

**RECOMMENDATION REPORT OF THE
INDEPENDENT HEARING PANEL (IHP)**

**NOTICE OF REQUIREMENT
WESTERN BAY OF PLENTY DISTRICT COUNCIL
*Active recreation reserve, Ōmokoroa***

25 JANUARY 2024

INDEX OF ABBREVIATIONS

The following list of abbreviations and acronyms are used in this report. This glossary is provided as a key to those unfamiliar with the references.

Abbreviation	Meaning
"IHP"	Independent Hearing Panel
"NoR"	Notice of Requirement
"PC92"	Plan Change 92 Ōmokoroa and Te Puke Enabling Housing Supply and Other Supporting Matters
"PWA"	Public Works Act 1981
"RMA"	Resource Management Act 1991
"The Act"	Resource Management Act 1991
"The Council"	Western Bay of Plenty District Council
"The Panel"	Independent Hearing Panel
"IHP"	Independent Hearing Panel
"WBoPDC"	Western Bay of Plenty District Council

EXECUTIVE SUMMARY

Western Bay of Plenty District Council is a Tier 1 Council undertaking a broad plan change process to provide for medium density residential development in accordance with the National Policy Statement for Urban Development. Over the next 30 years the population of Ōmokoroa is estimated to grow from approximately 3,500 people to in excess of 13,000.

This notice of requirement (NoR) addresses a discrete element of the overall package for Ōmokoroa, being the setting aside of land for active recreation. The NoR is undertaken in accordance with s168A of the Resource Management Act.

The panel has recommended the designation of land for this purpose, broadly consistent with the recommendation of Council officers. This decision follows a formal hearing process which raised significant issues for the panel's consideration. In particular, we note the concerns of submitters who currently occupy and actively use land which will be subject to this designation. It is especially the case for the early childhood education centre which was the subject of a resource consent process and for which consent was granted with the support of Council.

While the Council indicated a proactive approach has been taken to addressing the issues of landowners and users of the site in question, negotiations between the parties to address their concerns had not substantively started prior to the hearing and had not concluded at the close of the hearing. This is a disappointment, as Council has had a significant amount of time to work these matters through to avoid uncertainty for all parties.

The Council set out the relationship with mana whenua (Pirirākau) and the engagement process utilised to develop and advance the proposal to hearing. It appears to the panel that the relationship is robust, however it is noted that the issues raised by Pirirākau representatives in the hearing have not been resolved. It is the panel's view that the strength of relationships and appropriate conditions can provide for these important interests.

On balance, the panel finds that the merits of the proposal outweigh the deficiencies. There are substantial positive benefits that will accrue to the community of Ōmokoroa in respect of the proactive process of designating land to provide for a consolidated area for active recreation. The Council has a 10-year window to exercise the opportunity presented by the designation. It is the panel's view that the concerns raised by submitters need to be a focus for Council, both for the period prior to site development and beyond that.

The panel thanks the submitters to the NoR hearing for their thoughtful and clear submissions. Equally, the team recognise the effort, knowledge, and experience of Council officers.

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RECOMMENDATION REPORT OF THE INDEPENDENT HEARING
PANEL TO WESTERN BAY OF PLENTY DISTRICT COUNCIL IN
RELATION TO NOTICE OF REQUIREMENT ACTIVE RECREATION
RESERVE, ŌMOKOROA

Proposal Description:

Notice of Requirement – Active Recreation Reserve, Ōmokoroa.

Independent Hearing Panel:

Mr Greg Carlyon – Independent Hearing Commissioner, Chair

Ms Pia Bennett – Independent Hearing Commissioner

Ms Lisa Mein – Independent Hearing Commissioner

Mr Alan Withy – Independent Hearing Commissioner

Date of Hearing:

11th – 15th September 2023

Hearing officially closed:

3rd November 2023

1. INTRODUCTION

Report purpose and background

- 1.1. This report sets out our recommendation to the Western Bay of Plenty District Council (**the Council, WBOPDC**) as the requiring authority for their decision on the Notice of Requirement – Active Recreation Reserve, Ōmokoroa (**the NoR**)¹.
- 1.2. The NoR was notified by the Council, subject to s168A of the Act, alongside Plan Change 92. The reason for the NoR is to provide a sufficient level of service for recreation for the current, and particularly for the future residents of the Ōmokoroa Peninsula.
- 1.3. The land identified for the proposed Active Recreation Reserve is located to the west of the intersection of Ōmokoroa and Prole Roads, on land that is currently divided among six owners.
- 1.4. The NoR for the use of that land received six submissions, four of which were opposing submissions. All four opposing submissions were from either owners or lessees of land parcels subject to the NoR.

The role of the Independent Hearing Panel

- 1.5. The Independent Hearing Panel (**the IHP, the Panel**) was appointed by the Council to hear and consider the NoR, along with submissions, evidence and Reporting Officer's recommendations on the matters raised. The Panel was appointed under s34 of the Resource Management Act (**RMA, the Act**) and makes recommendations to the Council.
- 1.6. The authority delegated to the IHP includes all the powers necessary under the RMA to hear and make a recommendation to the Council, who then make the ultimate decision regarding the NoR.

