

Recommendation to the Ministry of Education following the hearing of a Notice of Requirement under for a designation for “Educational Purposes – Primary School [years 0-6] and Early Childhood Education [ECE] Centre [preschool]”

Proposal

To provide for a designation for educational purposes - a primary school (years 0 to 6) and an Early Childhood Centre (ECE) at 289 West Hoe Heights, Orewa.

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| The Commissioners appointed by Auckland Council to consider the proposal recommend to the Ministry of Education that the notice of requirement be CONFIRMED subject to conditions. The reasons are set out below. | |
| Notice of Requirement: | “Educational Purposes – Primary School (years 0 – 6) and may include early childhood education (preschool)” |
| Site Address: | 289 West Hoe Heights, Orewa |
| Requiring Authority: | Minister of Education |
| Hearing Commenced: | 31 July 2019 - 9.30am |
| Hearing Panel: | Karyn Sinclair Peter Reaburn |
| Appearances: | <p><u>For the Requiring Authority:</u> Brandon Watts (Legal) Allister Young (Ministry of Education) Martien van Aken (Ministry of Education) Michael Jongeneel (Transport) Natasha Rivai (Planning)</p> <p><u>For the Submitters:</u> Orewa Primary School Board of Trustees <ul style="list-style-type: none"> - Amanda Coterell - Stephanie Pickering Auckland Transport <ul style="list-style-type: none"> - Alastair Lovell (Corporate) - Karen Bell (Planning) - Marija Batistich (Legal) - Duncan Tindell (Traffic) </p> <p><u>For Council:</u> Peter Vari (Team Leader) Vanessa Wilkinson (Reporting Officer)</p> |

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| | Martin Peake (Traffic) |
| Hearing adjourned | Monday 12 August 2019 |
| Commissioners' site visit | Friday 26 July 2019 |
| Hearing Closed: | Monday 12 August 2019 |

INTRODUCTION

1. This recommendation is made on behalf of Auckland Council ("the Council") by Independent Hearing Commissioners Karyn Sinclair and Peter Reaburn, appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("the RMA").
2. Pursuant to section 168 of the RMA, the Minister of Education ("MoE" or "the Minister") as the requiring authority, has lodged a notice of requirement ("NoR") to designate land for "Educational Purposes – Primary School [years 0-8]¹ and Early Childhood Education [ECE] Centre [preschool]" in the Auckland Unitary Plan (operative in part) ("AUP") at (part of) 289 West Hoe Heights, Orewa.
3. The proposal is fully explained in the Council officer's s42A report prepared by Vanessa Wilkinson (section 2.3), in Section 3 of the submitted NoR and in Section 2 of Ms Rivai's planning evidence for the Minister. In brief, the subject site covers an area of 2.89ha. The proposed designation will enable new education facilities to be established to serve the education needs of the growth areas in the north of Orewa, which is in the initial stages of development. The Primary School part of the proposal was originally proposed as being for years 0 – 8 however this was amended to years 0 – 6, as confirmed by the Minister's representatives at the hearing. The school will be built in stages with a roll progressively growing over time in response to demand. The eventual primary school roll would be up to 700 children (approximately 240 at the projected school opening date in 2021, with the traffic assessment done during the hearing based on 700), with a further 70 in the pre-school. A 10-year lapse period is sought. A concept design has yet to be developed. Once the designation is confirmed and the Establishment Board of Trustees has been appointed by the Minister, then an outline plan of works would be lodged under section 176A of the RMA to develop the site.
4. The NoR was publicly notified 12 April 2019. Submissions closed on 15 May 2019. A total of 3 submissions were received, all in opposition (Auckland Transport (AT) would support with amendments).
5. The NoR was referred to Commissioners for a hearing and recommendation. The hearing took place on 31 July 2019, recommenced on 12 August 2019 and closed that day. This report assesses the NoR under section 171 of the Act. The report addresses the issues raised in the submissions and contains our recommendation to the Requiring Authority under section 171(2) of the Act.

¹ Subsequently amended to years 0 – 6 during the hearing.

THE EXISTING ENVIRONMENT

6. The existing area is transitioning from rural to urban, consistent with the operative urban zoning that has been introduced into the area through the Auckland Unitary Plan (operative in part) ("AUP(OIP)"). A substantial roading network is already in place, and residential construction activity is occurring throughout the area. The subject site sits to the western edge of the current activity and future development is proposed further to the north, and along an extended Sunnyheights Road, which will be the main frontage to the school. The general area is of varying contour, and this includes the proposed school site itself which is in a currently partially earthworked state. We were informed that all development has had to be designed and constructed to address land stability concerns.

