

Variation 3 to the Proposed Waikato District Plan - Horotiu and Ancillary Matters Reporting Officer Summary Statement - 30 November 2023

1. My name is Karin Lepoutre. I am the author of the s42A reports for Variation 3 dated 15 September and 14 November 2023. The purpose of this statement is to:
 - i. Summarise my position on the outstanding matters for Variation 3 that remain contested by submitters including:
 - Proposed Objective MRZ2-O10 and Policy MRZ2-P16 regarding railway corridors in the MRZ2.
 - The proposed amendment to MRZ2-P11 – Reverse Sensitivity.
 - The appropriateness of a non-complying activity status applying to the HFL land due to the mapped area of higher flood risk.
 - ii. Provide clarifications and corrections.

Outstanding matters

Objective MRZ2-O10 and Policy MRZ2-P16

2. Paragraph 34 of the s42A rebuttal report outlines the recommended wording for a new objective and policy for the 2.5m setback from railway corridors. The recommendation is supported by KiwiRail. The recommendation is opposed by Kāinga Ora on the basis that they are unnecessary and duplicative¹ and would raise plan interpretation issues without matching provisions in all other relevant zones².
3. I have considered the relevant planning evidence and legal submissions from Kāinga Ora and KiwiRail relating to MRZ2-O10 and MRZ2-P16. In paragraph 35 of the s42A rebuttal report, I state that the inclusion of the objective and policy will contribute to a clear cascade between the objective, policy and standard. This, in turn, will assist future PDP users in interpreting the provisions.
4. In relation to the absence of similar provisions in other zones, I am of the view that land within the MRZ2 is most affected by the setback standard. This is due to the higher level of residential intensification anticipated in this zone compared to any other PDP zone. In my view, this warrants the inclusion of additional provisions compared to other zones. For these reasons, I remain of the view that MRZ2-O10 and MRZ2-P6 should be included within the PDP.

Policy MRZ2-P11

2. Paragraphs 36-37 of the s42A rebuttal report outlined the recommended amendments to MRZ2-P11. The recommendation is supported by KiwiRail and opposed by Kāinga Ora. I have considered the relevant planning evidence and legal submissions from Kāinga Ora and KiwiRail relating to this policy.
3. I acknowledge the concern raised by Kāinga Ora that the railway corridor setback is not intended to address reverse sensitivity effects. I further agree with Kāinga Ora that it would be inappropriate to

¹ Paragraph 2.2 of the Kāinga Ora legal submissions.

² Paragraph 2.6(b) of the Kāinga Ora legal submissions.

include a policy that is given effect to by a rule that is not yet included in the PDP (i.e. the Rail Corridor Noise Alert Area). Despite this, I note that there are other (existing) standards in the MRZ2 that require the use of design controls to minimise reverse sensitivity effects. These include:

- i. The requirement under MRZ2-S18 for buildings for a noise sensitive activity within the Horotiu Acoustics Area to be designed and constructed to achieve internal sound level specifications; and
 - ii. The requirement under PREC4-S3 for building for a sensitive land use in the 40dB LAeq noise contour in the Havelock Precinct to be designed and constructed to achieve internal sound level specifications.
4. In my view the amendment to MRZ2-P11 reflects that a range of measures will be used to address reverse sensitivity, including the use of design controls. I therefore remain of the view that the recommended amendment to MRZ2-P11 should be included in the PDP, despite it not relating to the railway corridor setback.

Natural hazard rules applying to the HFL land

5. The recommended approach for managing flood risks was addressed in detail at the substantive hearing. Despite this, concerns regarding the application of the natural hazard rules to the HFL land remain and have been raised in evidence and legal submissions by HFL.
6. Mr Aaron Collier and I have had further discussions regarding the application of the natural hazard provisions and specifically the recommended exemption to NH-R19, NH-R20 and NH-R21 outlined in paragraph 15 of the s42A rebuttal report. Mr Collier recommended the following amendments to the exemption (shown in red) via email on 29 November 2023:

