the recommendation below.

Infrastructure

71. The evidence from the New Zealand Transport Agency [742] at paragraphs 9.1 – 9.9 sets out additional reasons to support the 15m setback from state highways. The evidence at paragraphs 7.1 – 7.4 sets out areas where Business zoned land is adjacent to state highways and the Waikato Expressway and this was discussed in paragraph 51 of this rebuttal evidence in relation to signs.
72. I note that in the Residential Zone, Rule 16.3.9.2 includes a building setback for sensitive land uses in relation to a boundary with a national route, regional arterial or the Waikato Expressway. This rule recognises the amenity values expected within the Residential Zone. However, such amenity values do not apply within the Business or Business Town Centre Zones. Accordingly, I remain of the opinion that the 15m setback is not required.
73. With respect to whether the submission point should be accepted or rejected, I note that the recommendation is to include a 15m setback from SH23 for any site between Greenslade Road and Hills Road, Raglan. Accordingly, the submission point from New Zealand Transport Agency is accepted to enable this change to be recommended.

12.2 Recommendations

74. For the reasons set out above, changes to Rule 17.3.4.1 DI is recommended.

12.3 Recommended amendments

75. It is recommended that Rule 17.3.4.1 DI be amended as follows:

17.3.4.1 Building setbacks - Zone boundaries

PI	<p>(a) Any building must be set back a minimum of at least:</p> <p>(i) 7.5 3.0m from rear and side boundaries adjoining the:</p> <p>A. Residential Zone;</p> <p>B. Village Zone;</p> <p>C. Country Living Zone; or</p> <p>D. Reserve Zone; and</p> <p>(ii) 1.5m from rear and side boundaries adjoining the:</p> <p>A. Rural Zone; or</p> <p>B. Industrial Zone.</p> <p>(iii) 15m from SH23 for any site between Greenslade Road and Hills Road, Raglan.</p>
<p>⊕ RDI</p>	<p>(a) Any building that does not comply with Rule 17.3.4.1 PI.</p> <p>(b) <u>Council's discretion shall be restricted to the following matters:</u></p> <p>(i) <u>Height, design and location of the building relative to the boundary;</u></p> <p>(ii) <u>Impacts on the privacy for adjoining site(s);</u></p> <p>(iii) <u>Impacts on amenity values, including main living areas, outdoor living space of adjoining sites(s);</u> <u>and</u></p> <p>(iv) <u>Landscaping and/or screening.</u></p>

12.4 Section 32AA evaluation

76. As the matters that need to be considered in relation to a reduction in the setback from an adjoining zone are able to be specified, then the restricted discretionary activity status

represents an efficient and effective way to achieve the objectives and policies relating to amenity and reverse sensitivity.

13 Business Zone – 17.3.5 Horotiu Acoustic Area (Section 62 of the s42A Report)

13.1.1 Analysis

77. The evidence from Mark Arbuthnot on behalf of the Ports of Auckland [578] at paragraphs 5.1 – 5.27 relates to the inclusion of a “no complaints” covenant in favour of the Ports of Auckland for new buildings and the alteration of existing buildings within the Horotiu Acoustic Area to enable such development to be a permitted activity.
78. I had concerns as to the legality of the proposed rule and referred the matter to Council’s legal advisor Bridget Parham (Tompkins Wake). Ms Parham confirmed my understanding that the activity status must be clear from the plan provisions and not be dependent on the agreement of another party to determine whether or not an activity was permitted. In this instance, the proposed rule requires an affected part to enter into a covenant with Ports of Auckland, but there is no requirement that the Ports of Auckland must agree to the covenant. In that situation, the activity would fall to be a restricted discretionary activity.
79. In addition, it is noted that the covenant is with respect to “...effects generaed by the lawful operation of the Waikato Freight Hub”. There is no definition or limit as to what those effects are, which introduces even further uncertainty to the proposed permitted activity rule.
80. For these reasons, in my opinion, the proposed permitted activity covenant should not be included in the PWDP.

