

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

Report to Auckland Council
Hearing topic 074 Designations

Minister of Defence

Designation 4308
Devonport Naval Base (South Yard)

May 2016

Report first prepared by Murray Kivell in accordance with the Auckland Unitary Plan Independent Hearing Panel procedure and in accordance with section 142 of the Local Government (Auckland Transitional Provisions) Act 2010, on: 24 August 2015 and updated 7 October 2015 and 16 December 2015.

Adopted as Auckland Unitary Plan Independent Hearings Panel recommendations in accordance with the Auckland Unitary Plan Independent Hearing Panel procedure and in accordance with section 144 of the Local Government (Auckland Transitional Provisions) Act 2010 on date of signature.

Contents

1. Introduction	3
2. Assessment	3
3. Expert input.....	3
4. Mediation required	3
5. Hearing required	4
6. Recommendation to Panel	4
7. Panel recommendations to Auckland Council	5
8. Panel reasons	5
9. Assessment of modifications and submissions.....	6
10. Attachment 1 changes to text of the Proposed Auckland Unitary Plan	9

1. Introduction

The purpose of this report is to provide an assessment and recommendation in relation to modifications to existing designations being rolled over by the requiring authority, and classified by the Independent Hearings Panel as moderately complex. This classification will generally apply where there is a:

- i. rollover of a designation with no modifications and a submission lodged by third party;
- ii. modification to a designation that will result in more than minor effects and with or without submissions;
- iii. notice of requirement for a new designation for existing works with or without submissions.

2. Assessment

The assessment will address:

- i. effects on the environment of allowing the modifications;
- ii. mitigation measures proposed by requiring authority including any proposed conditions;
- iii. other section 171 matters where relevant;
- iv. whether land is owned by the requiring authority.

See section 9 of this report for the assessment of each modification and requirement.

On the basis of the assessment, the report concludes that the following modifications should be confirmed.

3. Expert input

Not applicable.

4. Mediation required

Based on the responses of the requiring authority as detailed in section 9, the following matters have been identified that would benefit from mediation:

submissions from the New Zealand Historic Places Trust (now Heritage New Zealand) referenced as 371-214, 371-215, 371-216 and 371-217, and the Character Coalition submission 6370-15, have not been resolved. The requiring authority does not agree to the Type 2 condition sought by the submitters on any of its designations. The requiring authority is also seeking the deletion of several operative plan designation conditions in respect of heritage matters and archaeology sites.

It is estimated that one day of mediation will be required.

5. Hearing required

Based on the responses of the requiring authority as detailed in section 9, the following matters have been identified to progress to a hearing:

submissions received from the Character Coalition (6370-15) and Heritage New Zealand (371-214, 215, 216, 217), and the related designation conditions in respect of heritage and archaeology from the legacy district plan.

It is estimated that one day of hearing will be required (if not resolved prior through mediation).

6. Recommendation to Panel

That the Panel:

- i. modify the designation as set out in section 9;
- ii. agree to schedule mediation between the submitters and the requiring authority to address the matters identified in section 4 above; and (if required)
- iii. agree to hear matters identified in section 5 above.

Author	Murray Kivell
Author's Signature	
Date	24 August 2015 and updated 7 October 2015 with changes, and updated 16 December 2015 with changes

7. Panel recommendations to Auckland Council

The Auckland Unitary Plan Independent Hearings Panel recommends that Auckland Council recommends to the requiring authority that it confirms the notice of requirement for the modifications to designation 4308 included in the Proposed Auckland Unitary Plan subject to the further modifications shown in Attachment 1.

8. Panel reasons

The reasons for the Panel's recommendation are set out in section 9 below.