SUBMISSIONS AND EVIDENCE

7. The s42A report and recommendation on the NoR was prepared by Council officers. This report, along with the Council's various specialist assessments, was circulated prior to the hearing and taken as read. The s42A report did not come to a position on an appropriate recommendation and sought further information to be provided by MoE at the hearing.
8. The evidence presented at the hearing responded to the issues and concerns identified in the s42A report, the NoR itself and the submissions made on the NoR. Expert evidence on behalf of MoE was circulated prior to the hearing and was taken as read. Evidence from submitters was heard on the day.
9. The submissions and evidence presented by the Requiring Authority at the hearing is summarised as follows:

Brandon Watts

Mr Watts outlined the Minister's approach to the designation of the land, including recognising the need to secure land for schools in areas with potential for the urban expansion. Mr Watts confirmed that the Minister had sufficient interest in the land such that the consideration of alternatives would be triggered by significant adverse effects only.

Mr Watts outlined the Minister and Ministry obligations, which are governed by the Education Act 1989. He disputed that those obligations extended to providing funding to upgrade roads, where upgrades have been identified as necessary to serve a "new urban community"². He cited the example of Scott Point School, where the Ministry did accept a condition to enable the upgrades of roads prior to the school opening. However, Mr Watts cautioned this example being used as a precedent for the Crown funding timely delivery of infrastructure.

Mr Watts confirmed the Ministry intent that the school would be for year 0-6.

² Legal submissions para 3.2

Mr Watts canvassed issues raised in the s42A report and by submitters, and conditions, and much of this is expanded in the discussion on evidence summarised below.

Martien Van Aken

Mr Van Aken is the Delivery Manager for the Ministry of Education. He summarised the site selection and acquisitions process. He set out the discussions that had been held with the Orewa Primary School Board of Trustees, Auckland Council and Auckland Transport.

Allister Young

Mr Young is a Senior Analyst – Planning for the Ministry of Education and provided evidence in relation to the process the Ministry used to determine the reasonable necessity for the school. Mr Young outlined the projected growth that would be generated from the available residential zoned land in the north of Orewa, as projected by the ART model. Table 3 of his evidence set out the existing and projected rolls of Orewa and Orewa North primary schools. At para 5.17 he noted that the initial school would allow for up to 420 students. He went on to note “Future stages will be scheduled when population increase result in the need for more capacity to be added to the school” (para 5.18).

Michael Jongeneel

Mr Jongeneel is a consultant traffic and transport engineer and gave evidence in support of the MoE NoR. Mr Jongeneel authored the integrated transport assessment in the AEE. His assessment had been based on a higher than average pedestrian and cycling mode share compared to Auckland based on his understanding that the school catchment was closely confined, the relatively high standard of pedestrian and cycling accessibility and safety in this area and a School Travel Plan that promoted a positive transport culture. During the hearing it became clear that the school roll would not reach the projected numbers (up to 700) from the immediate catchment initially presumed by Mr Jongeneel. At the request of Commissioners, and in light of the evidence submitted by Orewa Primary School, Mr Jongeneel submitted an amended traffic assessment which was based on the wider area in “Zone 22” of the ART model, as a potential catchment. The Commissioners note that this is for assessment purposes only and should not be taken to infer a potential school zone, the determination of which is entirely outside of the purview of this Panel. In his reassessment Mr Jongeneel adopted a lower pedestrian and cycling mode share more reflective of Auckland averages and the existing local experience. He noted however that in his view the assessment was conservative, so the effects identified would be at the worst end of the spectrum. Mr Jongeneel identified the pick-up in the afternoon as being critical, with drop off in the morning peak being more dispersed. He identified a potential demand for 206 vehicles during this period and applied a peak rate of 0.11 space/child, resulting in a demand of 78 parking spaces for a roll of 700 children. Mr Jongeneel acknowledged it would be impractical to provide for that many car parks on site and identified where on road parking may provide the (not unsubstantial) shortfall. Mr Jongeneel recommended School Travel Plan

as being the key to encouraging walking and cycling (including scooters) to school, thus limiting the potential chaos at the school gate at pick up time. He further noted that the traffic effects generated by the school would be redistributed within the transport network if the school did not proceed.

Mr Jongeneel identified the Establishment Outline Plan of Works (“OPW”) as being an appropriate mechanism to confirm the transportation issues and identify the appropriate mitigations, which could include on-site parking, pick up and drop off areas, travel management plans and on street interventions. Notwithstanding this he preferred designation conditions with more detail in them, to those proposed by MoE.