13.1.2 Recommendations

81. Accordingly, no change to the recommended amendments in the s42A report are required.

14 Business Zone – 17.4.1.1 Subdivision – Multi-unit development (Section 66 of the s42A Report)

14.1.1 Analysis

82. The evidence from Cameron Wallace on behalf of Kāinga Ora (Housing New Zealand Corporation) [794] relates to the standards (particularly minimum unit sizes) for subdivision of multi-unit developments as a restricted discretionary activity.
83. The standards for the multi-unit development as an activity in the Business and Business Town Centre Zones have been considered in Section 48 of my s42A report (paragraphs 323 – 341). The same matter was addressed in the s42A report with respect to Hearing 10: Residential Zone at Section 13.3.3 (paragraphs 250 – 256). In the Residential Zone situation, there was a submission that gave scope to recommend the deletion of most of the restricted discretionary activity standards and rely solely on the matters of discretion and objectives and policies to guide the assessment of a multi-unit development. I have not been able to find a submission in relation to the Business and Business Town Centre Zones that gives scope for a similar approach to be adopted.
84. I note that the activity status Rule 17.1.3 RDI – Multi-unit development, does not set out minimum unit sizes. In my opinion, the inclusion of minimum unit sizes within subdivision Rule 17.4.1.1 RDI – Multi-unit development is an omission, and my preference would be for condition RDI(a)(iii) to be deleted. However, my reading of the submissions does not give scope for this approach. In the absence of submissions to provide consistency between

activity status Rule 17.1.3 RDI – Multi-unit development, and subdivision Rule 17.4.1.1 RDI – Multi-unit development, I would welcome consideration of this matter by the Hearing Panel.

85. I note the evidence from Transpower New Zealand Ltd [FS1350] with respect to the appropriate location of the subdivision rules in relation to the National Grid Corridor. I note that reference has been made to the proposed New Plymouth District Plan as a guide to the location of the subdivision provisions. However, in my opinion, quoting the proposed New Plymouth District Plan is not determinative as there are a number of situations where the proposed New Plymouth District Plan has not followed the requirements of the National Planning Standards. Mandatory directions 24 and 25 require that all subdivision provisions be in one or more chapters under the *Subdivision* heading and that cross-reference must be made to any relevant provisions under the *Energy, infrastructure and transport* heading. It is ambiguous as to exactly where the subdivision provisions relating to infrastructure should be located. This is a matter that should be clarified with the Ministry for the Environment by Council as part of its reformatting of the PWDP in order to confirm the exact location of the subdivision provisions.

14.1.2 Recommendations

86. Accordingly, no change to the recommended amendments in the s42A report are proposed. However, consideration by the Hearing Panel with respect to the scope to delete Condition RDI(a)(iii) is recommended.

15 Business Town Centre Zone – 18.1.2 Permitted activities (Section 75 of the s42A Report)

15.1.1 Analysis

87. The evidence from CivilPlan Consultants (Aaron Grey) on behalf of Hugh Green Limited [FS1078] at paragraphs 5.44 – 5.49 addresses the provision for office activities (P8) in the Business Town Centre Zone, with respect to the activity specific condition requiring the office to be located above ground level. At paragraph 5.47 of the evidence a range of options to provide for offices has been provided.
88. I have reviewed the location of the Business Town Centre Zone and the ‘Verandah Line’, as this notation coincides with the central pedestrian part of the town centres where visual display to attract foot traffic is most important. I agree with the submitter’s evidence that for sites within the ‘Verandah Line’ notation, offices could be a restricted discretionary activity. I also agree with the submitter’s evidence that where the Business Town Centre Zone applies outside the ‘Verandah Line’ notation, that offices could be located at ground floor.
89. The evidence from Matthew Allot (Boffa Miskell Limited) on behalf of The Department of Corrections identifies that a consequential amendment is required to Rules 17.1.2 and 18.1.2 to give effect to the recommendations from Hearing 5: Definitions (refer to paragraphs 1.6 – 1.14 of the “Highlights Package”). This is agreed with.

