
RESOLUTION CL24-2.1

Moved: Cr M Grainger

Seconded: Cr R Joyce

1. That the Environmental Planning Manager's report dated 6 March 2024 titled 'Recommendations by the Independent Hearings Panel for Plan Change 92 and the Notice of Requirement for Ōmokoroa Active Reserve' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.

CARRIED

RESOLUTION CL24-2.2

Moved: Mayor J Denyer

Seconded: Cr A Henry

3. That Council accepts the recommendations of the Independent Hearings Panel for Plan Change 92 in accordance with clause 104 of Schedule 1 of the Resource Management Act 1991 (RMA), with the exception of the following Independent Hearings Panel recommendations identified in Table 1 below, with reasons for doing so, and any alternative recommendations in accordance with clause 102 (1)(b) and (c):

Table 1. Rejected IHP Recommendations

	Recommendation rejected	Alternative recommendation (if any)
A	Introduction of new indoor railway vibration rules for Ōmokoroa and Te Puke in Section 4C – Amenity (sub-section 4C.1 – Noise and Vibration) of the District Plan. Specifically Rule 4C.1.3.6 (indoor railway vibration standards) and Rule 4C.1.4.4 (matters of discretion for indoor railway vibration) ¹ .	Delete Rules 4C.1.3.6 (indoor railway vibration standards) and 4C.1.4.4 (matters of discretion for indoor railway vibration).

¹ References:

IHP Recommendations Report – paragraphs 3.140 – 3.145.

IHP Recommendations Report Attachment B – Summary of Recommendations – Section 4C – Amenity – Topic 2 (page 15).

IHP Recommendations Report Attachment C – District Plan Provisions – pages 60-61.

KiwiRail submission points: 30.4 & 30.5.

	<p>Reason</p> <p>The vibration rules are overly onerous and time-consuming to implement and present a significant or even unbearable cost to landowners. Based on KiwiRail’s own evidence, this includes for a single dwelling, the need for a vibration expert to carry out an assessment (\$3-4k), the likelihood of needing to find an expert outside of the region due to the limited number of experts, a railway vibration assessment (\$5-8k), the possibility of needing to isolate the building from the ground vibration (\$100k + GST) or a heavy masonry construction (“high risk” and “high cost”) or for landowners to abandon a project due to cost. These are over and above the normal building costs. These measures seem unreasonable to impose on individual landowners simply to avoid KiwiRail’s perceived concerns regarding possible reserve sensitivity. Council is not aware of any complaints about vibration from those already living within 60m of rail corridors in the District nor was evidence of complaints provided by KiwiRail.</p>	
B	<p>Recommendation rejected</p> <p>Proposed industrial zone to the west of the existing Francis Rd intersection with State Highway 2 being retained as Future Urban².</p> <p>51 Francis Rd (Lot 2 DPS 76152) 21 Francis Rd (Lot 3 DPS 76152) 1362 SH2 (Lot 1 DPS 5073) 1 Francis Rd (Lot 2 DPS 5073)</p>	<p>Alternative recommendation (if any)</p> <p>Rezone the land to Industrial Zone on the District Plan Maps, as proposed by Plan Change 92.</p> <p>As a consequential change, amend the proposed Ōmokoroa Structure Plan Stage 3 Road and Walkway/Cycleway map in Appendix 7 – Structure Plans of the</p>

² References:

IHP Recommendations Report – paragraphs 3.214 and 3.289 – 3.321.

IHP Recommendations Report Attachment B – Summary of Recommendations – Ōmokoroa Zoning Maps – Topic 5 (page 8).

IHP Recommendations Report Attachment D – District Plan Maps – “Ōmokoroa Plan Change 92 Zoning Map – January 2024”. See area of land shown as “Future Urban” at Francis Rd.