Natasha Rivai

Ms Rivai gave planning evidence on behalf of MoE. She confirmed that the site was in Crown ownership as of 16 May 2019, which assists the MoE to meet the test of sufficient interest in the land to avoid the need to assess alternatives. Ms Rivai confirmed her opinion that MoE had undertaken an adequate consideration of alternatives. After covering off the other s171 tests that are relevant to our recommendation she reiterated the conclusion of the AEE, in that the designation could be confirmed subject to conditions.

Orewa Primary School

Orewa Primary School was represented by two Board of Trustee members, Amanda Cotterell and Stephanie Pickering. Ms Cotterell briefly outlined the school’s history, including its relocation to the current site in 2006. She set out the current challenges with the roll, and noted that as at March 2019, 66% of their students were out of zone. This was in spite of a zone being implemented in 2018 in anticipation of significant residential growth and the associated increase in primary aged children. Ms Cotterell noted that this year the school will lose 68 students to college. However, the expectation was the school roll would remain about the same in 2020 (475 – 480 children). The school capacity was about 500 students without further investment and the school’s view was that 5 – 8 extra classrooms could easily be accommodated with further investment.

While Ms Cotterell agreed that the growth in Orewa was inevitable, it was the submission of the Orewa Primary School that the location was not “the best position”. Their review of the MoE, developer and Auckland Council data suggested that the catchment would not be big enough to provide the numbers for the school roll. Orewa Primary School asserted that the data illustrated by Mr Young in his evidence was not real, and that the reality was almost 50% less school aged numbers than forecasted. It was submitted that given the need for out of zone students to prop up numbers for the schools to be sustainable, they would have to compete, which would be harmful for both schools and the community within which they were located. In addition to the capacity that existed or could be provided at the school, if necessary, Orewa Primary School had the ability to manage out of zone enrolments as a means of ensuring the school’s capacity to serve the local area was maintained.

In summary, Orewa Primary School considered the proposed school site was too close (resulting in competition), they doubted the forecasts MoE have based their NoR on, the growth of the area has not been as fast as predicted and it would be an inefficient use of resources given that Orewa Primary School has capacity. Regarding the MoE assumptions Ms Pickering confirmed that Orewa Primary School did not agree with the 8% figure used to generate school aged children from households, with their experience being closer to 4%, and they disputed the number of houses anticipated to be constructed. They remained concerned that the decisions being made were on forecasts rather than reality.

Ms Cotterell also raised doubt regarding the MoE's assessment of mode of travel to the new school. Ms Cotterell noted that 75% of Orewa Primary School's children were transported to the school by car and she considered this, while greater than the Auckland average, was consistent with the Hibiscus Coast. The transport choice for students was partly a result of parental attitude, with many parents choosing to collect children by car at the end of the school day to transport them directly to activities such as sports. Ms Cotterell noted that topography played a significant role in walkability, and hills don't encourage walking to school.

Auckland Transport

Marija Batistich

Ms Batistich gave legal submissions on behalf of Auckland Transport (AT). She outlined the role of AT and summarised their position, being that they didn't support the NoR as set out at paragraph 4 of her submission. Briefly AT were concerned that the consideration of alternatives was inadequate, on the basis that the traffic effects were significant, including the need to consider alternatives post the lodgement of the NoR. Ms Batistich addressed the other statutory tests we need to consider in our recommendation to MoE, including the possibility that MoE had amended the objectives of the NOR through the evidence of Ms Rivai. She also outlined AT's reservations at being able to adequately inform suitable roading and traffic solutions at the OPW phase.

Alistair Lovell

Mr Lovell gave evidence on behalf of AT in his capacity as Land Use Planning and Policy Manager – North and West. He outlined the AT involvement prior to the hearing, which including two meetings with MoE representatives. Mr Lovell set out the functions of AT, what influences projects and funding, services available to assist schools and AT's concerns about this NoR. Mr Lovell noted that with over 550 schools in the Auckland region, AT's ability to respond to traffic issues is limited, and it is their preference to ensure that "new schools are appropriately located and designed with the surrounding transport network and final intended roll in mind" (para 6.6).

At paragraph 7.10(d) Mr Lovell set out the potential consequences of the proposal proceeding.

Duncan Tindall

Mr Tindall provided traffic and transport evidence in support of the AT submission. Mr Tindall raised issues relating the site selection process, noting his disagreement with the evaluation process, the transport assessment undertaken to support the NoR and the operational effects that may result. Mr Tindall did not agree with the mode share split used by Mr Jongeneel, the likely catchment of the school students, potential effects including congestion (caused by vehicles) and associated safety and the ability to influence appropriate mechanisms to mitigate effects. Mr Tindall considered the potential effects to be traffic delays in Celestial Crescent, Sunnyheights Road and Crozier Place, demand for pick up and drop off parking and the risk of collision between vehicles and pedestrians, cyclists and scooters. The latter two were of most concern to Mr Tindall.