Comments to the parties to the proceedings

- 1.7. The panel would like to acknowledge and record our appreciation to all of the parties that took part in the proceedings. Those who made submissions and those who attended the hearings enabled a clearer understanding of the issues at play in relation to the NoR, the existing environment and the context at this location in Ōmokoroa. All of the material greatly assisted us in assessing the issues and determining the recommended response. We acknowledge and appreciate the time, thought and effort that went into preparing them.

¹ Western Bay of Plenty District Council, Notice of Requirement – Ōmokoroa Active Reserve Document, 1 August 2022, p8, p31- and Appendix 6.

Report outline

- 1.8. The content of this report is intended to satisfy the Council's obligations related to decision-making and reporting under s171 of the RMA.
- 1.9. This report is organised into five sections:
 - a. Context for the NoR (section 2)
 - b. Submissions (section 3)
 - c. Analysis and Considerations (section 4)
 - d. Environmental Effects (section 5)
 - e. Recommendation (section 6)

2. CONTEXT

Background

- 2.1. The Council has identified two areas of their district where the medium density residential standards (MDRS) are appropriate and, as a Tier 1 council, they are obliged to provide for levels of intensification set out in the MDRS and the National Policy Statement for Urban Development (NPS-UD).
- 2.2. The resident population of the Ōmokoroa peninsula is estimated to increase from around 3,500 in 2018 to around 13,000 in 30 years' time. This is expected to be developed on land between State Highway 2 (SH2) and the railway line, on land currently zoned "Future Urban". Plan Change 92, which was notified at the same time as the NoR, is the key instrument to introduce those changes in density and to rezone that area, as well as the existing urban area of Ōmokoroa, to Medium-density residential zone (MRZ).
- 2.3. Due to the increase in density that the plan will enable, there is both a need for greater provision for the recreation needs of current and future residents, but it is also important that the necessary land is set aside prior to the bulk of development taking place. For that reason, the NoR sits alongside PC92 and needs to be understood in the context of a rapidly urbanising township.

Notice of Requirement for a Public Work by a Territorial Authority

2.4. The criteria for a decision on a new NoR are set out in s168A(3) RMA² (and are also repeated in s171). That section directs decision-makers to consider the effects on the environment, 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 decision on the requirement.*

2.5. In this context, the word 'environment' has a broad meaning (as used in the RMA), and includes ecosystems, people, communities, and amenity values.

2.6. These clauses are not tests.³ These are matters that must be carefully considered making an overall judgement under Part 2 as to whether the requirement is reasonable under Part 2 of the Act.

Relationship with the Public Works Act

2.7. The hearing and recommendation in relation to the NoR is a separate process from that of the Public Works Act (**PWA**). The NoR is limited to exploration of the case for requiring that specific land for the stated purpose and, should that be accepted as justified, the imposition of conditions on those works to ensure that it is well integrated with its surrounding environment and community, especially the mitigation of adverse effects on neighbours. This was explained to submitters during the hearing.

² As cited in the evidence of Ms Barry Piceno, counsel for Mr and Mrs Bruning, landowners and one party that submitted in opposition to the NoR.

³ As pointed out by Ms Barry Piceno, as well as Mr Danby, the author of the s42a report.

- 2.8. In relation to the compulsory acquisition under the PWA, the requirements of the acquiring authority were to leave owners in a position that is no better or worse than their current position. This was explained to submitters alongside their entitlement to consult a lawyer and that, as part of that process, the Council would cover all fair and reasonable costs relating to legal advice.
- 2.9. The submitters were also made aware that the Council has acknowledged that they have a preference for current owners and occupiers to remain at their respective locations until the proposed designation is given effect to, anticipated to be before the mid-2030s. However, landowners have submitted that they would like to have more certainty around dates, sums, and ongoing tenure in relation to a future compulsory acquisition.
- 2.10. If the decision of the Council (as requiring authority) is to confirm the requirement, submitters are encouraged to negotiate with WBOPDC's property team to agree on terms that are fair and reasonable to the submitters in terms of timelines and fair compensation.
- 2.11. The decision before the Panel is therefore largely separate from the issue of compensation.

Relevant planning documents

- 2.12. The NoR for the Active Reserve was notified together with the intensification planning instrument of PC92, which gives effect to the direction of the NPS-UD. It is appropriate that developers look not only at providing higher densities, but that they also achieve integrated management of resources by providing appropriate areas of open space, especially necessary where greater densities are being provided for as there is often an accompanying loss of private outdoor space. There is also already a recognised need for more active recreation facilities in and around Ōmokoroa, and this will only intensify as the population grows.
- 2.13. In the context of Part 2 of the Act, the panel accepts the assessment by Mr James Danby, the Council reporting officer, who presents a brief but useful analysis of Part 2 relevant to this NoR. The actual and potential effects on the environment are set out in Section 5 of this Decision.
- 2.14. In brief, Mr Danby's conclusions were that there is a benefit to the wider community of the active reserve, principally through providing for their health and social wellbeing. He also argued that the provision of the Active Reserve serves the requirements of greater intensification generally, which centre around providing for well-functioning urban environments, by providing valuable outdoor amenity in lieu of the foregone private outdoor living of less intensive suburban environments.

