BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2020] NZEnvC 41

IN THE MATTER	of the Resource Management Act 1991
AND	of a direct referral application under s 198B of the Act for a notice of requirement to alter designation 3800 'Care and Protection Residential Centre - Upper North' in the Auckland Unitary Plan (Operative in Part)
BETWEEN	MINISTER FOR CHILDREN (ENV-2019-AKL-000007) Applicant
AND	AUCKLAND COUNCIL Regulatory Authority

Court:	Environment Judge B P Dwyer Environment Commissioner D J Bunting Environment Commissioner A C E Leijnen Deputy Environment Commissioner S G Paine
Hearing:	at Auckland on 3-4 March 2020
Appearances:	D Allan and A Devine for the Applicant M Allan and M Jones for the Regulatory Authority D André for Submission No 43 parties, and for F Y Chin, J Chan, D Bell, Submitter 58, Submitter 59 L Li for herself Te Rata Hikairo for himself D Newman for himself A Dalton for herself Submitter 58 for herself P Rauwhero for herself
Date of Decision:	7 April 2020
Date of Issue:	7 April 2020

FINAL DECISION OF THE ENVIRONMENT COURT

MINISTER FOR CHILDREN

A: Requirement confirmed, conditions in final form to be submitted to the Court

REASONS

Background

[1] On 22 February 2019 the Minister for Children (the Minister) lodged with the Auckland Council (the Council) a Notice of Requirement (NOR) for an alteration to *Designation 3800 Care and Protection Residential Centre-Upper North in the Auckland Unitary Plan - Operative in Part*. The NOR and designation relate to a property known as Whakatakapokai at 398 Weymouth Road, Weymouth in South Auckland (the Site) which contains a care and protection residence managed by Oranga Tamariki-Ministry for Children for twenty residents up to the age of 16 (the Residence).[1]

[2] The nature of the public work proposed under the alteration was described in the following terms:

> To alter the purpose of Designation No. 3800 to align with and fulfil the current and future obligations and duties of the Chief Executive of Oranga Tamariki-Ministry for Children by increasing the number of children/tamariki and young persons/rangatahi who may live at the Oranga Tamariki Residence at 398 Weymouth Road, Weymouth (Oranga Tamariki Residence), for care and protection, youth justice or certain adult jurisdiction or transitional purposes from 20 to 30.

[3] In short, the purpose of the alteration was to expand the use of the Residence from its previous care and protection purpose to include youth justice placements and increase the number of persons who might be housed there.

[4] When lodging the NOR with the Council, the Minister requested that the NOR be subject to a decision of the Environment Court instead of a recommendation by the Council and a decision by the Minister. This was agreed, and an Environment Court hearing was held in Auckland on 20 – 22 May 2019.

[5] The Court's Interim Decision issued on 1 August 2019 included the following

[1] In the Court's Interim Decision, the term "Site" was used as having the same meaning as Residence in this Final Decision.

findings:

- Irrespective of the mix, the combined number of care and protection and/or youth justice placements on the Site should be limited to 20.
- Subject to the inclusion of the Court's amendments to the safety and security conditions in any final condition set, with this number of placements, the level of risk mitigation should be appropriate for the proposed Youth Justice Residence;
- Provided that there was compliance with the noise conditions in the 31 May 2019 condition set, the Court identified that repurposing of the facility would not give rise to unreasonable noise effects;
- There was no challenge to the evidence of the expert witnesses that any effects of the repurposing on traffic, transport and parking had been adequately mitigated and managed under the relevant conditions in the 31 May 2019 condition set.
- Conversely, the Court was not satisfied that an adequate Social Impact Assessment (SIA) had been undertaken and identified a process to enable the SIA to be updated and a Social Impact Management Plan (SIMP) to be prepared;
- There was also a significant gap in the evidence from the Minister about the intended use of the Wharenui for Care and Protection assessments and the Minister and the Council were directed to provide the Court with further information about this and the related security implications.

[6] The Court advised that a final determination on the proceedings in light of the above interim findings would be made once the Court had considered further evidence on the use of the Wharenui and the updated SIA and SIMP.

[7] This decision sets out the final determination of the Court in these proceedings.

The Wharenui/Hub/Care and Protection Facility

The Experts

[8] Expert evidence on the proposed use of the Wharenui was provided by Mr C Ioane (for the Minister) and Mr C W Polaschek (for the Council).

[9] Mr Ioane is a member of Oranga Tamariki Community Residential Services

Auckland (CRSA) and responsible for the management of the Residence.

[10] Mr Polaschek is an independent security consultant. His security and risk management experience has been gained through previous employment with the Department of Corrections, Oranga Tamariki (under a number of former iterations) and the Ministry of Social Development. Roles with the Department of Corrections have included managing Wellington Prison and as National Manager System and Security (which at the time included responsibility for the maintenance, review and development of all policies and procedures for 19 prisons).

The Residence

[11] The final version of the Designation Conditions[2] includes the following definitions:

> **Residence:** Describes the whole of the site used for care and protection and youth justice functions as shown on the Concept Plan (included at the start of the conditions).
>
> **Care and Protection Facility:** That part of the Residence to be occupied exclusively by the care and protection function, that includes the Wharenui, as shown on the Concept Plan (below).
>
> **Youth Justice Facility:** That part of the Residence to be occupied exclusively by the Youth Justice function as shown on the Concept Plan (below).
>
> **The Concept Plan: Designation 3800: Oranga Tamariki Residence** shows the Residence as comprising four separate areas:
>
> - Area 1 – Youth Justice Facility
> - Area 2 – Care and Protection Facility including Wharenui
> - Area 3 – Shared Administration Area
> - Area 4 – Landscaping, Access, Parking

[12] Areas 2, 3 and 4 (the Care and Protection Facility including the Wharenui, the Shared Administration Area, Landscaping and Parking) are all located outside of the high security fence which surrounds the Youth Justice Facility. A copy of the Concept Plan is attached to this decision as Appendix 1.

[13] In the evidence the terms Wharenui, Hub, and Care and Protection Facility have been used interchangeably to mean the same thing. In the conditions, this facility

[2] Designation Conditions attached to Minister Reply Submissions dated 13 March 2020.

is described as the Care and Protection Facility.

[14] The Wharenui will have communal sleeping, eating, recreational, cooking and administrative areas as well as showers and ablutions.

Tamariki, Rangatahi and Young Persons

[15] In his 15 April 2019 evidence, Mr Ioane wrote that "Care and Protection Residences are for children and young people primarily aged 9 to 17 who have highly complex needs and require intensive support" and "The purpose of placement within a Residence is to stabilise tamariki and rangatahi."[3]

[16] Our general understanding is that the term "tamariki" refers to children and "rangatahi" and "young persons" to teenagers. Having said this, in his Supplementary Evidence of 29 November 2019, Mr Ioane refers to tamariki "up to the age 17 years…"[4].