Panel Chair	David Kirkpatrick
Chair's Signature	
Date	18 May 2016

9. Assessment of modifications and submissions

Requiring authority	Minister of Defence
Designation number	4308
Designation purpose	Defence purposes (as defined by section 5 of the Defence Act 1990) – naval base
Location	South of Calliope Road, and west of Spring Street, Devonport.
Designation given effect to	Yes
Lapse date in operative plan	NA
Rollover designation with no modifications	No, involves modifications.
Description of the rollover modifications and reasons	<p>The modifications sought in the rollover seek the following changes:</p> <ul style="list-style-type: none"> i. amended wording which elaborates the purpose of the designation; ii. amend operative plan designation conditions with the conditions outlined in the rollover notice. The modifications relate to noise, parking and transportation, height and bulk/location controls, tree protection, stormwater management, fuel tunnels, heritage buildings and archaeological sites; iii. the addition of two conditions that improve the workability of the designation by clarifying that an outline plan is not required for maintenance works or for activities that are provided for as permitted activities.
Notice of requirement	NA
Land owned by the requiring authority	All land subject to designation is owned by the Crown.
Submitter	<p>838-38 – New Zealand Defence Force 838-35 – New Zealand Defence Force 6370-15 – The Character Coalition 371-214, 215, 216, 217 – Heritage New Zealand</p>
Matters addressed in submission	<p>838-38 – New Zealand Defence Force requesting term ‘purpose’ be used rather than ‘description’ within designation schedule.</p> <p>838-35 – New Zealand Defence Force requesting that the wording of condition 10 be rearranged to clarify that the second sentence applies to both Conditions 9 and 10.</p> <p>6370-15 – The Character Coalition requesting greater protection historic heritage.</p> <p>371-214 – Heritage New Zealand requesting greater protection of historic heritage.</p>
Engagement by requiring authority with submitters	No agreement reached on heritage matters. Submitters are seeking an additional condition regarding heritage protection, and the requiring authority opposes this outcome. The requiring authority also seeks the deletion of several operative plan

	<p>designation conditions regarding heritage and the accidental discovery of archaeological sites.</p>
<p>Assessment and reasons</p>	<p>Basis of Assessment The designation has been given effect to, and the modifications proposed are to clarify the purpose statement, and modifications to designation conditions are on the basis that the existing conditions are overly prescriptive not practical, will frustrate the function of a designation as set out by the Resource Management Act 1991, and are not necessary to control effects.</p> <p>Effects of modifications to Description/Activity The clarified 'purpose' statement of (additional text underlined) 'Defence purposes <u>(as defined by s5 of the Defence Act 1990) – naval base</u>' is an enhancement with no adverse effects on the environment.</p> <p>Effects of modification of conditions The modifications relate to noise, parking and transportation, height and bulk/location controls, landscaping/tree protection, stormwater management, fuel tunnels, heritage buildings and archaeological sites.</p> <p>As above the operative plan designation conditions are highly prescriptive and appear to be imposition of various district plan requirements in the manner of resource consent conditions, in many respects are outdated in referring to reports from the 1990s, for example, and in some cases represent a re-working of section 176A Resource Management Act 1991 regarding what the purpose of outline plans is and information levels.</p> <p>The modifications represent a more permissive regime but also one that is better aligned with the approach of the Proposed Auckland Unitary Plan in respect of noise provisions, tree protection and stormwater management. Further, the impact on the environment of these changes has been evaluated as being less than minor.</p> <p>In particular:</p> <ul style="list-style-type: none"> i. the updated noise condition provides better alignment with the Proposed Auckland Unitary Plan approach; ii. the parking and transportation operative conditions are outdated and overly prescriptive and this matter can be managed effectively through outline plans; iii. the fuel tunnels are now only partially used and are subject to Hazardous Substances and New Organisms Act 1996 and regional rule restrictions which are adequate controls without further duplication required; iv. the amended height and bulk/location controls will be effective in managing amenity beyond the site and particularly at the residential interface; v. the amended tree condition is better aligned to the