15.1.2 Recommendations

90. It is recommended that Rule 18.1.2 P8 ‘Office’ be amended to provide for offices at ground floor outside the ‘Verandah Line’ notation and as a restricted discretionary activity at ground floor level within the Verandah Line’ notation.
91. It is recommended that ‘*Community corrections activity*’ be included in Rule 17.1.2 and Rule 18.1.2.

15.1.3 Recommended amendments

92. It is recommended that Rule 18.1.2 P8 'Office' be amended and new Rule 18.1.3 RD3 'Office at ground floor level within the Verandah Line' notation as shown below:

P8	Office	Located above ground floor level within the Verandah Line' notation
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RD3	(a) Offices located at ground floor level within the Verandah Line' notation	(a) The Council's discretion shall be limited to the following matters: (i) Streetscape effects including ways in which to activate visual connection and interest between pedestrians and the office; and (ii) Extent of glazing and length of frontage of the office to the street.
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93. It is recommended that 'Community corrections activity' be included in Rule 17.1.2 as follows:

P20	Community corrections activity	Nil
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94. It is recommended that 'Community corrections activity' be included in Rule 18.1.2 as follows:

P12	Community corrections activity	Nil
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15.1.4 Section 32AA evaluation

95. The proposed changes give effect to the Business Town Centre Zone objectives and policies (particularly Objective 4.5.12 – Business Town Centre – Character, and Policy 4.5.20 – Pedestrian frontages: active street frontages – Business Town Centre Zone).

96. The following points evaluate the recommended changes under Section 32AA of the RMA.

Effectiveness and efficiency

97. Offices are an integral activity expected in the Business Town Centre Zone and need to be provided for in a manner that still achieves the pedestrian amenity outcomes sought. Accordingly, the recommended amendment will more effectively achieve the objective of commercial activity being focused in the Business Town Centre Zone (Objective 4.5.1) but in a manner that maintains and enhances the character of those zones (Objective 4.5.12).

Cost and benefits

98. The matter of concern with respect to offices located at ground floor is that the length of frontage and lack of interest between the interior of the office and the street, may lead to parts of the Business Town Centre that are not attractive for pedestrians to walk past. Effectively restricting the viability of commercial and retail activities. The costs associated with a full discretionary activity resource consent are not necessary where the matter to be considered is very specific and can be addressed through the lesser cost restricted discretionary activity resource consent process.

Risk of acting or not acting

99. There are no additional risks of not acting. There is sufficient information on the cost to the environment, benefits to people and communities to justify the amendment to the rule.

Decision about most appropriate option

100. The recommended amendment still gives effect to the relevant objectives and policies. In my opinion, the recommended amendment is more effective in achieving the purpose of the RMA than the notified version.
101. The changes to include the community corrections activity as a permitted activity, give effect to the recommendation and s32AA evaluation from Hearing 5: Definitions. Accordingly, no s32AA evaluation is required to be undertaken.

16 Business Town Centre Zone – 18.1.3 Restricted discretionary activities (Section 76 of the s42A Report)

16.1.1 Analysis

102. I refer to the discussion in Section 14 of this rebuttal evidence with respect to the provision of multi-unit development activity and subdivision as a restricted discretionary activity (Rule 18.1.3 RDI). In the absence of a submission seeking the deletion of the conditions for multi-unit development activity and subdivision, it would be necessary to prepare a variation to the PWDP, should the Hearings Panel consider this to be an issue.
103. The evidence from Tattico Limited (Tom Morgan) on behalf of Lakeside Development Limited [FS1371] at paragraph 5.6 discusses the appropriate activity status for multi-unit development at ground floor level and concludes that ground floor residential activity should be provided as a restricted discretionary activity outside of a 'primary retail street', but should remain non-complying where located on a 'primary retail street'. The activity status in the Business Town Centre Zone is non-complying for residential activity on the ground floor (refer to Rule 18.1.5 NC2). The appropriate activity status for multi-unit development could be considered as part of the recommended variation.
104. The evidence from Fire and Emergency Services notes that the provision of '*Emergency service facilities*' has not been included as a discretionary activity as was recommended. This was an oversight and is corrected.