[17] In preparing this decision, we have not attempted to draw any distinction between the terms used on their own or in various combinations.

Updated Operating Model

[18] The outline in the following sections has been drawn primarily from the evidence of Mr Ioane.

[19] Historically, Oranga Tamariki has operated four care and protection residences, Epuni in Wellington, Te Oranga in Christchurch, Puketai in Dunedin and Whakatakapokai. In addition, a fifth residence in Christchurch is contracted to Barnardos, which provides care for young men aged 14-17 years who are receiving specialist therapeutic treatment and support.

[20] These care and protection residences are to be phased out and replaced with well-supervised, smaller, community-based options, such as the facilities that are operated by CRSA.

[21] The Wharenui at Whakatakapokai will be the first of these facilities (and currently the only one) to have changed from the historic operating model to the new

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3 Ioane EIC at [5.1] and [5.2].

4 Ioane Supplementary Statement at [4.5 (a)].

community-based option. It opened in 2010 as a place to work and sleep for care and protection purposes. Up until January 2019, it was utilised for day and residential programmes. This included staff training, powhiri for welcoming visitors to Whakatakapokai and the delivery of cultural programmes for residents such as Kapa Haka. In 2017, Taonga Whetu – a Kaupapa Maori Unit of 4 to 5 young men lived in the Wharenui for 6 to 12 month stays.

[22] Under the CRSA Interim Operating Model, the Wharenui will be used as an entry-and-assessment Hub with the admission criteria changing from those previously applying to the Whakatakapokai Care and Protection Residence.

[23] The CRSA hub and spoke model involves a significant shift from accepting tamariki who present with high and acute behavioural needs (previously accepted at Whakatakapokai as a Care and Protection Residence) to tamariki who require early intervention rather than waiting for matters or behaviours to escalate before Oranga Tamariki is asked to consider placement options. The purpose of the Hub is to welcome tamariki while they stabilise and adjust to the daily routine and for staff to assess their needs. They will stay for between two days and two weeks before being transitioned elsewhere normally into a community home.

[24] In recognition of the new social and physical environment being created at the Hub, tamariki and rangatahi who present with high and acute behavioural needs will be assessed at a national level and typically referred to one of the other three Oranga Tamariki care and protection facilities around the country. As an example, a high-end residential placement could be made for a child who is acting aggressively towards others, damaging property or placing themselves at risk and therefore requires a more physically secure environment.

[25] While tamariki and rangatahi usually enter the Hub via a planned admission, at times they may require emergency admission if their existing placement has broken down or they require immediate respite to address health needs or preserve their placement or whanau relationships. The way in which these emergency placements are assessed was clarified in the Minister's Reply submissions as discussed below.

[26] As Care and Protection and Youth Justice cater to different cohorts, the Wharenui will have its own Security, Emergency and Site Safety Management Plans specific to its use, prepared in accordance with the Residential Care Regulations.

Admission Criteria

[27] Mr Ioane and Mr Polaschek were questioned about a number of aspects of the admission criteria to the Wharenui, including about how front- line staff would be aware of the conditions imposed under the designation and how exceptions to the normal admission criteria such as emergency situations would work in practice.[5]

[28] With respect to the conditions, Mr Ioane said that they would be incorporated in a CRSA document titled *Key Operating Procedures* which would be regularly updated and available for use by front-line staff.

[29] He was asked if a specific need was identified for the placement of a young person into Oranga Tamariki's care late at night, what the assessment process would be for selecting the placement facility and whether the Wharenui would be the "first stop" for this. His response was that that such "after-hours" assessments would normally be made at a regional level (as opposed to a national level) and a decision would be made on whether the placement should be at the Wharenui or elsewhere.

[30] Mr Polaschek advised that he was unfamiliar with the assessment procedures used by Oranga Tamariki particularly in emergency situations. He said that if he had a better understanding of these procedures, this might have influenced his assessment of the degree of risk for both the children in the unit and the people in the surrounding communities.[6]

[31] Helpfully, more specific detail on all of this was provided in the Minister's Reply Submission discussed below.

Safety and Security

[32] As the Wharenui is a care and protection facility, there is no ability for staff to detain tamariki although they do have authority to exercise some control. Mr Ioane said that if tamariki left without permission, CRSA would implement its enhanced notification check list which detailed the procedures for staff to follow. This check list included a Site Safety Plan.

[33] The emphasis at the Wharenui was on dynamic security measures rather than

5 NOE at pages 76-79 and at pages 104-112.
6 NOE at page 98.

physical measures. Mr Ioane said that these dynamic measures include specified selection criteria for placements, high staff supervision ratios, a line of sight policy and a behaviour management system.

Mr Polaschek's Findings

[34] Mr Polaschek made the following findings based on his understanding of Oranga Tamariki's proposed safe use and operation of the Wharenui:[7]

- The tamariki placed at the Wharenui are not young offenders but those with behavioural challenges requiring care and protection services.
- These young people do not pose a risk to the community.
- Tamariki who might pose a more significant risk if they abscond or had acute behaviours will be housed elsewhere.
- The intended approach for operating the Wharenui is not entirely unique, but a marginally more intensive version of other community programmes already in existence at other locations in New Zealand.
- The Wharenui has a one-bedroom secure area and an attached marae both of which are considered in the overall security evaluation.
- Senior staff at the Wharenui will be involved in vetting and selecting the tamariki to be placed in the Wharenui.
- The major security feature is intensive supervision of the young people through a high staff to placement ratio.
- If they chose to abscond, there is little available evidence that the tamariki who will be placed at the Wharenui pose a risk to anyone other than themselves.
- Absconding risk is significantly mitigated by the proposed dynamic security features (as summarised in the section above on security and risk).
- A potential risk is that if Oranga Tamariki's wider care and protection system came under placement pressure, higher risk tamariki could be end up being placed in the Wharenui.

[35] These findings were predicated on the understanding that no child or young person currently subject to any action under the Youth Justice provisions of the Oranga Tamariki Act should be held at the Wharenui.

[7] Polaschek Second statement of evidence at [7].

[36] Based on these findings, Mr Polaschek's overall risk assessment on the proposed use of the Wharenui for care and protection services was that, while security would be low, the risk to the community would also be low.

Tamariki in the Youth Justice System

[37] We now set out the differing views of the Minister and the Council on whether a tamariki or rangatahi who has been involved in the Youth Justice system should be eligible for placement in the Wharenui.

