

Recommendation following consideration of a Notice of Requirement under the Resource Management Act 1991



Proposal

Notice of Requirement to designate land at 1043 Linwood Road, Kingseat, for a Primary School (Years 0-8) and Early Childhood Education (ECE).

It is recommended that this Notice of Requirement is **CONFIRMED**, subject to conditions. The reasons are set out below.

Designation number:	TBC
Site address:	1043 Linwood Road, Kingseat
Requiring Authority:	Minister of Education
Hearing commenced:	No hearing required
Commissioner:	Philip Brown (Chairperson)

INTRODUCTION

1. Pursuant to section 168 of the Resource Management Act 1991 (“**the Act**”), the Minister of Education, as the Requiring Authority, gave notice to the Council to designate the site at 1043 Linwood Road, Kingseat, to enable the establishment of a new primary school catering for school age children from Year 0 to Year 8, as well as a new Early Childhood Education Centre (ECE) catering for pre-school children.
2. At the request of the Requiring Authority, the Notice of Requirement (“**NoR**”) was publicly notified on 11 December 2020. Submissions closed on 29 January 2021. A total of five submissions were received. Three of the submissions were in support, with the remaining two either neutral or conditionally supporting the proposal.
3. The NoR was referred to me as a sole commissioner, to confirm a recommendation on behalf of Council. A hearing has not been convened in this instance as none of the submitters wished to be heard and I was satisfied that sufficient information was in place to inform the recommendation. Accordingly, my recommendation has been made on the papers.
4. My recommendation assesses the NoR under section 171 of the Act. This report addresses the issues raised in the submissions and contains my recommendation to the Requiring Authority under section 171(2) of the Act. In making this recommendation, I have considered the NoR and its supporting materials, the Council’s comprehensive s42A report prepared by Ms Vanessa Leddra, and the

submissions received. I have also undertaken a site visit to understand the existing environment of the site and surrounding area.

THE EXISTING ENVIRONMENT

5. The site is located at 1043 Linwood Road, in Kingseat. It has been acquired by the Crown for educational purposes although the new title has yet to issue. The proposed school site is 4.44ha in area.
6. The site and surrounds are currently rural in character, with the land predominantly in pasture with scattered dwellings and rural accessory buildings, hedgerows and paddock fencing. Some horticultural use is evident on the adjacent site to the west.
7. While the land currently displays a rural character, the Auckland Unitary Plan (Operative in Part) provides for significant change to occur in this location. The site is identified as falling within the Mixed Housing Suburban zone and the Single House zone, and is also subject to precinct provisions. The combined effect of the Auckland Unitary Plan zoning and rules is to enable significant urban growth in Kingseat, albeit in the format of a rural settlement. The change in character that will arise as a result of the enabled growth has yet to materialise at Kingseat in any appreciable way, but that is simply a matter of time given that the zoning is settled.
8. The site is also impacted by existing overland flow paths and small areas of flood plain associated with minor watercourses that traverse the land.

SUBMISSIONS

9. The NoR was publicly notified by the Auckland Council (“**Council**”) on 11 December 2020. Submissions closed on 29 January 2021. A total of five submissions were received, as follows:
 - Auckland Transport (support in principle, subject to concerns being addressed through conditions);
 - Heritage New Zealand Pouhere Taonga (neutral, with a request for matters to be addressed through conditions);
 - Kingseat Village Limited (support);
 - Karaka Lakeview Limited (support);
 - Karaka Centre Limited (support).
10. The views of the Franklin Local Board were also sought in relation to the NoR. In summary, the Board supports the NoR on the basis that the future school will become an important part of the growing community at Kingseat. However, the Board did raise several traffic and access related matters that were similar to those covered in the Auckland Transport submission. It also sought to ensure that the school boundary was contiguous with the adjacent land identified as Open Space – Sport and Active Recreation Zone under the Auckland Unitary Plan.

