

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

**Decision No. [2017] NZEnvC 213**

|               |   |
|---------------|---|
| IN THE MATTER | of the Resource Management Act 1991                       |
| AND           | of a direct referral pursuant to s 87G of the Act         |
| BETWEEN       | MINISTER OF CORRECTIONS<br>(ENV-2017-AKL-92)<br>Applicant |
| AND           | OTOROHANGA DISTRICT COUNCIL<br>Consent Authority          |

Court: Environment Judge J E Borthwick  
Environment Commissioner A Leijnen  
Environment Commissioner R Bartlett  
Environment Commissioner G Paine

Hearing: at Hamilton on 4-12 October 2017 and 30-31 October 2017.

Final closing: 20 November 2017.

Decision reserved: 27 November 2017.

Appearances: S Quinn and E Manohar for applicant  
M Mackintosh and S Thomas for Otorohanga District Council and  
Waipa District Council  
J Milne for New Zealand Transport Agency  
H Irwin-Easthope for Raukawa Charitable Trust  
L Burkhardt for Maniapoto ki Te Raki  
H Maniapoto in person

Date of Decision: 21 December 2017

Date of Issue: 21 December 2017

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**INTERIM DECISION OF THE ENVIRONMENT COURT**

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## REASONS

### Introduction

[1] The Minister of Corrections, on direct referral to the Environment Court, has applied for an alteration to an existing designation enabling the expansion of Waikeria Prison.

[2] The prison population has undergone rapid growth in recent years, so much so that the capacity of the prison network is at risk of being exceeded. Indeed, the facilities are required as a matter of "urgency" and it is critical that the "designation be confirmed as soon as possible".<sup>1</sup> Presently there is accommodation for around 650 prisoners at Waikeria. The altered designation would house up to 3,000 male and female prisoners. If built, Waikeria will be the largest prison in the country.

[3] The Minister intends on procuring the new facility through a Public-Private Partnership. Under this method of procurement, which was proceeding in parallel with the notice of requirement, the design of the facility was unknown and the effects on the environment of allowing the requirement were difficult to quantify.<sup>2</sup>

[4] To overcome this, the Minister proposed a set of design parameters which, in the court's view, were insufficient to address the scale and significance of actual and potential effects on the environment and second, were insensitive to the direction given in the relevant planning documents. The key issue before the court, therefore, concerned the response under the Resource Management Act 1991 where a notice of requirement is unsupported by a conceptual design or layout of the works that would be enabled.

### The burning fires of occupation

[5] Before addressing the law and the parties' interests in the proceeding, we acknowledge the descendants of the owners of the land on which the prison is located.<sup>3</sup>



<sup>1</sup> Notice of Motion for proceedings under s 198E of RMA dated 3 July 2017.

<sup>2</sup> Notice of Requirement and Assessment of Effects, Vol 1, 6.1 Public Private-Partnership Model at 30.  
<sup>3</sup> The parties are Waipa District Council, New Zealand Transport Agency, Maniapoto ki Te Raki, Mr Harold Maniapoto and Raukawa Charitable Trust.

[6] The land taken from the former owners in the early 1900s, under the Public Works Act 1908, comprised part of the Tokanui Block. The Tokanui Block encompassed some 10,205 acres situated on the southern bank of the Puniu River. The Block was the remnant of lands occupied by the parties' predecessors<sup>4</sup> extending both north and south of the Puniu River. The land to the north of the Puniu River was confiscated by the Crown following violent conflict in 1864.

[7] With reference to its former land cover, the area was once known as Te Nehenehenui — the Great Expansive Forest.<sup>5</sup> The landcover was modified in part by Māori burning off the forest to establish gardens. The area is also the southern extent of a considerable former eel fishery, particularly long fin eel.<sup>6</sup>

[8] At this hearing, Maniapoto Ki Te Raki (MKTR) represents some of those descendants. While other hapū communities also have interest in the land, these descendants are ahi kā and have mana whenua over the land.<sup>7</sup>

[9] The descendants have been dispossessed from their occupation of the land and therefore the practical exercise of kaitiakitanga. What cannot be taken from them however, is their standing as reinga kaitiaki; the current generation of customary guardians. It is in that capacity that Mr Harold Maniapoto for and on behalf of the Maniapoto whānau and MKTR, Messrs JM Roa, R Bidois, and Ms V Ingley, addressed the generational impact of the land acquisition and its subsequent use.

[10] The descendants cannot seek redress in this court for the land acquisition. Together with Raukawa Charitable Trust, they are concerned that the intensification of land use that would be enabled by the notice of requirement (if confirmed), has the potential to exacerbate the customary and cultural effects consequential upon the original taking.<sup>8</sup>

[11] That said, at the conclusion of the hearing, all parties had resolved, by agreement, their interest in the notice of requirement. The Minister has been proactive in searching

<sup>4</sup> Those persons having primary hapū affiliations aligning with the Te Kanawa and Rereahu sections of the Maniapoto confederation of hapū.

<sup>5</sup> Joint brief of evidence of H Maniapoto for and on behalf of himself and the Maniapoto whānau, and Maniapoto ki Te Raki at [29].

<sup>6</sup> Transcript at 947.

<sup>7</sup> See generally the joint brief of evidence of H Maniapoto for and on behalf of himself and the Maniapoto whānau, and Maniapoto ki Te Raki. Burkhardt, opening submissions, at [3]-[4].

<sup>8</sup> Transcript at 972.



for solutions, particularly to matters which arose indirectly through the works enabled by the notice of requirement.

### **Structure of the decision**

[12] We are not in a position yet to confirm the designation subject to any modifications to the conditions. That is because the Minister, after the hearing, filed evidence and supporting conditions that would increase the assessed level of height of buildings across the majority of the land identified as the "Building Zone". The scope for this change under the Notice of Requirement (NoR) was not supported by submissions from counsel.

[13] Instead, we give our preliminary findings on ss 171(a)-(d) RMA and will direct that the Minister address the scope for the amendments to conditions proposed by the landscape expert (Mr J Goodwin).<sup>9</sup> We will also seek clarification on other conditions which we discuss.

[14] A decision on the merits of the relevant provisions will follow once the legal position on scope is determined. The NoR will then be formally considered pursuant to Pt 2 of the Act.

[15] Attached to this Interim Decision is a copy of the proposed conditions for the designation. To assist us, the conditions have been formatted to standardise referencing and to include condition numbers. Unless otherwise indicated, all references in this decision are to the conditions attached and labelled "A".

[16] Parties will see that we have suggested amendments to give effect to what we understand to be their intent. Where we have not given a reason for proposing a change, the change made should be obvious on its face. On occasion, where the meaning of the condition is unclear, we have sought further submissions.

[17] The parties may suggest alternative wording to the court's. It is important that the conditions are clear, certain and enforceable and that the actual effects of the altered designation are in accordance with the levels predicted.



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<sup>9</sup> Goodwin, Supplementary Evidence dated 10 November 2017.

## The law

[18] The Minister of Corrections filed a notice of motion pursuant to s 198E of the Resource Management Act 1991 requesting the Environment Court decide its requirement to alter designation D55 in the Otorohanga District Plan.

[19] A notice of motion having been accepted, s 198K(5) provides that the court in considering the notice of requirement to alter a designation:

...

- a) must have regard to the matters set out in section 171(1) and comply with section 171(1A)<sup>10</sup> as if it were a territorial authority; and
- b) may —
  - (i) cancel the requirement; or
  - (ii) confirm the requirement; or
  - (iii) confirm the requirement, but modify it or impose conditions on it as the court thinks fit ...

[20] The Court may also waive the requirement for an outline plan to be submitted under section 176A, but the Minister does not request this.<sup>11</sup>

[21] Section 171 states:

(1A) ...

- (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) ...;
    - (ii) ...;
    - (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

<sup>10</sup> No issue arises under s 171(1A).

<sup>11</sup> Quinn, Opening Submissions at [47].



- 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.

[22] The decision-maker is required under s 171 to consider the environmental effects of the notice of requirement, subject to Pt 2, and having particular regard to the matters listed in sub-sections (a)–(d). Whata J discussed the reference to Pt 2 in s 171 in *Queenstown Airport Corporation v Queenstown Lakes District Council* [2013] NZHC 2347 and at [68–70] he said:

[68] It will be seen that the focal point of the assessment is, subject to Part 2, consideration of the effects of allowing the requirement having particular regard to the stated matters. The import of this is that the purpose, policies and directions in Part 2 set the frame for the consideration of the effects on the environment of allowing the requirement. Indeed, in the event of conflict with the directions in s 171, Part 2 matters override them. Paramount in this regard is s 5 dealing with the purpose of the Act, namely to promote sustainable management of natural and physical resources.

[69] Part 2 also requires that in achieving the sustainable management purpose, all persons exercising functions shall recognise and provide for identified matters of national importance; shall have regard to other matters specified at s 7 and shall take into account the principles of the Treaty of Waitangi.

[70] The reference at s 171(1)(d) to “any other matter” is qualified by the words “reasonably necessary”. Given the Act’s overarching purpose, however, the scope of the matters that may legitimately be considered as part of the effects assessment must be broad and consistent with securing the attainment of that purpose.

[Footnotes omitted]

[23] More recently the High Court decision of *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 (referred to as the *Basin Reserve* decision), considered the phrase “subject to Part 2” in the context of s 171 (1). There the High Court, referencing the Board’s decision, said that the Board had understood not only the different nature of its task in considering an application under s 171 but also the implications of the “subject to Part 2” component.<sup>12</sup>

[183] Further and perhaps more importantly, as we have already noted, Section 171(1) and the considerations it prescribes are expressed as being *subject to Part 2*. We accordingly have a

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<sup>12</sup> *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [118].



specific *statutory direction* to appropriately consider and apply that part of the Act in making our determination. The closest corresponding requirement with respect to statutory planning documents is that those must be prepared and changed *in accordance with ...the provisions of Part 2*.

[184] For the above reasons, the statutory framework and expectation of Section 171(1) relevant to our current decision can be contrasted with the situation in *King Salmon*. The plan change being considered on that case was required to *give effect to* a higher order planning document which the Supreme Court consider should already *give substance to pt 2's provisions in relation to... [the] coastal environment*. By contrast, here we are required to consider the environmental effects of the NoR, subject to Part 2 and having particular regard to the relevant statutory planning documents.

[24] As the High Court makes clear, the role of Pt 2 in the *King Salmon* context is different to the role it plays under s 171 of the Act as the planning documents do not determine the outcome of a s 171 decision. The High Court went on to say that the phrase "subject to Part 2", as it occurs in s 171, is a specific statutory direction that is not restricted to instances of unresolvable conflict.<sup>13</sup>

[25] Following the *Basin Reserve* decision, in *R J Davidson Family Trust v Marlborough District Council*<sup>14</sup> Justice Cull, having noted the similarities between ss 171 and 104 of the Act in that they both list matters "subject to Part 2," did not explain why she adopted an interpretation of those words that is inconsistent with the *Basin Reserve* decision. It has been suggested that the observation made in *Basin Reserve* as to the different role that planning documents may play in RMA proceedings (in that case comparing and contrasting NoR and plan change proceedings) may be pertinent to the interpretation taken in *RJ Davidson* which was considering an application for resource consent.<sup>15</sup>

[26] *RJ Davidson* has been appealed to the Court of Appeal but regardless of the outcome we distinguish it on the basis that it is a resource consent appeal and we consider we are bound by the *Basin Reserve* decision which is a designation proceeding. We will briefly address s 171(1)(b) & (c) next.



<sup>13</sup> *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [354] (HC).

<sup>14</sup> *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52.

<sup>15</sup> *Re Queenstown Airport Corporation Limited* [2017] NZENVC 46 at [67].

**Adequacy of consideration given to alternatives (s 171(1)(b))**

[27] To the extent that there was concern about the adequacy of consideration given to alternative routes or methods for undertaking the work, this arose in relation to the proposal to use Waikeria Road as the sole access to the Prison. In the past, Wharepuhunga Road provided direct access to the prison but its usage had stopped when the Department of Corrections adopted a policy of allowing prison access through a single point of entry. Once this policy was explained, the parties seeking a return to a dual entranceway withdrew their challenge under s 171(1)(b) RMA.<sup>16</sup>

[28] That said, the issue as to whether the requiring authority has given adequate consideration to alternatives only arises in this case were we to find that the work would likely have significant adverse effects on the environment. While the works, subject to conditions, will generate adverse effects, the effects are not at a level that they could be considered "significant" and so the consideration of alternatives does not arise.

**Whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought (s 171(1)(c))?**

[29] With reference to s 171(1)(c) of the Act, the objectives of the Minister are as follows:<sup>17</sup>

- (a) The long term (up to ten years) demand requirement is met by 2015;
- (b) The required prisoner places are delivered at the lowest whole of life costs;
- (c) Operational efficiencies are achieved;
- (d) An optimal fit for purpose solution is provided to rehabilitate and reintegrate prisoners whereby prisoner places are provided close to prisoner demand and therefore close to prisoner's family and friends;
- (e) The prison facility is located sufficiently close to communities large enough to attract and sustain sufficient staff to support a safe and secure custodial operation;



<sup>16</sup> Burkhardt, closing submission at [18]-[20].

<sup>17</sup> NoR, Executive Summary at ii.

- (f) The prison facility is located sufficiently close to communities large enough to attract and sustain service providers to rehabilitate and reintegrate prisoners; and
- (g) Significant adverse environmental effects of the development are appropriately avoided, remedied or mitigated.

[30] As for whether the alteration to the existing designation is reasonably necessary, we were told from 2014 prisoner numbers have been increasing in response to a growing number of persons charged with serious violent offences and in persons being remanded in custody prior to sentencing, together with an increase in the length of remand. The Minister does not see the trending growth in the prisoner population decreasing. The Department of Corrections projects a shortfall of 1,450<sup>18</sup> prisoner places in 2025. Indeed, the actual prisoner population in January 2017 is over 800 above the forecast peak for the same month. While the Department is presently managing, overcrowding will increase risk to prisoner safety and to the safety of prison staff. Overcrowding could also lower operational efficiency and reduce the ability to deliver effectively on rehabilitation and employment programs.<sup>19</sup>

[31] Presently, there is accommodation for 650 prisoners housed in several units at Waikeria Prison. The Minister intends on building accommodation and associated facilities to accommodate a further 1,500 male prisoners, perhaps increasing the build to accommodate an additional 500. The balance (350) is reserve capacity, which, for the time being, will not be built.<sup>20</sup> Attached to this decision and labelled "B" is a list of facilities within the secure perimeter that are likely to be required to meet demand.

[32] Given the demand growth for future prisoner accommodation, we accept the works or designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought (s 171(1)(c)).

### **The receiving environment**

[12] We set out next a brief description of the receiving environment. The altered designation will enable the development of a new prison facility at Waikeria, with facilities



<sup>18</sup> Lightfoot, EIC at [53] gave the shortfall as 1,700.

<sup>19</sup> NoR, 3.2 Necessity for the Proposed Capacity Increase at 16.

<sup>20</sup> Lightfoot, EIC at [14].

to be located within a 94 hectare block (Building Zone). Some of the existing prison facilities (known as the "Lower Jail") are situated within the Building Zone and for the time being they will remain.

[13] The Building Zone is part of 1,276 hectare Waikeria Prison site (Prison Site or Site) and is located within a broad rolling valley. The Site is bounded roughly by Waikeria and Mangatutu Streams. These streams drain into the Puniu River which eventually flows into the Waikato River. Active erosion is evident along their deeply incised banks and there is little riparian vegetation cover. Much of the Site is low-lying and is dissected by small natural gullies, watercourses and drainage channels. Some water bodies are ephemeral and others perennial.<sup>21</sup> Two small tributaries of Waikeria Stream flow northward through the Site and a third skirts the western margin. A fourth stream drains from the south-eastern corner into the Mangatutu. Small wetlands are present on these tributaries both within the Site and adjacent to the Waikeria Stream. Scattered on Site are trees and shrubs including occasional native kanuka, tōtara and flaxes; otherwise the land is almost entirely in pasture.

[14] The streams and wetlands in and around the Site are of a quality typical of lowland farmland in the Waipa catchment. Water quality in the streams is degraded by sediment and nutrient inputs, nevertheless both longfin eels (classified "At Risk – Declining") and short fin eels were observed in surveys of the Site. Wetlands along tributaries within the Site provide ecosystem services by retaining sediment and smoothing flood flows but are dominated by exotic grasses and weeds. They support a range of macro-invertebrates but are classified as "poor" or "fair" against Macroinvertebrate Community Indices and have limited indigenous habitat.

[15] Interspersed on the wider Prison Site are rolling hills and small ridges, although these landforms do not follow any particular alignment. The elevation of the Building Zone itself increases gently from RL<sup>22</sup> 42 in the north to RL 60 in the south.

[16] The Building Zone has been modified by buildings and roads associated with an existing prison and by the agricultural activities (predominately dairying) that occurs on the Site. Described by one expert as being of a "pleasant pastoral character typical of

<sup>21</sup> Stream network is illustrated in NOR, AEE, "Waikeria Prison Capacity Increase Assessment of Environmental Effects of Earthworks", Appendix 3, dated 14 July 2017.

<sup>22</sup> RL means "Reduced Level".



much of the lower Waikato<sup>23</sup> the Prison Site is surrounded by open rolling countryside, punctuated by the occasional tree, woodlot and shelterbelt. The land surrounding the Waikeria Prison is used for pastoral farming, and towards the north is some lifestyle farming. Pastoral farming underpins the rural character of the valley, including the site of the prison.

[17] There are 10 dwellings located in the valley, the closet of which are two dwellings on Walker Road located 700-1080 m away. Where visible to neighbouring residents and from public places, the view of the Building Zone is mainly from an elevated position.

### **The effect of the works on the environment considered in the context of the proposed conditions**

#### ***Acknowledgements***

[18] The descendants of the original owners have endured pain and suffering as a consequence of the land acquisition. This is acknowledged by the Minister in the following way:

#### **Condition 8(g)(II)**

The ongoing adverse effects on the relationship of Raukawa and Maniapoto with the awa and whenua through the intensification and expansion of the use of the whenua for a prison and the degradation of the original ecology and the land and the water bodies are minimised.

#### **Condition 8(h)<sup>24</sup>**

- (i) To recognise and acknowledge that the Waikeria Prison site was taken from Maniapoto, Matakore, and Ngāti Te Kanawa hapū and whānau and that the continued dispossession of this whenua, its natural resources and assets has adversely affected their descendants and to recognise and provide for the enduring relationship of mana whenua with the whenua and resources.
- (ii) To recognise and acknowledge that the Waikeria Prison site was taken from the whānau, hapū and iwi of Raukawa of the Wharepuhunga rohe; that the continued dispossession from the whenua negatively impacts the whānau, hapū and iwi of Raukawa; and to recognise and provide for the enduring relationship of Raukawa with the whenua and resources.

<sup>23</sup> NoR, AEE, Report 6: Assessment of Landscape and Visual Effects, 3.0 Landscape Context and Wider Prison Site Character at 7.

<sup>24</sup> Sub-clause i has been amended to improve grammar.



[19] The recognition and acknowledgements given by the Minister to mana whenua in condition [8(h)] are important, particularly when considered in the broader context of restorative justice. We do not see the acknowledgements as “criteria” for an Outline Plan and Design Report as currently listed. Might the acknowledgements be better situated in the preamble to the Designation?

[20] For persons with mana whenua, the relationship with the land has endured the taking of the land and this is specifically recognised and provided for Maniapoto ki Te Raki in the following condition:<sup>25</sup>

**Condition 130**

Prior to the end of the operation of the TWLG under condition 116 e),<sup>26</sup> the requiring authority shall invite Maniapoto ki Te Raki (or its successor or assignee) to enter a relationship agreement to recognise and provide for the enduring relationship of mana whenua with the whenua, natural resources and assets comprised within the Waikeria Prison site, including to provide for ongoing exercise by mana whenua of kaitiakitanga. The requiring authority shall not be in breach of this condition if Maniapoto ki Te Raki (or its successor or assignee) do not wish to enter into a relationship agreement.

***Wetlands and streams***

[21] The parties have agreed to form a Tangata Whenua Liaison Group. This group will comprise Maniapoto ki Te Raki, Raukawa Charitable Trust and Te Roopu Kaumātua o Waikeria. In addition to the important objectives concerned with the implementation of accidental discovery procedures and the facilitation of cultural input into the commemoration and recognition activities, the group is to facilitate cultural input into the development of a Landscape and Visual Mitigation and Monitoring Plan and second, the Ecological Enhancement and Mitigation Plan (condition 116).