[38] Section 238(1)(a) to (f) of the Oranga Tamariki Act lists the orders or options available to the Youth Court for a child or young person who appears before that Court. There are two broad categories, either to release them into the community (three options under paragraphs (a), (b) and (c)) or detain them (three options under paragraphs (d), (e) and (f)).[8]

[39] Mr Ioane said that he did not support a condition (proposed by the Council at the hearing) under which any child or young person who had a Court order against them under any of these six paragraphs should be excluded from being assessed and cared for at the Wharenui.

[40] His argument was that there are circumstances under which a child or young person could be released into the community by a court pending processing under the Youth Justice system and that person could then come under the care of Oranga Tamariki because of unrelated factors. The Council's proposed condition at the time of the hearing, if implemented, would mean this child/young person would not be able to be assessed and cared for at the Wharenui.

[41] In consequence, at the time of the hearing, the Minister's position as set out in its proposed Condition 4A [9] was that if a child or young person had an order against them under s 238(1)(d), (e) or (f) (the detention provisions) they would be excluded from being assessed and cared for at the Wharenui, but if the order was restricted to any of the three release options in s 238(1)(a), (b) or (c), they would not.

[42] Mr Polaschek said that his concern was that this would allow for placements at the Wharenui of young people who had been involved in the youth justice system

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8 Copy of s 238 of the Oranga Tamariki Act attached as Appendix 2 to this decision.

9 28 February 2020 Condition Set.

and could be on a trajectory towards more serious offending. He saw a key risk of including youth justice placements being one of contagion which could come through the sharing of anti-social ideas, attitudes and behaviours. He said that it was these contagion factors which had led to Oranga Tamariki's original creation of separate categories for care and protection and youth justice. He described the mixing of care and protection and youth justice placements as a potential "school of crimes" scenario under which there was the potential to increase the risk of absconding with vulnerable young people running away with older more sophisticated youth.

[43] Having said this, he did agree with counsel for the Minister that under s 238(1)(a) to (c) a young person could be released and live in the community with the potential for "contagion" of other vulnerable young people to occur anywhere.

[44] At the end of questioning, Mr Polaschek said that he had not changed his position that any young person who has had youth justice involvement should be excluded from placement at the Wharenui.

[45] Given the differences which remained at the end of the hearing between the Minister and the Council on this "youth justice" placement issue, the Court directed the parties to confer and report back on whether they could agree on a position on these placements which would work for Oranga Tamariki and the community and not lead to an increase in the level of risk.[10]

Minister's Reply Submissions

[46] In his Reply Submissions of 13 March 2020, counsel for the Minister responded to the Court's direction by proposing that the 28 February 2020 wording of condition 4A be amended to require that:

- Decisions on placements at the Hub be made by the "*Auckland High Needs Hub*" or the "*Te Tai Tokerau Hub*" (regional committees with responsibility for Care and Protection placements in the Auckland and Te Tai Tokerau regions).
- Decisions in emergency and overnight cases be made by the National Residential Services Manager or their duly authorised delegate.
- For all decisions, regard be had to the nature of the alleged or admitted offence by the child or young person including any matters raised by

[10] NOE at page 108.

Police or the Youth Court on these matters.

[47] Accordingly, the Minister's proposed amended wording for Condition 4A is as follows:

(1) While the Care and Protection Facility continues to be used for care and protection purposes, no children / tamariki or young people / rangatahi will be held in the Care and Protection Facility who:
  (a) Are currently subject to any order under section 238(1)(d), (e) or (f) of the Oranga Tamariki Act 1989; or
  (b) Are placed with the chief executive under section 235 of the Oranga Tamariki Act 1989.

(2) In circumstances where the requiring authority is considering whether to place children / tamariki or young people / rangatahi subject to any of the youth justice processes set out in condition 4A(2)(a) at the Care and Protection Facility, the requiring authority shall take the steps in condition 4A(2)(b) before making that placement:
  (a) The relevant youth justice processes are that the children / tamariki or young people / rangatahi are:
    (i) Subject to an order under section 238(1)(a), (b) or (c) of the Oranga Tamariki Act 1989; or
    (ii) Subject to a Police Alternative Action process; or
    (iii) Involved in a Family Group Conference process under section 247 of the Oranga Tamariki Act.
  (b) Before making any placement at the Care and Protection Facility for any children / tamariki or young people / rangatahi subject to the processes in condition 4A(2)(a) the requiring authority shall ensure that:
    (i) Subject to (ii) below, any decision regarding whether to place the children / tamariki or young people / rangatahi at the Care and Protection Facility shall be made by the Auckland High Needs Hub or the Te Tai Tokerau Hub.
    (ii) Any decision regarding an out of hours or emergency admission to the Care and Protection Facility that cannot be made by the Auckland High Needs Hub or the Te Tai Tokerau Hub shall be made by the National Residential Services Manager or their duly authorised delegate.
    (iii) Any decision regarding whether to place the children / tamariki or young people / rangatahi at the Care and Protection Facility shall have regard to:
      A. The nature of the alleged or admitted offence; and
      B. Any matters raised by the Police or the Youth Court

> regarding the circumstances relating to the child or young person and the alleged offending.

[48] The Council's position (on Mr Polaschek's advice) is that the wording in 4A(2)(b)(iii) did not go far enough to control the risk of a "youth justice" placement being made at the Hub resulting in undesirable contagion of other young persons.

[49] To address this concern, the Council sought that the Minister's wording of condition 4A(2)(b)(iii) be replaced with two objectives:

- That only children or young people with low level/low risk offending be placed at the Hub and that the risk to the community should not be increased as a consequence of any placement at the Hub; and
- That children/young people who had *previously* been subject to a youth justice plan and children/young people subject to *a current* youth justice process involving reoffending or alleged reoffending should be excluded from placement.

[50] While accepting that the nature of the alleged or admitted offence of a "youth justice" child or young person should be taken into account when a decision was being made on placement, the Minister did not accept that this should be provided for in the condition in the definitive way being sought by the Council. It restated its earlier position that the "youth justice" children and young people being considered for placements at the Hub under its wording of the condition are already entitled to be at large in the community and that the risk to the public from such placements at the Hub (with its monitoring and management) would be less than if these children or young people were living elsewhere in the community.

[51] The Minister also rejected the Council's request for a further provision to be included in condition 4A under which every 12 months the Minister would be required to advise the Council that the placement terms in condition 4A had been met.

[52] As the two parties were unable to agree to the amended wording being sought by the Council, it was left to the Court to decide on the final wording of the condition.

[53] In response to a request from the Court for clarification of the identity of the "duly authorised delegate" referred to in condition 4A(2)(b)(ii), counsel for the Minister advised that the National Residential Services Manager sits at Tier Level 3 in Oranga

Tamariki's organisational structure. If there was a need for delegation this would be to another Oranga Tamariki officer at the same Tier 3 level or above.