11. A report and recommendation on the NoR was prepared by Ms Leddra, and is referred to hereafter as 'the s42A report'. This report, along with the Council's various specialist assessments, have been circulated to all parties prior to my consideration of the NoR. There has been no hearing in this case as all submitters have indicated that they do not wish to be heard and the Requiring Authority does not seek a hearing. I am satisfied that I have all the necessary information to make a recommendation.
12. I have been appointed to consider this matter and act under delegated authority from the Council under section 34A of the RMA.
13. The recommendations made in this document arise from my findings after considering the NoR, the submissions lodged, and the s42A report. I understand that the recommended conditions set out at Attachment E of the s42A report have been agreed to by the Requiring Authority. It is evident that there is consensus among all parties as to appropriate conditions to be applied to the designation if it is to be confirmed.
14. My recommendation is made in terms of the framework provided by section 171 of the RMA.

PROCEDURAL MATTERS

15. There were no procedural matters that were brought to my attention in reaching a recommendation on the NoR. All submissions were received within the statutory timeframe.

ISSUES FOR CONSIDERATION

16. After analysis of the NoR application (including proposed mitigation measures), undertaking a site visit, reviewing the s42A report, and reviewing the submissions and Local Board feedback, the proposed NoR raises a number of issues for consideration. The principal issues for consideration are:
 - *Whether the NoR raises any potential for significant adverse effects to arise in the future;*
 - *Whether any such adverse effects are sufficiently offset by positive effects; and*
 - *Whether any such adverse effects can be appropriately managed by conditions that would attach to the designation.*

Permitted Baseline

17. It is appropriate to consider the environmental effects of the proposal in the context of baseline effects that could arise from the implementation of permitted activities on the site.
18. This matter was addressed by Ms Leddra in the s42A report, where she concluded that the permitted baseline is of little assistance in assessing the effects of the

proposed school designation. I agree with her assessment. Resource consent would be required for any educational facilities on the site, and housing development would also be substantially limited by the permitted thresholds of the Auckland Unitary Plan.

Effects of the Proposal, and Appropriate Conditions

19. The assessment of environmental effects report submitted in support of the NoR addressed the potential effects of the proposal, both adverse and positive. Technical assessments relating to traffic and transportation, soil contamination, geotechnical, flooding, stormwater and ecology matters were also prepared for the Requiring Authority in order to confirm the extent of effects.
20. The Requiring Authority's conclusions in the AEE report were reviewed by Ms Leddra in her s42A report, together with a number of Council specialists. Ms Leddra has concluded, subject to some further amendments to the conditions, that the adverse effects of the project can be avoided, remedied or mitigated.¹ I understand that the amendments referred to by Ms Leddra have been agreed to by the Requiring Authority.
21. In the circumstances of an uncontested NoR, there is little value in me including an exhaustive assessment of effects in this recommendation report. Rather, I record that I have read the AEE, the s42A report and the relevant technical reports and specialist reviews, and agree with the conclusions set out in those documents. I am satisfied that the adverse effects of the proposal on the environment will not be significant and can be appropriately managed through the conditions that have been agreed between the Requiring Authority and the Council.
22. It is also clear to me that the new school will have positive effects, principally through the provision of educational facilities to service the projected population growth in Kingseat. Schools also provide an important community focal point that facilitates social interaction between families in the contributing area.

RELEVANT STATUTORY PROVISIONS CONSIDERED

23. The Minister of Education is a Requiring Authority in terms of s166 of the Act. The Minister has given notice to the Auckland Council of a requirement to designate the site at 1043 Linwood Road, Kingseat, for "Educational Purposes – Primary School (Years 0-8) and Early Childhood Education (Pre-School)".
24. Section 171 of the Act sets out the matters to which a territorial authority must have regard when considering a requirement and any submissions received, and in making its recommendations to the requiring authority. Section 171 is subject to Part 2, which states the purpose and principles of the Act.

¹ Paragraph 4.3.6, page 30, s42A report

25. Section 171(1) requires:
- (1) *When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to -*
 - (a) *any relevant provisions of -*
 - (i) *a national policy statement:*
 - (ii) *a New Zealand coastal policy statement:*
 - (iii) *a regional policy statement or proposed regional policy statement:*
 - (iv) *a plan or proposed plan; and*
 - (b) *whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if –*
 - (i) *the requiring authority does not have an interest in the land sufficient for undertaking the work; or*
 - (ii) *it is likely that the work will have a significant adverse effect on the environment; and*
 - (c) *whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*
 - (d) *any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.*

Section 171(1)(a) – Any relevant provisions of a national policy statement, a New Zealand coastal policy statement, a regional policy statement or proposed regional policy statement, a regional plan, a district plan or proposed district plan.