On consideration of Mr Jongeneel's indicative traffic assessment provided to the Commissioners prior to the closing on 12 August, Mr Tindall agreed that the afternoon pick up is the peak but was concerned that the numbers had been underestimated. He did not consider a potential 38 parking spaces would be sufficient, and without adequate on-site provision, which might or might not include a vehicular north-south link through the MoE site, parking on public roads would be a necessity. This might result in parking over driveways, people driving around and general confusion. Mr Tindall considered that there was a lack of clarity as to how this would be managed.

Karen Bell

Ms Bell provided planning evidence in support of the AT submission. Ms Bell addressed the site selection process, the statutory assessment that supported the NoR and the potential transport effects, having considered the evidence of MoE and the s42A report. Ms Bell noted that while in her opinion the MoE methodology for undertaking the site evaluation was appropriate, MoE had erred in not following it. On questions from the Commissioners Ms Bell confirmed that it is good forward planning to secure sites for schools in growth areas. She went on to observe that the topographical constraints of the site would compromise onsite parking, would require MoE to negotiate road upgrades with AT and discourage active modes such as walking and cycling. In her opinion, without a clear commitment to agree the extent of network modifications with AT and confirm the on-site parking and drop off/pick up, then the designation should not be confirmed.

Auckland Council

Martin Peake

Mr Peake generally shared the concerns that had been expressed by Mr Tindall. He considered a north-south link to be important for traffic circulation and parking, however noted that this link was currently undefined and, given the topography, may be impracticable.

Vanessa Wilkinson

Ms Wilkinson was the reporting officer. At the conclusion of the s42A report she made no clear recommendation as to whether the designation could be confirmed or not. After hearing the MoE and submitter evidence she

acknowledged that the outstanding questions she had were sufficiently addressed so that the designation could, in her opinion, be confirmed, subject to conditions.

Ms Wilkinson did not agree with the conditions proposed by Ms Rivai. A set of draft conditions was provided before the close of the hearing.

Rebuttal

Mr Jongeneel provided an indicative traffic assessment based on a roll of 700 children (at MoE's request) and at a 65% mode share (ie 65% of students arriving by car). This is discussed above.

Mr Young provided greater clarity around the data used and set out his assumptions in a tabulated form. He concluded that the numbers of school aged children may in fact be higher than originally assessed.

Right of Reply

Mr Watt clarified several aspects in the right of reply. The first stage of the school development would allow for a roll of 420 primary school students, with an overall roll for up to 700. This is an amendment from the numbers provided with the NoR. He further confirmed that the purpose of the designation was for "Education purposes – primary school (years 0-6) and may include early childhood education (preschool)." The likely years catered for at the school were modified from those as originally referred to in the NoR.

With respect to the forecasting of potential households and the yield of school age children, Mr Watts noted that "the question of timing of that development is not particularly important; what matters is the final yield of dwellings. That is what the Minister must plan ahead for." (para 3.3). He noted that there was no disagreement as to the likely future need for a school in Orewa in the long term.

Mr Watts noted that the data provided by Mr Young prior to the reply confirmed that the 8% school age children derived from the average Auckland data was less than that for newer subdivisions in the north of Auckland around Hatfields, Millwater and Silverdale.

Mr Watts submitted that the Minister did not want to see Orewa Primary School underutilised and that zoning tools within the Education Act would be used to address that.

With respect to AT's submission, Mr Watts noted the perverse outcomes that might result if the NoR did not proceed. Those outcomes serve, in his opinion, as an appropriate baseline. He submitted that AT was expecting the Minister to neutralise the effect of children travelling to school, which in his view was a result of housing development, rather than the school or its proposed location. Mr Watt noted that should the designation not proceed, interventions may be necessary to ensure the safety of children at Orewa Primary School, (it was noted during the hearing that there is a lack of footpaths in the vicinity of Orewa

Primary School). He suggested that those interventions would be subject of funding decisions by AT.

Mr Watts addressed the site selection process and confirmed that in his opinion the process was not fatal if MoE deviated from its own guidelines. The test of “adequate consideration” was contextual and iterative, and not determined by MoE guidelines in his submission.

Mr Watts confirmed the objectives of the designation and work are as stated in the NoR documentation.

Mr Watts stated that the purpose of a designation was to secure long-term authorisation for a future work. Where there is no design, the OPW process is the appropriate mechanism to identify potential effects and the mitigation for them.

Mr Watts addressed the conditions recommended by Council officers. Without dealing with each specific condition the Commissioners note that the Minister cannot reject the enrolment of a student residing within a school zone, and to that effect a limit on student numbers would be inappropriate.