[54] The Minister and the Council were also unable to agree on the final wording for condition 9. The Minister's version of this condition sets out the obligations of the Minister to provide information to the Community Liaison Committee (CLC) on such matters as placements and abscondences at the Youth Justice Facility and changes to physical works at the Residence. The Council has requested that this information should also include details about placements at the Wharenui.

[55] The Minister opposes this request for a number of reasons. The Minister argues that the additional administrative workload it would impose on the Wharenui management was not warranted as placements at the Wharenui are for very short terms and of low risk. The Minister also argues that being required to provide similar information for the low security Wharenui as for the high security Youth Justice Facility would be out of proportion with the relative security levels of the two facilities.

Discussion and Finding on use of Wharenui

[56] The primary area of disagreement between the Minister and the Council is whether the amended wording requested by the Council should be included in condition 4A with the Council arguing that the Minister's wording on its own does not go far enough to control the risk of a young person with an "inappropriate" youth justice background being placed in the Wharenui.

[57] The Minister opposed the Council's wording arguing that its wording at 4A(2)(b)(iii) requires that any decision regarding placements must have regard to the nature of the alleged or admitted offence and any circumstances raised by the Police or Youth Court regarding the circumstances relating to the child or young person and the alleged offending.

[58] We find in favour of the Minister's wording for this on the proviso that the requirement for reporting requested by the Council is also included in the condition.

[59] This reporting requirement is for 12 monthly reports to be provided by the Minister to the Council confirming that all placements at the Wharenui have met the placement criteria required under the condition. The Council has also sought that it has access to relevant records (suitably redacted) to verify that the pre-placement

assessment criteria required under the condition have been met.

[60] We support the inclusion of this provision for three reasons:

- It seems to us that for its own internal audit processes the Minister would need to prepare such a report and therefore minimal additional administrative effort would be required to provide a copy to the Council;
- Reporting would provide an external check that the pre-placement criteria required under the condition are being met by the Minister;
- Reporting would also provide a measure of comfort to the community to know that compliance with terms of this condition is being pro-actively audited by the Council.

[61] The Council's proposed requirement for reporting is therefore to be included in the condition.

[62] The wording for condition 4A starts with the words "While the Care and Protection facility continues to be used for care and protection purposes, …". These words are to be deleted with the wording of the condition starting with "No child/tamariki….". Additionally, the following wording is to be added at the end of condition 4A(2)(b)(ii) … "This delegate shall be an officer at Tier 3 level or above in Oranga Tamariki's organisational structure".

[63] As noted above, under condition 9, the numbers and reasons for placements at Youth Justice facility are to be provided to the CLC monthly, and the Council has requested that similar information be provided for the care and protection facility, this being opposed by the Minister.

[64] We have decided that the Council's request would be satisfied to an acceptable degree if the Minister was to provide the CLC with a copy of its annual report to the Council (as we have directed is to be provided under condition 4A). In doing so we acknowledge that this is an annual report and that the other information under condition 9 is to be provided by the Minister monthly. We do not see this time difference as being unreasonable given the relative security status between the two facilities. The wording of condition 9 is to be amended accordingly.

Planning Issues

[65] We need to be satisfied from a planning perspective that the proposed use of the Wharenui is authorised under the terms of the existing designation and if not whether this use would be consistent with the planning framework of the AUP.

[66] In the 2002 NOR and in the existing Designation, the Purpose of the Residence is framed as follows:

> Care and Protection Residential Centre-Upper North, being a residence in terms of section 364 of the Children, Young Persons and Their Families Act 1989 for:
>
> (a) The placement of up to 20 children and young persons for the purpose of providing care (including secure care), protection, control and treatment and
> (b) Ancillary educational, recreational, rehabilitative, administrative, visitor accommodation and cultural facilities
> (c) Activities consistent with and ancillary to the establishment, operation and maintenance of the Care and Protection Residential Centre- Upper North, including buildings, fixed plant and service infrastructure, fencing, landscaping, earthworks, outdoor recreation areas access and car parking

[67] The Minister is seeking to make amendments to two aspects of this Purpose:

- To increase the number who may live at the Residence from 20 to 30;
- To expand the categories of children and young persons who may be accommodated at the Residence.

[68] With respect to the first aspect, in our Interim Decision we determined that there should be no increase in the number who may live at the Residence.

[69] For the second aspect, under the terms of the wording of the Minister's 13 March 2020 version of condition 4A, we find that the Minister is not seeking to expand the categories of children and young persons who may be accommodated at the Wharenui under the terms of the existing designation. This finding is supported by the Council which confirms in its closing submission that the proposed Hub use is consistent with the current use of the Wharenui and therefore forms part of the existing environment.[11]

[11] Council Closing Submission at [2.8].

[70] Accordingly, we find that the proposed use of the Wharenui is authorised under the existing Designation and it is not necessary for us to go to the next step and evaluate the proposed use against the planning framework of the AUP.

THE SIA and SIMP

[71] We now address the further evidence from the parties on the SIA and SIMP.

The Experts

[72] We set out the context of the issue of social impacts in our Interim Decision (at [100]). At the first hearing we were provided with evidence from Ms A J Linzey for the Minister and Mr R J Quigley for the Council. Ms Linzey was responsible for further work and preparation of an updated SIA and the preparation of a draft SIMP. Both these witnesses provided updated statements and a further JWS to assist the Court again.

[73] In addition Dr C N Taylor, a consultant and researcher in the field of applied social research and social impact assessment for 38 years, prepared an independent review of the updated SIA and the development of the draft SIMP. His role was limited to providing technical advice on the updated SIA and SIMP following receipt of the second statement of evidence from Mr Quigley. He did not undertake an impact assessment to assess the potential social impacts from the proposed alteration to the designation.

Mr Quigley's Concerns

[74] Dr Taylor's evidence largely responded to the concerns expressed in Mr Quigley's evidence regarding the updated SIA and SIMP; providing an independent commentary with respect to the structural, methodological and other concerns raised by Mr Quigley.

[75] Principal concerns Mr Quigley had of the updated SIA can be summarized as:

- Inaccurate aspects – primarily the literature review;
- Questions ask wrong people the wrong types of questions to fully characterize the proposal's potential social effects;
- Reasoning, clarity around issues and who is affected;
- Significance of effects; and
- Linkages to SIMP.

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Literature review

[76] Review of relevant literature was undertaken in the initial preparation of the SIA and the findings are included in the section entitled "Scoping Outcomes". Mr Quigley's concern lies with the accuracy of the reporting on the findings of the review.

[77] For example, as outlined in his first statement of evidence, the reference to the Final Decision of the Board of Inquiry into the Proposed Men's Correctional Facility at Wiri, 2011, provides no evidence about a reduction in resident fears over time. His concern is that this error leads to an unsubstantiated conclusion, as we understand it, which then influences reasoning in the SIA when effects are evaluated. The amended SIA does not, in his opinion, correct this issue.