26. Pursuant to section 171(1)(a), when considering the requirement, I must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to any relevant provisions of a national policy statement, the New Zealand Coastal Policy Statement, the regional policy statement, the proposed regional policy statement and the relevant regional and district plans and proposed plans.
27. Collectively the Minister’s Notice of Requirement application and the s42A report provided a comprehensive commentary on the relevant national and regional policy statements, and the Auckland Unitary Plan. I do not intend to repeat this material in this decision; rather I rely on the application documents and the s42A report in this regard.

28. I note that, in preparing my recommendation, I did consider the proposal in the context of the National Policy Statement on Urban Development, the National Policy Statement on Freshwater Management, and the National Environment Standard for Assessing and Managing Contaminants in Soil to protect Human Health.
29. The New Zealand Coastal Policy Statement was not considered relevant in relation to this particular requirement. No regional plan provisions are relevant to the consideration of this NoR. Any subsequent applications to develop the site that trigger the need for resource consents under the regional plan will be applied for at that time.

Section 171(1)(b) – Adequate consideration has been given to alternative sites, routes, or methods of undertaking the work or that it is likely that the work will have a significant adverse effect on the environment.

30. It is noted that consideration of alternative sites is only required under s171(1)(b) if the Requiring Authority does not have an interest in the land that is sufficient to undertake the work or if it is likely that the work will give rise to significant adverse effects. In this case the Requiring Authority has obtained an interest in the land and, as a consequence, there is no need for me to assess whether adequate consideration has been given to alternative sites.
31. In any event, I am satisfied that the work envisaged under the NoR would not give rise to any significant adverse effects and I am also aware that the Requiring Authority did consider other sites before deciding that the land at 1043 Linwood Road was a suitable location for a new school in this area.

Section 171(1)(c) - Whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.

32. The supporting information provided with the NoR explains that the Education and Training Act 2020 empowers the Minister of Education to designate schools. The management of schools, once established, sits with the elected Board of Trustees in each case.
33. It is clear that a designation is the most efficient and effective means of enabling a school to be established and to operate into the future without any significant impediment. It is also evident that the immediately surrounding area is identified for significant growth since the Auckland Unitary Plan assigned residential zones to that land. For these reasons, I consider that the work and designation is reasonably necessary for achieving the objectives of the Requiring Authority in providing state schooling.

Section 171(1)(d) Other matters considered reasonably necessary in order to make a recommendation on the requirement.

34. The default period for the lapse of a designation is five years after its inclusion in a plan unless it has been given effect to or an application is made to extend the period,

or a longer period is confirmed as part of the designation process.² In this application the Requiring Authority has sought a lapse period of 10 years. Given that development of the surrounding area for urban purposes is likely to occur progressively over a number of years, I consider that a 10 year lapse period is appropriate.

35. The other relevant matters relate to the timing of urban development in the Kingseat location, as set out in Council's 'Future Urban Land Supply Strategy' (FULSS), and the need to ensure that such development is served by appropriate physical and social infrastructure.
36. The FULSS identifies the Kingseat area as being a rural settlement to be live zoned and development ready in the period 2012-2017. That outcome has been achieved through the Auckland Unitary Plan as the land in this area has been assigned urban residential and business zones, and recreation zones. In that context, population is set to increase rapidly in the Kingseat rural settlement and there is a need to enable all the services and infrastructure required for a growing population. Close to 2,000 people would be accommodated within the settlement when fully established. The designation for a new school would support the growth objectives of the Auckland Unitary Plan.