[22] These latter two objectives are noteworthy in that they — together with other conditions of the designation — have the capacity to produce a new paradigm (or maybe a return to an older one) when thinking about prospective change and the response to change in the environment. Namely, to regard the use, development and protection of natural and physical resources not as alternatives, but as a cumulative whole. We return to this when we consider the notice of requirement under the planning documents. For

<sup>25</sup> Irwin-Easthope, closing submission, at [4(c)], Raukawa Charitable Trust did not seek a similar condition.

<sup>26</sup> A change has been made to correct the cross-reference.



now, we record that during the hearing, the requiring authority moved from conditions addressing discrete elements of the works to a more considered approach, taking account of the interconnected nature of natural and physical resources.

[23] All of the proposed conditions underwent considerable change during the course of the hearing. For the most part, the conditions and the amendments made to the same were not explained by the expert witnesses for the Minister. One important change was the deletion of the following objective: <sup>27</sup>

Ecological enhancement will contribute to the improvement of water quality and aquatic habitat, particularly for tuna/eel but also other indigenous aquatic species.

[24] This clause was part of a wider provision which sets out to explain the objectives of creating and enhancing wetlands and riparian planting. We have proposed wording bringing this objective, subject to modification, back into the condition set.

[25] It is a condition that the Minister undertake planting of 8.6 hectares of wetland within the designation site and undertake planting along the riparian margin of a 2,010 m stretch of Waikeria Stream. Similar conditions are contained in resource consents granted to authorise earthworks and the diversion of surface water.<sup>28</sup> The designation differs from the resource consent in that a larger area of land is to be enhanced and planted.

[26] The resource consent documentation refers to the planting as "compensation", "off-set" and "enhancement". Likewise, the various iterations of the designation conditions use different terms to encapsulate the reason for the planting, with the Minister eventually landing on "compensation". These changing terms point to an underlying uncertainty or lack of clarity around the purpose of the planting. This matter was tested by the court.

[27] The terms "off-set" and "compensation" are technical terms, the meaning of which has yet to be settled by the senior courts. The terms are not, at least in our minds, synonymous and their meaning can be distinguished in the way described by the Board

<sup>27</sup> Proposed Designation Conditions Version dated 24 October 2017, Condition 56.  
<sup>28</sup> Common bundle Volume 1, Tab 1 and 2, AUTH 138553.04.01 and AUTH 138553.01.01 and RM170041.



of Inquiry in *Transmission Gully*.<sup>29</sup>

Offsetting which related directly to the values affected by an activity was in fact a form of remedy or mitigation of adverse effects and should be regarded as such. Offsetting which did not directly relate to the values affected by an activity could more properly be described as environmental compensation.

[28] The High Court decision of *Royal Forest & Bird Protection Society of New Zealand Inc v Buller District Council & Ors* [2013] NZHC 1346, which discusses the two terms, lends support for our view the terms are not interchangeable.<sup>30</sup>

[29] The term "compensation" is significant if it is intended to convey that the conditions pertaining to wetlands and surface water, concern values that are unaffected by the project works. If this is what the Minister intends, the term will affect the interpretation and implementation of the wetland and stream conditions. That is because the term strongly implies that the harm being compensated will remain in the environment. We think this is the antithesis of Raukawa and MTKR submission and the outcome they seek.

[30] Counsel for Raukawa records her client's view that the actions in condition 36(b) respond to ongoing adverse effects on the relationship of Raukawa with the awa and whenua (river and land). These effects will increase with the intensified use of the whenua. Raukawa called no evidence to support a nexus or link between the project works and an effect on the whenua and awa in this location. It may be that Raukawa consider this link axiomatic in that Raukawa believe:<sup>31</sup>

"... that water is not separate from people, is not separate from its surrounds and therefore cannot be separated, or assessed in isolation, from the environment as a total entity."

[31] As evidenced by the use of language to describe the purpose of the wetland and stream enhancement and the views expressed by more than one expert witness<sup>32</sup> Raukawa's understanding is not necessarily a shared or common view. We repeat what

<sup>29</sup> Final decision of the Board of Inquiry into the New Zealand's Transport Agency's Transmission Gully Plan Change Request (5 October 2011, EPA 0072) at [210].

<sup>30</sup> *Royal Forest & Bird Protection Society of New Zealand Inc v Buller District Council & Ors* [2013] NZHC 1346 at [49].

<sup>31</sup> Agreed Bundle of Planning Documents, Tab 8, Te Rautaki Taiao A Raukawa: Raukawa Environmental Management Plan 2015, Section 2.1, clause 2.1.1 Issue Statement – Water.

<sup>32</sup> See for example, Transcript at 667, where we were told that the riparian planting is not in response to the loss of any "value".



we said during the hearing about the need for evidence, lest what is gained in direct negotiations be lost through inappropriate language in the conditions of the designation.

[32] In the absence of any legal argument we will not essay the meaning of the term "compensation". It is sufficient to record our finding that what is proposed in relation to the wetlands and streams described in the Final Condition Set<sup>33</sup> at condition 36(a) is direct mitigation of the effects of the project works. Second, the actions to be taken in relation to that part of Waikeria Stream described in condition 36(b) - to promote restoration of the ecological health of this waterway, are in response to the objectives of the Vision and Strategy Statement<sup>34</sup> and are a positive benefit to the environment.

[33] We elaborate, resource consents granted to the Minister are also subject to conditions that require riparian planting and wetland enhancement. The designation extends this work across a larger area in response to the effects of earthworks and vegetation removal north of Settlers Road and within the land included in the NoR after notification [being an additional 6.37 ha<sup>35</sup>]. The works proposed on the downstream section of the Waikeria Stream are in direct mitigation for the diversion of water from tributaries to the Waikeria and Mangatutu Streams and two wetlands together with the loss of associated wetland services, including the retention of sediment and buffering of surface water flows and the loss of habitat for short and long fin eels.<sup>36</sup> The conditions are also a partial response to future modification to stormwater flow paths through the Site and the potential effects that may arise were there to be an increase in the volume of direct discharge of stormwater into the waterways. The works will improve the stability of stream banks and avoid further loss of sediment into the waterways from bank erosion.

[34] While there is no direct equivalency, the localised positive benefit of improved fish and macroinvertebrate habitat is to be considered alongside the loss of intrinsic values of the ecosystems<sup>37</sup> within the Building Zone, including habitat for lizards, birds and macroinvertebrates. Subject to what we say next in relation to conditions, we are satisfied that the mitigation response and enhancement of the waterbodies and their surroundings

<sup>33</sup> Dated 10 November 2017.

<sup>34</sup> In particular Objectives (a) and (h).

<sup>35</sup> Goodwin, EiC at [34].

<sup>36</sup> Boothroyd, supplementary evidence dated 6 September 2017 at [11ff].

<sup>37</sup> Section 2 RMA defines intrinsic values in relation to ecosystems, as meaning those aspects of ecosystems and their constituent parts which have value in their own right, including—

(a) Their biological and genetic diversity; and  
(b) The essential characteristics that determine an ecosystem's integrity, form, functioning, and resilience.



may provide habitat for lizards and avifauna. If this occurs there will be a net gain and overall betterment in the ecological values attached to these water bodies and improvement in ecological functioning.

[35] The Minister has endeavoured to address comprehensively the waterways and wetlands in a manner which promotes the integrated management of the land, water and physical resources. This approach accords with sound resource management practice. We are satisfied that the development of new wetlands and the planting of native wetland species has the potential to improve overall habitat value, as well as replacing the services lost as a consequence of diverting surface water from wetlands and streams within the Building Zone.

*Amendments to wetland and stream conditions*

[36] The parties are directed to consider amendments suggested by the court to the conditions of the designation:

- (a) we will not approve the use of the term "compensation" and have suggested alternative wording. The conditions both mitigate the direct effects of the works on the environment and second, promote restoration of stream habitat. We understand the Landscape, Ecological Enhancement and Mitigation Plan prepared by Boffa Miskell Limited — Revision C<sup>38</sup> is the starting point, but not the end-point. Accepting that full "restoration" is not a possible outcome in this highly-modified environment, does the wording proposed by the court better encapsulate what is intended for Waikeria Stream? We have used the terms "restoration" and "restorative" which, while aspirational, resonate with the language used in the Vision & Strategy Statement. We have suggested that similar amendments be made to Condition 37;
- (b) condition 8(g)(I) addresses the action required under consents granted by the Regional Council to mitigate the direct effect on the wetland and streams within the Building Zone. The reference to consents in condition 8(g)(I)(i) is superfluous given the criterion in condition 8(g)(I)(vi)(second bullet) and also condition 27 which requires the implementation of the Landscape,



<sup>38</sup> Dated 8 November 2017.

Ecological Enhancement and Mitigation Plan prepared by Boffa Miskell Limited — Revision C. It is important not to over complicate the conditions;

- (c) condition 8(g)(l)(i), as worded by the parties, also contains a statement that is factually incorrect and this will affect the implementation of the condition. The condition states that wetland compensation will restore some biodiversity values **not** present in the existing wetlands. An important objective for Raukawa and MKTR is to protect the services provided to the river by wetlands and second, the habitat of eels. The existing wetlands have these values, albeit that they are in a degraded state. The court has amended conditions 8(g)(l)(i) and (ii) to address directly the objectives of Raukawa and MKTR;<sup>39</sup>
- (d) the provisions that are cross-referenced in condition 8(g)(l)(v) are not criteria, rather they are methods to implement the criteria and their inclusion seems superfluous but in any event repeats condition 8(a)(ii);
- (e) the reference to rats and stoats is to be removed from condition 8(g)(l)(vi)(third bullet) as these animals do not directly impact on water quality.<sup>40</sup> A provision for control of these animals has been suggested in condition 36(b);
- (f) wetland “enhancement” does not encapsulate the parties’ intention that new wetlands be developed. We suggest “wetland development” accords with the parties’ intentions and have amended the condition accordingly; and
- (g) Condition 28(d) refers to a wetland feature and Stream A2 that is not identified on a plan to be attached to the conditions. We suggest that the parties either amend the condition or produce a plan identifying the named water bodies referred to in the conditions.

### ***Landscape and rural character***

[37] In the absence of a preliminary or even conceptual design, the effect of the new facilities on the area’s rural character and the visual amenity derived from rural character could not be assessed relative to the distribution, bulk and height of individual buildings and structures or relative to the finished ground level.



<sup>39</sup>

The wording better encapsulates what was intended by the former objective in paragraph [23] above.

<sup>40</sup>

Transcript at 1036ff.

[38] To assess effects the Minister adopted a "building envelope" approach, based on the building height not exceeding 12 m and assuming two floor levels at RL45 (northern and majority of the Building Zone) and RL50 (southern and smaller part of the Building Zone).<sup>41</sup>

[39] Earthworks have been separately consented by the Otorohanga District Council authorising the modification of the landform to accommodate building platforms. In saying this, the final landform is not known as no plans were attached to the land use consent application or to the grant. To avoid (or at least minimise) the adverse effects on landscape character and visual amenity, the Minister's landscape expert advised the existing undulating land contours would need to be shaped. The proposed conditions of consent did not, however, make provision for the recontouring of land or for that matter secure the building height relative to a finished ground level or to the assessed reduced levels. Indeed, the Minister's landscape expert said his assumed reduced levels may differ in the final design.<sup>42</sup>

[40] In addition to a control restricting the height of buildings, the Minister proffered two conditions relevant to managing the effect on landscape character and visual amenity. The first of these is a requirement to paint the buildings and structures a recessive colour. The second is a requirement to submit a management plan to the Otorohanga District Council addressing how the project works would be integrated into the environment to mitigate any adverse effects.

[41] The court can give little or no weight to the opinions of the landscape experts where the assumptions informing their opinions as to scale and significance of adverse effects may subsequently be proven wrong.<sup>43</sup> Second, the effect on the environment, specifically rural character and visual amenity, is not a matter to be left for the outline plan process as proposed by the relevant management plan condition. The Otorohanga District Council's landscape expert, Mr D Mansergh, observed that the way the conditions were worded involved professional judgement.<sup>44</sup> We agree and prior to the hearing we alerted the Minister to our view that the condition, as drafted, was simply an unlawful delegation of decision-making power to the District Council.<sup>45</sup>

<sup>41</sup> Common Figure Set, Fig 16.

<sup>42</sup> NoR, AEE, Report 6: Assessment of Landscape and Visual Effects, 6.0 Landscape effects at 14.

<sup>43</sup> We refer, in particular, to the assumptions made as to the reduced level of land which were used as the basis to evaluate the effect on visual amenity.

<sup>44</sup> Mansergh, EIC, at [18].

<sup>45</sup> Record of Pre-Hearing Conference dated 11 August 2017.



[42] In response to the court the Minister worked hard to secure the level of effect that the landscape experts predicted while retaining flexibility in the eventual design. The experts made predictions as to the change to rural character and effect on derived visual amenity consequential upon development. When the works are considered in relation to the internal Prison Site (only), the landscape's rural character will be maintained.<sup>46</sup> The effect on the character of the surrounding landscape will be moderate-low after 10 years.<sup>47</sup> This change in view will have a moderate to high adverse effect on the visual amenity of persons who reside at 52 Walker Road even after mitigation planting is established,<sup>48</sup> with a lesser effect on other residents and on views from public places. Having reviewed the evidence, we accept these predictions subject to what we have to say about conditions below.

*Proposed new conditions*

[43] Prior to the hearing the Minister proposed additional conditions limiting the gross floor area of all new buildings (condition 12ff); site coverage (condition 16); the impervious surface area (condition 17) and incorporating into conditions certain structuring elements of a future design (e.g. conditions 11(d) & 28(c)). Collectively these conditions support a development which, in contrast with the existing prison facilities at the Building Zone, will not appear as a consolidated mass of buildings when seen from external viewpoints outside of the designation site.<sup>49</sup>

[44] A careful distinction has also been drawn between criteria addressing the bulk, location and design of buildings within the Building Zone and landscaping of the Building Zone. The conditions address the effects on rural character and visual amenity from two different, but complementary, perspectives.

[45] The bulk, location and design criteria (condition 8(c)) direct **how** facilities are to be integrated into this landscape. In particular, facilities are not to visually dominate their

<sup>46</sup> We refer here to the "landscape effect" which the NOR, AEE, Report 6: Assessment of Landscape and Visual Effects 6.0 Landscape Effects at 14. Glossary of key terms (at ii) defines as being a change in the physical landscape, which may change its character or value and NOR, AEE, Assessment of Landscape and Visual Effects at 6.0 Landscape Effects at 14. As for the maintenance of rural character within the Building Zone see page 15.

<sup>47</sup> NOR, AEE, Report 6: Assessment of Landscape and Visual Effects 6.0 Landscape Effects at 15.

<sup>48</sup> NOR, AEE, Assessment of Landscape and Visual Effects 6.0 Landscape Effects at 15 and 7.4.1 Views from the East at 26; Goodwin, Supplementary Statement dated 10 November 2017 at [17]-[18].

<sup>49</sup> These structuring elements are also part of the Department of Correction's "Works Requirements" being a document prepared by the Department as part of the tender process for the project works. See Affidavit of AD Robertson affirmed 26 September 2017.



surrounds; the buildings or clusters of buildings are to be separated by open areas and are to be designed and located so that they appear as discrete buildings or clusters when viewed from outside the site and there is a requirement to provide variation in building size, roof form, buildings and façade and colour. Importantly, it is a criterion that “landscape design principles and ecological compensation initiatives” are integral to the design of the new facility. While we will come back to the proposed wording of this condition, this condition is not achieved by soft landscaping sensitive locations in an endeavour to minimise effects by screening or breaking up the view toward/over the new prison facilities. The conditions of the amended designation make clear the Landscape, Ecological Enhancement and Mitigation Plan, Revision C, is not the end-point.

[46] Before considering the effects on rural character and visual amenity, we will comment on a new condition establishing reduced levels.

#### *Reduced Levels*

[47] In the absence of a design, the mass of the development was assumed to occupy the entire Building Zone limited only by the controls on height relative to the assumed RLs. Photomontages illustrated the effect on landscape and visual amenity at its “worst” or “most extreme” level.<sup>50</sup> We do not necessarily accept that the relatively benign shading on a series of photographs does illustrate the “extreme” effects of the works and, as it transpired, this was not the “worst” level of effects. Following questions from the court to ascertain the level of certainty around predicted visual effects, the Minister proposed conditions fixing RLs albeit at a higher level than those considered in the Assessment of Environmental Effects attached to the NoR.

[48] Responding to the increasing contours towards the south, three RLs are now proposed for different parts of the Building Zone. Two RLs are for land south of Settlers Road and a third for land north of Settlers Road. Where land is being filled in, the former would increase the height of buildings and facilities by 1 metre and 3 metres when compared to assumed RLs in the NoR. For Walker Road residents, the project works will become more prominent in the view albeit the buildings and facilities will remain below the background landform and vegetation.<sup>51</sup> This visual backdrop may assist in integrating the Prison into its rural surroundings as it allows for the creation of terraces at different

<sup>50</sup> Goodwin, EIC at [45]; Supplementary Evidence dated 6 September 2017 at [7].

<sup>51</sup> Goodwin, Supplementary Evidence dated 10 November 2017.



elevations, thus enabling the design to respond to the surrounding natural contours. Vertical variation of buildings may also assist in breaking up the massing effect of buildings.<sup>52</sup> Finally, we were told the conditions now preclude the possibility of buildings and structures intruding into the skyline and becoming a focal point or feature, although we think this possibility is somewhat fanciful.

[49] On the other hand, it will take 12-18 months longer for landscaping to mitigate effects (now 10-12 years in total) and for 52 Walker Road the landscaping will be less effective in reducing the level of effects, particularly during the establishment phase.<sup>53</sup> Overall, the level of effect has not substantially changed, but in saying that the level of adverse effect was already high for 52 Walker Road under the NoR as notified.

[50] Some members of the bench have considerable disquiet as to the manner by which this latest change has been introduced. This change has to be considered in the context of the extension of the area of the Building Zone towards the east, and, it follows, towards the Walker Road residences. The photomontages attached to the NoR are not "indicative" representations of the effect on landscape and the change in view. Given our disquiet the Minister and the District Council will be directed to file succinct, but comprehensive, submissions addressing whether the scope for the change to the reduced levels are within the scope of the NoR (as notified).

[51] The change to the RLs, if approved, will not be without amendment. In particular, there will be the additional requirement that condition 33 (or a new condition as appropriate) be amended to require the Minister to consult with the owners and occupiers of 12B & 52 Walker Road over any landscape treatment of their private property that may reduce the visibility of the development and the effect on the residents' visual amenity.

[52] The standards relating to building height are set out in two separate conditions.<sup>54</sup> These standards work together to control height and it is preferable that they are set out in a single condition (we have suggested amendments to condition 11(a)). Further to this:

<sup>52</sup> Mansergh, Supplementary Evidence dated 15 November 2017.

<sup>53</sup> Goodwin, Supplementary Evidence dated 10 November 2017 at [12-20].

<sup>54</sup> Appearing as conditions 11 & 14 in the Final Condition set dated 10 November 2017.



- (a) reduced levels are measurements relative to a particular datum.<sup>55</sup> The datum shall be recorded in an Advisory Note and on the plan labelled "Figure 16a: Building Zone with Maximum Building Height R.Ls";
- (b) condition 11(a) sets the standard for the maximum building height. At 12 m above finished ground level, the height is that of a two-storey building. The RLs set the overall height of development above which buildings cannot intrude, and this is so regardless of the finished ground level. To make clear the intention that the character of the development will be no higher than the two storey building, the conditions are to be amended state that the lessor of the height above finished ground level or height above RL is to apply; and
- (c) the conditions are to confirm the maximum height of the secure perimeter, lighting, light poles, electronic security and communication towers above (we think) the finished ground level.

*Other amendments to landscape conditions*

[53] In addition to some minor word changes (tracked) better suited to criteria we suggest amendments to the relevant provisions of condition 8 as follows:

- (a) condition 8(c) – the provisions that are cross-referenced in condition 8(c)(i) are not criteria, rather they are methods to implement the criteria and their inclusion seem generally superfluous but in any event repeats condition 8(a)(ii). The predicate of the criterion is unclear and consequently its purpose is difficult to divine. We have interpreted what is intended and suggested amendments;
- (b) condition 8(f)(iv) – might 'natural character' better encapsulate what is lost when referring to both land and water within the Building Zone?;
- (c) condition 8(c)(vi) is important. We understand the purpose is to require the designer of the project works to take expert advice on the subject matter of landscape and water bodies and to integrate that advice as part of the facilities design. We have suggested amendments using language better suited to a criterion.