		<p>District Plan as recommended in Council's right of reply (29 September 2023). This includes deleting the industrial zone access and roundabout from the far western end of this land and changing it to a right hand turn only, and adding a new east to west structure plan road.</p> <p>As a consequential change, amend the proposed Ōmokoroa Structure Plan Stage 3 map in Appendix 7 – Structure Plans of the District Plan to show that the "Francis Road structure plan area typical 25m cross section" shall also apply to the existing Francis Road where it adjoins the land Plan Change 92 proposed to be rezoned as Industrial. This is the cross section recommended to be added as part 4.8 of Appendix 7 – Structure Plans. Also make associated changes in proposed Rule 12.4.11.8 (b).</p> <p>As a consequential change, delete the</p>
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		<p>following wording from proposed Rule 12.4.11.8 which was recommended by the IHP in support of their recommendation:</p> <p>Alternatively, prior to this intersection being closed, access into the Industrial Zone from Francis Road at or beyond its intersection with State Highway 2 shall be prevented by way of an appropriate legal mechanism to Council's satisfaction.</p> <p>Add the words "Light Industrial" over the proposed Industrial Zone on the District Plan Maps so that this land becomes subject to existing rules for the Ōmokoroa Light Industrial Zone in Section 21 – Industrial of the District Plan.</p>
	<p>Reason</p> <p>Ōmokoroa has approximately 18ha of existing Industrial Zoned land on the south-eastern side of Ōmokoroa Rd (the only land currently available for industrial use). Plan Change 92 proposed to rezone a further 10ha of Industrial land (from its current Future Urban Zoning) on the south-eastern side of Ōmokoroa Rd and to the west and east of the existing Francis Rd intersection with State Highway 2. These additional areas are required to meet the demand for Industrial land in the western part of the District and to provide employment for those living in the area. This meets SmartGrowth's objective to provide employment opportunities within growth areas and aligns with its vision for the Western Bay sub-region to be a great place to live, learn,</p>	

work and play. These additional areas are also required because an existing Industrial Zone further north on Ōmokoroa Rd has been developed for housing under the Housing Accords and Special Housing Areas Act 2013 and is therefore no longer available for industrial use. Further, the location of the additional areas would provide a buffer between the Stage Highway and properties being rezoned to Medium Density.

A number of submitters living in the Francis Road area opposed the Industrial Zone at Francis Rd due to concerns such as noise, traffic and effects on the natural environment. There are existing provisions in the District Plan in Sections 4C – Amenity and Section 21 – Industrial which manage effects relating to noise, setbacks, screening and urban design e.g. avoiding large blank walls through use of glazing, varied materials and use of vegetation. In response to submissions, Council reporting officers also recommended a rule to ensure that Francis Road would need to be closed before industrial development could occur, and a 25m Francis road reserve (including noise bund) be completed between the proposed Industrial Zones and Medium Density Zones. Despite these measures, the IHP recommended that the proposed Industrial Zone to the west of the existing Francis Radd intersection with State Highway 2 be retained as Future Urban. The IHP's remaining concern being that the definition of "industry" in the District Plan is "very coarse" and "effectively allows for a range of industrial use from heavy industrial through to activities that are likely to be compatible with the Ōmokoroa community.

As an alternative, proceeding with rezoning the land to Industrial but marking it as "Light Industrial" on the District Plan Maps would allow existing Light Industrial rules to apply. These rules prevent "industry" (manufacturing, processing, packaging, dismantling activities and engineering workshops) and "storage, warehousing, coolstores and packhouses" from being permitted and make them non-complying along with waste management activities specifically. The rules would only permit activities such as commercial services (e.g. banks, post offices and laundromats etc), takeaway outlets, service stations, medical facilities, veterinary clinics and emergency services etc. The rules would also reduce the height limit from 20m to 9m and provide stricter noise requirements than the general Industrial Zone. This is an existing method within the District Plan in response to similar issues and is considered to resolve the remaining concern of the IHP.

C	Recommendation rejected	Alternative recommendation (if any)
	<p>Proposed Natural Open Space Zone (as modified by Council officer recommendations) on Bruning land (Lot 3 DPS 28670) being retained as Future Urban³.</p>	<p>Rezone the land to Natural Open Space Zone on the District Plan Maps, as proposed by Plan Change 92 and as modified by Council officer recommendations.</p> <p>For clarity, this is the part of the property shown as Future Urban on the following map:</p> <p>IHP Recommendations Report Attachment D – District Plan Maps – “Ōmokoroa Plan Change 92 Zoning Map – January 2024”).</p> <p>As a consequential amendment, show a landscape strip on the Industrial Zoned land where it adjoins the land requested to be rezoned to Natural Open Space.</p>

³ References:

IHP Recommendations Report – paragraphs 3.334 – 3.363.

IHP Recommendations Report Attachment B – Summary of Recommendations – Ōmokoroa Zoning Maps – Topic 6 (page 11).

IHP Recommendations Report Attachment D – District Plan Maps – “Ōmokoroa Plan Change 92 Zoning Map – January 2024”). See area of land shown as “Future Urban” on the eastern side of Ōmokoroa Road and adjoining State Highway 2.

Bruning submission point: 31.3.