Part 2 of the Act

37. Part 2 of the Act sets out its purpose and principles.
38. In terms of section 5, I accept that the proposed designation is necessary to provide for the educational needs of the expanded rural settlement at Kingseat. The works enabled by the designation will assist people and communities to provide for their social, economic and cultural wellbeing.
39. The designation will also provide for the efficient use and development of natural and physical resources, which is a matter that should be had particular regard to under section 7 of the Act. A local school will avoid the need for new residents in this rural settlement to travel further afield to obtain schooling for their children.

CONCLUSIONS

40. Section 171 of the RMA provides the means by which the NoR can be recommended to be confirmed or otherwise by the Minister of Education. In terms of section 171, after considering all the information put before me, I consider that the NoR should be confirmed by the Minister of Education, subject to the recommended conditions (as set out in Attachment A).
41. I have concluded that the 10 year lapse period sought by the Minister of Education for the designation is appropriate given the project's scale and the anticipated

² Section 184(1) of the RMA

timeframes in respect of funding, design, and outline plan approval processes to be completed, as well as the timing of population growth in this location.

RECOMMENDATION

In accordance with section 171(2) of the Resource Management Act 1991, the Auckland Council recommends to the Minister of Education that the Notice of Requirement for Educational Purposes – Primary School (Years 0-8) and Early Childhood Education (Pre-School) applying to 1043 Linwood Road, Kingseat (Section 1 of approved title plan SO 544969 (new title yet to issue) on underlying title Lot 2 DP 417814 (CT identifier 468658)), as shown on the 'Designation Plan' in Appendix A of the Notice of Requirement, be confirmed, and be subject to the following conditions set out in Attachment A.

REASONS FOR THE RECOMMENDATION

Under section 171(3) of the Act the reasons for the recommendation are:

1. The NoR satisfies section 171 of the Act as the designation is reasonably necessary for achieving the objectives of the Requiring Authority, and will provide required early childhood education and primary school education facilities in the Kingseat rural settlement growth area.
2. The work proposed by the designation is consistent with Part 2 of the Act in that it enables people and communities to provide for their social, economic, and cultural wellbeing and represents an efficient use of natural and physical resources.
3. The designation is in general accordance with relevant objectives, policies of the Auckland Unitary Plan (Operative in Part) including the Auckland Regional Policy Statement.
4. Subject to the recommended conditions, set out in Attachment A, the designation will avoid, remedy or mitigate adverse environmental effects.

AMENDMENTS TO THE UNITARY PLAN (OPERATIVE IN PART)

That the Auckland Unitary Plan (Operative in Part) be amended as set out in Attachment A.



Philip Brown
Independent Commissioner

Date: 26 May 2021

ATTACHMENT A: DESIGNATION AND RECOMMENDED CONDITIONS

50XX Primary School and ECE 1043 Linwood Road, Kingseat

Designation Number	50XX
Requiring Authority	Minister of Education
Location	1043 Linwood Road, Kingseat
Rollover Designation	NA
Lapse Date	The designation shall lapse on the expiry of 10 years from the date on which it is included in the district plan if it has not been given effect to before the end of that period.

Purpose

Educational Purposes – Primary School (Years 0-8) and Early Childhood Education (Pre-School).

Conditions

The standard conditions for all Minister of Education designations apply to this designation, except that where any standard condition conflicts with a site-specific condition below, the site-specific condition shall take precedence.

1. **Building height in relation to boundary**

Any new building or building extension (excluding goal posts and similar structures) shall comply with the height in relation to boundary controls of 2.5m high at the boundary and 45 degrees from any adjoining land zoned primarily for a residential purpose, or zoned primarily for an outdoor space/outdoor recreation purpose.

2. **Noise**

The noise (rating) level arising from the operation of the school and pre-school must comply with the following noise levels when measured at the boundary of any residentially zoned site, or within the notional boundary of any site in a rural zone:

DAY/TIME	NOISE LEVEL
<i>Mon – Sat, 7.00am – 10.00pm (0700 -2200)</i>	<i>55 dB L_{Aeq}</i>
<i>Sunday 9am to 6pm</i>	
<i>All other times</i>	<i>45 dB L_{Aeq} 75 dB L_{AFmax}</i>

These noise limits do not apply to noise from normal school sports and school recreational activities occurring between 8am and 6pm Monday to Saturday.