16.1.2 Recommendations

105. Accordingly, no change to the recommended amendments in the s42A report are required.
106. That the Hearing Panel consider the preparation of a variation to review the necessary conditions to be complied with for multi-unit development activity and subdivision to be a restricted discretionary activity and the matters of discretion in both the Business and Business Town Centre Zones.
107. It is recommended that '*Emergency service facilities*' be included as Discretionary activity D3 in Rule 18.1.4

16.1.5 Recommended amendments

108. It is recommended that Rule 18.1.4 be amended as shown below:

18.1.4 Discretionary Activities

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

D1	Any permitted activity that does not comply with one or more of the activity-specific conditions for a permitted activity (Rule 18.1.2) unless a lesser activity status under Land Use Effects Rule 18.2 or Land Use Building Rule 18.3 applies.
D2	Any multi-unit development that does not comply with (Rule 18.1.3) unless a stricter activity status applies under Rule 18.1.5.
D3	<u>Emergency service facilities</u>

16.1.4 Section 32AA evaluation

109. The amendment corrects an omission from the s42A report recommendations. The s32AA evaluation undertaken in the s42A report concluded that the provision of emergency services facilities could be suitable on some sites in the Business Town Centre Zone, but could be contrary to the objectives and policies with respect to a number of matters including vehicle access, disruption to frontages. Accordingly, no s32AA evaluation has needed to be undertaken.

17 Business Town Centre Zone – 18.2.4 Earthworks (Section 82 of the s42A Report)

17.1.1 Analysis

110. The evidence from Transpower New Zealand Ltd [FS1350] identifies an error in the s42A report with respect to rule references which is agreed with.
111. Refer to the analysis in Section 9.1 of this rebuttal evidence with respect to Rule 18.2.4.1(a)(v).

17.1.2 Recommendations

112. It is recommended that Rule 18.2.4(1) be amended to delete and incorrect rule reference.
113. It is recommended that part (a)(v) of Rule 18.2.4.1 be amended.

17.1.3 Recommended amendments

114. It is recommended that Rule 18.2.4(1) be amended as shown below:

18.2.4 Earthworks

- (1) Rule 18.2.4.1 – Earthworks - General provides the permitted rules for earthworks activities within the Business Town Centre Zone. **This rule does not apply in those areas specified in Rules 18.2.4.1 and Rule 18.2.4.2**
- (2) There is a specific standard for earthworks within rule:
Rule 18.2.4.2 – Maaori Sites and Maaori Areas of Significance.

115. It is recommended that Rule 18.2.4.1 be amended as follows:

PI	<p>(a) Earthworks within a site must meet all of the following conditions:</p> <ol style="list-style-type: none"> (i) Earthworks must be located more than 1.5m from <u>infrastructure including</u> a public sewer, open drain, overland flow path or other <u>public</u> service pipe; (ii) Earthworks must not exceed a volume of more than 250m³ and an area of more than 1,000m² within a site <u>over any single consecutive 12 month period</u>; (iii) The height of the resulting cut, filled areas or fill batter face in stable ground, not including any surcharge, does not exceed 1.5m, with a maximum slope of 1:2 (1 vertical to 2 horizontal); (iv) <u>Earthworks are set back at least 1.5m from all boundaries</u>;
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	<ul style="list-style-type: none"> (v) Areas exposed by earthworks are stabilised to avoid runoff within 1 month and re-vegetated to achieve 80% ground cover within 6 months of the commencement cessation of the earthworks or finished with a hardstand surface; (vi) Sediment resulting from the earthworks is retained on the site through implementation and maintenance of erosion and sediment controls; (vii) Earthworks must not divert or change the nature of natural water flows, waterbodies or established drainage paths; (viii) Earthworks must not result in the site being unable to be serviced by gravity sewers.
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17.1.4 Section 32AA evaluation

116. As the change corrects a rule reference, no s32AA evaluation has been undertaken.

18 Business Town Centre Zone – 18.2.7 Signs (Section 83 of the s42A Report)

18.1.1 Analysis

117. Refer to the analysis in Section 10.1 (paragraph 49) of this rebuttal evidence with respect to the incorrect application of the correction.