Designation area

2.15. The Designation takes up the length of Ōmokoroa Road from the proposed Park & Ride facility to Prole Road. Opposite the proposed reserve to the south (on Ōmokoroa Road) is a proposed industrial area, to the east on the other side of Prole Road is the school, and some of the area to the north is the Open Space set aside for the gully system and active transport network.

2.16. The area subject to the designation is currently home to a number of land uses. This includes:

- (a) An early childcare education centre;
- (b) A storage business;
- (c) A campground;
- (d) A small area of native forest;
- (e) A number of residential buildings;
- (f) Pasture; and
- (g) Avocado groves

2.17. The location of the Reserve will be largely buffered from residential zones by adjacent land uses. However, there is a small area on the western edge of the proposed reserve where the proposed Medium density residential zone (MRZ) will directly adjoin the Reserve.

2.18. An indicative Concept Plan has been developed, showing three large playing fields, 4 junior playing fields, a multi-purpose artificial turf, hard courts, a bowling green, areas for parking, and three buildings. The concept plan also includes landscaping and an area for stormwater retention.

2.19. Stormwater and an active transport network will be connected to the gully system. The stormwater retention area will catch and filter stormwater and ensure that the gully system is protected against erosion resulting from the increase in stormwater volumes. Also using the gully system, a network for cyclists and pedestrians is proposed across the natural areas provided for in the gully system.

3. SUBMISSIONS

3.1. The following submissions were received:

Submitter	Position/ Interest	Support / Oppose
Annette Giles	Trustee 468 Ōmokoroa Road (campground)	Oppose
Mornay and Rachel Jacobs	Owners and operators of The Garden Early Childcare Centre located at 7 Prole Road	Oppose
Patricia and David Cummins (Rascal Holdings)	Landowners of 7 Prole Road	Oppose
TDD Ltd	Landowners of 477 Ōmokoroa Road (storage business)	Oppose
Heritage New Zealand	Concerned with appropriate archaeological protocols (obtaining an archaeological authority for the development).	Support
Ōmokoroa Country Club	Supportive of additional green space and active reserves within the peninsula.	Support

3.2. There were three key themes evident in submissions:

- a. The compulsory requiring of land.
- b. The appropriateness of the designation.
- c. The process of engagement.

3.3. The submission received from Ms Giles challenged the legitimacy of the NoR. Ms Giles cited s22 of the Public Works Act (1981) (**PWA**), which directed that only land required for essential works may be compulsorily taken. It is understood that the owners operate a campground and caravan park at this location.

3.4. There may be arguments for and against the land in question being considered 'essential'. However, since s22 of the PWA has been repealed, that matter is less

relevant than the submitters rights under both the NoR process and the PWA itself. Since those rights are relevant to several submitters, those are dealt with in Section 4.

- 3.5. Mornay and Rachel Jacobs and Patricia and David Cummins made similar submissions. They argued that the childcare centre was in an ideal location for that business and that finding a similar facility on a similarly sized land parcel elsewhere was very difficult. Both submitters sought that the childcare centre be allowed to remain in the location or that they be fairly compensated for the loss of the facility, including the loss of business. They also suggested that the area of the childcare centre property be excluded from the area subject to the NoR.
- 3.6. TDD Ltd, through Aaron Collier, and in written evidence by Chris Taylor, also submitted in opposition to the NoR, citing insufficient or inadequate consultation, and lack of justification for the inclusion of TDD land. They sought more clarity over the timing of land acquisition, a masterplan showing the need for their land, and for the Council to begin the process of acquisition.
- 3.7. A legal submission for TDD Ltd was presented by Ms Barry Piceno. The matters raised in that submission related to matters set out in s168A(3) of the RMA, including whether the designation is reasonably necessary, consideration of alternatives, and consideration of adverse effects. Each of those matters is addressed in the latter sections of this Decision.
- 3.8. Two of the submitters have challenged the need for the Council to take their land for the Active Reserve.
- 3.9. The submissions relating to the early childhood centre highlighted that the decision on their application for resource consent from 2017 found that the location was ideal for that activity. We have a great deal of sympathy for the applicants and do accept that their activity is well-located and well-suited to serve the needs of the community. However, the NoR is for an area much larger than the early childcare centre and the loss of that activity must be weighed against the benefit to the community of designating the land in its proposed location, having regard to the suitability of potential alternatives.
- 3.10. Some submitters have raised concerns in terms of the process of engagement with them as landowners. Landowners are in an awkward position, knowing that their land is to be taken for the reserve, but that development is still perhaps 10 years away.
- 3.11. The panel agrees that the Council could have engaged in a more proactive and constructive way to provide greater certainty. We expect that the future approach of the Council will be more disciplined and show more in-depth understanding for the position of the submitters. This means engaging with them on a timeline and in a manner that suits their needs both in terms of being able to use their current property

and on deciding when it works for them to be bought out and move to an alternative location. In the case of the storage facility, it is expected that the activity would be allowed to continue to operate in that location until the requiring authority was ready to give effect to the designation.