Noise levels shall be measured and assessed in accordance with NZS 6801: 2008 “Measurement of Environmental Sound” and NZS 6802:2008 “Environmental Noise”.

Noise from construction shall not exceed the limits recommended in, and shall be measured in accordance with, New Zealand Standard NZS 6803:1999 “Acoustics – Construction Noise”.

3. **Establishment Outline Plan of Works**

The Requiring Authority shall, in accordance with the requirements of s176A of the Resource Management Act 1991, submit an Outline Plan of Works for the construction and development of the school and Early Childhood Education Centre (ECE) which shall include the following further information:

- a) *A Design Concept Plan for the site including:*
 - i. *The general location of access points for vehicles, cyclists, scooters and pedestrians, on-site parking areas (including cars, cycle and scooter parks), and on-site pick up and drop off areas;*
 - ii. *Measures and treatments at all access points to manage conflict between pedestrians, cyclists, scooter users and vehicles, including alternative access frontages where practicable to avoid direct access from Linwood Road*
 - iii. *General location of building platforms, areas for proposed buildings and open space (such as playgrounds and sports fields); and*
 - iv. *“Indicative” areas accommodating future education purpose growth on this site, including building platforms, car parking areas, vehicular access, maneuvering and circulation areas.*
- b) *A Transport Assessment prepared by a suitably qualified traffic engineer/transportation planner which, taking into account the Integrated Transport Assessment (ITA) prepared by Abley Ltd dated 19 October 2020, addresses safety, efficiency and the following specific matters:*
 - i. *Safe access for pedestrians, cyclists and vehicles (including buses, rubbish trucks and for ground and building maintenance) and appropriate measures and treatments to minimise conflicts between all transport modes;*
 - ii. *On-site staff and visitor car parking including for the primary school satellite unit and ECE, cycle and scooter parking, and loading spaces to facilitate deliveries and rubbish removal;*
 - iii. *On-site pick-up and drop-off area(s) specifically designed to accommodate predicted demand including vehicular access, circulation, maneuvering for cars and buses (if required). The following matters shall specifically be addressed as they relate to the school and ECE:*
 - a) *Potential effects on the safe and efficient operation of the surrounding transport network and the internal school circulation;*
 - b) *Providing for the continuity of cycle and pedestrian facilities;*
 - c) *Providing safe separated access points to the school for those who walk or cycle on either side of the pick-up and drop off access; and*
 - d) *An onsite pick-up and drop-off area for the ECE independent of the school;*

- e) *The availability of alternative access, including side roads from Linwood Road.*
- iv. *Any impediments on the safe and efficient movement of pedestrians and cyclists as they relate to the school and ECE within the surrounding transport network and any measures required to mitigate these;*
- v. *Traffic generation and any means of mitigating adverse effects on the efficiency and safety of the surrounding transport network;*
- vi. *Where vehicular access is provided from Linwood Road:*
- the effects of the location and design of the access on the safe and efficient operation of the adjacent transport network having regard to:*
- *visibility and safe sight distances;*
 - *existing and future traffic conditions including speed, volume,*
 - *type, current accident rate, and the need for safe maneuvering;*
 - *proximity to and operation of intersections;*
 - *existing community or public infrastructure located in the adjoining road, such as bus stops, bus lanes and cycleways.*
- c) *A summary of the consultation and Engagement with Auckland Transport recording agreements reached on the transport matters described below, and effects associated with the school and the ECE on the surrounding existing and future roading network. A copy of the draft Design Concept Plan and draft Traffic Assessment prepared to support the Establishment Outline Plan shall be provided to Auckland Transport for the purposes of this consultation and engagement.*
- The specific transport matters that will be considered and discussed include:*
- i. *Measures and treatments to ensure safe access is provided to the school and ECE for all transport modes, including implementation timeframes;*
- ii. *Measures and treatments to the surrounding road network as they relate to the school and ECE, such as those included in Auckland Transport's Transport Design Manual (TDM) or updated equivalent Auckland Transport design standards which apply at the time of the preparation of the Establishment Outline Plan. These may include road widening, pedestrian and cycle facilities (crossings and paths), right turn bays, signs, road markings (e.g. No Stopping At All Times (NSAAT)), traffic management and calming measures to support forecast increases of traffic and travel modes that are attributed directly to the school and ECE.*
- iii. *Bus access (if any) and the location of bus stops and shelter along the school and ECE road frontages;*
- iv. *The provision of footpaths on pedestrian routes.*
- d) *A record of former land parcel boundaries and early farming activity features as required by Condition 8.*