<sup>55</sup>

Mansergh, Supplementary Evidence dated 10 November 2017 at [8] appears to give the datum as NZGD2000 datum. The Minister will confirm the datum is that used in NoR, Report 6.



[54] We have suggested amendments to other conditions addressing landscape and visual mitigation, as follows:

- (a) condition 27 – the preamble to the condition conflates the Landscape, Ecological Enhancement and Mitigation Plan, Revision C, with the other measures in sub-clauses (a) to (h). The implementation of the Plan is a standalone condition. Is the correct date for the Plan “8 November 2017”?
- (b) condition 28(b) – is the reference to “Figure 17 Proposed Landscape Mitigation Plan Revision A dated 15.08.2017” correct? If it is, the plan will need to be produced and appended to the designation conditions;
- (c) condition 28(XXX) – addressing wetlands, we wonder to what extent that the condition is needed at all (it appears to duplicate in part, if not in whole, other conditions). If it is to be retained is it better placed under the Ecological Mitigation provisions from Condition 36?;
- (d) condition 28(e) – the purpose of this condition is uncertain:
  - (a) the criterion in condition 8(e) and the Landscape and Ecological Enhancement and Mitigation Plan, Revision C make tolerably clear that the tree and block planting using species capable of reaching a minimum height of 8 m are **not** required solely for purpose of mitigating the effect on the visual amenity of the listed dwellings in sub-clause (f). Condition 28(e) appears to contradict this. What is the correct position?; and
  - (b) where the tree and block design can incorporate indigenous vegetation while achieving its primary purpose of screening or breaking up the views, this should be considered?

[55] Condition 29 directs a Landscape and Visual Mitigation and Management Plan be prepared, although two issues require clarification:

- (a) the purpose of the Management Plan is not stated, but we assume it is to give effect to the relevant criteria in condition 8. That being our working assumption, we have introduced a new condition (condition 30) to record the same. If we are wrong, parties are to state the objective of the Management Plan; and
- (b) the parties are to clarify whether the Tangata Whenua Liaison Group that is to have cultural input into the development of the Plan (condition 116((b)) in addition to the “input” of the persons named in condition 29. If not, we



suggest condition 29 refer to the Tangata Whenua Liaison Group rather than the persons named and second, refer to "cultural input". Parties are to comment.

### ***Effect on Housing and Housing Affordability***

[56] A key issue for Mr Maniapoto and MKTR concerned the potential social impact on vulnerable low income Māori families arising from a rapid influx of workers and their families.<sup>56</sup> Competition for accommodation, housing or rental properties, with upward pressure on pricing, will bear immediately and directly on this community.<sup>57</sup>

[57] In the NoR the Minister proposed expanding an existing Community Liaison Group to include representatives from the Ministry of Social Development and other social service providers, such as Housing New Zealand, representatives from the education sector and the District Health Board and emergency services and the like. This group was charged with, amongst other matters, identifying workforce skills requirements and localised recruitment and training strategies and second, monitoring the effect of construction activities on the housing and rental market.

[58] The condition was strongly opposed by Mr Maniapoto and MKTR as being ineffective.<sup>58</sup>

### ***Context***

[59] Te Awamutu, Kihikihi and Hamilton City are experiencing strong population growth, with areas directly around the Prison Site being projected to have significant population growth. Nearby, the Otorohanga population has been declining over the past two decades, but this trend is predicted to reverse.<sup>59</sup>

<sup>56</sup> NoR, AEE: Report 4: Assessment of social effects of the proposed Waikeria prison expansion, dated 7 April 2017 3.3 at 30, reports on the place of various communities on the New Zealand Deprivation Index. Deprivation (based on relative income, home ownership, employment and other factors) is ranked on a scale of (1) least deprived to (10) most deprived. The average nationwide deprivation average being 5-6. For communities living in proximity to the Prison Site, their deprivation ranking typically exceeded the New Zealand average, with persons living in the towns being most deprived.

<sup>57</sup> Maniapoto EIC at [64-69].

<sup>58</sup> Burkhardt, Opening Submissions at [27]-[29].

<sup>59</sup> NoR, AEE: Report 4: Assessment of social effects of the proposed Waikeria prison expansion, dated 7 April 2017 at [3.2] at 30.



[60] Property and rental prices have increased in the last 12 months, with the median house value and rental price in Te Awamutu and Kihikihi being over 20% higher than 12 months ago.<sup>60</sup>

[61] The communities living in the towns of Te Awamutu, Kihikihi and Otorohanga are ranked well above the average on the New Zealand Deprivation Index. Approximately one-third of the population residing in these towns rent housing.

*Predicted effects*

[62] The Minister predicted that there will be negative effects on the availability and affordability of accommodation as a consequence of the construction and operation of the Prison.<sup>61</sup> The scale and significance of any effect will depend on the total number of persons moving into these towns and surrounding areas for work.

[63] At full capacity, the Department of Corrections workforce will expand to approximately 1,400 employees. The Minister assumes half of the workforce for the new Prison facility will already live in the area, with the balance likely to move into the area together with their families (being an estimated 970 people). While this is only an assumption, based on the residential location of existing Prison staff, the employees and their families are expected to relocate to Te Awamutu, Kihikihi and Otorohanga.<sup>62</sup>

[64] On the one hand, the local population will benefit from the increased opportunity to gain permanent employment in positions remunerated well above the medium income,<sup>63</sup> however, as the Minister quite properly acknowledges, population growth may negatively affect the supply and affordability of accommodation. The change in supply and affordability, and its consequential effect on the existing local community, is "difficult to judge".<sup>64</sup> That said, for the rental market in particular, the expert for the Minister concluded "many" will be affected.

<sup>60</sup> NoR, AEE: Report 4: Assessment of social effects of the proposed Waikeria prison expansion, dated 7 April 2017, Table 11 at 31.

<sup>61</sup> Quigley EIC at [7]. NoR, AEE: Report 4: Assessment of social effects of the proposed Waikeria prison expansion, dated 7 April 2017 at 7.

<sup>62</sup> NoR, AEE: Report 4: Assessment of social effects of the proposed Waikeria prison expansion, dated 7 April 2017 at 6.

<sup>63</sup> Quigley, EIC at [38].

<sup>64</sup> Quigley, EIC at [45].



[65] The price pressure will be greatest on local people on low or fixed incomes for whom it will be more difficult to find suitable rental accommodation; there will be flow on effect of price pressure across the market.<sup>65</sup>

[66] The Department of Corrections staff are not the only persons needing accommodation. Accommodation is also required for released prisoners; this is described as a "constant challenge" by providers of the relevant services for the existing 650 prisoner muster.<sup>66</sup> The majority of the construction force is likely to be recruited from outside the Waikato. We were told these persons would be unlikely to seek permanent accommodation,<sup>67</sup> but would have a high demand for short-term and rental accommodation.<sup>68</sup> Accommodation for the public sectors (i.e. health and education) and Prison service providers (i.e. rehabilitation services) will also be needed as will short term accommodation for prisoners' families.

*Conclusions on the scale and significance of the effects on the housing and rental prices*

[67] The expert for the Minister advised housing determines many other "social and health outcomes".<sup>69</sup> We would go further than that; access to adequate housing is a basic human right.<sup>70</sup> There will be a change in the availability and affordability of housing accommodation.<sup>71</sup> The scale of change and therefore the level of effect, particularly on low income families, was not (and we think probably cannot) be quantified.

[68] It is therefore imperative that the conditions be robust so as to enable both the prediction and then early detection of change in the accommodation market. The Minister will need to bring to bear the influence he has on the residential location of the construction and operational workforce. It is acknowledged that the Minister has the capacity to influence (but not control) market demand.

<sup>65</sup> NoR, AEE: Report 4: Assessment of social effects of the proposed Waikeria prison expansion, dated 7 April 2017 at 32-33.

<sup>66</sup> NoR, AEE: Assessment of social effects of the proposed Waikeria prison expansion, dated 7 April 2017 at 48.

<sup>67</sup> Transcript at 778.

<sup>68</sup> NoR, AEE: Assessment of social effects of the proposed Waikeria prison expansion, dated 7 April 2017 at 27-28.

<sup>69</sup> NoR, AEE: Assessment of social effects of the proposed Waikeria prison expansion, dated 7 April 2017 at 27-28.

<sup>70</sup> Universal Declaration of Human Rights 1948, Article 25.

<sup>71</sup> NoR, AEE: Assessment of social effects of the proposed Waikeria prison expansion, dated 7 April 2017 at 28 & 31 described likelihood of an effect arising from the construction and Department of Corrections workforce as being "almost certain".



*Amendments to housing and housing affordability conditions*

[69] The latest draft conditions are a significant improvement on earlier iterations. We have suggested changes based on our understanding of the Minister's objectives. The parties will say if we have not correctly understood the purpose and content of the conditions.

[70] Note that we have suggested amendments to the conditions distinguishing between:

- (a) the process to set-up the Community Impact Forum and the Forum's objectives;
- (b) the roles of the independent technical specialists and the Community Impact Forum; and
- (c) a "change" to housing availability and housing affordability and the "adverse effect" on the local population consequential upon a change in housing availability and housing affordability.<sup>72</sup>

[71] The Final Conditions Set<sup>73</sup> referred to the effect of change for both the Waikato Region and the "local area"<sup>74</sup>. We have amended the conditions assuming that the context is the "local area" and the effects are on the "local population". The parties are to confirm whether our assumption is correct.

[72] We have suggested wording reflecting the fact that the Minister has the capacity to influence the market. This is in addition to those matters which are said to be within the Minister's "responsibility", a term which we find ambiguous.

**Earthworks**

[73] The District Plan's standards for permitted earthworks<sup>75</sup> have been set to:

<sup>72</sup> Referred to in the Minister's conditions as an adverse effect on housing availability and housing affordability, we consider it accurate to refer to "change" and not "adverse effect". The change in housing availability and housing affordability may have an adverse effect on the local population who may be unable to secure adequate housing.

<sup>73</sup> Dated 10 November 2017.

<sup>74</sup> Final Condition Set, condition 66.

<sup>75</sup> Earthworks are permitted under the District Plan when they:

- are undertaken more than 5m from natural waterbodies and involve exposing an area less than 5000m<sup>2</sup>
- involve the movement of soil and/or rock of less than 1000m<sup>3</sup> any 12-month period and have a cut or fill height of more than 2m or



... control earthworks to ensure that the erosion potential is taken into account and minimised by developers, that disturbance to indigenous vegetation, natural landforms, high amenity value areas and environments is avoided or minimised.

[74] The amended designation will enable substantial earthworks north of Settlers Road and within the approximately 6 ha extension to the area of land originally encompassed on the NoR.<sup>76</sup> Despite that, the NoR contained no information which would allow the court to understand the effect of earthworks on the environment.

[75] The Minister has now proposed conditions managing the effects of earthworks. These conditions are consistent with the outcomes for the environment set out in the assessment criteria (section 24.5 of the District Plan). The conditions address the practical management of the effects of earthworks - including dust, sediment and vibration, on the environment. The in-stream effect of earthworks and the effect on surface and sub-surface flows are left to be addressed under a future application with the Regional Council. Part of an integrated set of provisions, the reduced levels (when fixed) will ensure that earthworks do not elevate buildings above the height considered by the court. The earthworks conditions appropriately interface with the conditions for the Building Zone (bulk and location); Landscape and Visual Mitigation Management Plan and the conditions for construction traffic and noise.

*Amendments to the conditions for earthworks management*

[76] The designation will authorise earthworks north of Settlers Road and within the 6 ha extension.<sup>77</sup> No conditions were proposed to limit noise from earthworks. The parties will confirm whether the relevant standards are those set out in NZS6803:1999 Acoustics – Construction? Assuming that is the correct position we have suggested amendments to the conditions.

**Vibration**

[77] Save in one respect we are satisfied with the level of effect on the environment. In respect to vibration the Minister has relied on the NZ Transport Agency State Highway

- involve the movement of soil and/or rock of less than 5000m<sup>3</sup> any 12-month period and have a cut or fill height of less than 2m.

<sup>76</sup> We record that no party suggested there was a scope issue to the extension, which also saw a commensurate reduction in land on the western side of the Building Zone.

<sup>77</sup> No other earthworks are authorised.



Construction and Maintenance Noise and Vibration Guide (Version 1.0, 2013).<sup>78</sup> No explanation has been given as to why these standards should apply to the construction of the new prison facilities. The Minister and District Council are to consider the standard proposed and either confirm, providing an explanation for its adoption or propose an appropriate standard.

[78] Note that we have suggested some minor amendments to condition 44.

### ***Traffic***

[79] At the commencement of the hearing the parties did not agree on measures required to reduce the medium to high level of risk of serious injury or death predicted at the intersection of Waikeria Road and State Highway 3 (SH3). The New Zealand Transport Agency's position was that this risk of serious injury or death was unacceptable.<sup>79</sup> The unacceptable increase in the crash risk at the intersection is triggered by the increase in Prison traffic and with it delay to and length of traffic queuing on Waikeria Road to take a right-hand turn onto the state highway.<sup>80</sup>

[80] In addition, the road formation along Waikeria Road does not meet the standards in the relevant District Plans. While the performance of the road may be adequate for the volume and type of vehicles currently using the road, it would cease to be so when construction of the Prison commences.

[81] The risks were known, but the experts did not agree on the works required to minimise the risk to an acceptable level or the timing of those works. The court directed the experts to conferencing facilitated by an Environment Commissioner; this resulted in a comprehensive set of conditions to manage risk and the timing of the required works.

[82] The methods to reduce risk to an acceptable level are set out in comprehensive conditions. Careful attention has been given by the experts to the methods to manage risk prior to the works on the state highway intersection being completed. The works at the Prison Site will commence before roading improvements on the state highway are completed, however we are satisfied the crash risk will be managed at an acceptable

<sup>78</sup> See Condition 43(e).

<sup>79</sup> Gray, EIC at [5(d)].

<sup>80</sup> The design of the existing intersection, including the sightlines on the approach to the intersection, does not facilitate safe movement across the state highway.



level under the proposed conditions.

[83] One minor matter, we have deleted the term "offset mitigation" from condition 66(a), as unnecessary.

### ***Lighting***

[84] The recommendations of the lighting experts<sup>81</sup> have now been properly secured in the conditions of designation.

[85] The assessment of environmental effects attached to the NoR noted residents' concerns with glare from Prison lights. As we discovered on a site visit one evening, those concerns are well founded, with members of the bench finding it difficult to look directly towards the Prison due to the intensity of glare from pole mounted lights.

[86] In saying that, the existing Prison lighting "generally satisfies" the conditions of the designation. The existing designation has a glare limit set at a luminous intensity of 50,000 candelas, which is well beyond the limit recommended in the relevant Standard of 500 candelas.<sup>82</sup> In response, the existing lighting within the Building Zone will be upgraded and all new lighting associated with the works will implement the recommendations in the Standard.<sup>83</sup> On that basis we are satisfied that spill light, glare and sky glow (being the effects considered by the lighting experts) will not be obtrusive.

[87] The one outstanding matter concerns whether landscaping can ameliorate the change in night-time amenity, particularly for residents at 12B & 52 Walker Road. This is an issue because the prison, together with its lighting, is set to expand and fill nearly the entire valley. While we raised our concern during the hearing regarding the effect on visual amenity we did not receive a reply.

[88] The concerns are not such that the NoR should not be confirmed, nevertheless the effect on visual amenity of lighting at the Prison is the second reason supporting the direction earlier given that the Minister approach directly the owners and occupants of 12B and 52 Walker Road and consult with them on the landscape treatment of their

<sup>81</sup> Messrs JE Bretherton & JK McKensey.

<sup>82</sup> AS4287-1997 Australian Standard: Control of the obtrusive effects of outdoor lighting.

<sup>83</sup> McKensey, EIC at [10(c)].



elevated properties.

### ***Stormwater and wastewater management***

[89] Consents from the Regional Council will likely be required to authorise the diversion and discharge of stormwater. Were this an application for resource consent, those Regional Council applications would be before the court.

[90] Nevertheless, the District Plan requires consideration of the adverse effect on rural character associated with stormwater (and wastewater) management<sup>84</sup> and consideration of natural hazards.<sup>85</sup> Notwithstanding the policy direction the NoR did not address stormwater or natural hazards and so the court directed the Minister and District Council to produce further evidence in order that we could satisfy ourselves as to the effects on rural character associated with stormwater management<sup>86</sup> and second, to satisfy ourselves that the project works will not contribute to, or be adversely affected by, any existing or potential natural hazard. This evidence was produced. In addition to addressing the above matters the evidence also demonstrates the Minister can deliver on the ecological enhancement of wetlands and waterbodies agreed to with MKTR and Raukawa, which are likely to require hydrological works to create and sustain new wetlands.

[91] We record that while the requiring authority's existing resource consent authorises the discharge of wastewater into the waterways of the Puniu catchment, the Minister will not rely on that consent and instead will construct a pipeline<sup>87</sup> to the Te Awamutu Municipal Wastewater Treatment Plant for disposal. The removal of wastewater from the stream will improve water quality and addresses a key concern for Māori.

### ***Amendments to stormwater and wastewater conditions***

[92] In the Final Condition Set at condition 8(d),<sup>88</sup> there are two criteria for "Site

<sup>84</sup> Otorohanga District Plan objective 3.2.3 & policy 3.3.7.

<sup>85</sup> Otorohanga District Plan objective 4.2.

<sup>86</sup> We hasten to say the court did not direct the production of a design of the stormwater management systems.

<sup>87</sup> If the pipeline is not constructed then provision has been made to transport wastewater to the facility.

<sup>88</sup> Original numbering.



Servicing.” We understand “site servicing” to be concerned with stormwater and wastewater. The criterion addressing the finished land contours and land stabilisation is not concerned with site services *per se*. The criterion states the sediment loadings from the site into watercourses shall be “no greater than those existing prior to the works being undertaken”. While that may be true for land contour and land stabilisation works, this is not the outcome predicted for the new site services, which are expected to deliver a reduction in existing sediments loadings. To avoid confusion as to the intended outcome, the two criteria now appear under separate sub-headings.

[93] Condition 26(c) is not clearly expressed and reads:

Stormwater shall be managed so that ..... stormwater increases in peak flows from the Building Zone are managed by employing hydrologic neutrality principles.

[94] We understood hydrologic neutrality principles will be employed when designing stormwater systems. The “systems” referred to are those designed to retain run-off for discharge at a later point-in-time,<sup>89</sup> rather than natural features such as wetlands, which may also buffer run-off.<sup>90</sup> Parties are to confer and include a definition of “hydrologic neutrality” in the definitions section and suggest wording requiring the adoption of these principles in the design of the stormwater systems, if this is what is intended.

[95] Condition 19(b) – an interim provision for the disposal of wastewater, the wording is somewhat disjointed and its ambit is uncertain duplicating in part an unnumbered provision that follows. Assuming we have interpreted the purpose of the condition correctly, would the condition be better expressed as:

“Following primary treatment, on-site wastewater will be transported off-site to a reticulated wastewater network that is connected to a consented municipal wastewater treatment plant. There shall be no discharges from the primary treatment facility into water or onto or into land in circumstances which may result in contaminants from wastewater entering water.”

The parties will need to consider deleting or amending the duplicated provision which follows.

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<sup>89</sup> Transcript at 618.  
<sup>90</sup> Transcript at 628.



[96] Condition 23 – addresses the effect on residents arising from the transportation of wastewater. We have reinstated the words deleted as this requires action on the Minister's part to address the effect on amenity arising from the transportation of wastewater. In the first instance the Minister should seek to avoid adverse effects on those residents and, if this is not practicable, then to mitigate those effects.

### **Noise**

[97] Given the separation distances from the residential dwellings and the Building Zone we are satisfied the evidence demonstrates that construction and operational noise, if audible, will not be at a level that causes an adverse effect on amenity.

[98] The court directed that the Minister and District Council produce evidence on the predicted change in ambient noise level along Waikeria Road north of the bridge. There are a number of dwellings situated in close proximity to the road carriageway and the court wished to understand the change in ambient noise and effect on amenity arising from a four-fold increase in Prison traffic and from construction traffic and other heavy goods vehicles.

[99] The effect of road noise was a matter raised by MKTR and Mr H Maniapoto when giving notice under s 274 RMA and by Ms C Lolesi (a submitter on the NoR).