10. We acknowledge the Knox and Morris families from 248 West Hoe Road who, while not appearing at the hearing, raised issues regarding the scope of the designation (years 0-8 which we note was subsequently amended) and traffic/transportation effects. These issues were thoroughly canvassed by both Auckland Transport and Orewa Primary School.
11. The recommendations made in this document follow the deliberations and the findings made by the Commissioners after considering the NoR, the submissions lodged, the Council’s reports, the submissions and evidence presented at the hearing (including final comments made by Council officers and consultants) and the Reply and associated updated conditions schedule provided by Mr Watts on behalf of the MoE.
12. The recommendations are made in terms of the framework provided by section 171 of the RMA.

PROCEDURAL MATTERS (SECTION 37)

13. No procedural matters arose.

ISSUES IN CONTENTION

14. After analysis of the application and evidence (including proposed mitigation measures), undertaking a site visit, reviewing the Council planning officer’s report, reviewing the submissions and concluding the hearing process, the proposed activity raised a limited number of issues for consideration. These issues related solely to conditions and advice notes to be imposed on the

designation as, at the end of the hearing, no party opposed the designation in principle.

15. The principal issues remaining in contention were:
 - The need for the School;
 - Suitability of the site; and
 - The potential adverse traffic and transportation effects and appropriate mitigation of those effects.

Need for the School

16. There were clearly uncertainties arising from the analysis that had been conducted for the AEE as to what the catchment for the school would be, what catchment would be needed to justify the projected ultimate school roll and what the timing would be to establish a new school, considering the capacity available, particularly at Orewa Primary School.
17. By the end of the hearing we were left with significant doubt as to whether the projected timing for opening a new school (2021) and the ultimate roll for the school (700) were realistic expectations, at least without some significant changes occurring in the density and rate of development currently being experienced in this area. However, this is not a basis for concluding that the designation should not be confirmed. As Mr Watts noted in his closing submissions there did not seem to be any significant challenge to the proposition that a further school will be needed, at some time, to accommodate school aged children from new urban development.
18. The Commissioners agree and are confident that the Ministry will proceed to appointment of the Establishment Board of Trustees and construction of the school as and when demand requires. Similarly, we are confident that the school's capacity at any point in time will logically be developed with a view to demand and capacity in other schools. We note to that end that the designation is sought for a period of 10 years, which given the lack of clarity around the rate of residential development through the wider Orewa area is appropriate.

Suitability of the Site

19. Orewa Primary School did not agree that the location of the school was appropriate. This was in part due to the close proximity of the proposed site to Orewa Primary School and in part due to the current lack of confidence that school aged children will materialise from the residential dwellings in the numbers predicted to avoid the two schools competing for students.
20. Auckland Transport's witnesses expressed reservations about the site's topography, location (not being near public transport or more major roads) and lack of existing infrastructure to support cycling, scooters and walking to and from school.

21. The Commissioners find that MoE has undertaken an adequate assessment of alternative options. This finding is based on the Frequency Report that demonstrates that a short list of options was identified and evaluated. We do not intend to delve into the various ratings for the sites, that is not our role. Our role is to confirm that the site has not been selected without due consideration of others. We are satisfied that the site evaluation has not been cursory or flippant. We further note that no other alternative sites were identified during the hearing.

Adverse Traffic and Transportation Effects

22. The adverse effects that might result without proper integration of the school activity with an appropriately designed transport network were considered to be “potentially significant” by Auckland Transport. These effects are set out in Mr Tindall’s evidence at para 6.19. Mr Peake generally agreed with Mr Tindall’s conclusions. By the conclusion of the hearing Mr Jongeneel also largely agreed, although considered that an overly conservative approach may have been taken.
23. There are clearly potential adverse effects that will need to be addressed. The effects that may result from inadequate pick up and drop off facilities and the collisions between vehicles and people using other modes of transport are of particular concern to the Commissioners. However, we do not go so far as to consider the potential effects so significant to recommend withdrawing the NoR. To that end we agree with Mr Watts’ submission in closing that the use of the designation and a subsequent OPW to address adverse effects is an appropriate application of the tools available to a Minister of the Crown. We find on the evidence as a whole that there are no adverse effects that cannot be mitigated. The questions that then arise are what detail is required in designation conditions and who will be responsible for mitigation works, in particular on the public road.
24. The Commissioners note the arguments presented on both sides in relation to addressing the adverse potential traffic and transport effects. On one hand, the designation of the site for a future use, and addressing adverse effects through an OPW is a mechanism available to MoE. On the other hand, AT is not confident that at the school roll predicted, the traffic effects can be adequately mitigated, especially as many of the options would fall within the public road asset. Furthermore, AT is not confident it can reasonably input into potential mitigations through the OPW phase of the project.
25. We accept that the use of the designation and OPW pathway is open to MoE in the manner they are choosing to use it (Watts reply at section 9). However, we find it a little perverse that MoE seek the luxury of capitalising on the OPW but without any commitment to identifying the particular matters that the OPW needs to address. Reliance on a later traffic and transportation assessment to do that does not, in our view, adequately address matters which it is known, even at this stage, will need to be addressed. Accordingly, we consider that a reasonably explicit set of conditions addressing these particular concerns is