4. Access to Linwood Road

- a) *Where alternative road access is available at the time the first stage of the school is constructed, vehicle access shall not be taken from Linwood Avenue unless otherwise agreed with Auckland Transport.*
- b) *In the event that vehicular access is to be provided from the road frontage with Linwood Road, the school shall not be opened until such time that Linwood Road is upgraded. The upgrade of school site frontage with Linwood Road shall be the responsibility of the Ministry of Education.*

5. School Travel Plan

- a) *Prior to the opening of the school, the requiring authority shall either directly or through the School Board of Trustees, develop a School Travel Plan.*
- b) *The purpose of the School Travel Plan is to provide specifically for measures to reduce vehicle dependence, including walking school buses, carpooling, the encouragement of the use of public transport, the use of remote pick up/drop off locations if appropriate, and the encouragement of walking and cycling. This Travel Plan shall also specifically address the following matters:*
 - i. *Safe access to the entry points to the school. Features such as Kea Crossings or Zebra Crossings should be specifically considered;*
 - ii. *Consistency with or use of Auckland Transport's Travel Wise programme, or any equivalent programme adopted;*
 - iii. *Measures to separate vehicle entry and pedestrian/cyclist entries; and*
 - iv. *Location and provision on site of any scooter and cycle parking required.*
- c) *The School Travel Plan shall be developed in consultation with Auckland Transport and shall include a monitoring programme. The School Travel Plan shall be reviewed at the time of submitting each subsequent Outline Plan of Works relating to increased student numbers.*
- d) *A joint Travel Plan for the school and ECE on the site may be developed.*

6. On-site pick up and drop off

- a) *Vehicular on-site pick-up and drop-off areas for the school shall be provided. The number of pick-up and drop-off bays shall be determined by an assessment of the predicted demand for vehicles entering and exiting the site. This assessment will be undertaken, and the results submitted, as part of any outline plans where there is an increase in teaching spaces. Bays may be provided on a staged basis consistent with each stage of school development.*
- b) *An assessment of the need for a bus pick-up and drop-off facility for the school shall be submitted as part of any outline plan to increase teaching spaces. Bus facilities may be provided on a staged basis consistent with each stage of school development.*

7. **Construction**

A construction management plan shall be prepared and submitted with any outline plan or works for major site works.

8. **Recording Former Land Parcel Boundaries/Early Farming Activity Features**

Prior to the start of Project Works, the Requiring Authority shall engage an appropriately qualified specialist experienced in the identification and (archival) recording of rural historic heritage features and landscapes and approved by the Auckland Council Cultural Heritage Implementation Team and Heritage New Zealand Pouhere Taonga, to make an archival quality photographic record of hedgerows located within/along the site boundaries considered to demarcate former land parcel boundaries, and of any other remnant rural landscape features representative of historical farming activities in the area (which included former use of the site for pig farming). The record shall include a scale site plan indicating the extent of the photographed features and the locations at which photographs are taken and include a photographic scale in all images as part of the establishment outline plan required by condition 3(d). Digital copies of the record shall be submitted to Heritage New Zealand Pouhere Taonga Northern Regional Office and to the Auckland Council Cultural Heritage Implementation Team within 6 months of the start of Project Works.

9. *A connection to Watercare's wastewater system shall be provided before the school or ECE become operational.*

Advice Note

1. **Accidental Discovery**

Should the proposed earthworks result in the identification of any previously unknown sensitive materials (i.e. archaeological sites), the requirements of land disturbance – Regional Accidental Discovery Rule (E11.6.1 as at 15 January 2021 or any subsequent update to this rule) set in the AUP: OP shall be complied with on the basis that regional land disturbance rules apply in addition to this designation.