[78] Dr Taylor's review does not check the accuracy of the literature review but he opines that "it is best to consider the literature review mainly as part of scoping the SIA rather than as a definitive review". He concludes that has been the case with the updated SIA. He goes on to explain at para [5.7]:

> That said, with due care and consideration of the limits of the data source, as Mr Quigley points out (his para 4.67), comparison cases can also usefully help to elaborate an effect – as one source of information on that effect. In this detailed use of information from other cases and experiences the source can be cited at point of use, not confined to a specific review section.

- Finding

[79] In respect of the literature review, we accept the criticism here by Mr Quigley and the evidence of Dr Taylor concerning the purpose of the literature review. The degree to which this has influenced the "scoring" attributed to an identified adverse effect is difficult to understand from the evidence.

[80] This issue is not confined to just the literature review as scores have changed as the authors of the SIA have amended their impressions of likely social effects from the evidence gained through interviews, focus groups and the telephone survey and a better understanding of submissions on the designation. The activity itself has also been refined through the Court's Interim Decision and conditions which the Minster proposed to attach to the designation when the revised SIA assessment was undertaken.

[81] The difficulty we think Mr Quigley has, is the "black box" the scoring has gone into from initial observation to outcome once these mitigating factors are applied. With regard to the literature review we do not find the concern with the literature review is an impediment to our assessment of the potential social effects of this proposal and is likely to (as we will come to) be remedied by the operation of the SIMP. We now look at each of the potential social impacts considered.

Wrong people the wrong types- characterization of potential social effects (in other words: defining the degree of impact):

[82] The two principal witnesses (Linzey and Quigley), prepared a second JWS dated 22 January 2020. This helpfully provided a summary table of their points of difference in evaluation. There appeared to be general agreement on where the potential for social impacts may fall and these were grouped variously under the following headings:

- Way of Life - Privacy and Residential Amenity
- Way of life - People's daily activities and networks
- Sense of Place
- Health and Wellbeing
- Personal / Property Rights
- Fears and Aspirations

[83] The revised SIA provided a summary of changes made to conclusions around these factors and the rationale for those changes[12]. As we have noted, the degree of adverse effect recorded in the revised SIA has changed as a result of changes made to the proposal through amended conditions (put to the Court at the first hearing), as well as the Court's Interim Decision which limits the overall number of residents to 20. In short, using the list reference above:

- Way of Life - Privacy and Residential Amenity:

[84] The preliminary SIA had assigned this effect as moderate to potentially high adverse. Now that conditions are proposed to attach to the designation the revised SIA concludes the conditions resolve this issue and no further assessment was undertaken. Mr Quigley has assessed this potential effect as high or very high. He queries the comprehension of data as this is mixed with sense of place and in his view, there was a poor sample frame as a greater number of nearer residents should

[12] Updated Social Impact Assessment Table at page 108.

have been included and this would raise the sensitivity.[13]

- Way of life - People's daily activities and networks:

[85] The revised SIA concludes effects as low negative neighbour community and very low negative local community. This issue was assessed in a different category in the initial SIA so there is no comparison to be made. Mr Quigley ascribes a high or very high negative. He opined that:

> …only four neighbours were interviewed and a diffuse community were sampled for the focus groups and phone survey. Therefore, the scale and sample are positioned to support conclusions of low or very low effects.
> …
> Social research is seldom driven by proportions or percentages…..[14]

- Sense of Place:

[86] This was a potential high negative for the local community and low negative for the for sense of place and quality of environment in respect of property value. However, the revised assessment which seems to have refined the issues, concludes for "values and Sense of Place" a low negative and for "Community Character" a moderate negative reducing to low once the facility is established. Mr Quigley affords this a high negative. In addition to his criticism of mixed data which he found difficult to follow, and his issue with the sample frame and inadequate literature review, Mr Quigley explains:

> ..I do not agree that community stigma decays quickly. I suspect once a community is stigmatised, it is very hard to shift from other people's minds, but evidence for or against this is not presented.[15]

- Health and Wellbeing and Fears and Aspirations:

[87] This assessment now includes Fears and Aspirations as part of Health and Wellbeing. Both were assessed as having a high potential adverse effect initially. The revised SIA concludes moderate negative for neighbour community and low negative for local community. Mr Quigley observes that this assessment point focuses on the physical risk of harm arising from an escape and the fear / anxiety arising from that risk. He cites the following "key" sentences in this assessment:

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13 Quigley 2nd statement of evidence at [4.104] – [4.105].
14 Quigley 2nd statement of evidence at [4.102].
15 Quigley 2nd statement of evidence at [4.127].

> Personal safety, particularly relating to the families and children residing in the adjoining Waimahia development, was […] a common theme in both the community surveys, neighbour interviews and in focus group discussions, However, it was not a significant concern raised by most stakeholders (exceptions include the residents and ratepayer groups).

[88] Citing Mr Polaschek's evidence he explains that fear in this case is a legitimate social effect particularly for those who live nearby. Further, citing the SIA conclusion:

> …the social impacts on physical health and wellbeing are considered to be low for most people most of the time with the revised security measures in place. It is considered to be a moderate impact in term of an abscondence event (however, there remains a degree of uncertainty regarding the behaviour on an absconder once the event of 'escape' has occurred).[16]

[89] Mr Quigley further opines that:

> When considering potential physical harm from an escapee, I am concerned that the assessment scale employed in the SIA is not appropriate to deal with scoring this type of effect because the assessment scale only describes proportions of communities, not allowing for rare but severe effects on small numbers of people.
>
> For my assessment of fear / anxiety, the likelihood of escape is high, duration for which escape is possible is permanent, and severity of effect is high. Overall, I would assess the potential social effect arising from fear / anxiety as very high.[17]

- Personal / Property Rights:

[90] This was initially only considered in respect of sense of place and quality of environment for neighbours. The updated assessment concludes very low (only considered for property damage) for neighbourhood community. Mr Quigley found that he could not assess this impact due to lack of data.

Observations

[91] Mr Quigley made comments about the methodology (described in section 3 of the SIA). As Dr Taylor observed, these comments give the impression that the updated SIA is weakly prepared or even unfounded in approach and method. Having

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16 Quigley 2nd statement of evidence at [4.133].

17 Quigley 2nd statement of evidence at [4.136] –[4.137].

undertaken his independent review, Dr Taylor considered such a conclusion to be unreasonable because the SIA adopts (appropriately in his opinion) a multi-method approach, drawing data from numerous sources. While it is possible to go through and pick holes in each particular method or data source, giving the impression the SIA is faulty overall, the reality, for most SIAs, is that they have to draw on a range of sources looking for "arrows of evidence" within the restrictions of time, budget and project context.