[100] The noise expert engaged by the Minister did not consider the effect of road noise on residents relevant as it is not controlled at source (that is to say by imposing noise limits on the road carriageway). While District Plans may not impose limits on the road carriageway, we are aware of Plans that do address the effect of noise from road traffic on the amenity of adjoining properties. Indeed, although it is not relevant to the NoR, the Otorohanga District Plan has an objective that addresses the adverse effects of noise generated by traffic on State Highways and Railways (objective 3.2.6). The District Plan is less directive when addressing the effect of noise on amenity in other contexts. The objective to "avoid, remedy or mitigate" any adverse effects on rural character and the amenity values constituting that character (objective 3.2.3) is not prescriptive as to the source of "excessive noise" addressed in policy 3.3.7(h). The health effects emanating from noise are plainly relevant under s 171(1) and the consideration, subject to Pt 2, as are the effects on the environment.

[101] Environmental sound along Waikeria Road is characterised by birdsong, wind in



the trees and road traffic; with the influence of traffic on noise levels increasing in proximity to the state highway. There are around 775 vehicle movements per day along the road, the majority of which are associated with the Prison and occur during the daytime (6:00am to 10:00pm). We were told the pattern of daytime and night time movements will not change.

[102] Three residences closest to the road enjoy a night time ambient noise level of 23 dB  $L_{Aeq}$  increasing to a daytime ambient noise level of between 53-54 dB  $L_{Aeq}$ .<sup>91</sup> The daytime ambient noise level at the façade of the dwellings is predicted to increase by 3-4 decibels during the construction period and by 6-7 decibels once the maximum capacity for prisoners is reached.<sup>92</sup> In consequence, the internal noise level of these dwellings may exceed 40 dB  $L_{Aeq}$  (24hour), being the level recommended by the noise experts as establishing a good standard of acoustic amenity within a dwelling.<sup>93</sup> The level of adverse effect of noise within the dwelling was assessed as moderate for these residents. Were the prison to operate at its maximum capacity, an additional seven dwellings<sup>94</sup> would fall within the 55 decibel contour with the same consequential effect on the internal amenity of the dwellings.

[103] Referring to research conducted in 2001 the expert called by the District Council supported the selection of an external noise level of 55 dB  $L_{Aeq}$  (24 hours) and an internal noise level of 40 dB  $L_{Aeq}$  (24 hours) for habitable rooms.<sup>95</sup> He described the predicted change in the noise level as a "stepwise increase in the level of noise that the community will experience".<sup>96</sup> What will also increase markedly is the 'busyness' of what is presently a quiet no-through road.

[104] The noise experts recommended conditions to mitigate the effect of noise within habitable homes. Where internal sound levels are predicted to exceed 40 dB  $L_{Aeq}$  (24 hours)

<sup>91</sup> 44, 407 & 425 Waikeria Road.

<sup>92</sup> Initially the prison will accommodate up to 2,650 prisoners, with a maximum capacity of 3,000. See Robinson, Supplementary Evidence dated 24 October 2017 at [42]-[43]. At maximum capacity, the ambient noise levels would be between 59-61 decibels.

<sup>93</sup> The noise expert called on behalf of the District Council, Mr NR Lloyd, considered 40 dB  $L_{Aeq}$  (24hour) an appropriate limit even though there is little or no night-time noise from prison traffic. While the 24 hour criterion assumes a regular diurnal noise distribution, the lack of night-time noise would be of a "benefit" in this case (Lloyd, EiC at [25]). We understood him to mean the standard was conservative of residential amenity.

<sup>94</sup> 195, 292, 299, 299a, 322, 374a, 374b Waikeria Road.

<sup>95</sup> Lloyd, EiC at [27]. The report addressed noise from new roads, for reasons that he gives Mr Lloyd considered it reasonable to refer to its recommendations. The recommendations are in line with those made by the Minister's expert Mr C Robinson, Supplementary Evidence dated 24 October 2017.

<sup>96</sup> Lloyd, EiC at [31].



in habitable rooms, subject to the home owners' agreement, the Minister will implement the mitigation measures recommended by an acoustic engineer.

[105] We note that the requirement to undertake noise mitigation remains open for a period of two years after the date that the first prisoner is accommodated at the new facilities. However, it is unclear whether the prison will be developed to full capacity by that time. We have amended the condition to require the acoustic engineer to assume the prison is at fully capacity (3000 prisoners) when reporting on mitigation measures in order that all residences that may be exposed to a moderate level of adverse effects are identified. The parties may suggest alternative conditions which achieve the same end, but are to be mindful of Mr Lloyd's evidence that it is advisable to put the mitigation in place before the noise becomes a nuisance.<sup>97</sup>

[106] The parties have agreed on conditions addressing the effects of noise on outdoor living amenity. We have amended the wording slightly to be consistent with the objective for the noise conditions.

[107] Subject to the above, we record our finding that the rural amenity currently enjoyed by these residents will change, and unmitigated there will be a moderate adverse effect on aural amenity. There are a range of mitigatory measures that, with the homeowners' agreement, are capable of reducing the actual or perceived effect of noise to an acceptable level. These are in addition to measures which may be taken by the Road Controlling Authorities in relation to the road including the reduction of the posted speed limit to 80 km/hr and resurfacing of the carriageway with smooth asphalt.

### ***Impervious Surface Area***

[108] Condition 17 has been amended to restrict the impervious surface area of land located south of Settlers Road. We heard no evidence as to the purpose and effect of this condition. We will decline to confirm the designation subject to this condition.

### ***Other clauses and conditions***

[109] With regard to the preamble to the designation, we are unsure what "The ODP is listed as Designation D55 in Schedule 16 – Designations" means. If ODP is a reference

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<sup>97</sup> Transcript at 1069.



to the District Plan this would make no sense and so we have suggested replacement wording. If that is incorrect, "ODP" will need to be defined.

[110] As to the purpose of the designation (clause 1 (1)) the designation does not authorise the activities described in the resource consent RM 170041 (broadly, earthworks and vegetation removal south of Settlers Road).

[111] Condition 9(b) – is there a word missing after "performance"? If not, the parties are to rephrase "ongoing whole of life environmentally sustainable performance."

[112] Condition 11(d) is unclear. Interpolating, we have suggested amendments.

[113] Condition 96 – the Ministry is changing the terms of reference and composition of the Community Liaison Group. The preamble 'fudges' this, and it is simpler to delete.

[114] Condition 124(b) – are the words "Karakia for" required? Do not the words "appropriate cultural recognition or commemoration" contemplate a Karakia? If so, it may not be necessary to include this in the condition as the other occasions listed in (a)–(g) do not state what the appropriate recognition or commemoration will be.

[115] Condition 124 – Advice note. We are unsure what is meant to be conveyed by "there is no requirement that the delivery of carvings...". If this refers to a private agreement with some of the parties it may be better left out, but if not then it requires elaboration.

## **Planning Framework (s 171(1)(a))**

### ***Introduction***

[116] We heard from five planning witnesses, namely Mr C Dawson for the Otorohanga District Council, Ms S Dines, Mr P Hall and Dr P Mitchell for the Minister and Mr M Crisp for NZTA. We will not discuss their evidence at any length but concentrate instead on those provisions that the witnesses alerted us to as being of particular importance when considering the notice of requirement and submissions on the same.

[117] The court was concerned to understand how integrated management of natural and physical resources is to be achieved within the Prison Site and for the Prison Site



within its rural setting. We were not satisfied that the few high-level parameters set out in the proposed conditions would constrain the environmental effects to the level predicted by the various experts.

[118] The planning regime to which we are to have particular regard proved challenging for the planning witnesses for several reasons. There is an emphasis on integrated management of the Region's resources under the Vision and Strategy for the Waikato River (which has the status of a National Policy Statement) and Regional Policy Statement; these documents address the environment in a holistic fashion. On the other hand a NoR is, by definition, principally concerned with the use of land.

[119] A second challenge arose because there is not a conceptual design or layout of the works. Compounding this, the finished ground levels for preliminary earthworks are not stipulated even though the works are authorised by a resource consent.

[120] The third and final challenge centred on translating into conditions the technical recommendations of the other expert witnesses so that the outcomes they were advising upon are properly secured.

[121] Subject to what we say about conditions in this decision, having had particular regard to the planning instruments, for the most part these issues have now been – or can be, satisfactorily addressed. That said, we turn next to the planning instruments.

### ***Planning instruments***

[122] We must have particular regard to two National Policy Statements, being:

- (a) National Policy Statement for Freshwater Management; and
- (b) the Vision and Strategy for the Waikato River (Vision and Strategy).

[123] For completeness, we also received evidence on the National Environmental Standard for Assessing and Management Contaminants in Soil to Protect Human Health (NES Soil). The Minister has been granted resource consent to disturb the contaminated land within the Building Zone and this activity is not considered part of the works that are the subject matter of this NoR.

[124] The relevant regional planning documents have given effect to the National Policy Statement for Freshwater Management.



[125] The Vision and Strategy for the Waikato River (which, as we have noted, has the status of a National Policy Statement) is contained in three Acts of Parliament. It is deemed part of the Waikato Regional Policy Statement<sup>98</sup> and the Regional Policy Statement has been reviewed to give effect to the same.<sup>99</sup> The Waikato Regional Council has also reviewed its Regional Plan and has promulgated Change 1 the Regional Plan with the purpose of giving effect to the Vision and Strategy.<sup>100</sup> The Otorohanga District Plan is yet to give effect to the Vision and Strategy.

[126] We have also had particular regard to the:

- (a) Waikato Regional Policy Statement;
- (b) Waikato Regional Plan;
- (c) Otorohanga District Plan (ODP); and
- (d) Waipa District Plan<sup>101</sup>.

[127] And, to the extent that counsel or witnesses referred to them, we have had regard to the following Environmental Management Plans:

- (a) Te Rautaki Taiao a Raukawa – Raukawa Environmental Management Plan 2015;
- (b) Ko Ta Maniapoto Mahere Taiao – Maniapoto Environmental Management Plan; and
- (c) Tai Tumu, Tai Pari, Tai Ao – Waikato Tainui Environmental Management Plan.

[128] We commence our discussion with the objectives and policies pertaining to the integrated management of resources.

### ***Integrated management***

[129] Objective 3.1 of the Regional Policy Statement is that natural and physical

<sup>98</sup> Milne, Memorandum dated 30 August 2017 at [5]. The deeming provisions being s 11(2) Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010; s 14(3) of the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 and s 8(2) of the Nga Wai o Maniapoto (Waipa River) Act 2012.

<sup>99</sup> Milne, Memorandum dated 30 August 2017 at [8].

<sup>100</sup> Section 198D Planning Report 30 June 2017 at [8.2]; Milne, Memorandum dated 30 August 2017 at [9].

<sup>101</sup> Waikeria Road lies within both Waipa and Otorohanga Districts and therefore is managed by two road controlling authorities. The Waipa District Plan is relevant to this extent and as we are satisfied with the conditions have addressed the relevant objective and policies pertaining to the effects arising from road traffic and will not discuss the Plan directly.



resources are managed in a way that recognises:

- a. the inter-relationships within and values of water body catchments, riparian areas and wetlands, the coastal environment, the Hauraki Gulf and the Waikato River;
- b. natural processes that inherently occur without human management or interference;
- c. the complex interactions between, air, water, land and all living things;
- ...
- e. the relationships between environmental, social, economic and cultural wellbeing;
- ...
- f. the interrelationship of natural resources with the built environment.

[130] This objective is implemented through several policies including Policy 4.1 which states that an integrated approach to resource management **will** be adopted that:

- a) recognises the inter-connected nature of natural and physical resources (including spatially and temporally) and the benefits of aligning the decisions of relevant management agencies across boundaries;
- b) maximises the benefits and efficiencies of working together;
- c) recognises the multiple values of natural and physical resources including ecosystem services;
- d) responds to the nature and values of the resource and the diversity of effects (including cumulative effects) that can occur;
- e) maximises opportunities to achieve multiple objectives;
- f) takes a long-term strategic approach which recognises the changing environment and changing resource use pressures and trends;
- g) applies consistent and best practice standards and processes to decision making; and
- h) establishes, where appropriate, a planning framework which sets clear limits and thresholds for resource use.

[Emphasis added]

[131] The above is reinforced by another objective (Objective 3.12) which states that "development of the built environment<sup>102</sup> and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental ....outcomes ...".

[132] While Mr Hall found no equivalent policies in the Otorohanga District Plan,<sup>103</sup> the District Plan nonetheless acknowledges that environmental issues can seldom be



<sup>102</sup> Defined as "buildings, physical infrastructure and other structures in urban, rural and the coastal marine area, and their relationships to natural resources, land and people" in Regional Policy Statement at [Glossary].

<sup>103</sup> Hall EIC at [55]. We are unsure whether he means the District Plan has not given effect to the Regional Policy Statement.

compartmentalised by geographical or administrative boundaries.<sup>104</sup> If confirmed, the designation would be enabling large scale, bulky works which, without careful design, will appear out of scale with the surrounding environment and have the potential to dominate the countryside.

[133] Instead, the conditions are sensitive to the rural context in which the new prison facilities will be set. The conditions make clear that the integration of the new prison facilities into the surrounding landscape is not an afterthought where a typical approach might be to propose soft landscaping to screen or breakup the view of a development.<sup>105</sup> Rather, the Minister must demonstrate that the proscribed outcomes for the landscape and natural environment, including wetlands and streams, are integral to the design of the new prison facilities. The inter-connected nature of natural and physical resources is recognised by conditions which enable an increase in the prison muster while, at the same time, improving the quality of the catchment water;<sup>106</sup> improving the aquatic habitat of Waikeria Stream; reducing glare from prison lights; upgrading the carriageway of Waikeria Road to achieve the standards in the District Plans; and improving intersection design at SH1. There are different lenses through which these actions may be viewed, not least being responses to ensure that land use and development avoids (in the first instance) or mitigates adverse effect on the amenity of persons living in the area.<sup>107</sup> The actions are not wholly attributable to the alteration to the designation; the actions will benefit the environment generally.

[134] Finally, the conditions require the various management plans to “talk to” each other and in this way, avoid compartmentalising the use, development and protection of resources.

### ***Resource use and development and sustainability and the built environment***

[135] Next, the Regional Policy Statement contains a high-level objective to “recognise and provide for the role of sustainable resource use and development and its benefits in enabling people and communities to provide for their economic, social and cultural wellbeing”.<sup>108</sup> Again, we were told there was no equivalent provision in the District

<sup>104</sup> Otorohanga District Plan, Section: Introduction at “Cross Boundary Issues” p 4.

<sup>105</sup> We are not suggesting that in this case the landscape plan was simply an “afterthought.” The evidence demonstrates care and attention being brought to bear on the landscape’s values (including amenity values).

<sup>106</sup> Wastewater will no longer be discharged into the catchment.

<sup>107</sup> Otorohanga District Plan, Objectives 3.3.1 and 3.3.2.

<sup>108</sup> WRPS, Objective 3.2



Plan.<sup>109</sup>

[136] With the prison network operating close to its available capacity, in meeting the demand for additional accommodation at an existing site, the NoR is a response to risks associated with overcrowding. This includes risk of harm to prisoners and prison staff arising from overcrowding together with lower operational efficiency and reduced ability to deliver effective on rehabilitation and employment programs. Further, the new prison facilities would meet a regional shortfall in prisoner places over the next 10 years.<sup>110</sup>

[137] Subject to the appropriate conditions, the increased intensification of land use at the Prison Site is beneficial to both prisoners and staff at the Prison Site and to the wider regional population.

### ***Health and wellbeing of the Waikato River***

[138] Addressing the Vision and Strategy head-on, it is an objective of the Waikato Regional Council in its Regional Policy Statement that:

#### **Objective 3.4**

The health and wellbeing of the Waikato River is restored and protected and Te Ture Whāimana o Te Awa o Waikato (The Vision and Strategy for the Waikato River) is achieved.

[139] Of the 23 policies that implement this objective, seven are directly relevant. To achieve the strong direction that the health and wellbeing of the Waikato River be “restored” and “protected”, decision-makers are to adopt an integrated approach to resource management. These policies are listed at paragraph [130] a)–g) above.

[140] Going forward, positive indigenous biodiversity outcomes are promoted and the full range of ecosystem types are to be maintained or enhanced so that they achieve healthy ecological functioning. This requires decision-makers have a particular focus on:

#### **Policy 11.1**

- a) working towards achieving no net loss of indigenous biodiversity at a regional scale;
- b) the continued functioning of ecological processes;
- c) the re-creation and restoration of habitats and connectivity between habitats;
- d) supporting (buffering and/or linking) ecosystems, habitats and areas identified as significant

<sup>109</sup> Hall, EIC at [64].

<sup>110</sup> NoR, at [3.3 Location of Demand for Prisoner Places] p19.



- indigenous vegetation and significant habitats of indigenous fauna;
- e) providing ecosystem services;
- f) the health and wellbeing of the Waikato River and its catchment;
- g) contribution to natural character and amenity values;
- h) tāngata whenua relationships with indigenous biodiversity including their holistic view of ecosystems and the environment;
- i) managing the density, range and viability of indigenous flora and fauna; and
- j) the consideration and application of biodiversity offsets.

[141] While not noted by the planning witnesses, the methods in the Regional Policy Statement direct Regional and District Plans to maintain or enhance indigenous biodiversity by:

**Method 11.1.1**

- (a) providing for positive indigenous biodiversity outcomes when managing activities including subdivision and land use change;
- (b) ...
- (c) creating buffers, linkages and corridors to protect and support indigenous biodiversity values, including esplanade reserves and esplanade strips to maintain and enhance indigenous biodiversity values.

[142] The Regional and District Plans are also to recognise:

**Method 11.1.2.**

... that adverse effects on indigenous biodiversity within terrestrial, freshwater and coastal environments are cumulative and may include:

- a) fragmentation and isolation of indigenous ecosystems and habitats;
- b) reduction in the extent and quality of indigenous ecosystems and habitats;
- c) loss of corridors or connections linking indigenous ecosystems and habitat fragments or between ecosystems and habitats;
- d) the loss of ecological sequences;
- e) loss or disruption to migratory pathways in water, land or air;
- f) effects of changes to hydrological flows, water levels, and water quality on ecosystems;
- g) loss of buffering of indigenous ecosystems;
- h) loss of ecosystem services;
- i) loss, damage or disruption to ecological processes, functions and ecological integrity;
- j) changes resulting in an increased threat from animal and plant pests;
- k) effects which contribute to a cumulative loss or degradation of indigenous habitats and ecosystems;
- l) ...

[143] Importantly all parts of the Regional Policy Statement work together and we have



had regard to the same because at the end of the hearing we remained unclear to what extent the relevant provisions of the Regional Policy Statement (as amended by the Vision and Strategy), has been given effect to by the Otorohanga District Plan.

[144] As we have noted the streams and wetlands in and around the Prison Site are of a quality typical of lowland farmland in the Waipa catchment. The water quality of the streams has been degraded by sediment and nutrient inputs from dairying taking place on the Prison Site and elsewhere and also by the discharge of prison wastewater. The extent and quality of indigenous ecosystems and habitats on the Site are limited when compared to the range of ecosystem types and indigenous vegetation assemblages that existed prior to European occupation.<sup>111</sup> The Minister would modify the environment further by diverting water from wetlands and streams within the Building Zone.

[145] The removal of wetlands and sections of streams from the Site appears, at first blush, insensitive to the policy direction to recognise the inter-connected nature of natural and physical resources (including spatially and temporally)<sup>112</sup> or the promotion of positive outcomes including the continued functioning of ecological processes; and the recreation and restoration of habitats and connectivity between habitats.<sup>113</sup> While the Minister will directly mitigate the loss of those streams and wetlands by developing wetlands and enhancing riparian vegetation within the catchment, it is not a foregone conclusion that these water bodies will be modified or destroyed. The conditions of the designation require the Minister to, amongst other measures:

- (a) Ensure finished land contours and land stabilisation measures are such that sediment loadings from the site into watercourses running through the site will be no greater than those existing prior to the works being undertaken;<sup>114</sup>
- (b) Demonstrate that the outcomes for the landscape and natural environment, including wetlands and streams, have been an integral part of the design of the accommodation and associated facilities;<sup>115</sup>
- (c) Minimise the ongoing adverse effects on the relationship of Raukawa and Maniapoto with the awa and whenua through the intensification and

<sup>111</sup> Hall, EIC at [85].

<sup>112</sup> Policy 4.1.

<sup>113</sup> Policy 11.1.

<sup>114</sup> Condition 8(d)(i).

<sup>115</sup> Condition 8(c)(vi).



expansion of the use of the whenua for a prison and the degradation of the original ecology and the land and the water bodies;<sup>116</sup> and

- (d) Retain stormwater from the Building Zone to the extent practicable in its existing tributary catchments to provide sustenance flows to existing water courses and wetlands.<sup>117</sup>

[146] The NoR reflects a desire to adopt an integrated approach to the use, development and protection of natural and physical resources within the Site and to take action that, given the scale of the project works, is commensurate with the objective to restore and protect the Waikato River (into which the water bodies of this catchment drain). For completeness, we record that the reticulation of the wastewater, and retirement of pasture through the establishment of the Building Zone, will positively contribute to the outcomes sought by proposed Change 1 to the Regional Plan in terms of water quality.