necessary to ensure that the potential effects can be adequately mitigated through the OPW to be lodged at the time the school is established. In that respect we err on the side of Auckland Council and Auckland Transport albeit not at the level of prescription they were seeking. We have modified the conditions proposed at the end of the hearing to ensure that, prior to opening, the design of the school accommodates anticipated traffic flow and drop off and pick up facilities and minimises potential conflicts between vehicles and other road users. This is in addition to and will complement the School Travel Plan already proposed by the Ministry. In the view of the Commissioners, the conditions as recommended below will ensure adequate recognition and mitigation of the potential adverse traffic and transport effects of the activity subject to the NoR.

26. AT does not consider it should have the responsibility to upgrade the public assets. The Auckland Transport position of not supporting the designation as the OPW cannot reasonably address effects outside of the designation, we find, is adequately addressed through conditions of designation that will need consideration at OPW stage.

RELEVANT STATUTORY PROVISIONS CONSIDERED

27. The Ministry is a Requiring Authority in terms of s166 of the Act. The Ministry has given notice to the Auckland Council of its requirement to designate the site at 289 West Hoe Heights, Orewa for educational purposes - a primary school (year 0 to 6) and an Early Childhood Centre (ECE).
28. Section 171 of the Act sets out the matters to which a territorial authority must have regard to 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. 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.

- 29. Pursuant to section 171(1)(a), when considering the requirement, we 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.
- 30. Collectively, the Minister's Notice of Requirement application, the Council officer's hearing report and the evidence given at the hearing provided a comprehensive commentary on the relevant national policy statements and the AUP. This analysis was not subject to disagreement. We do not intend to repeat this material in this decision; rather we rely on the application documents and officer's report in this regard, except to indicate that the following documents were considered of particular relevance in reaching our decision:
 - National Policy Statement on Urban Development Capacity (2016)
 - National Policy Statement of Freshwater Management
 - New Zealand Coastal Policy Statement and Hauraki Gulf Marine Park Act 2000
 - Auckland Unitary Plan Chapter B Regional Policy Statement;
 - Auckland Unitary Plan Chapter E Auckland-wide provisions;
 - Auckland Unitary Plan Chapter H Zone provisions; and
 - Auckland Unitary Plan Chapter I Precinct provisions.

Section 171(1)(b) – Whether consideration is necessary of alternative sites, routes, or methods of undertaking the work

- 31. The MoE already has an interest in the land which is to be designated.
- 32. With regard to the potential for significant adverse effects on the environment and as discussed above one of the two principal matters of contention related to potential traffic and transport effects. However, as noted above, with appropriate conditions of designation that address design matters to address pick up and drop off and minimise conflicts for users accessing the school, these effects can be adequately mitigated and are not likely to be significant.

Without these conditions as recommended, the Commissioners consider the MoE conditions as attached to Mr Watts closing submissions to be woefully inadequate and provide no confidence that the potential traffic and transport effects would be adequately addressed at the OPW stage of the project.

33. In summary, as we have found that, subject to the conditions we have recommended, the work will not have significant adverse effects on the environment it is not necessary to assess alternative sites, routes or methods.

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.

34. As set out in the NoR, the Education Act 1989 empowers the Minister of Education to designate land for schools. The designation will provide the appropriate mechanism for the Minister to have ongoing certainty that the site can be developed and used for this purpose when the need for a new school facility is there. In the longer term the designation provides certainty and flexibility for the operation of the facilities on site. We accordingly find that the works and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.

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

35. The default period for the lapse of a designation is 5 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 process³. The Requiring Authority has sought a lapse period of 10 years.
36. The Commissioners agree with the request by the Requiring Authority to extend the timeframe to ten years. Given the lack of certainty as to when the school may be needed, this timeframe is considered appropriate.