[92] There appeared a strong criticism concerning capturing of potentially affected parties close to the site, with the lack of capture potentially diluting responses and therefore degree of effect[18]. There was also a perceived lack of effort as only 4 of 40 households bordering Whakatakapokai were interviewed; noting that some neighbour feedback was received through other processes in focus groups and surveys which amounted to potentially a further 12 or 13.[19]

[93] These concerns related to the potential impact on these people from abscondences from the Youth Justice facility particularly. Ms Linzey agreed that given the evidence of Mr Polashek the notion of concerns lessening over time cannot be said with certainty because of the likelihood of abscondence and the concern which might follow from an incident. While this effect has been assessed in the draft SIA as of a scale mostly limited to the most immediate neighbours, the effect was shall we say, "down played" due to the small proportion this group represented in the overall numbers making up the sphere of influence captured in the SIA. The small group where contact had been made is about 40 households, whereas Mr Quigley considered it was more likely to be 70 households (within about 100m from the site). We understood there to be a large measure of agreement with questions from Mr M Allan for the Council and Ms Linzey on these matters.[20]

[94] There is also a point of difference in the baseline consideration between these two witnesses. Ms Linzey has made her assessments from a baseline of the existing facility on the site whereas Mr Quigley sees the proposal as a new activity. These different starting points for assessment means there will likely be an elevated conclusion as to the potential social effects by Mr Quigley. That said, we do not discount his conclusions, but it is likely that the adverse effects are less than he

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18 Quigley Second Statement of Evidence at [4.36].
19 NOE at page 51.
20 NOE at pages 48 - 51.

anticipates.

[95] Overall, we note that Dr Taylor concludes:

> while the document could be reformatted and improved, the research and analysis approach adopted by Beca was orthodox and consistent with good practice, and the issues raised around particular methods used have been addressed satisfactorily by Ms Linzey in her statement of rebuttal.

Finding

[96] Logically we accept that those closest to the facility will be most fearful of effects related to abscondences in particular and further, based on Mr Polaschek's evidence, we can anticipate unauthorised departures from the Wharenui as well. Whether affected parties will differentiate between the two we can only speculate. However, this does seem to be a matter which has been assessed in the SIA as having a lower weighting of potential impact on Way of Life, and Health and Wellbeing than we would have anticipated, especially highlighted by the concerns raised by Mr Quigley for the capture of neighbours' input. Having come to that conclusion, we consider that this is not a fatal flaw of the SIA and we can rely on the outputs from the SIMP to address these impacts which we will discuss later.

[97] Moving to the other differences of opinion, we ask the question: do these demonstrate a flaw in research or interpretation?

[98] We accept that having identified a potential adverse effect the degree of effect can be modified by mitigation. That is a common reason for conditions which are ascribed to a land use activity.

[99] The issue we conclude from the evidence that the change to the degree of an adverse effect between identification and then after mitigation is somewhat obscured in the SIA report. It would have been easier for the Court if the identified effect was recorded as the respondents described and then a mitigation level applied so we can see how it moves from high to low.

[100] However, we are not convinced that the potential social impacts are significant. We conclude that there is a better understanding and balance now as a result of the revised SIA which results from real surveys using various methods to understand potential effects on the communities likely to be negatively impacted.

[101] The areas of impact are now clear although the degree of impact is not entirely certain. Clearly conditions attached to the designation and the limited intensity of the operation are likely to mitigate social impacts. We agree with the Minister that an adaptive approach is available with the implementation of a suitable SIMP. This can provide mitigation so that social impacts are likely to be less than significant and potentially no more than moderate to low negative and may change over time. The devil is in the detail of the conditions and the SIMP and how this responds to community concerns.

Has a process been identified to enable the SIA to be updated?

[102] Where physical changes are proposed to the site the CLC or the Auckland Council can request an update (conditions 28AA and 28A). The adaptive method to address potential social impacts which have been identified and those which may have been unforeseen and arise, is the SIMP.

Has a process been identified to prepare and provide a SIMP?

[103] A draft SIMP was initially provided to the Court but fell well short of expectations. A management plan is a tool or method for implementing certain types of conditions of consent. The draft we saw was somewhat confused in that respect, where matters which should have been conditions were contained in the plan and the plan methods were not always well described. We accept this was a starting point and the Minister, in consultation with the Council, has produced a revised draft for our consideration with the Minister's closing.

[104] The starting point is the relevant conditions. These are now significantly refined from those we saw at the start of this process. The activities to be accommodated at the Site are now clearly defined including diagrams where necessary.

[105] The nature of the residents of the facility, particularly with the shift to youth justice and the change in the age cohort, has been properly defined with the care and protection function clearly separated and defined relative to the Youth Justice activities (see Placement conditions). We discuss those conditions in more detail above.

[106] In respect of the SIMP, condition 28C requires the Minister to prepare and submit for certification by the Council, an SIMP in general accordance with the latest Draft SIMP submitted to the Court. We are satisfied that this is an appropriate condition and sets out the process, purpose and parameters for the plan and the expected outcomes. In that regard, we are satisfied that the Minister's version of the condition as presented to the Court in reply (13 March 2020), is satisfactory. We do not consider the amendments to that condition sought by the Council are necessary or improve upon it. The Court does not support an open-ended research requirement as the work to date, plus ongoing monitoring and the package of required methods for community engagement, will necessarily lead to knowledge and understanding of any issues which may arise, and the plan will provide for mitigation.

[107] Condition 28E provides for annual reporting to the Council and after the first and second anniversary of certification of the initial SIMP, if new or increasing adverse social effects requiring further management / mitigation are identified, there is scope for additional monitoring and response. The Minister's reply submission at [4.43] notes that the respective versions of condition 28E incorporate wording that is consistent with the parties' approach to condition 28C. As we have found in favour of the Minister's version of condition 28C, we also find in favour of the Minister's version of condition 28E.

[108] Condition 28D sets the parameters for ensuring appropriate technical experience is brought to the preparation, monitoring and reporting. Condition 28F sets the circumstances for review and the requirements of a review are set out at condition 28GA and certification at condition 28G.The Court is satisfied that this package of detailed conditions as set out by the Minister in reply, are appropriate and provide for an adaptive response to mitigating potential adverse social effects.

Conditions

[109] In the Reply Submissions, counsel for the Minister advised that the Minister and the Council had reached agreement on the wording of all of the designation conditions apart from conditions 4A, 9, 28C and 28E. As they had been unable to agree on the wording for these four conditions, it was left to the Court to decide on the final wording.

[110] As can be seen, in this decision we have made findings on the final wording for conditions 4A and 9 in the section on the Wharenui and for conditions 28C and 28E in the section on the SIA/SIMP.

[111] We summarise here these findings:

Condition 4A:

The Minister's version is to be adopted with the following amendments:

The introductory words "While the Care and Protection facility continues to be used for care and protection purposes.." are to be deleted.