### ***Landscape and amenity***

[147] At a high level the Regional Policy Statement seeks that the qualities and characteristics of areas and features, valued for their contribution to amenity, are maintained or enhanced (Objective 3.21). The natural character of wetlands and rivers and their margins are to be protected from the adverse effects of use and development (Objective 3.22).<sup>118</sup> While the landscape and natural features here do not qualify as significant from a regional perspective, the Otorohanga District Plan provides clear guidance as to the expected outcome in respect of this Site under "Issue 3 - Rural Character" and the objectives and policies that follow.

[148] The District Plan identifies as a significant issue the potential loss of rural character and amenity values. This includes losses arising from the cumulative effects of development; restrictions on outlooks and views, and inappropriate design, size, height, location and/or use of buildings.<sup>119</sup> We record that our consideration of amenity values was not limited to visual amenity.

[149] Two objectives in the District Plan address these potential losses. Rural character

<sup>116</sup> Condition 8(g)(II).

<sup>117</sup> Condition 26(b).

<sup>118</sup> WRPS Part A objective 3.22.

<sup>119</sup> Otorohanga District Plan at [3.1.1].



and amenity values are to be retained by managing land use and development (Objective 3.2.1) and more specifically:

**Objective 3.2.3**

To ensure that land use, subdivision and development activities in the Rural Effects Area avoid, remedy or mitigate any adverse effects including cumulative effects, upon the rural character of the area where they are located, or the amenity values which constitute this character. Rural Character includes:

- (a) small scale and low density and intensity of development;
- (b) scenic vistas;
- (c) high proportion of natural open space;
- (d) areas of indigenous vegetation and habitats of indigenous fauna;
- (e) natural features, including rolling hills, mature vegetation and water bodies;
- (f) agricultural working landscapes;
- (g) lawfully established activities and structures.

[150] This is achieved by retaining rural character by managing activities in a way which recognises, provides for and enables the continuation of lawfully established activities (Policy 3.3.1) and by managing the scale and intensity of activities so they are compatible with the rural character of the area in which they are to be located (Policy 3.3.5).

[151] Further direction is given in Policy 3.3.7 which we set out next:

**Policy 3.3.7**

In the Rural Effects Area, avoid, remedy or mitigate against the adverse effects, including cumulative effects, on rural character associated with:

- (a) density / intensity of development;
- (b) altering visual amenity values from public places including roads;
- (c) ...
- (d) ...
- (e) built form, building site and coverage, building setbacks, height and design;
- (f) ...
- (g) traffic generation and insufficient roading capacity;
- (h) excessive noise and vibration;
- (i) ...
- (j) objectionable dust generation;
- (k) earthworks;
- (l) glare and light spillage;
- (m) ...
- (n) compromising the relationship of Māori and their culture and traditions with their ancestral lands,



water, sites, waahi tapu and other taonga;

(o) ...

(q) stormwater and/or wastewater management; and

(r) ...

[152] Policy 3.3.10 also provides:

Subdivision, building and development should be located and designed to:

- (a) be sympathetic to and reflect the natural and physical qualities and characteristics of the area;
- (b) ensure buildings have bulk and location that is consistent with buildings in the neighbourhood and the locality;
- (c) avoid buildings and structures dominating natural features, adjoining land or public places;
- (d) encourage retention and provision of trees, vegetation and landscaping;
- (e) ...
- (f) maintain adequate daylight and direct sunlight to buildings;
- (g) promote the use of energy efficient design, orientation and layout, where appropriate;
- (h) ensure adequate supply of potable water;
- (i) enable the continued operation and maintenance of existing lawfully established activities;
- (j) ...

[153] The NoR concludes by stating that the rural character of the area surrounding the Prison Site and amenity values derived from the same will be retained.<sup>120</sup> This is a surprising conclusion given that the new prison facilities will expand to potentially occupy 93 ha. This will change the physical landscape, altering its character and altering also the mostly elevated views which are valued by people living and working in the area. Indeed, the assessment of environmental effects found **after** mitigation had established over 8-10 years, the adverse effects on visual amenity of some residents would remain.<sup>121</sup> In addition there will be adverse amenity effects including those arising from increased busyness and noise from traffic on Waikeria Road.

[154] There is little by way of direct support in the District Plan for the scale and intensity of the development proposed (Policy 3.3.7(a)) and it cannot be said that the buildings will be of a bulk consistent with other buildings in the neighbourhood, including – we find, the Lower Jail (Policy 3.3.10(b)).

[155] It is not unusual for there to be a lack of direct policy support for a NoR. The

<sup>120</sup> NoR at [9.5.3], p 116. Compare Dines, EIC at [170] and Hall, EIC at [165] differing opinions.

<sup>121</sup> NoR, Report 6: Assessment of Landscape and Visual Effect, Table 1, at 19-25.



planning instruments are not determinative of a NoR even though they are documents to which we are to have particular regard. What is required here is that the NoR take cognisance of the existing rural character and the amenity that derives from the same, so that the design of the new prison facilities is sympathetic to and integrates with the surrounding area. In short, the requiring authority is to ensure that the adverse environmental effects are avoided, remedied or mitigated (Otorohanga District Plan, Objective 11.2.1). There were a number of methods identified in the evidence and during the course of the hearing that could promote this outcome, which have now been carried over into the conditions. Even so, the physical works will change the rural character and will, we acknowledge, have an adverse effect on the visual and aural amenity of some residents and in response the court has suggested further conditions for the benefit of 12B and 52 Walker Road.

### ***Relationship of Tāngata Whenua with the environment***

[156] Finally, and to be considered alongside the foregoing, Objective 3.9 of the Regional Policy Statement states:

The relationship of tāngata whenua with the environment is recognised and provided for, including:

- a) the use and enjoyment of natural and physical resources in accordance with tikanga Māori, including mātauranga Māori; and
- b) the role of tāngata whenua as kaitiaki.

[157] In the context of the Otorohanga District Plan, decision-makers are to ensure that land use does not compromise the relationship of Māori cultural values to, and with, their ancestral lands, water, sites, waahi tapu and other taonga (Objective 3.2.5) by addressing adverse effects that may compromise the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga (Policy 3.3.7(n)).

[158] The Minister, who has been responsive to the continuing hurt of mana whenua dispossessed from their land, acknowledges their enduring relationship with the whenua and resources.<sup>122</sup> The effect on the relationship of Raukawa and Maniapoto with the awa and whenua as a consequence of intensification and expansion of land use, and the

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<sup>122</sup> Condition 8 (h).



degradation of the original ecology and land and waterbodies, is to be minimised.<sup>123</sup> Prison wastewater will no longer be discharged into Waikeria Stream. The recognition and enhancement of tāngata whenua relationships with indigenous biodiversity, including their holistic view of ecosystems and the environment, will be better aligned to the NoR through input from Puniu River Care Inc.<sup>124</sup> The enduring relationship of mana whenua (MTKR specifically) with the Prison site by providing for ongoing exercise by mana whenua of kaitiakitanga will be recorded formally in an agreement as between the parties. Finally, a Tāngata Whenua Liaison Group will be formed to promote the relationship with the requiring authority and to facilitate cultural input into the development and implementation of mitigation measures and management plans and to develop a Recognition and Commemoration Plan.<sup>125</sup>

### Outcome

[159] As recorded, the court is not in a position to confirm the NoR as the Minister is yet to establish whether there is scope to introduce the reduced levels in condition 14 [Final Condition Set]. The late change is not an insignificant matter, given the intensifying effects on residential neighbours. But for this change we would have confirmed the NoR, subject to conditions, based on the reduced levels in the NoR's Assessment of Environmental Effects.

[160] In light of the urgency of the matter we have endeavoured to assist the parties by suggesting amendments to the conditions. The parties may propose alternative wording which addresses the issues we have raised. The parties are to provide **reasons** for any alternative wording.

[161] Finally, the Minister is to review the conditions to ensure any internal cross-references are correct (they will have changed with the court's renumbering) and second, there is consistent use of macrons.




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<sup>123</sup> Condition 8 (g)(II).  
<sup>124</sup> Hall EIC at [99-101].  
<sup>125</sup> Condition 116ff.

**Directions**

[162] We direct:

- (a) by **Friday 26 January 2018** counsel for the Minister and Otorohanga District Council are to file legal submissions substantiating scope for the proposed Reduced Levels; and
- (b) by **Wednesday 31 January 2018** the parties:
  - (i) confer and file an agreed memorandum succinctly, but comprehensively, responding to the matters raised in this interim decision; and
  - (ii) file an amended set of conditions and plans.

For the court:

  
\_\_\_\_\_  
**J E Borthwick**  
**Environment Judge**



## **Attachment A: draft designation conditions**

### **Notes**

Changes to proposed conditions made since that date are shown in underlining / ~~strikeout~~ format, and shaded yellow for ease of reference.

Grammatical changes, principally corrections made to semi-colons and full-stops, are not shown.

The court has adopted its own paragraph numbering and sequencing standards. The court has not corrected internal cross-referencing



# 1. Amendments to Designation in Otorohanga District Plan

The ODP is listed as Designation D55 in Schedule 16—Designations.

The designation is listed as Designation D55 in Appendix 16 to the Otorohanga District Plan (ODP) – Requiring Authorities, Designations and Heritage Orders.

The NOR sought two changes to the above schedule:

## 1. Alteration of the designated Purpose as follows:

Construction (excluding the activities described in the resource consent RM170041 issued by Otorohanga District Council on 25 September 2017 for land south of Settlers Road), operation and maintenance of Prison and associated activities to accommodate up to 3,000 prisoners (subject to condition).

## 2. Update to the Legal Description as follows:

Sections 1 & 2 SO 60097 Section 2 SO 60097 and Sections 1 and 3 SO 455234 comprised in Computer Freehold Register 647680 (South Auckland Land Registration District).

## Definitions

AEP — Annual exceedance probability.

**Active Traffic Management** — is defined in the Code of Practice for Temporary Traffic Management (COPTTM), 4th Edition published 1 November 2012: Part 8 of the Traffic Control Devices manual which includes Manual Traffic Controllers using stop/go paddles, portable traffic signals, and pace vehicles (pilot).

**Associated facilities** — for the purposes of Conditions 10 and 11 include the following:

### Facilities within secure perimeter

- surveillance equipment and lighting;
- gatehouse;
- prison management, security and operations support;
- prisoner receiving centre;



- specialised units including special treatment, at-risk and drug treatment unit;
- prisoner visits area;
- health centre;
- workshops / industries facilities;
- kitchens/laundries;
- cultural buildings;
- sports hall/gymnasium and sports field; and
- programme facilities such as classrooms, meeting rooms and staff offices.

#### **Non-Secure Facilities**

- surveillance equipment and lighting;
- prison access control point (boom gate);
- visitors reception centre;
- external deliveries store;
- internal roading;
- staff and visitor car parking;
- administration and staff amenities;
- facilities management and trade parking;
- prisoner Control Point; and
- LPG storage facilities.

**Building Zone** — is the area of the Waikeria Prison site shown within the yellow outline on Figure 1.

**CLG** — Community Liaison Group.

**CIF** — Community Impact Forum.

**Construction works** — includes the laying of foundations, installation of infrastructure and all other activities associated with building the facility up to the point of all Code Compliance Certificates under the Building Act being issued by the Otorohanga District Council.

**Event** — for the purpose of Condition 3 "event" means

**Hydraulic Neutrality** [insert definition]

**New prison facilities** — are is facilities constructed after [date of confirmation of NOR] within the Building Zone shown on Figure 1 to accommodate prisoners.



**Queue** — the queue length for the purposes of day to day monitoring shall be the maximum observed queue. The queue length for the purposes of monitoring and reporting under conditions 47, 49, 51, 52 and 53 is the 95th percentile back of queue.

**Secure perimeter [insert definition]**

**Waikeria Prison site** — is the 1,276 hectare designation area described as Section 2 SO 60097 and Sections 1 and 3 SO 455234 comprised in Computer Freehold Register 647680 (South Auckland Land Registration District).



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Commented [BJ1]: Page references are to be reviewed.

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## PRISON OPERATIONS

1. All buildings on the site which are designed to hold prisoners overnight shall be contained within secure perimeters.
2. No additional vehicle entrances or road intersections with Waikeria Road or Wharepuhunga Road shall be permitted without Otorohanga District Council's consent (as road controlling authority) for the location, design and construction of the vehicle entrances or road intersections.
3. The Prison Manager shall ensure that the following minimum-security event performance standards are met:
  - (a) notification of those persons included on the notification list shall commence within 15 minutes of the control room being notified of a significant security event;
  - (b) 24-hour prison hotline is provided for the community to ask questions during incidents, report concerns and/or provide information to the prison; and
  - (c) all persons on the notification list, as defined below, are provided with the number of the prison hotline.

The notification list and those persons to be provided with the prison hotline number will be determined by the CLG and updated, as necessary, from time to time.

4. No building or group of buildings larger than 120 m<sup>2</sup> floor area and capable of accommodating prisoners overnight shall be located within 200 metres of any residential dwelling beyond the Waikeria Prison site existing as at 26 November 1998, without consent of the dwelling's owner.
5. There shall be no maximum security prisoner accommodation on the Waikeria Prison site and total prisoner numbers shall not exceed 3,000 at any one time.

## OUTLINE PLAN

6. Prior to undertaking any construction related activities authorised by this designation, the requiring authority shall have submitted an Outline Plan to the Otorohanga District Council, prepared in accordance with section 176A of the Resource



Management Act 1991 ("RMA"), and finalised ~~that Outline Plan~~ in accordance with the process set out in section 176A of the RMA.

## DESIGN REPORT

7. The Outline Plan required by Condition 6 shall be accompanied by a Design Report, the purpose of which is to demonstrate that the works identified in the Outline Plan will comply with the conditions of this designation.

The Design Report is to be accompanied by a written statement, prepared by appropriately qualified and experienced independent expert(s):

- (a) confirming that in their opinion(s) the works identified in the Outline Plan will comply with the conditions of this designation; and
- (b) setting out their analysis of how, in their opinion(s), the requirements of Condition 8 have been satisfied.

## OVERARCHING REQUIREMENTS

8. Notwithstanding any other condition of this designation, the Outline Plan and Design Report required by Conditions 6 and 7 shall satisfy the following criteria:

- (a) Integration
  - (i) the development authorised by this designation integrates with the existing rural environment and landscape; and
  - (ii) Conditions 9–29 are implemented as one complementary suite of conditions that collectively satisfy the criteria of ~~this~~ Condition 8.
- (b) Sustainability

new prison facilities are designed and constructed in accordance with sustainable design principles;
- (c) Building zone, bulk, location and design
  - (i) ~~Building heights, shape and bulk are such that adverse effects on rural character and rural amenity values from locations beyond the boundary of the Waikeria Prison site will be minimised to the extent necessary to ensure compliance with Conditions 9–29.~~



the design of the accommodation and associated facilities has minimised the adverse effects on rural character and rural amenity values when viewed from dwellings, houses and public places beyond the boundary of the Waikeria Prison site;

- (ii) new prison facilities constructed after [date NoR confirmed] are of an appropriate size, design and colour so as to not be visually dominant in the context of the surrounding rural environment;
- (iii) buildings or clusters of buildings are separated by open areas and are not a large consolidated mass;
- (iv) Read buildings as separate elements and have multiple buildings that are on different parts of the site seen as a series of buildings. buildings are designed and located so that they appear to be separated into discrete buildings or clusters, when viewed from outside the site, rather than being viewed as a single uninterrupted mass;
- (v) there is variation in building size, roof form, building façade and colour at Waikeria Prison; and
- (vi) Landscape design principles and ecological compensation initiatives are an integral part of the design of the new facility. the outcomes for the landscape and natural environment, including wetlands and streams, are demonstrated to have been an integral part of the design of the accommodation and associated facilities.

Commented [BJ2]: An agreed change proposed by the District Council

(d) Finished land contours and land stabilisation

- (i) finished land contours and land stabilisation measures are such that sediment loadings from the site into watercourses running through the site will be no greater than those existing prior to the works being undertaken;

(e) Site servicing

- (i) the Waikeria Prison capacity increase advances the Vision and Strategy for the Waipa River and the improvement of water quality in the Puniu River through the removal of a direct discharge of treated sewage through the reticulation of wastewater from Waikeria Prison to the Te Awamutu Wastewater Treatment Plant and the resultant reductions in contaminants discharged;



(f) Landscape and visual mitigation

- (i) site landscaping is sufficient to ensure that the adverse effects of activities authorised by this designation on scenic vistas and the proportion of open space, both as viewed from neighbouring dwellings, will be minimised to the extent necessary to ensure compliance with Conditions 9–29;
- (ii) the adverse landscape and visual effects of the prison facility within the designated site are minimised to the extent necessary to ensure that the development of the new prison facilities is integrated with the surrounding environment and maintains rural character;
- (iii) the adverse visual effects of the new prison facilities on the residents of 12B Walker Road, 52 Walker Road and 29A Wharepuhunga Road, 44 Wharepuhunga Road and 164 Wharepuhunga Road are minimised; and
- (iv) the loss of rural-natural character within the Building Zone is mitigated compensated for through by planting (including riparian planting) within the Waikeria Prison site.

(g) Ecological mitigation compensation measures for works undertaken in the Building Zone

- (I) that ecological mitigation compensation works to be undertaken on the site, including any works undertaken in accordance with Condition 11 of the Waikato Regional Council consent AUTH 138553.01.01 dated 14 September 2017, or any subsequent variation or replacement of that consent, will be sufficient to ensure: the following.

The ecological mitigation will be sufficient to ensure the following:

- (i) Wetland development compensation will provide for the loss of wetland function and restore some biodiversity values that are not currently present in the existing wetlands.  
wetland development will remediate the services performed by any wetlands removed from the Building Zone including sediment retention and the buffering of surface water flows;
- (ii) the area of tuna (eel) habitat is improved;
- (iii) ecological benefits will be derived from the integration of ecological compensation with landscape and visual mitigation, and stormwater management within the Building Zone;
- (iv) Wetlands and streams removed within the Building Zone will be mitigated by: compensated for



the Landscape, Ecological Enhancement and Mitigation Plan prepared by Boffa Miskell Limited - Revision C, dated 8 November 2017 is implemented;

- (v) So that compliance with Conditions 22–29 is achieved; and  
So that 70% canopy closure (or shade) across the stream channel surface is achieved; and
- (vi) water quality in the Puniu River catchment is improved by:
  - where practicable, avoiding or if not practicable minimising transportation of sediment to the waterbodies;
  - developing wetlands within the wetland enhancement area shown on the Landscape, Ecological Enhancement and Mitigation Plan prepared by Boffa Miskell Limited – Revision C, dated 8 November;
  - fencing riparian areas, removing stock and managing browsing animals pests such as rats, stoats, possums and goats;
  - providing shading of Waikeria Stream to moderate stream water temperature and prevent excessive pest plant growth; and
  - staged removal of willows and replacement with native riparian species to improve bank stability and retain sediment.

- (ii) the ongoing adverse effects on the relationship of Raukawa and Maniapoto with the awa and whenua through the intensification and expansion of the use of the whenua for a prison and the degradation of the original ecology and the land and the water bodies are minimised.

(h) Mana whenua recognition

- (i) to recognise and acknowledge that the Waikeria Prison site was taken from Maniapoto, Matakore, and Ngāti Te Kanawa hapū and whānau and that the continued dispossession of this whenua, its natural resources and assets has adversely affected their descendants/owners; and to recognise and provide for the enduring relationship of mana whenua with the whenua and resources; and



- (ii) to recognise and acknowledge that the Waikeria Prison site was taken from the whānau, hapū and iwi of Raukawa of the Wharepuhunga rohe; that the continued dispossession from the whenua negatively impacts the whānau, hapū and iwi of Raukawa; and to recognise and provide for the enduring relationship of Raukawa with the whenua and resources.

## SUSTAINABILITY

9. In the design, construction, and operation of the new prison facility, the requiring authority shall:
  - (a) ensure efficient and sustainable design principles are incorporated in relation to the use of energy, water, resources, materials, stormwater, wastewater and transportation;
  - (b) consider the ongoing whole of life environmentally sustainable performance in all aspects of the design;
  - (c) maximise the use of natural light and use energy efficient lighting and control systems; and
  - (d) operate the facility in a manner that is energy efficient.