3.12. The panel also notes the submission from Heritage NZ, which acknowledges that the applicants have begun the application for an Archaeological Authority, and that that permission will be obtained prior to any development of the subject land. The Council has volunteered a condition that any recommendations of the Archaeological Authority will be adhered to in the development and maintenance of the Active Reserve.

3.13. Another submission, from the Ōmokoroa Country Club, is noted in the s42a report, one that supports the additional provision of green space and active reserve in the peninsula.

4. ANALYSIS AND CONSIDERATIONS

Reasonably necessary

4.1. For any NoR, it is important to address the question of whether the requirement is 'reasonably necessary', weighing the wellbeing benefits derived from the proposed designation with the costs of its implementation.

4.2. The NoR document is relatively brief in its discussion as to whether the Designation is reasonably necessary, simply stating that "*a key part of the structure plan is the identification of the Active Reserve*" and "*the Designation is required to 'safeguard' the proposed public work in accordance with the proposed structure plan*"⁴.

4.3. In his evidence, Mr Geoff Canham (Council's consultant Parks and Recreation Specialist) explained that there was an existing need for recreational facilities at Ōmokoroa to service not only the recreational needs of the resident population, but also the needs of the wider rural community. He reported that, with the anticipated increase in population that PC92 would enable, this need would be greatly expanded.

4.4. Mr Canham outlined that the Council's level of service was based on a qualitative assessment of need, with some of the facilities planned to be provided at the Active Reserve being explicitly mentioned in the council 2021–2031 Long-Term Plan (LTP). Furthermore, he explored levels of service across the district and provided a discussion paper that draws upon the various structure plans and council strategies to explain why an active reserve providing these facilities is needed in Ōmokoroa.

⁴ Western Bay of Plenty District Council, Notice of Requirement – Ōmokoroa Active Reserve Document, 1 August 2022, p34.

- 4.5. The Panel has considered the evidence of Mr Taylor, Director of TDD Ltd, and the legal submissions of Ms Barry Piceno on behalf of TDD Ltd regarding the requirements for active recreation and the size of the land area proposed by the NoR. Mr Taylor considers that there is a lack of information justifying the need for, or purpose of, the reserve⁵.
- 4.6. We understand that the proposed layout of the Active Reserve is indicative only. We refer to the evidence of Mr Hextall with respect to the concept plan for the reserve, stating it is “in draft to inform active reserve requirements and to provide a better understanding of the possible park development”⁶.
- 4.7. Mr Canham provides greater detail as to the need for an Active Reserve in the preferred location. In paragraph 28 of his evidence, Mr Canham states:
- The Ōmokoroa Active Reserve will be essential in alleviating the future proofing requirement pressure arising from PC 92 and Ōmokoroa, as well as providing one of the few multi-functional active reserves in the overall Western Bay reserve network.*
- 4.8. Although the levels of service (LOS) assessment is qualitative rather than quantitative (i.e. based on provision per thousand population served), the material presented by Mr Canham has laid out the case for a variety of facilities to serve the community into the future in a consolidated location. This included provision of a swimming pool, indoor recreation centre, and the relocation of the Ōmokoroa bowling greens⁷.
- 4.9. In her legal submission, Ms Barry Piceno argued that it is anticipated that a large proportion of the future residents of Ōmokoroa will be in the older age brackets and that without the level of detail (from a developed concept plan) the Council is in no position to know what extent of land it can justifiably purchase and develop as active reserve⁸. Putting aside the question of whether or not that is true, the Panel does not accept that as justification for not providing the community with facilities to support a more active lifestyle. Certainly, the IHP is aware of brochures promoting an active lifestyle for retirees, which would suggest that there is both demand and need for recreational facilities to serve that age bracket. In addition, the scope of PC92 and NoR is such that it will effectively lock the structure plan into the urban fabric for many decades. Areas that are developed now (and those left undeveloped) will likely be the pattern serving communities far into the future.
- 4.10. We therefore agree with the Requiring Authority that as population increases demands on recreation spaces for both passive and active recreation increase and that the

⁵ Statement of Evidence of Mr Chris Taylor, 22 August 2023, pp 20(i).

⁶ Statement of Evidence of Mr Jeffrey Peter Hextall, 28 August 2023, pp24.