Part 2 of the Act

37. Part 2 of the Act sets out the purpose and principles of the RMA.
38. In terms of section 5, we accept that the proposed school will provide for the community's social, cultural and economic well-being by enabling the provision of education facilities in a new area of urban growth.
39. In terms of section 6, s.6(h) dealing with the management of significant risks from natural hazards is relevant. The floodplain on the site and the potential instability will both be addressed at the subsequent OPW phase of the project. Given that instability of the site is considered to be a matter of national importance we recommend the conditions offered by MoE and further modified in this recommendation. With the conditions as recommended the

³ Section 184(1) of the RMA

Commissioners are confident that the potential adverse effects from flooding and instability can be appropriately mitigated.

40. There are a number of Other Matters under section 7 of relevance to the proposed designation, to which we have had regard namely:

- (b) The efficient use and development of natural and physical resources;
- (c) The maintenance and enhancement of amenity values;
- (f) Maintenance and enhancement of the quality of the environment;

Commissioners raised the issue of ongoing site management until the school is developed. Mr Watts reference back to the health and safety requirements did not satisfy the Commissioners, but with the inclusion of a condition to appropriately manage the site until the school designation is given effect to, we are satisfied that the amenity values and the quality of the environment will not be compromised. Accordingly, these matters have been appropriately addressed through conditions of designation.

41. Section 8 of the Act requires all persons exercising functions and powers under the Act, in relation to managing the use, development, and protection of natural and physical resources, to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). These also enable consideration of section 6 (e) and 7 (a) matters. We are satisfied that these matters have been appropriately addressed.
42. Overall, we agree with the Council officers that the NoR meets the relevant provisions of Part 2 of the RMA and will achieve the purpose of the RMA, being sustainable management of natural and physical resources.

CONCLUSIONS

43. Section 171 of the RMA provides the means by which the NoR can be recommended to be confirmed or otherwise. In terms of section 171 we consider that the NoR is appropriate, subject to the conditions we are recommending to be adopted (as Attachment A), and should be confirmed.
44. We have concluded that the 10-year lapse period sought by the Minister for the designation is appropriate given the project's scale and the expected timeframes anticipated in respect of funding, land acquisition and OPW processes to be completed, as well as its actual construction.
45. Other issues raised will be appropriately dealt with at the OPW stage, which must occur before work commences, and is subject to overview by the Council.

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 to provide for a designation for educational purposes - a primary school (years 0 to 6) and an Early Childhood Centre (ECE) at 289 West Hoe Heights, Orewa, as shown on the 'Designation Plan' in Appendix 2 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 early childhood education and primary school education facilities in the Orewa North growth area.
2. The work proposed by the designation is consistent with Part 2 of the Act in that it represents the sustainable management of natural and physical resources.
3. The designation is in general accordance with relevant objectives and policies of the Auckland Unitary Plan.
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.



Karyn Sinclair
Chairperson
30 August 2019

Attachment A

Recommended Conditions and Advice Notes Following Hearing

NOTE

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

Purpose: Educational Purposes – primary school (years 0 - 6) and may include an early childhood education facility.

SITE SPECIFIC CONDITIONS

Height in Relation to Boundary

1. Any new building or building extension (excluding goal posts and similar structures) shall comply with the height in relation to boundary controls from any adjoining land zoned primarily for a residential purpose or zoned for an open space/outdoor recreation purpose.
Note: reference to zone or zoned in this condition, includes any variation to the height in relation to boundary standard contained in a Precinct.

Geotechnical

2. All site development shall meet the recommendations of the Geotechnical Investigation prepared by Coffey dated 16 November 2016 (Appendix 4 of the Notice of Requirement application); and as a minimum include an investigation of landslide risk and mitigation, together with long term groundwater drainage considerations.
3. The investigation and analyses shall be carried out by a suitably qualified geotechnical engineer with experience in the materials and issues presented within previous reports on the site.

Maximum Impervious Area

4. The maximum impervious area must not exceed 70% of site area.
5. Where site impervious area is developed beyond 70%, onsite stormwater mitigation must be provided for the additional impervious area. Details of the onsite stormwater mitigation shall be provided with the Outline Plan of Works.

Consultation and Engagement with Auckland Transport

6. Prior to the submission of the Establishment Outline Plan of Works required under condition 7 the requiring authority shall consult and engage with Auckland Transport regarding all of the matters outlined in condition 7, 7A and 7B.