At the end of condition 4A(2)(b)(ii) add the words…"This delegate shall be an officer at Tier 3 level or above in Oranga Tamariki's organisational structure".

The wording at (3) of the Council's version is to be added to the Minister's version.

Condition 9

The Minister's version is to be adopted with the following amendments:
A new condition 9 (aa) is to be added to condition 9 to read as follows:

A copy of the 12 monthly report to be provided by the Minister to the Council under condition 4A (3) is to be provided to the CLC at the same time it is provided to the Council.

Conditions 28C and 28E

The Minister's wording for each of these conditions is to be adopted without alteration.

[112] Counsel for the Minister advised the Court in his Reply Submissions that the Minister and the Council had reached agreement on the wording of all of the other conditions. The Court has no comments on any of this wording. Our assessment of the Notice of Requirement shall proceed on the basis of the conditions agreed by the Minister and the Council, finalized in accordance with our findings in the preceding paragraph [111]. A matter of particular significance to the Court in that regard is what we understand to be an acceptance on the part of the Minister that the total capacity of the facility for both care and protection and youth justice should be 20 persons, as

with the existing facility. We have undertaken our statutory assessment on the basis of that limitation.

Sections 171 and 198E RMA

[113] These proceedings have come directly to the Court pursuant to the *streamlining* procedures contained in ss 198B to 198G RMA.[21]The Court's obligations and powers in considering this matter are found in s 198E(6) which relevantly provides:

> (6) If considering a matter that is a notice of requirement for a designation or to alter a designation, the court—
>
> (a) must have regard to the matters set out in section 171(1) and comply with section 171(1A) as if it were a territorial authority; and
>
> (b) may—
>
> (i) cancel the requirement; or
>
> (ii) confirm the requirement; or
>
> (iii) confirm the requirement, but modify it or impose conditions on it as the court thinks fit; and
>
> (c) may waive the requirement for an outline plan to be submitted under section 176A.

It will be seen that we are obliged to have regard to the matters set out in s 171(1) (section 171(1A) not relevant) in considering the alteration to the designation.

[114] Section 171 relevantly provides as follows:

> (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—

[21] Section 198A(1)(a) RMA.

(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.

(1B) The effects to be considered under subsection (1) may include any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation, as long as those effects result from measures proposed or agreed to by the requiring authority.

We consider these matters in the following paragraphs of this decision.

[115] We identified the relevant provisions of the various instruments set out on s 171(1)(a)(i)-(iv) in paras [203]-[228] of our Interim Decision. We do not discuss those matters further here but simply observe that nothing in the evidence which we heard established any inconsistency between the NOR and the various instruments which we considered and further that there was a large measure of consistency of the NOR with the AUP.

[116] The determinative issue before the Court arises pursuant to s 171(1)(b)(ii)[22], namely the effects of the alteration to the designation and further whether it is likely that the work authorized by the alteration is likely to have a significant adverse effect on the environment. If we find that to be the case we are then obliged to consider whether or not adequate consideration has been given by the Minister to alternative sites or methods of undertaking the activity for which the alteration is sought. The Minister had undertaken no consideration of alternatives in this case. The Minister's position was that consideration of alternatives was unnecessary because the alteration of designation and subsequent activity undertaken in accordance with it is not likely to have a significant adverse effect on the environment.

[117] Section 2 RMA defines environment in these terms:

environment includes—

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22 Section 171(1)(b)(i) does not apply as the Crown owns the Residence.

(a) ecosystems and their constituent parts, including people and communities; and
(b) all natural and physical resources; and
(c) amenity values; and
(d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters

It will be seen that the definition is wide ranging. It includes people and communities and the social, economic, aesthetic and cultural conditions which affect them.

[118] In para [27] of our Interim Decision we identified the various topics we would consider in our determination. These included the "effects'' issues of:

- Safety and security:
- Social impact;
- Noise;
- Traffic, transport and parking.

[119] We make no further comment on the latter two issues other than to refer to the findings which we made regarding them in paras [177] - [198] of our Interim Decision. We confirm that we are satisfied that provided the altered activity is undertaken in accordance with the recommended conditions relating to these issues, any adverse effects pertaining to them will be either avoided or minor at worst. We are unable to identify any significant adverse effects arising out of these issues.

[120] In our Interim Decision we determined to hear further evidence on the matters identified in the first two bullet points (above) because:

- We developed concerns during the hearing as to the use of the Wharenui on site for accommodation of young persons who are not subject to the security measures applicable to the youth justice facility;
- We had concerns as to the adequacy of the social impact assessment undertaken by the Minister.

[121] Our findings on the issues of safety and security of the Residence (excluding the Wharenui) are set out in paras [29] – [98] of our Interim Decision. In particular, at para [97] of our Interim Decision we found that subject to inclusion of the Court's amendments to conditions the level of risk mitigation should be appropriate for the proposed youth justice facility.

[122] Our findings in relation to use of the Wharenui are set out in paras [8] – [70] (above). The key finding is that contained in para [70] that the proposed and (apparently) existing use of the Wharenui is permitted by the existing designation. To the extent necessary we find that even if that is not the case, subject to compliance with the conditions we have identified, appropriate safety and security measures have been imposed in respect of the Wharenui. We record that the Minister has tendered conditions pertinent to operation of the Wharenui as part of this alteration process.

[123] We are unable to identify any significant adverse effects arising out of the safety or security issues we have discussed.

[124] Our findings as to social impacts are set out in paras [99] – [176] of our Interim Decision and [72] – [112] of this decision. In particular we refer to our finding in para [101] (above) that with the implementation of a suitable SIMP…"social impacts are likely to be less than significant and potentially no more than moderate to low negative and may change over time." We are satisfied that the conditions which are to be imposed provide adequate mitigation of social effects on the basis of the evidence before us although we recognize that there may be a need for an adaptive management approach to the SIMP. The conditions proposed enable that.

[125] We are unable to identify any significant adverse effects arising out of the social impact issues we have discussed.

[126] In light of our various findings as to effects contained in paras [117] – [125] (above) we accept the Minister's position that no assessment of alternative sites or methods was required in this instance. We also record that none of the effects issues which we have identified were such as to require that we exercise the power to cancel the requirement.

[127] In terms of s 171(1)(c) we record that we are satisfied that the alteration is reasonably necessary for achieving the Minister's statutory objectives. No party suggested otherwise. We have not considered any "other matter" pursuant to s 171(1)(d).