⁷ Relocation of the bowling greens is required as the current location leaves them susceptible to coastal erosion.

⁸ Legal submissions TDD Ltd Ms Barry Piceno, pp 38

provision of sports fields is part of providing for a well-functioning urban environment as defined by the NPS-UD. In our view, it is essential that planning for future demand for open space and recreation is considered at the same time as the zoning for future residential and commercial development as this will have far-reaching implications.

- 4.11. The Active Reserve space to be provided aligns with the Western Bay of Plenty District Council's Recreation and Open Space Strategy as well as the Bay of Plenty Regional Spaces and Places Strategy. The latter document also identifies the possibility of sharing the cost of the requirement; in addition to serving the wider community, the Active Reserve is anticipated to provide for the specific sporting needs of the new schools to be established nearby.
- 4.12. In her legal submissions, Ms Barry Piceno raised the possibility of the new schools providing sports fields and other recreational facilities on their own grounds. However, this would likely take a similar amount of space, could also be subject to a NoR, and would provide only for the needs of the school students. It is considered an efficient use of land to provide for a facility that could be shared between the Ministry of Education and the wider community.
- 4.13. The Panel therefore accepts the Requiring Authority's position that the NoR is reasonably necessary to enable the development of the Active Recreation Reserve to support urbanisation of Ōmokoroa and to address the shortfall for community needs.

Consideration of alternatives

- 4.14. It is important for any proposed designation that all reasonable alternatives have been explored and that adequate consideration has been given to the assessment of those alternatives, where the land required for the designation belongs to someone other than the requiring authority, or where the designation will likely have significant adverse effects on the environment.
- 4.15. The NoR sets out that the proposed site has gone through a detailed site selection process and various alternative locations have been considered within the Stage 3 Structure Plan for Ōmokoroa. A discussion paper⁹ sets out possible locations for future sports fields within Stage 3 of Ōmokoroa. Each of these seven sites was evaluated against LOS assessment criteria for the purchase and development of Sport and Recreation Parks including topography, soil suitability, strategic alignment to community's needs, and were considered in terms of their overall benefits and constraints.

⁹ Appendix 6 to the NoR documentation, prepared by Tracey Miller, April 2021.

- 4.16. The alternative sites were judged less acceptable due to cost, lack of visibility and connectivity, poor soils, and for the fact that several were currently being progressed for development under the higher densities that PC92 is intended to enable.
- 4.17. According to the information within that report, Option 1 (the subject site) was identified as having *“good access opportunities with access from Ōmokoroa Road via the future Francis Road extension as well as Prole Road. The site is also immediately opposite the future school site creating the possibility of shared use and cost sharing of facilities”*.¹⁰
- 4.18. However, we note that one of the key disadvantages of this site is that it requires purchase of six properties. Consideration of alternative sites was not directly raised by any of the submitters, however the four submissions in opposition to the NoR are either landowners or leaseholders directly affected by the land area identified as being required for the future recreation reserve.
- 4.19. We accept the criteria as read and that the subject site was selected for its high visibility with road frontages to Prole and Ōmokoroa Roads, good future transport access to the north and west, because it is relatively flat, close to the school and town centre, and because the Council already owns approximately 2.67 ha at 452 Ōmokoroa Road, forming part of the wider 10 ha area required.
- 4.20. The Panel accepts that the listed criteria, considered together, constitute a fair assessment of suitability. A fair comparison has been made of the potential sites for the Active Reserve. The Panel therefore accepts that a fair assessment of alternatives has been made and the chosen site is the most suitable based on those criteria.
- 4.21. In applying a broad overall judgement (subject to Part 2), we are satisfied that adequate consideration has been given to alternative sites and that Option 1 is the most suitable.
- 4.22. In the next section, our attention turns to assessment of the effects of the proposal, including the ability to address those effects. Included in that assessment is a consideration of the potential adverse effects and mitigations for the alternative sites.

¹⁰ Appendix 6 to the NoR documentation, prepared by Tracey Miller, p 17.

5. ENVIRONMENTAL EFFECTS

- 5.1. Under s168A(3)(b)(ii), it is important to look at the actual and potential effects on the environment resulting from the proposed Designation. Although the final design of the Active Reserve is yet to be determined, it is possible to a large degree to outline the anticipated effects of this Designation. These effects are likely regardless of the final design of the Active Reserve, though may differ in the degree to which effects impact particular properties.

Positive effects

- 5.2. The positive effects have been well traversed by the Reporting Officer in the s32 assessment and later in the s42a response to submissions. The area of Active Reserve will serve the recreational needs of the whole Ōmokoroa community. Benefits have been identified in relation to the school, members of the current Ōmokoroa Bowling Club, future residents living in the higher-density dwellings, and residents of the wider rural area.