Establishment Outline Plan

7. The requiring authority shall, in accordance with the requirements of s176A of the Resource Management Act, submit an Establishment Outline Plan for the construction and development of the school (and Early Childhood Education Centre (ECE) if development coincides) which will confirm the anticipated school (and ECE) roll and will include the following further information:
 - A) *A Design Concept Plan* for the site showing:
 - i. The general location and access points for vehicles (including but not limited to buses, rubbish trucks and ground and building maintenance), ^{*4}scooters/cyclists and pedestrians, parking areas (including bicycle/scooter parks), and pick-up and drop-off areas;
 - ii. Measures and treatments at all access points to manage conflict between pedestrians, cyclists/scooter users and vehicles;
 - iii. General location of building platform areas for proposed buildings and open space (such as playgrounds and sport fields).
 - B) A Traffic Impact Assessment (TIA) Report prepared by a suitably qualified traffic engineer and/or transportation planner which addresses, in addition to safety and efficiency, the following specific matters:
 - i. Safe access to the site from and along all routes for pedestrians, cyclists, scooter users and vehicles (including buses, rubbish trucks and ground and building maintenance) and appropriate measures and treatments to minimise conflict between transport modes;
 - ii. The provision of on-site school and early childhood education centre staff and visitor car parking, bicycle and scooter parking, and loading spaces to facilitate deliveries and rubbish removal;
 - iii. The separate on-site pick-up and drop-off area specifically designed to accommodate predicted vehicle demand including vehicular access, circulation, manoeuvring for cars and buses;
 - iv. Measures that encourage and provide for safe walking and cycling or scooter use along routes leading to and from the proposed school, including but not limited to:

⁴ The term "Scooters" refers to electric and non-electric scooters ridden by children; and does not include vehicles that require a license to operate.

- a. Celestial Crescent between Sunnyheights Road and West Hoe Heights (with consideration given to the speed environment on these routes)
 - b. on road interventions such as widening of footpaths installation of pedestrian crossing points in the form of kea or zebra crossings or pedestrian refuges, cycle paths, routes and crossing facilities for the safe movement of cyclists and scooter users to the site and the time and means by which these are to be implemented
 - v. Measures that provide or support safe, convenient and appealing access to the public transport network for staff and pupils of the school.
 - vi. Measures to ensure that motorists on the local road network are able to turn around safely on any street that is converted to a cul-de-sac as a result of the development of the site.
- C) A summary of the *Consultation and Engagement* with Auckland Transport (Road Controlling Authority) and Auckland Council (Territorial Authority) required by condition 6, recording agreements reached on the traffic and transport matters and any unresolved matters raised by the Establishment Outline Plan of Works, including effects associated with the school and early childhood education facility on the adjoining existing and future transport network. A copy of the draft *Design Concept Plan* and draft *Traffic Impact Assessment* prepared to support the Establishment Outline Plan is to be provided to Auckland Transport for the purposes of this consultation and engagement.

Bicycle Parking

- 8. Bicycle parking shall be provided to meet the requirements of the Auckland Unitary Plan (Chapter E27).
- 9. Facilities shall be provided for scooter parking. The requirements for scooter parking shall be determined by a qualified traffic engineer. Scooter parking shall not be included within the bicycle parking requirements.
- 10. Bicycle and scooter parking shall be covered.
- 11. The requiring authority shall be responsible for the implementation of the measures identified unless otherwise agreed with Auckland Council and Auckland Transport.

School Travel Plan

- 12. 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.

13. Within six (6) months of the school opening, the requiring authority shall either directly or through the School Board of Trustees, review the School Travel Plan and revise the Travel Plan as is necessary.
14. 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, and the encouragement of walking and cycling. This Travel Plan must also specifically address the following matters:
 - a) Safe access to the entry points of the school. Features such as kea crossings or zebra crossings should be specifically considered;
 - b) Consistency with or use of Auckland Transport's Travelwise Programme, or any equivalent programme adopted;
 - c) Measures to separate vehicle entry and pedestrian/cyclist entries; and
 - d) Location and provision on site of any scooter and bicycle parking required.
15. The School Travel Plan shall be developed in consultation with Auckland Transport and shall include a monitoring programme.
16. The School Travel Plan must be revised at the time of submitting each subsequent outline plan where there is an increase in student numbers.
17. Evidence of consultation with Auckland Transport in relation to any revision of the School Travel Plan shall be provided with the outline plan.

Early Childhood Education Centre Travel Plan

18. A Travel Plan for the early childhood education centre on the site must be developed in consultation with Auckland Transport and shall include a monitoring programme.
19. The Early Childhood Education Centre Travel Plan must be revised at the time of submitting each subsequent outline plan where there is an increase in student numbers.
20. Evidence of consultation with Auckland Transport in relation to any revision of the Early Childhood Education Centre Travel Plan shall be provided with the outline plan.

Construction

21. A Construction Management Plan shall be prepared and submitted with any outline plan for all site works.

Site Maintenance Plan

22. The requiring authority shall maintain the site, including keeping the grass mowed and otherwise maintaining the site in a tidy fashion until such time as construction of the school (and ECE) begins or the designation is removed from the land.