## BUILDING ZONE, BULK, LOCATION AND DESIGN

10. All prisoner accommodation and associated facilities constructed after [date NoR confirmed] shall be located in the Building Zone shown in Figure 1: Local Context Plan – Revision A prepared by Boffa Miskell Limited, dated 14 August 2017.
11. The following development controls shall apply to all prisoner accommodation and associated facilities constructed in the Building Zone after [date NoR is confirmed].
  - (a) the height of buildings and structures shall not exceed the lesser of the following standards:
    - Height of buildings and structures above finished ground level
      - (i) the maximum building height (excluding structures for lighting, light poles, electronic security and communications towers) shall not exceed 12 metres above the finished ground level;



- (ii) the maximum height of the secure perimeter shall not exceed 6 metres above the finished ground level;
- (iii) the maximum height for structures for lighting, electronic security and communications towers shall not exceed 20 metres above the finished ground level; and

Height of buildings and structures relative to a Reduced Level

- (iv) the maximum height of any building within the Building Zone on which it is located, shall not exceed those shown on Figure 16a: Building Zone with Maximum Building Height R.Ls – Revision 0, prepared by Boffa Miskell Limited dated 6 November 2017.

Advice Note [establish datum]

- (b) the buildings and structures within the Building Zone shall be finished with a recessive colour scheme. As a minimum:
  - (i) the exterior walls of facilities (excluding architraves and trims) shall be restricted to the following hue and greyness values contained in Groups A and B of the BS 5252: 1977 colour chart – 00 neutral, 06 yellow-red, 08 yellow-red, 10 yellow, and 12 yellow green with a maximum (colour) weight value of 29, and the following hue and greyness values contained in Group C of the BS 5252: 1977 colour chart – 08 yellow-red, 10 yellow, and 12 green-yellow with a maximum (colour) weight value of 39. The maximum light reflectivity value (LRV) for greyness groups A or B shall be 60%. The maximum LRV for greyness group C shall be 40%;
  - (ii) the roofs of facilities shall be constructed with non-reflective materials and have a colour with a reflectivity value of no more than 40% for groups A, B or C; and
  - (iii) non-reflective glass shall be used in glazing.
- (c) natural light is provided to all staff member spaces to ensure connection with the exterior is maintained during the working day, except where required for security purposes;
- (d) ~~Within the secure perimeter vehicle access provision shall ensure there is~~  
the internal design of the secure perimeter access shall ensure:



- (i) access and turning for all vehicles, including B-Trains, to industries, kitchens and laundry key delivery points, without the need to reverse;
  - (ii) vehicle access and turning space to the front door of each accommodation unit for pickup and delivery of goods, rubbish, meals and prisoners; and
  - (iii) ~~The provision for emergency vehicles to~~ can travel directly via internal roadways to any building in the facility;
- (e) there is suitable screening and separation between prisoner accommodation units to ensure that lines of sight between accommodation unit cell windows and from the prisoner accommodation unit to the walkways are blocked;
- (f) lighting shall comply with the technical principles of AS 4282 – 1997 (Control of the Obtrusive Effects of Outdoor Lighting) and will include:
- (i) only luminaires with full cut-off optics; and
  - (ii) luminaires that will be aimed to ensure light is directed below the horizontal.

#### Gross Floor Area

12. The Gross Floor Area (GFA) for all new buildings in the Building Zone established after [date the NOR is confirmed] shall not exceed a total of 220,000 m<sup>2</sup>.

13. For the purposes of this condition, GFA is defined as follows: means the following:

GFA is the sum of the gross area of the several floors of all buildings on a site, measured from the exterior faces of the exterior walls, or from the centre lines of walls separating two buildings or, in the absence of walls, from the exterior edge of the floor.

14. Except as otherwise provided, where floor to floor vertical distance exceeds 6 metres, the GFA of the building or part of the building so affected shall be taken as the volume of that space in cubic metres divided by 3.6. In particular, GFA includes:

- (a) basement space except as specifically excluded by this definition;
- (b) elevator shafts, stairwells and lobbies at each floor unless specifically excluded by this definition;



- (c) interior roof space providing headroom of 2.4m or more where a floor has been laid;
- (d) floor spaces in interior balconies and mezzanines;
- (e) floor space in terraces (open or roofed), external balconies, breezeways, porches if more than 50% of the perimeter of these spaces is enclosed, except that a parapet not higher than 1.2m or a railing not less than 50% open and not higher than 1.4m shall not constitute an enclosure; and
- (f) all other floor space not specifically excluded.

15. The GFA of a building shall not include:

- (a) uncovered steps;
- (b) interior roof space having less than 2.4m headroom;
- (c) interior roof space more than 2.4m headroom where no floor has been laid;
- (d) floor space in terraces (open or roofed), external balconies, breezeways or porches if not more than 50% of the perimeter of these spaces is enclosed and provided that a parapet not higher than 1.2m or a railing not less than 50% open and not higher than 1.4m, shall not constitute an enclosure;
- (e) pedestrian circulation space;
- (f) space for stairs, escalators and elevators servicing a floor or that part of a floor used only for carparking or loading;
- (g) required off-street parking and/or loading spaces; and
- (h) carparking in basement space (including manoeuvring areas, access aisles and access ramps).

**Site Coverage**

16. Site coverage for all new prison buildings in the Building Zone established after [date the NOR is confirmed] shall be no more than 160,000 m<sup>2</sup>.

For the purposes of this condition, the area used to calculate 'site coverage' means that area of the Building Zone covered by buildings. Included in the term 'buildings' for the purpose of this definition are accessory buildings, and those parts of the site covered by overhanging buildings, but not fences or walls, eaves, pergolas, slatted open decks, or similar structures of a substantially open nature.

**Finished Building Levels**

Commented [BJ3]: Condition relocated to [11].



### Impervious Surface Area

17. The impervious area for all new prison buildings in the Building Zone south of Settlers Road established after [date of the NOR is confirmed] shall not exceed a total of 221,000m<sup>2</sup>, and in the Building Zone north of Settlers Road established after [date of the NOR is confirmed] shall not exceed a total of 136,000m<sup>2</sup>

For the purposes of this condition, the impervious area is an area with a surface which prevents or significantly retards the soakage of water into the ground and includes:

- Roofs;
- paved areas including footpaths, driveways and sealed/compacted metal parking areas,
- sealed and compacted metal roads; and
- layers engineered to be impervious such as compacted clay.

The following surfaces shall not be included:

- grass and bush areas;
- gardens and other vegetated areas;
- porous or permeable paving and living roofs;
- permeable artificial surfaces, fields or lawns;
- slatted decks;
- ponds and dammed water; and
- rain tanks

### SITE SERVICING

18. Prison facilities constructed after [date NoR confirmed] shall not be occupied by prisoners unless adequate servicing is in place for:
- (a) wastewater disposal;
  - (b) water supply; and
  - (c) storm water treatment, diversion and discharge.
19. For the purpose of condition 18 a), adequate servicing means either:



(a) the Prison will be connected to the Te Awamutu Municipal Wastewater Treatment Plant; or

(b) ~~Primary treatment followed by transport off site to a reticulated wastewater network connected to a consented municipal wastewater treatment plant and there being no discharges to the Puniu catchment.~~

~~Following primary treatment, on-site wastewater will be transported off-site to a reticulated wastewater network that is connected to a consented municipal wastewater treatment plant. There shall be no discharges from the primary treatment facility into water or onto or into land in circumstances which may result in contaminants from wastewater entering water.~~

~~For the purpose of Condition 18 a), Following accommodation of the first prisoner in the new prison facilities, no wastewater from Waikeria Prison will be discharged to the waterways of the Puniu catchment.~~

Commented [BJ4]: Repetition

20. As soon as possible following [date NoR confirmed] wastewater from Waikeria Prison will be reticulated to the Te Awamutu Wastewater Treatment Plant for treatment and disposal.

#### Wastewater management

21. All wastewater transported off site in accordance with condition 16 (ii), shall be managed in accordance with a Wastewater Transportation Management Plan (WTMP) prepared in accordance with Condition 19.

22. All truck movements associated with the offsite transportation of wastewater in accordance with condition 16 shall be via Waikeria Road.

23. The requiring authority shall prepare a WTMP and submit it to Otorohanga District Council for approval in a technical certification capacity. The WTMP shall be submitted no later than 20 working days prior to the commencement of the wastewater transportation activities. The WTMP shall, as a minimum, demonstrate how the required traffic movements will be managed to avoid peak staff movements along Waikeria Rd and to mitigate adverse effects on the amenity of residents on Waikeria Rd. ~~ensure compliance with Condition 36.~~

24. The WTMP shall:



- (a) detail the process for collection and transportation of wastewater from the Waikeria Prison site to the disposal facility including evidence of the approval of the territorial authority that is accepting the wastewater and the facility at which the wastewater would be disposed of;
- (b) identify the number, frequency and type of required truck movements;
- (c) demonstrate how truck movements will be managed to avoid peak staff movements along Waikeria Road;
- (d) identify the duration of the proposed activity;
- (e) identify potential effects on other road users and Waikeria Road residents and measures to be implemented to minimise those effects;
- (f) provide a communication plan for notifying residents of Waikeria Road and other members of the community that may be potentially affected by the traffic of the nature, timing and duration of that traffic;
- (g) provide a complaints procedure for community members to report traffic issues. The complaints procedure will include:
  - (i) the process for members of the community to report issues;
  - (ii) the process to be followed by the requiring authority to investigate and then take action to address issues identified; and
  - (iii) the process used to report to the CLG and the complainant regarding the outcome of the investigation and the actions taken to address the issue identified.

25. The WTMP approved in accordance with condition 19 shall be implemented prior to the transportation of wastewater off-site occurring and adhered to until wastewater from the Prison is connected to the Te Awamutu Municipal Wastewater Treatment Plant.

#### **Stormwater management**

26. Stormwater shall be managed so that:

- (a) The 10% and 50% AEP flows in watercourses outside the Building Zone are no greater than that which existed prior to the development of the site to construct the new prison facility;



- (b) Stormwater from the Building Zone is retained to the extent practicable in its existing tributary catchments to provide sustenance flows to existing water courses and wetlands;
- (c) Increases in peak flows from the Building Zone are managed by employing hydrologic neutrality principles; and
- (d) Stormwater from contaminant generating areas of the site will be treated in accordance with best practice (for example Auckland Regional Council Technical Publication 10) using water sensitive design principles in preference to hard engineering solutions.

#### LANDSCAPE AND VISUAL MITIGATION

27. The landscape and visual mitigation shall be established and maintained in accordance with the approved Landscape and visual mitigation measures shall be implemented in general accordance with the Landscape, Ecological Enhancement and Mitigation Plan Revision C prepared by Boffa Miskell dated 8 November 2017, 15 August 2017.

28. and shall, as a minimum, include the following:

- (a) All existing trees as at [date NOR is confirmed] greater than 8 metres in height that are located within:
  - (i) the Building Zone south of Settlers Road shall be retained, unless they are located within 10m of any new facility, required earthworks, building or road; and
  - (ii) the Building Zone north of Settlers Road and west of Waikeria Road shall be retained for not less than 10 years, provided that any trees removed after that date are identified and addressed in the Landscape and Visual Mitigation and Management Plan ("LVMMMP").
  - (iii) any tree posing a security or safety risk shall be exempt from this condition.
  - (iv) where a tree is removed for security or safety purposes under this condition, the LVMMMP required under condition 23 shall be reviewed to ensure its objectives are still being met and if necessary amended.
- (b) the vegetation blocks identified on Figure 17 Proposed Landscape Mitigation Plan Revision A dated 15.08.2017 shall be managed to retain their size and



function as a screening and integrating element within the prison site. This may include planting of vegetation adjacent to these existing vegetation blocks and/or in alternative locations, provided that the planting performs the same screening and integrating function.

- (c) the design and construction of landscape features and open space shall ensure that:
  - (i) amenity planting around the visitors' car park, visitors' reception centre and administration, staff training and staff amenities is predominantly comprised of native species;
  - (ii) exercise yards have unobstructed views to an immediately adjoining planted outdoor environment;
  - (iii) a rugby field is provided; and
  - (iv) two horticultural areas each of 2,400 m<sup>2</sup> are provided.
- (d) existing hydrological features within the Building Zone (and in particular wetland C and Stream A2) shall be retained to the extent practicable;

xxx ~~Wetland mitigation initiatives shall be undertaken in areas that include an array of existing wetland features and substrates, provide opportunities to modify artificial drainage channels to reinstate a more natural wetland hydrology, and provide benefits to the Waikeria and Mangatutu Streams and Puniu River receiving environment.~~

- (e) tree and block planting species used to satisfy (f) below, shall be capable of reaching a minimum height of 8 metres within 10 years, except for those components of the planting that are proposed for landscape and visual mitigation purposes in accordance with these conditions, in which case this provision will not apply;
- (f) between 50% and 80% of the new facilities within the Building Zone are screened from the dwellings located at 12B Walker Road, 52 Walker Road and 29A Wharepuhunga Road; 44 Wharepuhunga Road; and 164 Wharepuhunga Road within 10 years of [date of NoR confirmed]; and
- (g) finished earthworks shall be are blended or shaped so as to integrate into the adjacent existing contours.

Commented [BJ5]: Amend to 12 years, subject to scope.



29. The requiring authority shall, following input from Maniapoto ki Te Raki, Raukawa Charitable Trust and Te Roopū Kaumātua o Waikeria, prepare the a Landscape and Visual Mitigation and Management Plan (LV MMP) ~~and submit it to Otorohanga District Council for approval in a technical certification capacity no later than 3 months after [date NOR is confirmed].~~
30. The objective of the LV MMP is to ensure the works achieve the overarching requirements of the designation set out in condition 8.
31. The LV MMP shall be submitted no later than 3 months after [date NOR is confirmed] to the District Council for certification that it achieves the above objective.
32. The LV MMP shall, as a minimum, include the following:
- (a) earthworks and building platform design (including finished ground levels and the location and treatment of batters and retaining walls if any);
  - (b) building design and location (including site plan and elevations for all buildings);
  - (c) visual simulations for VP01, VP03, VP06, VP08, VP10, VP13 and VP19. At each viewpoint the following will be shown:
    - the existing view;
    - a visual simulation depicting the three dimensional model of the actual building design and location in the view; and
    - a visual simulation depicting the three dimensional model of the actual building design and location in the view with mitigation planting in place after 10 years.
  - (d) building materials, reflectivity levels and colour;
  - (e) carpark design and configuration;
  - (f) alignment and configuration of all internal roads;
  - (g) internal and external security fencing/wall design and locations;
  - (h) light tower design and locations (including height and luminaire configuration);
  - (i) identification of existing specimen trees within the Building Zone and within the designated site that are to be retained (for mitigation/amenity purposes);
  - (j) the name (including botanical name), numbers, location, spacing and size of the plant species, details on the timing of planting and details of the existing planting to be retained;

Commented [BJ6]: Amend to 12 years, subject to scope.



- (k) proposed fencing and pest control measures;
- (l) proposed site preparation and plant establishment;
- (m) ongoing vegetation maintenance and monitoring requirement;
- (n) details of how the LVMMP is integrated with the Ecological Enhancement and Mitigation Plan and Enhancement Plan; and
- (o) details of how the LVMMP has incorporated the cultural input provided in accordance with Condition 74.

33. The parties listed below shall be given an opportunity to review and comment on the draft LVMMP at least 20 working days prior to its submission to Otorohanga District Council for approval:

- owners of 12B Walker Road
- owners of 52 Walker Road
- owners of 29A Wharepuhunga Road
- owners of 44 Wharepuhunga Road
- owners of 164 Wharepuhunga Road

The requiring authority shall not be in breach of this condition if one or more of the above parties do not wish to review the LVMMP or provide comment.

Comments provided by the parties and any changes made to the LVMMP as a consequence, shall be documented and provided to the Manager – Environmental Services.

34. The requiring authority shall complete the planting required by the LVMMP within 3 years of [date NOR is confirmed], and shall thereafter maintain all specified works and plantings to the satisfaction of the Manager – Environmental Services.

#### ECOLOGICAL MITIGATION AND COMPENSATION

35. The requiring authority shall, following input from Puniu River Care Incorporated, Maniapoto ki Te Raki, Raukawa Charitable Trust and Te Roopū Kaumātua o Waikeria, prepare an Ecological Enhancement and Mitigation Plan ("EEMP") and submit it to Otorohanga District Council for approval in a technical certification capacity within six months of the [date NOR is confirmed].



36. The purpose of the EEMP is to:

- (a) mitigate the loss of wetlands and streams within the Building Zone, and shall, as a minimum, include:
  - (i) in combination with any other ecological mitigation or restorative or compensation works undertaken, ~~mitigation and compensation~~ planting of 8.6 hectares of enhanced wetland area within the designation site generally in accordance with the Landscape, Ecological Enhancement and Mitigation Plan prepared by Boffa Miskell Limited - Revision C, dated 8 November 2017;
  - (ii) in combination with any other ecological mitigation or restorative compensation works undertaken, ~~mitigation and compensation~~ planting of 2,010 metres of riparian stream ~~compensation~~ with the designation site generally in accordance with the Landscape, Ecological Enhancement and Mitigation Plan prepared by Boffa Miskell Limited - Revision C, dated 8 November 2017; and
  - (iii) include the establishment of a native plant nursery within the designation site. Where practicable, plants for riparian revegetation will be sourced from within the ecological district.
- (b) enhance the riparian margins of the streams of the Waikeria Prison site, and shall, as a minimum, include:
  - (i) identification and revegetation appropriate riparian margins for revegetation and restoration of or on permanent waterbodies within the designation site. Riparian margins at least 3 metres wide and up to 20 metres wide with an average width of 10 metres on each side of the Waikeria Stream, where the streambank is located within the Waikeria Prison site, generally in accordance with the Landscape, Ecological Enhancement and Mitigation Plan prepared by Boffa Miskell Limited - Revision C, dated 8 November 2017; ~~will be revegetated and restored;~~ and
  - (ii) include the ongoing use and operation of a native plant nursery within the designation site. Where practicable, plants for riparian revegetation will be sourced from within the ecological district; and
  - (iii) measures to control mammalian predators such rats and stoats.



(c) the EEMP shall demonstrate how the mitigation activities and compensation planting are to will be carried out, and:

- be integrated with the LVMMMP required by Condition 23;
- detail hydrological works for creating, and planting proposals for wetlands;
- detail planting proposals for the wetland areas to be developed enhanced;
- detail proposals for riparian enhancement of streams;
- detail the name (including botanical names), numbers, location, spacing and size of the plant species, details on the timing of planting, and details of existing planting to be retained;
- detail plant and animal pest control measures including fencing of waterbodies to exclude stock and measures to control rats, stoats, possums and goats to be implemented for a minimum of 8 years following the completion of planting;
- detail the maintenance programme for the riparian revegetation
- promote the use of eco-sourced species; and
- provide details of how the EEMP is integrated with the LVMMMP and the Ecological Enhancement and Mitigation Plan required by Condition 11 of Waikato Regional Council consent AUTH 138553.01.01 dated 14 September 2017
- detail how the EEMP has incorporated the cultural input provided in accordance with condition 74.

37. The requiring authority shall complete the planting required by Condition 26 a) within 5 years after [date of confirmation of NoR].
38. The requiring authority shall complete the planting required by Condition 26 b) within 8 years after [date of confirmation of NoR].
39. Where practicable, implementation of the EEMP shall be undertaken by prisoners as part of the prison's rehabilitation and training programmes.

#### Accidental Discovery Procedure

40. The Requiring Authority shall, following consultation with with Maniapoto ki Te Raki, Raukawa Charitable Trust and Te Roopū Kaumātua o Waikeria, prepare and



The ADP required by this condition shall be based on, and be in general accordance with, the following:

| ACTION STEP  |                       |
|--|-----------------------|
| 1  | Recognition           |
| 2  | Find                  |
| <p><b>Step 1: Recognize</b><br/>           Identify the problem<br/>           Identify the location<br/>           Identify the nature of the problem<br/>           Identify the cause of the problem<br/>           Identify the impact of the problem<br/>           Identify the urgency of the problem</p> |                       |
| 3  | Communication         |
| 4  | Verify                |
| 5  | Authorization Process |
| 6  | Action                |
| 7  | Record Works          |



## EARTHWORKS MANAGEMENT

### Earthworks Management Plan

41. The requiring authority shall provide the Otorohanga District Council with an Earthworks Management Plan ("EMP"), at least 20 working days prior to the proposed commencement of earthworks within the Building Zone.
42. The objectives of the EMP are:
  - (a) to document earthworks management measures relating to: erosion and sediment control to minimise loss of sediment into water courses from the earthworks site; dust control measures to minimise nuisance on neighbouring properties; and noise and vibration controls measures to minimise vibration nuisance and adverse effects on amenity on to surrounding properties; and
  - (b) to ensure these measures are implemented for the duration of the earthworks.
43. The EMP shall set out the measures to be undertaken such that:
  - (a) erosion and sediment control measures are in accordance with the Waikato Regional Council's Erosion and Sediment Control Guidelines for Soil Disturbing Activities; dated January 2009.
  - (b) earthworks are stabilised against erosion as soon as practicable and in a progressive manner as earthworks stages are completed.
  - (c) the site is monitored and maintained until vegetation is established or the site grassed to such an extent that it prevents erosion and prevents sediment from entering any watercourse.
  - (d) all earthworks activities are carried out so that all dust and particulate emissions are kept to a practical minimum to the extent that there are no dust discharges beyond the boundary of the site that cause an objectionable effect.
  - (e) vibration levels at neighbouring properties do not damage the buildings or chattels, nor cause unacceptable effects on amenity, as assessed using the NZ Transport Agency State highway construction and maintenance noise and vibration guide (version 1.0, 2013).