A site is not within a high risk area where ~~This rule does not apply where a~~ detailed hydraulic analysis (flood Modelling) is undertaken by a suitably qualified person, ~~and approved by Council, which determines that confirms~~ the site is not within the definition of a High Risk Flood Area ~~or the analysis confirms that flooding effects can be appropriately avoided or mitigated such that they are less than minor.~~

7. The intention of Mr Collier's recommended amendments is to simplify the provision and provide greater certainty to applicants. I do not support the recommended amendments by Mr Collier for the following reasons:
- i. The amendment does not make it clear that the provision is an exemption to the rule (by deleting the words "this rule does not apply where...").
 - ii. Council would need to agree that the exemption would apply based on a review of the hydraulic analysis. This can only occur if Council is provided with the hydraulic analysis that demonstrates a site does not meet the definition of a High Risk Flood Area. By deleting the words "and approved by Council" it is unclear that the analysis, and in turn the exemption to the rule, is subject to approval by Council.
 - iii. The inclusion of the words "or the analysis confirms that flooding effects can be appropriately avoided or mitigated such that they are less than minor" are inconsistent with the non-complying activity status of the rule. Further, the use of the words "less than minor" does not provide certainty for plan users.
8. Despite the above, I agree with Mr Collier that the exemption can be simplified and therefore recommend the following alternative wording (included in the recommended amendments to the provisions in Attachment 1):

This rule does not apply where Council approves a detailed hydraulic analysis that demonstrates that the site is not within the definition of a High Risk Flood Area.

Clarifications and corrections

Recommended amendments to the Medium density residential zone chapter

5. Appendix A to the s42A rebuttal statement (recommended amendments to MRZ) was based on the closing statement version of the MRZ chapter. An updated MRZ chapter which incorporates all recommendations (including the recommendations from the s42A report dated 15 September 2023) is included in Attachment I to this summary statement.
6. The recommended amendments to the MRZ contained in Attachment I include an activity for 'Childcare facility'. In paragraph 70 of the s42A report dated 19 July 2023 Ms Hill recommended that the provisions tabled on behalf of the Ministry of Education (30 June 2023) were included in the PDP. The recommended provisions included a rule for childcare facilities that was not included in the PDP amendments in error. The provision for childcare facilities is now included as MRZ2-R14.

Setback to regional arterial roads

7. The previously proposed building setback of 15m to regional arterials (MRZ2-S15(a)(ii)) has not been addressed in any s42A report for Variation 3. The proposed standard is combined with the setback requirement to national routes (state highways) which is subject to the Waka Kotahi PDP appeal and it was therefore deferred³.
8. Since reviewing the agreed positions from Waka Kotahi, KiwiRail and Kāinga Ora it has become apparent that the 'regional arterial' component of the rule was not included as part of the appeal settlement as there was no scope in the appeal to remove it. Therefore, it remained in the recommended MRZ2 provisions (Appendix A to the s42A rebuttal statement for Horotiu and ancillary matters).
9. The 15m setback requirement to regional arterials could restrict the ability to achieve the MDRS on MRZ land in Horotiu, Ngaaruawaahia, Tuakau and Huntly. Council may make development within a relevant residential zone less enabling of development to provide for a qualifying matter⁴. However, the RMA only provides for *nationally significant infrastructure* as a qualifying matter.
10. In my view the proposed setback standard cannot be included in the PDP as it could restrict density and regional arterial roads ('regionally significant infrastructure') are not a qualifying matter under the RMA. I further note that the s32 evaluation did not assess the effect of the regional arterial setback requirement. For these reasons, I am of the view that the setback to regional arterials (MRZ2-S15(a)(ii)) and the relevant assessment criteria (MRZ2-S15 (2)(a)) relating to road network safety and efficiency should be removed.
11. This recommended amendment is included in Attachment I to this summary statement. I discussed this recommendation with Mr Mike Wood (Waka Kotahi) on 29 November and he did not oppose the recommended deletions. I further note that this recommendation is consistent with the amendment text outlined in the Kāinga Ora legal submissions (Annexure A).

³ The Waka Kotahi appeal only relates to the state highway component of the standard, not the regional arterials.

⁴ Section 77I of the RMA.