18.1.2 Recommendation

118. For the above reason, changes to part (a)(ii) and (iii) of Rule 18.2.7.2 PI is recommended.

18.1.3 Recommended amendments

119. It is recommended that Rule 18.2.7.2 PI be amended as follows:

18.2.7.2 Signs - Effects on traffic

PI	<ul style="list-style-type: none"> (c) Any sign directed at road land transport users must meet all of the following conditions: <ul style="list-style-type: none"> (vii) Not imitate the content, colour or appearance of any traffic control sign; (viii) Be located at least 60m from controlled intersections or at a level crossing, pedestrian crossings and any other sign; (ix) Not obstruct sight lines of drivers turning into or out of a site entrance and intersections or at a level crossing; (x) Contain no more than 40 characters and no more than 6 words and/or symbols; (xi) Have lettering that is at least 150mm high; and (xii) Where the sign directs traffic to a site entrance, the sign must be at least 130m from the entrance. (i) Rule PI(a) does not apply to site identification signs.
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18.1.4 Section 32AA evaluation

120. The recommended amendment seeks to clarify the rule. Accordingly, no s32AA evaluation has been required to be undertaken.

19 Business Town Centre Zone – 18.3.6 Building setbacks – zone boundaries & 18.3.7 Setback – water bodies (Section 90 of the s42A Report)

19.1.1 Analysis

121. The evidence of Woolworths New Zealand Limited [588] with respect to zone boundaries has been addressed in Section 12 (paragraph 70) of this rebuttal evidence. I concluded that

the restricted discretionary activity status is appropriate for non-compliance with the zone boundary standard.

19.1.2 Recommendations

122. For the reasons set out above, changes to Rule 18.3.6 DI to instead be a restricted discretionary activity is recommended.

19.1.3 Recommended amendments

123. It is recommended that Rule 18.3.6 DI be amended as follows:

<p>D+ RD1</p>	<p>(a) A building that does not comply with Rule 18.3.6 P1.</p> <p><u>(b) Council's discretion shall be restricted to the following matters:</u></p> <p><u>(i) Height, design and location of the building relative to the boundary;</u></p> <p><u>(ii) Impacts on the privacy for adjoining site(s);</u></p> <p><u>(iii) Impacts on amenity values, including main living areas, outdoor living space of adjoining site(s); and</u></p> <p><u>(iv) Landscaping and/or screening.</u></p>
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19.1.4 Section 32AA evaluation

124. As the matters that need to be considered in relation to a reduction in the setback from an adjoining zone are able to be specified, then the restricted discretionary activity status represents an efficient and effective way to achieve the objectives and policies relating to amenity and reverse sensitivity.

20 Business Town Centre Zone – 18.4.2 Subdivision – multi-unit subdivision (Section 96 of the s42A Report)

125. Refer to the analysis and recommendations in Sections 8, 14 and 16 of this rebuttal evidence.

21 Business Zone Tamahere – 19.3.2 Buildings, structures, vegetation and objects with an airport obstacle limitation surface (Section 113 of the s42A Report)

126. I understand discussions are being undertaken with Council GIS staff in relation to the recommendation in paragraph 779 of the s42A report. It may be possible to put some of the Moturiki Datum levels on the District Plan maps. However, it may be difficult for plan users to then use those Moturiki Datum heights to then determine compliance with the Obstacle Limitation Surface.
127. This matter will be addressed in the s42A report for Hearing 14: Te Kowhai Airpark Zone.



Alan Matheson
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