	<p>Auckland Unitary Plan approach;</p> <p>vi. stormwater will be effectively managed via regional rules and the outline plan process.</p> <p>The removal of the heritage and archaeology conditions will be considered during mediation.</p> <p>Overall, the effects of the modification of conditions have been assessed, and the effects are considered to be not more than minor.</p> <p>Effects on submitters</p> <p>i. Both of the New Zealand Defence Force submissions should be accepted and the term ‘purpose’ applied consistently in the designation schedule, and the format of Condition 10 be arranged as sought. Both amendments are on the List of Minor Amendments to correct errors.</p> <p>ii. The Character Coalition and Heritage New Zealand submissions have sought a Type 2 condition be imposed on the designation. The requiring authority does not agree, and the requiring authority is also seeking the removal of several existing designation conditions regarding heritage and archaeology. Should proceed to mediation.</p> <p>Effects on adjacent properties and on wider environment</p> <p>I do not consider that there are any adverse effects on adjacent properties and on the wider environment that are more than minor. The designation conditions as modified will be effective in managing any adverse effects.</p>
<p>Recommendation to Panel</p>	<p>That the Panel recommends to Council that the designation is confirmed with all modifications requested, including by New Zealand Defence Force’s own submissions, but with the exception of heritage matters and the removal of the existing heritage and archaeological conditions as sought by the requiring authority, as no agreement reached between the parties. The parties to advise.</p>
<p>Response from requiring authority</p>	<p>The requiring authority requested mediation on the following matter:</p> <p>The inclusion of an additional condition described as a “type 2 condition” concerning heritage requested by Heritage New Zealand (371-214).</p>
<p>Response from report writer</p>	<p>The report writer participated in mediation with the two parties on Tuesday 6 October. A signed Mediation Outcomes Statement confirms that there is no agreement on the matter and that the matter will proceed to a hearing.</p>
<p>Final response from report writer</p>	<p>Further discussion between the parties resulted in an agreement to the wording of a condition to manage and protect scheduled historic heritage places on selected Defence Force sites. This wording is recorded in statements of planning evidence by Ms Kate Searle for the New Zealand Defence Force (23 October 2015) and Duncan McKenzie for Heritage New Zealand (5 November 2015) and is also recorded in the updated position statement of Heritage New Zealand dated 1 December 2015.</p>

	<p>The agreed standard condition to apply to selected Defence Force sites including this facility is:</p> <p>Where any construction works for a project involve the total or substantial demolition of, or modifications to, a scheduled historic heritage place, any outline plan that is required shall, pursuant to s176A(3)(f), include:</p> <p>a) an assessment of the effects on the historic heritage values of the place;</p> <p>b) a consideration of alternative methods and/or appropriate mitigation to prevent or damage, loss or destruction of the values of the scheduled historic heritage place.</p> <p>This condition shall not apply in respect of repair or maintenance of the scheduled historic heritage place.</p> <p>This condition shall not apply where there is a conservation plan or similar plan (such as a New Zealand Defence Force Heritage Management Plan) for the management of the scheduled historic heritage place and the proposed construction works are in accordance with this plan.</p> <p>This condition is supported as it provides for the consideration of historic heritage when associated with the management of scheduled historic heritage places and will appropriately inform the Council on this matter.</p>
Recommendation from Panel	The Panel agrees with the report writer's recommendations set out in the 'Recommendation to Panel' row above and as modified 'Final response from report writer' row above.
Reasons	The Panel agrees with the report writer's reasons.

10. Attachment 1 changes to text of the Proposed Auckland Unitary Plan

Amend the description as follows:

Purpose Description

Defence purposes (as defined by section 5 of the Defence Act 1990) - naval base.

Amend Condition 10 by splitting it into two paragraphs as follows:

10. Trimming and maintenance of all native trees on the cliff top is to be undertaken by a qualified arborist.

For the purposes of this control, cliff top is defined as the point at which the gradient of the slope (as approached from the top of the slope) reaches a gradient steeper than 1 in 0.5, plus the first 10m back from the top of the cliff top.

Add new condition concerning historic heritage as follows:

15. Where any construction works for a project involve the total or substantial demolition of, or modifications to, a scheduled historic heritage place, any outline plan that is required shall, pursuant to s176A(3)(f), include:

- a) an assessment of the effects on the historic heritage values of the place;
- b) a consideration of alternative methods and/or appropriate mitigation to prevent or damage, loss or destruction of the values of the scheduled historic heritage place.

This condition shall not apply in respect of repair or maintenance of the scheduled historic heritage place.

This condition shall not apply where there is a conservation plan or similar plan (such as a NZDF Heritage Management Plan) for the management of the scheduled historic heritage place and the proposed construction works are in accordance with this plan.