Property

- 5.3. The most adverse of effects relating to this requirement is undoubtedly the imposition of the Designation over existing land uses. Most of the submissions received were in relation to the taking of land for the Designation. Landowners oppose the NoR and argue that they should be able to retain their land. The Panel notes that all of the alternative sites were privately owned and a NoR over any of them would likely face similar opposition from landowners.
- 5.4. In relation to the submission from the early childhood centre that suggested that the childcare be allowed to continue to operate in that location, Mr Canham provided a memo following the Hearing explaining the practicalities of operating the large Active Reserve. It made a compelling argument as to why the childcare facility surrounded by Active Reserve was not a feasible proposition. He argued persuasively that this would present many practical issues with continuing to operate the childcare in the manner to which it is accustomed, as well as presenting real challenges in terms of functionality and efficiency of the new reserve.
- 5.5. While it is important to differentiate the imposition of the Designation (the focus of this Decision) from the taking of land (subject to the PWA and a separate process to be implemented at a later date), it is important to recognise the effects of imposing that Designation in terms of how it impacts on the future use of that land by the current landowners and leaseholders.

Bulk and location

- 5.6. The Concept Plan for the Active Reserve includes the construction of several large buildings. These buildings are likely much larger with greater areas of blank wall than those anticipated in the surrounding residential zones, even at higher density. Those buildings have the potential to cause unreasonable shading or dominance over the neighbouring properties.

Cultural

- 5.7. This NoR, and indeed the whole plan change, involves urban development over an area of great significance to tangata whenua, in particular the Pirirākau hapū of Ngāti Ranginui. The Panel heard from representatives of Pirirākau during the hearing for PC92. The hapū restated their qualified support for the urbanisation of Ōmokoroa Peninsula, with appropriate conditions and on the understanding that the other areas of the Pirirākau rohe would not be subject to further urbanisation.
- 5.8. It is beyond the scope of this NoR or the PC92 to impose limitations on urban development elsewhere in the district. However, it is noted that one of the benefits of the changes brought about in the NPS-UD is the ability to provide for more efficient use of land for urban development and the ability to limit the 'urban sprawl' into the rural zones. It is also noted that any future plan change that contemplates further rezoning of rural land will need to engage directly with Pirirākau.
- 5.9. Mr Danby acknowledges the connection of Pirirākau to the Peninsula and supports the volunteering of a condition to ensure the involvement of Pirirākau in development of the Active Reserve. He stated, "*potential effects of land development on cultural values should be given appropriate consideration through the outline plan process*". The panel agrees with that assessment, noting that 'land development' should encompass more than the earthworks Mr Danby mentions, as there may be design decisions that the hapū would like input on, or design elements that the hapū might wish to see incorporated into future work at the Active Reserve.

Traffic

- 5.10. The NoR points out that large recreation reserves such as the proposed Active Reserve are likely to draw many visitors, especially during weekend sports and other events. The s42A addendum Concept Plan shows that the Active Reserve could cater for the anticipated needs of the community and also provide bus circulation areas and car parking for more than 300 vehicles.
- 5.11. The proposed design of the Active Reserve has the potential to mitigate potential traffic effects. The proposed pedestrian underpass to the school is anticipated to relieve a large amount of the parking demand for school use, since children will be able to safely make their way between the two locations without needing to be taken by vehicle. To

the west, the Active Reserve will be directly adjoining the proposed Park & Ride/Transport area, which will provide reserve parking on weekends, if needed. And to the north, the reserve will be connected to the walking and cycling network via the gully system, which would allow residents to make their way to the Reserve by means other than private transport.

Noise

5.12. Active Reserves can occasionally be high generators of noise, usually on weekends and (if used by schools) on sports days. There are some areas to the west and to the north that are adjacent to the reserve. While the proposed landscaping will protect the privacy of neighbouring residential areas, they may still be exposed to moderate levels of elevated noise on those occasions.

Antisocial behaviour

5.13. As with any public reserve, poor layout may create secluded pockets with little foot traffic or passive surveillance. This is particularly the case where a building is built close to a boundary with blank, windowless walls facing the fence or adjoining property.

Stormwater and erosion at the head of the gully system

5.14. The increased hard surfacing proposed will result in increased stormwater runoff. As indicated in the concept plan, it is likely that the stormwater will be directed into a stormwater retention pond, to keep the playing fields from becoming waterlogged. However, the increased volumes of stormwater risk introducing contaminants, including sediment, into the gully systems and out into the estuary.

5.15. A stormwater retention area allows for the filtration of stormwater so that discharge to the water also provides an opportunity to filter and slow the stormwater, thereby reducing the potential impact on the wider environment.

Uncertainty of development scope and timeframes

5.16. Council has pointed out that their anticipated timeframe for development of the Active Reserve is longer than the typical five years that a requiring authority would have to give effect to the Designation. Likewise, because the final design for the Active Reserve has not been produced yet, there is also uncertainty around whether the final configuration will require all of the land identified as subject to this NoR.