Advice Note: the noise controls for earthworks are set out in condition 47.



44. As a minimum the EMP shall include:

- (a) the proposed start date of the earthworks and a schedule of the earthworks program (including the expected timing and duration of works);
- (b) ~~A schedule/programme and plans of earthworks activities and expected timing/duration of works;~~ the dimensioned cut and fill plans of earthworks and earthworks activities including stockpiling;
- (c) the proposed earthworks methodology, including staging;
- (d) finalised methods for dealing with any potential adverse environmental effects including but not limited to effects arising in relation to sediment, dust, noise and vibration;
- (e) methods to clean up any debris on roads;
- (f) monitoring procedures and responsibilities;
- (g) methods for dealing with any complaints generated by the activities including reporting of any complaints to Otorohanga District Council; and
- (h) the principal contact person for the duration of the earthworks.

45. The EMP shall be approved in writing by the Otorohanga District Council in a technical certification capacity prior to the works commencing.

The requiring authority shall undertake all earthworks activities associated with the construction of new prison facilities in accordance with the EMP.

## NOISE

### Objectives

The objective of the noise conditions is as follows:

- A. Noise shall be managed to ensure noise from the earthworks, construction and operation (including road noise) of the new prison facilities does not cause sleep disturbance and is at levels is conducive to the residents' enjoyment of their homes and gardens.

### Earthworks and Construction Noise

46. Construction noise shall be managed and controlled in accordance with NZS6803:1999 Acoustics – Construction and the following noise limits shall not be



exceeded at the façade of any dwelling existing at [date NOR confirmed] throughout the construction of the new facility:

| Time of week                | Time period | Noise limit (dBA) |      |
|-----------------------------|-------------|-------------------|------|
|                             |             | Leq               | Lmax |
| Weekday                     | 630am-730am | 55                | 75   |
|                             | 730am-6pm   | 70                | 85   |
|                             | 6pm-8pm     | 65                | 80   |
|                             | 8pm-630am   | 45                | 75   |
| Saturdays                   | 630am-730am | 45                | 75   |
|                             | 730am-6pm   | 70                | 85   |
|                             | 6pm-8pm     | 45                | 75   |
|                             | 8pm-630am   | 45                | 75   |
| Sundays and public holidays | 630am-730am | 45                | 75   |
|                             | 730am-6pm   | 45                | 75   |
|                             | 6pm-8pm     | 45                | 75   |
|                             | 8pm-630am   | 45                | 75   |

Advice note: these limits have been taken from NZS6803:1999 Acoustics - Construction Table 2: Recommended upper limits for construction noise received in residential zones and dwellings in rural areas, with the long-term duration limits applying due to the proposed length of construction works.

47. The requiring authority shall ensure that construction noise, including both noise from on-site construction activities and noise from construction related traffic along Waikeria Road, shall be managed in accordance with an approved Construction Noise Management Plan (CNMP) that is consistent with NZS6803:1999 Acoustics - Construction.
48. The requiring authority shall prepare and submit a CNMP to Otorohanga District Council for approval in a technical certification capacity. The CNMP shall be submitted no later than 20 working days prior to the commencement of construction activities. The CNMP shall, as a minimum, demonstrate how construction noise will be managed in accordance with NZS6803:1999 Acoustics - Construction and define the measures to be employed for each construction phase or stage of the construction period.



49. The CNMP approved in accordance with condition 33 shall be implemented prior to the construction period commencing and adhered to for the duration of construction.

#### Operational Noise

50. The following noise limits will apply at the designation boundary for the Waikeria Prison:

|                            |           |                       |
|----------------------------|-----------|-----------------------|
| Monday-Friday              | 7am-10pm  | 50dB LA10             |
| Saturday                   | 7am – 7pm | 50dB LA10             |
| Sunday and Public Holidays | 8am – 5pm | 50dB LA10             |
| All other times            |           | 40dB LA10/70 dB LAmax |

Sound levels shall be measured in accordance with the provisions of NZS 6801:2008 Acoustics – Measurement of Environmental Sound and assessed in accordance with NZS 6802:2008 Acoustics - Environmental Noise.

#### Noise Mitigation

51. For dwellings existing at [date NoR is confirmed] that have direct access to Waikeria Road and within one month of [date NoR is confirmed], the requiring authority shall consult with those resident(s) and, where requested obtain, as soon as is practicable, an acoustic consultant's report undertaken by a suitably qualified acoustic engineer to ascertain any required mitigation measures at that receiving point. Where noise levels inside habitable spaces of an existing dwelling are predicted to exceed 40 dB LAeq (24 hours) LAEQ (24hr) due to Waikeria Prison vehicle movements along Waikeria Road and where agreed to by the affected resident(s) the requiring authority shall implement measures recommended in the report. The requiring authority shall implement such measures as soon as is practicable.
52. The requirements to undertake mitigation under this condition shall remain in force for the period of 2 years from the date the first prisoner being accommodated in the new prison facilities.
53. For the purpose of this condition the required mitigation measures are to be assessed:



- (a) with the windows open during the assessment where they are required for ventilation, unless alternative mechanical ventilation is provided; and
- (b) assuming the prison can accommodate 3,000 prisoners.

54. In addition, if a resident(s) considers that noise external to a dwelling referred to in this condition is required to be mitigated in order to allow the reasonable enjoyment of their garden and use of the dwelling's external amenity features, the requiring authority shall obtain, as soon as is practicable, an acoustic consultant's report undertaken by a suitably qualified acoustic engineer, to ascertain the options for mitigating those effects together with the recommendation of a preferred option. The requiring authority shall implement the preferred option as soon as is practicable, provided they are agreed to by the affected resident. In the event the affected resident(s) disagrees with the recommended preferred option contained in the acoustic consultant's report, it shall be peer reviewed by a second suitably qualified acoustic engineer appointed by the Otorohanga District Council. The recommendations of the peer review shall be binding on the requiring authority.

## TRAFFIC

### Objectives

The objectives of the traffic conditions are as follows:

- A. The safe and efficient construction and operation of the Prison is enabled.
- B. The adverse effects of traffic related to the Waikeria Prison capacity increase on the safe and efficient operation of the Waikeria Road-State Highway 3 intersection, Waikeria Road and the surrounding road network are avoided or minimised to the extent needed to ensure compliance with Conditions 37 - 53.
- C. The adverse traffic effects, including construction traffic effects, on the amenity of residents of Waikeria Road are minimised as far as practicable.

### Construction Traffic

55. The requiring authority shall ensure that construction traffic associated with the construction of the new prison facilities at Waikeria Prison is managed to ensure that the following standards are met, unless Waikeria Road or the State Highway 3



Waikeria Road intersection is being controlled under active traffic management under an approved Temporary Traffic Management Plan:

- (a) the average delay for vehicles turning right out of Waikeria Road shall not exceed 35 seconds; and
- (b) the queue length on Waikeria Road shall not exceed 50 metres.

The requiring authority shall undertake continuous monitoring of the Waikeria Road-State Highway 3 intersection to ensure compliance with this condition.

- 56. The requiring authority shall ensure all prison related traffic parks within the Waikeria Prison site.

#### **Construction Traffic Management Plan**

- 57. Construction traffic associated with the preliminary site earthworks and construction works at the Waikeria Prison site shall be managed in accordance with a Construction Traffic Management Plan (CTMP) that is submitted to the ODC for approval in a technical certification capacity. The CTMP shall be consistent with the Code of Practice for Temporary Traffic Management (COPTTM) 4th Edition Published 01 November 2012. The purpose of the CTMP is to:

- (a) manage traffic associated with preliminary site earthworks and construction works in accordance with the COPTTM during the construction period of the new prison facilities;
- (b) ensure that the compliance with condition 37 is achieved; and
- (c) minimise the effects of construction traffic on amenity for the residents of Waikeria Road during the construction works.

- 58. The CTMP shall, as a minimum, demonstrate how the construction traffic will be managed by way of approved Temporary Traffic Management Plans in accordance with the COPTTM.

- 59. The CTMP shall provide details of:

- (a) the Traffic Management Co-ordinator for the preliminary site earthworks and construction works;



- (b) the proposed construction programme identifying the sequence and timing of construction phases for new prison facilities;
- (c) the traffic generating activities and vehicle types expected during the construction programme;
- (d) material source locations;
- (e) construction transport routes;
- (f) daily and peak hour traffic volumes for each construction phase;
- (g) driver and tradesperson inductions;
- (h) Waikeria Road improvements;
- (i) construction site access and parking arrangements;
- (j) potential effects on other road users and Waikeria Road residents including information regarding private property access during periods of traffic disruption on Waikeria Road, dust, noise, vibration, safety and convenience;
- (k) The Temporary Traffic Management Plans (TTMP) to be employed for each construction phase or stage of construction until construction of the new prison facilities is complete;
- (l) The construction travel demand management measures to be employed on site where the construction traffic volume is more than 800 vehicles per day, to ensure the performance standards in Condition 37 are met. This will include, as a minimum, the following measures:  
The preparation of the CTMP shall include, As a minimum, consideration of the following measures:
  - (i) variable work start and end times for contractor staff
  - (ii) bus services for contractor staff
  - (iii) carpooling for contractor staff

The requiring authority shall implement mandatory barrier arm control of vehicle departure from the Waikeria Prison site in the event that these measures do not achieve the standards in condition 37.

- (m) methods of continuous monitoring of vehicle departure from the Waikeria Prison site during peak hours and queue length measurement on Waikeria Road at SH3 intersection to ensure standards in condition 37 are not exceeded;
- (n) a communication plan for notifying residents of Waikeria Road and other members of the community who may be potentially affected by construction traffic of the nature, timing and duration of the different construction phases of



- the construction works, including noise mitigation options and their implementation inside and/or outside the dwelling;
- (o) a complaints procedure for community members to report construction traffic issues. The complaints procedure will include:
    - (i) the process for members of the community to report issues;
    - (ii) the process to be followed by the requiring authority to investigate and then take action to address issues identified; and
    - (iii) the process used to report to the CLG and the complainant regarding the outcome of the investigation and the actions taken to address the issue identified.
  - (p) Process for review of CTMP.

- 60. The requiring authority shall finalise the Construction Traffic Management Plan (CTMP) and submit it, together with evidence of how the requirements of the relevant road controlling authorities have been met, to Otorohanga District Council for approval in a technical certification capacity. The CTMP shall be submitted no later than 20 working days prior to the commencement of preliminary site earthworks and construction works.
- 61. The CTMP approved in accordance with condition 39 shall be implemented prior to the preliminary site earthworks and construction works commencing and adhered to for the duration of those works.

#### **Waikeria Road upgrade**

- 62. The upgrade of Waikeria Road required by this condition shall be completed by 31 March 2018.
- 63. Physical works on the part of Waikeria Road that is located in Waipa District shall be designed in accordance with Appendix T4 of the Waipa District Plan.
- 64. Physical works on the part of Waikeria Road that is located in Otorohanga District shall be designed in accordance with Appendix 4 and Appendix 5 of the Otorohanga District Plan.
- 65. The design of the proposed works shall be submitted to Otorohanga District Council for approval in a technical certification capacity no later than 20 days prior to



undertaking the works, together with evidence demonstrating that the road controlling authority's requirements have been met.

66. The physical works shall include the following as a minimum:

- (a) vehicle entrance visibility improvements at 90, Tanker 35, Tanker 74, 195, 196, 233, 234-1, 234-2, 299, 382, 425 and 463 Waikeria Road to achieve a sight line visibility at each location of 170m where practicable within the public road reserve. **Other offset mitigation** Measures such as localised road widening, and warning signs, may be required subject to Otorohanga District Council Road Asset Manager's approval where compliance with the minimum sight distance cannot be achieved;
- (b) carriageway widening works to provide a minimum sealed width of 8.0 m with unsealed shoulder widths of at least 0.6m on both sides of Waikeria Road from the intersection of State Highway 3 and Waikeria Road to the northwest abutment of the single lane bridge on Waikeria Road across the Waikeria Stream;
- (c) trimming of trees and banks within the road reserve to achieve road corridor sightline improvements along the length of Waikeria Road;
- (d) shape correction to the approach to the bridge across Waikeria Stream and contouring to the embankment on the roadside at this location;
- (e) painted edge lines to delineate 0.5 m wide shoulders on both sides of the road over the full length of Waikeria Road;
- (f) road resealing and new line markings at the intersection of Waikeria Road and Walker Road to confirm that Walker Road traffic gives way to Waikeria Road traffic; and
- (g) installation of barriers where roadside hazards exist that have the potential to cause serious injury.

67. Following the upgrade of Waikeria Road required by condition 41, the requiring authority shall ensure that all traffic associated with the construction of the new prison facilities at Waikeria Prison shall use Waikeria Road to access the site.



**Waikeria Road Bridge Upgrade**

68. The Waikeria Stream bridge on Waikeria Road shall be upgraded to a minimum width of 8.0m. The construction of this upgrade shall commence as soon as practicable but shall be completed no later than 31 March 2019.
69. The bridge upgrade shall be designed in accordance with NZTA Bridge Manual and relevant standards as set out in NZ Transport Agency's Register of Network Standards and Guidelines ISBN 978-0-478-38032 (Online) and the design shall be submitted to Otorohanga District Council for approval in a technical certification capacity no later than 20 days prior to undertaking the works.

**SH3/Waikeria Road intersection upgrade to include a right turn bay from SH3 into Waikeria Road**

70. The intersection of State Highway 3-Waikeria Road shall be upgraded to improve sight distances and accommodate a right turn bay on State Highway 3 in general accordance with the design shown in the plan titled Department of Corrections Waikeria Prison Development SH3/Waikeria Road Intersection – Option 1 Figure 27A, DWG NO:14029A12A, prepared by TDG dated 11 August 2017. The construction of this upgrade shall commence as soon as practicable and shall be completed no later than 31 March 2020.
71. The improvements shall be designed to the relevant standards as set out in NZ Transport Agency's Register of Network Standards and Guidelines ISBN 978-0-478-38032 (Online) and the Waipa District Council Subdivision and Development Manual Version 2.5 May 2015 and submitted to Otorohanga District Council for approval in a technical certification capacity no later than 20 days prior to construction of the right turn bay commencing together with evidence to demonstrate that the requirements of the relevant road controlling authorities have been met.

**SH3/Waikeria Road intersection upgrade to a grade separated junction**

72. The requiring authority shall prepare a preliminary design plan set for the upgrading of the State Highway 3-Waikeria Road intersection to a grade separated junction form of intersection in general accordance with the design shown in Department of



Corrections Waikeria Prison Development SH3/Waikeria Road – grade separated junction – Option 1 – Revised (overbridge) (DWG NO: 14029A13B), or an equivalent underpass.

73. The grade separated junction shall be designed to the relevant standards as set out in NZ Transport Agency's Register of Network Standards and Guidelines ISBN 978-0-478-38032 (Online) and the Waipa District Council Subdivision and Development Manual Version 2.5 May 2015 and the design shall be submitted to Otorohanga District Council for approval in a technical certification capacity no later than 3 months following [date NOR confirmed]. The preliminary design shall be sufficient to satisfy a Stage 2 Preliminary Design Road Safety Audit.
74. The upgrade designed in accordance with condition 45 shall be constructed and operational no later than 2 years following the accommodation of the 1st prisoner in the new prison facilities on the Waikeria Prison site.

#### **Operational Traffic Demand Management**

75. From twenty working days prior to the first prisoner being accommodated in the new prison facilities and until the grade separated junction required by condition 46 is operational, average vehicle delay for vehicles turning right out of Waikeria Road shall not exceed 35 seconds and the queue length on Waikeria Road shall not exceed 50 metres unless Waikeria Road or the SH3/Waikeria Road intersection is being controlled under active traffic management under an approved Temporary Traffic Management Plan.
76. The requiring authority shall implement travel demand management measures as part of the Operational Travel Demand Management Plan ("OTDMP") required by condition 49 to achieve compliance with condition 47. Travel demand management measures shall include:
- (a) the use of variable staff shift changeover times; and
  - (b) continuous monitoring of the Waikeria Road -State Highway 3 intersection;
    - to ensure compliance with condition 47 is achieved.



### Operational Travel Demand Management Plan

77. The requiring authority shall finalise the draft OTDMP for Waikeria Prison and submit it to Otorohanga District Council for approval in a technical certification capacity, at least forty working days prior to the first prisoner being accommodated at the new prison facilities. At that time, the requiring authority shall provide evidence that the requirements of the road controlling authorities have been met.
78. The purpose of the OTDMP is to minimise the risk of Death and Serious Injury Crashes at the SH 3 / Waikeria Road intersection by specifying the measures to be implemented to ensure that the average delay of vehicles turning right out of Waikeria Road onto State Highway 3 does not exceed 35 seconds per vehicle or a queue length of 50 metres on Waikeria Road at the SH3 intersection.
79. To achieve this purpose the OTDMP shall include:
- (a) target outcome
    - (i) no crashes at the SH 3 / Waikeria Road intersection associated with prison related traffic.
  - (b) site context and current travel patterns
    - (i) current and **expected** road traffic volumes, and intersection turning volumes at SH3 / Waikeria Road intersection.
  - (c) stakeholders, roles and responsibilities
 

Stakeholders:

    - (i) prison management
    - (ii) staff at Access Control Point
    - (iii) other stakeholders
    - (iv) Community Liaison Group (CLG)
    - (v) NZTA
    - (vi) Waipa DC
    - (vii) Otorohanga DC

Personnel responsible for:

    - (i) management of the OTDMP. Nominate a TDM 'Champion'



- (ii) communicating the OTDMP to stakeholders
  - (iii) implementing the OTDMP
  - (iv) monitoring the OTDMP
  - (v) escalation and Resolution of performance issues
- (d) travel demand management targets and methods for the Waikeria Prison site which as a minimum, includes consideration of the following measures:
- bus services and carpooling;
  - use of a prison visitor booking system; and
  - management of prison visiting times.
- And must include measures to:
- manage peak departure traffic flow from the Prison using variable staff shift change times or egress control; and
  - provide continuous monitoring on Waikeria Road at the SH3 intersection.
- (e) day to day monitoring measures which shall include:
- how daily monitoring will occur (access control point flow rate, intersection queue measure);
  - by whom;
  - frequency i.e. hourly or 5 minute intervals at shift change times;
  - recording/reporting; and
  - actions if delays or queue limits are exceeded.
- (f) Other monitoring measures which shall include:
- monitoring methods and responsibilities to meet condition 52;
  - methods of measuring and evaluating the effectiveness of the OTDMP, for example, the effectiveness of (including but not limited to):
    - (i) car park occupancy
    - (ii) bus use
    - (iii) average staff vehicle occupancy (i.e. success of car-pooling/ride sharing)
- (g) any traffic control measures to be implemented on State Highway 3 and a description of the co-ordination required with Waipa District Council and NZTA to implement these measures.



80. Application of OTDMP shall be during **prison operation**. The separate Construction Traffic Management Plan contains the TDM measures to be implemented during the construction phases.
81. The OTDMP referred to in condition 49 shall be implemented twenty working days prior to the first prisoner being accommodated in the new prison facilities and will remain in force until the grade separated junction required by condition 46 is operational.
82. Unless active traffic management is in place, if the average delay per vehicle exceeds 35 seconds or the queue length on Waikeria Road exceeds 50 metres in the period between twenty working days prior to the first prisoner being accommodated in the new prison facilities and the completion of the grade separated junction required by condition 46, the requiring authority shall review the OTDMP and amend it to achieve compliance with condition 47.
83. The revised OTDMP shall be submitted to Otorohanga District Council for approval in a technical certification capacity in accordance with condition 49 and thereafter shall supersede any earlier OTDMP and be implemented in accordance with condition 50.