Reason

Plan Change 92 proposed for an area of this property to be rezoned from Future Urban to Natural Open Space due to having one or more characteristics that aligned with the purpose of such a zoning. The purpose of the zone being to identify land generally unsuitable for development which instead has ecological, cultural, recreation or amenity values and provides for the likes of open space, maintenance and restoration of natural character, green corridor links and visual separation between areas planned to be urbanised.

The Council officer (in a Section 42A Report) recommended changes to the proposed boundary of the Natural Open Space Zone on this property following an additional site visit. The Council officer then confirmed their view (in rebuttal evidence) that a Natural Open Space Zoning was most appropriate for this particular property “from a planning perspective”. However, the Council officer also offered the IHP an alternative option of retaining this part of the land as Future Urban given “unique and exceptional circumstances” relating to the property. This being an existing State Highway designation (D181) over part of the property and plans by Waka Kotahi to alter this designation and expand it further into the property. The reason given for this option was “for simplicity the option to retain the operative zoning could be followed with consequential rezoning as may be appropriate once the designation process is complete and there is more certainty around residual property boundaries and the like”.

Waka Kotahi’s submission sought for the proposed Natural Open Space Zone within the footprint of designation D181 be removed (and revert to Rural Zone) as Natural Open Space Zoning is incompatible with the urban infrastructure of a grade-separated interchange and may hinder Waka Kotahi in its ability to construct the intersection.

Bay of Plenty Regional Council sought for the land to be retained for Natural Open Space due to the need to protect streams, wetlands and freshwater ecosystems for the purpose of the Plan Change and the National Policy Statement for Freshwater Management.

Council agree that the land in question, being a wetland, has characteristics which make it most suitable for a Natural Open Space Zoning. The land is not suitable for urban purposes (residential, industrial and commercial) and should not be a Future Urban Zone.

D	Recommendation rejected	Alternative recommendation
	<p>Introduction of new indoor noise level rules for Ōmokoroa and Te Puke in Section 4C – Amenity (sub-section 4C.1 – Noise and Vibration) of the District Plan. Specifically Rule 4C.1.3.2.c.iii (indoor railway noise standards).</p>	<p>Amend Rule 4C.1.3.2.c.iii (noise sensitivity) to reduce the applicable area of the requirements from 100m to 50m as follows: “In Ōmokoroa and Te Puke, any new building or addition to an existing building located within <u>50m</u> 100m of the railway track designation boundary, which contains a dwelling, accommodation facility, education facility, place of worship or marae, or medical or scientific facility, shall meet the following requirements:”.</p>
	<p>Reason</p> <p>The applicable area of the noise rules (100m from a railway designation boundary) is potentially much wider than required to manage the actual effects of railway noise on buildings (holding noise sensitive activities). The acoustic evidence from Kainga Ora considers that the 100m area is too large, will apply controls to land that is not affected by noise to the degree that rules are necessary, and ignores a range of factors that may lead to a smaller applicable area such as railway cuttings, train speed and screening by topography and buildings. Kainga Ora recommended using computer noise modelling now to significantly reduce the spatial extent of the controls overall, which would have been especially likely where there is more complex topography and screening effects. In Kainga Ora’s view, such modelling would have been relatively straightforward given the easily accessed and reliable LIDAR terrain and other digital spatial data. The IHP did not accept this option and</p>	

	retained the applicable area as 100m. We recognise that it would not be practicable to revisit the option of doing computer modelling now to spatially identify the applicable area before the rule becomes operative. However, it seems clear from Kainga Ora's evidence that the 100m area is over-conservative, would create an unnecessary burden on many landowners and should be reduced in size. On that basis, we request that the applicable area be reduced in size from 100m to 50m. This will avoid the need for landowners to pay for acoustic assessments unnecessarily.
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4. That by rejecting the IHP recommendations identified in Table 1 above that these matters will be referred to the relevant Minister for a decision in accordance with clause 101(2) and 105 of Schedule 1 to the RMA.
5. That the public be notified of the decisions by Council in accordance with clause 102 of Schedule 1 of the RMA by 13 March 2024 including the recommendations of the IHP that it rejects and the reasons for doing so and any alternative recommendation that it has provided for a rejected recommendation.
6. That staff be delegated the authority to make minor editorial changes and consequential changes (if any) to the recommended decision of the Council in consultation with the District Plan Committee Chairperson.
7. That Council accepts the recommendations of the Independent Hearings Panel for the Ōmokoroa Active Reserve and confirms the Notice of Requirement with modifications in accordance with section 168A of the RMA.

CARRIED