Alternative sites

5.17. As referenced in the previous section, the alternative sites identified for the Active Reserve all have one or more of the following, less desirable, characteristics. Below

each is a discussion of the potential additional adverse effects that such characteristics would produce:

- (a) Not on main roads into and out of the peninsula;
 - Problems with wayfinding for visiting teams.
 - If the Reserve has less public visibility there may be an increased risk of antisocial behaviour.
- (b) Lack of proximity to key locations;
 - Additional traffic effects, in particular being further away from the school.
 - Lack of proximity to the Park n Ride would mean no option for overflow parking on weekends.
- (c) Less connectivity to the active transport network;
 - If people's option to walk or cycle to the venue safely is affected, this may result in increased traffic and parking effects.
- (d) On poorer soils with more difficult drainage;
 - Lack of functionality of the playing fields, especially in the winter and after heavy rain events.
 - Difficulty growing quality turf and/or heavier use of fertilisers needed to create good playing surfaces.
- (e) Natural hazard issues (flooding and/or liquefaction);
 - Potential disruption and damage to playing surfaces following storms and/or quakes.
- (f) Slope and site configuration issues (providing enough flat surfaces for sporting activities);
 - Less able to accommodate all playing surfaces;
 - Would require large-scale earthworks and retaining structures,
 - Poor amenity outcomes resulting from multi-tiered playing fields and the necessary terracing.
- (g) Being developed for housing;
 - The need to purchase and remove recently developed housing;
 - Cost implications for land purchase.
- (h) Are bisected by future roads.

- Loss of functionality of either the roading network or the Active Reserve.

(i) Cost

- The effect on the budget of land purchasing means a greater burden on the ratepayer or diminished quality of facilities if the budget is adjusted to compensate.

Ability to address effects

- 5.18. The panel makes the following comments in relation to the ability to address the adverse effects mentioned above.
- 5.19. In relation to property effects, those adverse effects mostly relate to disruption of the activities on the subject land. It is expected that those effects will be mitigated through open and fair engagement with those landowners under the subsequent PWA process. The panel urges Council to engage in a sensitive and proactive manner with landowners to arrange for acquisition of their property within a timeframe that suits each landowner's unique situation.
- 5.20. Bulk and location standards are relevant at the boundary of the site, particularly where it borders the Medium-density Residential Zone. A condition has been volunteered to ensure that the buildings on the Active Reserve do not cause inappropriate levels of shading and visual dominance over neighbouring properties.
- 5.21. In terms of cultural effects, it is appropriate that Pirirākau are involved in development at the site, not only in terms of overseeing earthworks, but also in ensuring that development is respectful of, or ideally reflects, their relationship with the peninsula. The volunteered condition seemed focused on the potential for disturbance of archaeological material, but also included wider considerations such as naming and signage.
- 5.22. To ensure that parking and circulation of traffic is safe and efficient, Council has volunteered a condition requiring a transportation assessment to be submitted alongside the outline plan.
- 5.23. In relation to the lapse date for giving effect to the Designation, Council has requested a term of 15 years to give effect to the Designation, to give surrounding areas time to develop the residences that will ultimately be served by the Active Reserve. The panel feels that 15 years is too long a timeframe to give effect to the designation and feel that, if the standard lapse time is to be extended, ten years is a more appropriate length.
- 5.24. In relation to noise, large events are anticipated to be infrequent enough that any adverse noise effects will be no more than minor.

5.25. In Attachment 1 to his evidence in reply, Mr Danby usefully provided an amended set of draft conditions for the designation. These conditions have been used as a good starting point for the panel's recommended conditions to address the effects listed above.

5.26. The panel accepts the amended conditions in line with the commentary above, subject to the following recommended further amendments:

1. An additional paragraph should be inserted to the purpose condition, strengthening the wording to reference s176A of the RMA and clarifying when an outline plan will be required (amended condition 2).
2. A requirement that the final design submitted with the outline plan show how the site will be developed to protect the head of the gully from erosion and to ensure that the principles of Crime Prevention Through Environmental Design (CPTED) are followed. The former is to effectively mitigate the potential erosion effects around the gully, as well as potential ecological effects on the gully system and the estuary. The latter is to ensure that the design considers the most appropriate layout in terms of matters like passive surveillance and social management (new condition 4).
3. An additional condition relating to cultural values has been inserted. This effectively divides the former condition into two. One condition (new condition 6) deals with engagement with Pirirākau on site design, which includes place names, signage, and interpretation, and the other (amended condition 7) deals with procedures around earthworks, which also includes the need to engage with Pirirākau.
4. A further condition requires the submission of records of any consultation with the wider community and key stakeholders, including outcomes sought, discussion and incorporation into the final design (new condition 9).
5. A review clause is also recommended, requiring that a formal review of the designated area be conducted within 12 months of lodgement of the outline plan, and that the removal of any excess land from the Designation is expedited under a s182 process (new condition 10).
6. The lapse date is amended to give the Requiring Authority 10 years from incorporation of the designation into the plan (amended condition 11).