Outcome

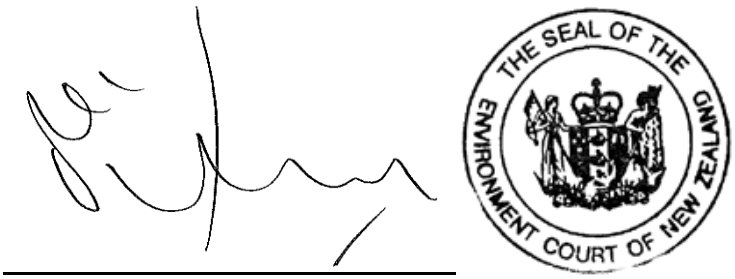
[128] In light of all of the findings in this and our Interim Decision we confirm the

Minister's alteration in accordance with the conditions agreed by the Minister and the Council, subject to the requirements as to conditions which we have identified in paras [109] – [112] (above). The Minister is directed to submit an order for execution under seal by the Court containing full conditions in final form accordingly.

Costs

[129] Costs are reserved in accordance with the provisions of ss 285(3), (5) and (7) RMA. In the event of any disagreement as to costs after discussions between the Council and the Minister, the Council is to advise the Court within 15 working days and directions will issue. The Court's Registry will be advised as to issue of this decision and details of the Court's costs will be advised to the Minister in due course.

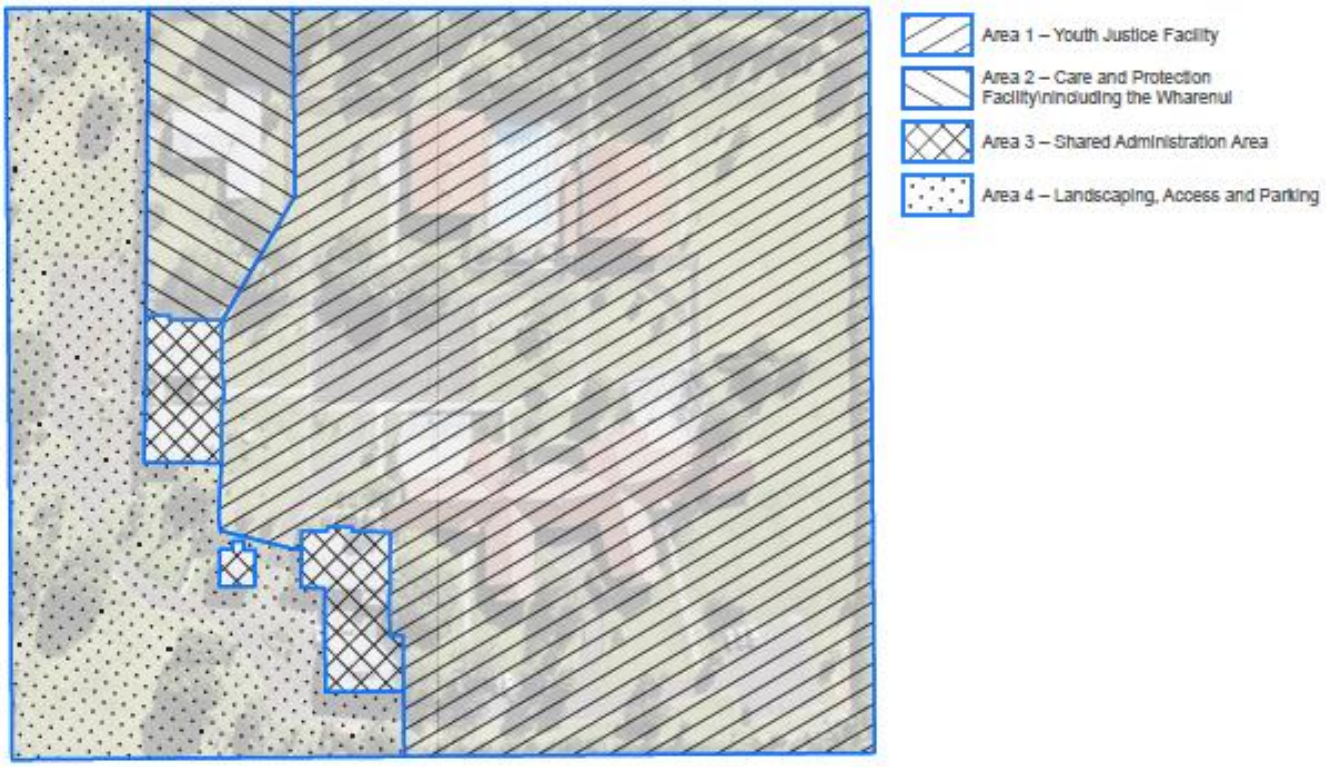
For the Court:



B P Dwyer
Environment Judge

Appendix 1

CONCEPT PLAN: DESIGNATION 3800 – ORANGA TAMARIKI RESIDENCE



THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

APPENDIX 2

238 Custody of child or young person pending hearing

(1) Where a child or young person (who for the purpose of paragraph (f) is limited to a young person who is aged 17 years) appears before the Youth Court, the court shall—

(a) release the child or young person; or

(b) release the child or young person on bail; or

(c) order that the child or young person be delivered into the custody of the parents or guardians or other persons having the care of the child or young person or any person approved by the chief executive for the purpose; or

(d) subject to section 239(1), order that the child or young person be detained in the custody of the chief executive, an iwi social service, or a cultural social service; or

(e) subject to section 239(2), order that the young person (but cannot under this paragraph order that the child) be detained in Police custody; or

(f) subject to section 239(2A), order that the young person (aged 17 years) be detained in a youth unit of a prison.

(1A) *[Expired]*

(1B) *[Expired]*

(1C) *[Expired]*

(2) If a child or young person appears before the Youth Court charged with the commission of an offence that the Commissioner of Police determines under section 29A of the Victims' Rights Act 2002 to be a specified offence, then,—

(a) before the court makes an order under subsection (1), the prosecutor must—

(i) make all reasonable efforts to ascertain the views (if any) each victim has about which of the types of order that may be made under subsection (1) is the most appropriate to be made by the court; and

(ii) inform the court of those views; and

(b) after the court has made an order under subsection (1), the Commissioner of Police must inform each victim (whether or not the victim's views have been ascertained under paragraph (a)) of—

(i) the order made by the court; and

(ii) in the case of any order made under subsection (1)(b), any

conditions of bail imposed by the court that—

(A) relate to the safety and security of the victim or 1 or more members of the victim's immediate family, or of both; or

(B) require the child or young person not to associate with, or not to contact, the victim or 1 or more members of the victim's immediate family, or both.

(3) Nothing in subsection (2) prevents the court from making an order under subsection (1), even though the court has not been informed of the views of any victim.

(4) The court must not refuse bail to a child or young person merely because the court considers that the child or young person is in need of care or protection (as defined in section 14).

(5) In this section,—

immediate family has the meaning given in section 4 of the Victims' Rights Act 2002

specified offence has the meaning given in section 29 of the Victims' Rights Act 2002.