6. RECOMMENDATION

6.1. It is the recommendation of the Independent Hearing Panel, subject to its deliberations and s171 of the Act, that the Requiring Authority **confirm** the requirement **with modifications to the conditions**, as set out below.

Conditions

6.2. At the hearing, the Panel raised a number of questions regarding the proposed conditions, in particular strengthening the wording of condition 2 to reference s176A of the RMA, specifically referencing engagement with Pirirākau and engagement with other stakeholders and shortening the lapse period.

6.3. In response to those matters, the Requiring Authority has amended the proposed conditions and agreed these with Mr Danby on behalf of the Council. The Panel generally accepts the proposed conditions set out by Mr Danby in the s42a supplementary evidence, subject to the following additions (underlined).

Purpose

1. *The purpose of the designation is to provide an Active Reserve for the following activities:*
 - a. *Playing fields and associated lighting structures.*
 - b. *Clubrooms and changing facilities.*
 - c. *Playgrounds.*
 - d. *Indoor sports centre.*
 - e. *Aquatic centre.*
 - f. *Access and parking facilities*
 - g. *Associated service connections.*

Outline Plan

2. *Prior to any works being undertaken to give effect to the Notice of Requirement excepting provisional works such as soil sampling and geotechnical investigative works, an outline plan pursuant to Section 176A of the Resource Management Act 1991 shall be submitted to the territorial authority in general accordance with the matters following.*

Any separate outline plan application submitted to Western Bay of Plenty District Council for the purpose of giving effect to the designation on a staged basis is appropriate and subject to all other designation conditions.

Building height and location

3. Any new building (excluding light poles, goal posts or similar structures) shall be designed to comply with height and height in relation to boundary performance standards for the underlying zone at the external boundaries.
 - a. Where a building exceeds the height standard the outline plan of works will assess:
 - i. The extent and scale of the additional height
 - ii. The visual dominance of the building.
 - iii. Whether the height of the building supports a positive relationship with the surrounding environment.
 - iv. Architectural design and built form
 - v. Amenity effects on surrounding properties, including shading and loss of daylight.
 - b. Where a building exceeds a height in relation to boundary performance standard the outline plan of works will assess:
 - i. The extent and scale of the building beyond the HIRB envelope and the associated shading, loss of daylight and building bulk effects on the surrounding environment

Site development

4. The final design for the site shall show:
 - a. how landscaping and ecological values at the head of the gully will be protected;
 - b. the incorporation of CPTED principles.

Vehicle Access and Parking

54. The design and location of vehicle access and exit points and parking areas associated with supporting the purpose of the designation shall be subject to a transportation assessment which shall be submitted with the outline plan application. The purpose of the transportation assessment is to assess the effects of the proposed work on the continued safe, effective, and efficient operation of the surrounding transport network.

Cultural values

- ~~6.5~~ The outline plan shall demonstrate how Pirirākau have been given the opportunity to provide input on development of the site, including:

- a. evidence that the engagement was early, meaningful, and open;
- b. a record of topics discussed, which may include place names, signage, interpretation and/or site design;
- c. a record of the outcomes sought, discussion and how these have been incorporated into the plan.

Earthworks

- Z. The outline plan shall demonstrate how earthworks within site will be undertaken in accordance with the 'good earthworks practice' Ōmokoroa Earthworks Procedures within the District Plan. This includes, but is not limited to:
 - a. Undertaking meaningful consultation with Pirirākau regarding the planned earthworks prior to the outline plan application.
 - b. Procedures for informing Pirirākau of earthwork start dates and opportunities for site blessings and monitoring of earthworks activities.
 - c. Discovery protocols for archaeology, koiwi; other artefacts; habitation sites or middens.
 - d. ~~Any discussions or agreement for input into place names and signage.~~
- 86. The outline plan application shall include a copy of any archaeological authority applied for under the Heritage New Zealand Pouhere Taonga Act 2014.

Consultation

- 9. The outline plan shall detail consultation undertaken by the Requiring Authority with key stakeholders, including providing a record of outcomes sought, discussion and how these have been incorporated in the development plan, and where there is disagreement, why they have not been incorporated.

Review of extent of designation

- 10. The Requiring Authority shall, within 12 months of lodgement of the outline plan, in conjunction with landowner(s) review the extent of designation required for the Active Recreation Reserve, including identification of any areas that are no longer required; and give notice in accordance with section 182 of the Resource Management Act 1991, for the removal of those parts of the designation.

Lapse Date

- 117. The designation shall lapse on the expiry of a period ~~10~~¹⁵ years after the date it is incorporated in the District Plan

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Greg Carlyon

A handwritten signature in blue ink, appearing to read 'Pia Bennett' with a long, sweeping underline.

Pia Bennett

A handwritten signature in black ink, appearing to read 'Lisa Mein' with a long, horizontal flourish at the end.

Lisa Mein

A handwritten signature in black ink, appearing to read 'Alan Withy' with a large, looped 'y'.

Alan Withy