#### **Traffic Compliance Reporting**

84. The requiring authority shall engage a suitably qualified traffic engineer to prepare monitoring reports analysing the continuous monitoring data collected in accordance with condition 39 and 49 to determine whether compliance with the standards in condition 37 and condition 47 is achieved. These monitoring reports shall be prepared during construction and from commencement of the new prison operations as follows:

##### Construction:

- (a) one month after construction works commence; and thereafter; and
- (b) every three months until the first prisoner is accommodated in the new prison facilities.



Operation:

- (a) at least one month prior to the first prisoner being accommodated at the new prison facilities; and
- (b) at least monthly for nine months after the first prisoner is accommodated at the new prison facilities and thereafter at least every three months until the grade separated junction required by condition 46 is operational.

85. The requiring authority shall provide the monitoring reports to Otorohanga District Council, Waipa District Council and NZTA within 10 working days of the report being completed. In the event of any non-compliance the report shall advise the actions to be taken to remedy the situation to achieve compliance. Raw data will be made available to Otorohanga District Council, Waipa District Council and NZTA on request.

**Monitoring Surveys**

86. The reporting required by condition 52 shall occur over a total of six consecutive weekdays (excluding Mondays) collected over a two-week period 1.5 hours either side of afternoon shift change(s) on each monitoring day. Surveys will not be undertaken between 15 December – 10 January and shall include observation and recording of:

- (a) total traffic volumes; and
- (b) average vehicle delay over the survey period

**LIGHTING****Objectives**

**The objective of the lighting conditions is as follows:**

- A. Lighting across the designation site achieves recognised obtrusive lighting amenity standards such that glare and light spillage will not create a nuisance for neighbours and light fall is generally confined to the designation site.



### Construction Lighting

87. The requiring authority shall prepare a Construction Lighting Management Plan (CLMP), confirming how the Construction Lighting will satisfy the requirements of Condition 59 and will minimise obtrusive light effects beyond the site. At least 20 working days prior to construction commencing, the requiring authority shall submit the CLMP to Otorohanga District Council for approval, in a technical certification capacity
88. The CLMP approved in accordance with condition 54 shall be implemented prior to the construction period commencing and adhered to for the duration of the construction period.

### Exterior Lighting

89. The following Lighting Pre-construction requirements shall apply for operational lighting installations:
  - (a) as part of the Outline Plan of Works, the requiring authority shall submit to Otorohanga District Council, a detailed lighting design and associated calculations confirming that the exterior lighting, will satisfy conditions 57 and 59.
  - (b) calculations shall be computer based using an NZ industry standard software package to confirm compliance with all requirements. Calculations shall be worst case using initial lumen values and an overall design maintenance factor of 1.0, ignoring the screening effects of foliage.
  - (c) light Spill shall be calculated at 5m intervals over the entire designation boundary
90. Light levels from fixed lighting at the prison site measured at a height of 1.5m above ground level at or beyond the boundary of the designated site shall not exceed 10lux.
91. Except for emergency and security incident lighting, all existing exterior lighting installations outside the Building Zone shall comply with the following obtrusive light limitations.



| Sky Glow     | Light Spillage | Glare Source Intensity I | Building Luminance |
|--------------|----------------|--------------------------|--------------------|
| UWLR (Max %) | Ev (Lux)       | (kcd)                    | L(cd/m2)           |
| 5            | 5              | 50                       | 5                  |

Advice notes:

- (a) UWLR (Upward Waste Light Ratio) = Maximum permitted percentage of luminaire flux that goes directly into the sky.
- (b) Ev = Maximum vertical illuminance at the boundary in Lux.
- (c) I = Light intensity in Candelas.
- (d) L= Luminance in Candelas per square metre.
- (e) Source Intensity – This applies to each source in the potentially obtrusive direction, outside of the area lit. The figures given are for general guidance only and for some medium to large sports lighting applications with limited mounting heights, may be difficult to achieve. However, if the aforementioned recommendations are followed then it should be possible to lower these figures to under 10kcd (kilocandela).
- (f) Building Luminance – This should be limited to avoid overlighting, relate to the general district brightness.
- (g) Exterior lighting within the Building Zone, and all new lighting installed outside the Building Zone following [date NoR is confirmed], is managed in accordance with condition 59 of this designation.

92. Except for emergency and security incident lighting, all exterior lighting located within the Building Zone and all new lighting installed outside the Building Zone after [date NoR is confirmed] shall be designed and constructed to comply with the obtrusive light limitations in the Table below.

| Luminous Intensity | Threshold Increment | Sky Glow     | Light Spillage | Building Luminance |
|--------------------|---------------------|--------------|----------------|--------------------|
| I (cd)             | TI (%)              | UWLR (Max %) | Ev (Lux)       | L(cd/m2)           |
| 500                | 20                  | 5            | 5              | 5                  |



Advice notes:

- (a) Luminous Intensity (I) limits are proposed based on curfewed hours of 11 pm – 6 am to limit potential impacts to neighbouring residents.
- (b) Threshold Increment (TI) is based on adaptation luminance (L) of 0.1cd /m2.
- (c) UWLR (Upward Waste Light Ratio) = Maximum permitted percentage of luminaire flux that goes directly into the sky.
- (d)  $E_v$  = Maximum vertical illuminance at the boundary in Lux
- (e) I = Light intensity in Candelas
- (f) L = Luminance in Candelas per square metre
- (g) Building Luminance – This should be limited to avoid overlighting, relate to the general district brightness.
- (h) Exterior lighting outside the Building Zone is managed in accordance with conditions 56 and 57 of this designation.

**Upgrade of Existing Lighting in the Building Zone**

- 93. Lighting within the Building Zone existing at [date of confirmation of NOR] shall be upgraded to comply with the standards in the Table in Condition 59.
- 94. The upgrade required by condition 60 shall be completed no later than the completion of the lighting for the first new prison facilities constructed in the Building Zone.
- 95. Within 30 working days of the completion of the new prison facilities, the requiring authority shall submit to Otorohanga District Council a report from a lighting engineer confirming that the lighting has been installed in accordance with the approved design and that it complies with the requirements of this condition.

**COMMUNITY CONSULTATION****Objectives**

~~The objectives of the community consultation conditions are to as follows:~~

- A. ~~The objectives of the Community Liaison Group (CLG) are to: For the CLG to provide a forum for discussing:~~



- (i) **promote** a positive relationship between the prison and the surrounding community;
- (ii) **monitor** the effect of the prison on the surrounding community;
- (iii) **monitor** the effectiveness of any measures adopted to mitigate adverse effects on the surrounding community of the prison facility;
- (iv) **monitor** and **review** the effectiveness of notification procedures during significant security events at the facility;
- (v) **review** any changes to prison management, practices and procedures insofar as they may affect the surrounding community; **and**
- (vi) **respond** to any concerns raised by the surrounding community or the CLG.

B. During the construction works for the CLG **to also is to** be a forum for discussing:

- (i) opportunities for training of local residents for the construction / operation of the prison;
- (ii) monitoring the effect of construction works for the expansion of the prison on the surrounding community;
- (iii) monitoring and reviewing demands of release and reintegration services expected from the expanded prison operations; **and**
- (iv) **identifying** options, processes or response planning to address issues identified in respect of the above.

96. **The requiring authority shall retain the already established CLG and shall consult on a continuing basis with the established CLG in accordance with the following:**

97. At a minimum, the following parties shall be invited to be part of the CLG, irrespective of whether or not they are involved with the established CLG as at [date the NoR is confirmed]:

- (a) one elected and one senior officer level representative from each of the Otorohanga District Council and Waipa District Council;
- (b) local iwi representatives who shall be confirmed through the governance structure of the relevant iwi organisation, and Mana Whenua representatives, including Maniapoto ki Te Raki;
- (c) residents from Walker Road, Ngahepe Road, Wharepuhunga Road and Waikeria Road;



- (d) representatives from the local communities of Kihikihi, Otorohanga and Te Awamutu including Korakonui School;
- (e) local business owners or business representatives from Kihikihi, Otorohanga and Te Awamutu;
- (f) the Prison Manager or his/her designated representative (who shall be the chair unless otherwise agreed by the CLG);
- (g) Waikato District Health Board and Community Mental Health and Alcohol and Other Drug services within Otorohanga District, Waipa District and Hamilton City;
- (h) representatives of NZ Police; and
- (i) representatives of NZ Transport Agency (NZTA).

98. The requiring authority Waipa District Council and Otorohanga District Council shall agree on the selection of those parties identified in (iv) and (v). Additional members may be appointed with the agreement of the requiring authority and Otorohanga District Council.

- (a) meetings of the CLG shall be held at least once every six months. Additional meetings may be held at any other time as agreed between the requiring authority and the Otorohanga District Council;
- (b) subject to the CLG objectives set out above, the CLG will be responsible for the formulation of its Terms of Reference, but could include defined roles and responsibilities of its members, procedural matters for the running and recording of meetings, including quorums for meetings;
- (c) the Prison Manager or his/her designated representative shall personally attend the meetings with the CLG;
- (d) the requiring authority shall not be in breach of condition 63 if any one or more of the named groups listed in condition 63 a) do not wish to be members of the CLG or to attend any meetings;
- (e) as soon as practicable following each CLG meeting, the Requiring Authority shall provide copies of the meeting minutes to the Otorohanga District Council and the Waipa District Council;
- (f) in the event that the Otorohanga District Council or any member of the CLG considers that the group is not operating effectively then this issue may be addressed to the Department's Chief Executive or delegated authority. The requiring authority will act to reinstate the Group in the event that the Department has not met the obligations to run the CLG as set out herein.



## COMMUNITY IMPACT FORUM

99. The process to establish the Community Impact Forum and the Forum objectives:

~~The objectives of the Community Impact Forum (CIF) conditions are as follows:~~

A. ~~During the period~~ Prior to construction commencing (including the activities authorised by consent RM170041 issued by Otorohanga District Council on 25 September 2017) the Requiring Authority shall establish a Community Impact Forum (CIF) in accordance with ~~is created as set out in condition 65.~~

B. The overarching objective of the Community Impact Forum is to review and make recommendations to the requiring authority on:

- (i) the likelihood and significance of adverse effects of the expansion of the prison on housing stock and housing affordability; and
- (ii) the measures to lessen the likelihood of a reduction in the available housing stock or a decrease in housing affordability. ~~And, if required, the management plan(s) prepared.~~

C. During construction and operation of the new prison facilities, the specific objectives of the Community Impact Forum shall be to:

- (i) ~~identify~~ opportunities for training of local residents for the construction / operation of the prison; ~~and are identified.~~
- (ii) ~~determine~~ the likelihood and significance of adverse effects of the expansion of the prison on housing stock and housing affordability in the local area ~~and the responses to address the same, is determined.~~
- (iii) ~~Implement the options, processes or response initiatives required to be implemented to address issues identified in (i)–(ii).~~

100. Within one month of [date NOR is confirmed], the following ~~persons parties~~ or their representatives will be invited by the requiring authority to join them on ~~the Community Impact Forum; a CIF comprising the following additional parties:~~

- (a) one elected and one senior officer-level representative from each of the Otorohanga District Council and Waipa District Council;



- (b) local iwi representatives who shall be confirmed through the governance structure of the relevant iwi organisation, and Mana Whenua representatives, including Maniapoto ki Te Raki;
- (c) representatives of the early childhood, primary and secondary education sector within the affected communities;
- (d) regional representatives of the Ministry of Social Development and local/regional social service providers;
- (e) Housing New Zealand, real estate and other social housing services;
- (f) representatives of tertiary education and training services;
- (g) representatives of NZ Police; and
- (h) representatives of the prison construction contractors for the new prison facilities at the Waikeria Prison site.

101. The requiring authority shall not be in breach of condition 64 if any one or more of the named persons groups listed above do not wish to be members of the CIF or to attend any meetings.
102. Meetings of the Community Impact Forum CIF shall be held at least once every three months until 5 years after the accommodation of the first prisoner in the new prison facilities, unless otherwise agreed by the majority of the participants.
103. The minutes of Community Impact Forum CIF meetings shall be provided annually to the Otorohanga District Council.

#### Housing Information for Waikeria Prison Operations Staff

104. The requiring authority shall prepare (and keep updated) a housing information package that promotes all local areas to assist staff moving to the area, providing a copy of the information package to prospective employees and shall make it available to potential staff as part of the recruitment process for the new prison facilities. The objective of the housing information package shall be to [insert].



## Housing and Housing Affordability Assessment

105. Within 3 months of the [date NOR is confirmed] the requiring authority shall engage suitably qualified independent technical specialists to work with the Community Impact Forum to advise on assess the likelihood and significance of any change in adverse effects on the availability of housing stock or change in housing affordability for existing residents in the local area Waikato Region during the construction and operation of the new prison facilities.
106. The role of the independent technical specialists group will be to:
- (a) develop a set of significance criteria that shall be used to assess the likelihood and significance of any change in the availability of housing stock or housing affordability and to report to the requiring authority on the likelihood and significance of any change; and
  - (b) identify any potential response(s), including if necessary a management plan with the objective of decreasing the likelihood and minimising the impact of any change on the local population; and
  - (c) to address the following matters:
    - (i) the likely availability and location of workforce supply;
    - (ii) the available housing stock and predicted housing growth in the Waikato Region and other relevant influences on housing affordability;
    - (iii) the requiring authority's potential local recruitment scenarios assuming low, medium and high levels of recruitment from the local area; and
    - (iv) the resulting number of houses required to house the additional workforce required for the construction and operation of new prison facilities at Waikeria Prison and the likely distribution of those houses within the local area.
107. The requiring authority shall provide a copy of the above report to the Community Impact Forum for their consideration.
108. The Community Impact Forum shall review the report of the independent technical specialists and make recommendations to the requiring authority on measures to lessen the risks associated with a reduction in the available housing stock or a



decrease in housing affordability and to advise on opportunities for training of local residents in construction and operational work.

#### Housing Stock and Housing Affordability Risk Management

109. The requiring authority shall, as soon as practicable, take all reasonable steps to ensure that the adverse effects on the local population consequential upon a change in housing stock and housing affordability identified as being attributable to the Waikeria Prison (in whole or in part), and which are within the requiring authority's ties: capacity to influence or responsibility to address (whether in whole or in part), are minimised. are discussed with the CIF.
110. If the independent technical specialist or Community Impact Forum recommend that a management plan be prepared and implemented, the requiring authority shall engage a suitably qualified expert(s) to prepare the plan. The measures that will be included in the management plan and implemented by the requiring authority, if required, are:

##### During the Construction Phase

- (a) specific transport initiatives (such as use of buses and car pooling) to get workers to the construction site; and
- (b) provision by the requiring authority of temporary construction housing in Kihikihi, Te Awamutu, Otorohanga, or on the Waikeria Prison site.

##### During the Operational Phase

- (a) additional local employment initiatives to encourage more local residents to seek employment with the requiring authority at Waikeria Prison;
  - (b) facilitation of additional training programmes to provide the required skills for work at the Waikeria Prison; and
  - (c) working with Otorohanga District Council, Waipa District Council and Government to escalate land release and/or housing development programmes.
111. To the extent that any change to effects on housing stock and housing affordability identified as being attributable to the Waikeria Prison (in whole or in part) is outside



~~the capacity of the requiring authority to influence or~~ the responsibility ~~of the requiring authority~~ to address, the Minister of Corrections will request appropriate Ministers, or any other relevant ~~person party~~, to take such measures as are necessary to avoid or remedy ~~(in the first instance)~~ or mitigate the ~~adverse effects on the local population of these matters.~~

112. Within one month of [date of NoR being confirmed], the requiring authority shall establish a fund of \$500,000 to be held by the Waipa District Council and administered jointly by Maniapoto ki Te Raki and Waipa District Council. The purpose of the fund is to provide for or assist in the establishment of housing or accommodation related projects for the benefit of the local hapū communities. The initiatives, and how the contribution is used, shall be at the discretion of Maniapoto ki Te Raki and Waipa District Council and the requiring authority acknowledges that Maniapoto ki Te Raki and Waipa District Council may choose to work with any other iwi and hapū, the Otorohanga District Council and/or established community or affordable housing providers as part of any initiative.

Advice Note: The requiring authority has offered Condition 70 and agrees to be bound by it pursuant to the Augier principle.

#### Local Area Recruitment and Training

113. The requiring authority shall work with the ~~Community Impact Forum~~ and the prison construction contractors to develop and implement a recruitment and training programme. The objective of the recruitment and training programme is to, where practicable, recruit the prison and construction staff required for the new prison facilities ~~Waikeria Prison capacity increase~~ from the Waikato Region.
114. When recruiting new employees, the requiring authority shall initially target recruits residing in the Waikato Region. ~~This shall involve~~ The requiring authority ~~shall hold~~ ~~holding~~ a minimum of 10 recruitment events in the Waikato Region in advance of undertaking national / international recruitment drives if suitable candidates are not identified from within the Waikato Region.
115. Where the requiring authority identifies a particular skills shortage within the Waikato Region it will notify the ~~Community Impact Forum~~ of that identified shortage, or ~~if~~ ~~where the Forum~~ is no longer operating, notify the Ministry of Social Development as



well as the local/regional social service providers and representatives of tertiary education and training services that were previously part of the Forum.

Advice Note: The requiring authority shall not be limited by this condition when determining the suitability of candidates. Nothing in conditions 72 – 73 shall derogate from the requiring authority's responsibilities under New Zealand employment legislation.

#### TANGATA WHENUA LIAISON GROUP

##### Objective

~~The objective of the Tangata Whenua Liaison Group conditions is as follows:~~

- A. To promote the relationship between the requiring authority and tangata whenua of Waikeria, and the relationship of tangata whenua with the land, by facilitating cultural input into:
- (i) the development and implementation of mitigation measures; and
  - (ii) the development, implementation and monitoring of management plans.

~~proposed through this designation.~~

116. The requiring authority shall establish a Tangata Whenua Liaison Group (TWLG) within one month of [date of NoR being confirmed].

The purpose of the TWLG is to recognise and provide for:

- the partnership between the requiring authority and tangata whenua of Waikeria;
- the relationship of tangata whenua with the land within the Waikeria Prison designation; and
- active involvement in the development, implementation and monitoring of the management plans referred to in this condition.



In particular, the TWLG will:

- (a) facilitate cultural input into the appropriate commemoration and recognition activities during the construction and operation of new prison facilities. This is to be primarily achieved through the preparation and implementation of a Recognition and Commemoration Implementation Plan in accordance with Conditions 83 - 88;
- (b) facilitate cultural input into the:
  - (i) implementation of accidental discovery procedures referred to in condition 30;
  - (ii) development of the Landscape and Visual Mitigation and Monitoring plan referred to in condition 23; and
  - (iii) development of the Ecological Enhancement and Mitigation Plan referred to in condition 26.
- c) the plans in b) above will be prepared by the requiring authority to reflect the cultural input provided. Where any aspect of the cultural input cannot be incorporated in the plans referred to in b) above then reasons will be provided for this. In those circumstances the TWLG may decide to engage an independent expert to further review and advise on those matters;
- (d) facilitate the monitoring of the implementation of the plans referred to in 73 b); and
- (e) operate for a period of 10 years from the [date of NoR being confirmed].

117. Two representatives from each of the following groups will be invited by the requiring authority to join the TWLG:

- (a) Raukawa Charitable Trust;
- (b) Maniapoto ki Te Raki; and
- (c) Te Roopu Kaumātua o Waikeria.

Two representatives of the Department of Corrections, one of whom will be the Prison Director, shall attend and participate in the meetings of the TWLG but will not be members of the TWLG.

118. The TWLG will prepare their own terms of reference and elect their chairperson within one month of [date of NoR confirmed]. The terms of reference will be reviewed



no later than two years after the date the TWLG is first established. The terms of reference will reflect the designation conditions and include as a minimum:

- (a) purpose and responsibilities;
- (b) the members and composition and record the ability of members to replace its representatives and for the member's representatives to seek input and direction from their constituent group;
- (c) frequency of meetings (but not less than at least once every 6 months);
- (d) chair and facilitation;
- (e) administrative support;
- (f) decision-making processes; and
- (g) remuneration.

119. If requested by the TWLG, the requiring authority shall assist the TWLG to prepare its terms of reference.
120. The requiring authority shall not be in breach of conditions 74 - 77 if any one or more of the parties specified either do not wish to be members of the TWLG or do not attend meetings.
121. The establishment and operation of the TWLG does not replace existing relationships between the requiring authority and whānau, hapū and iwi of the whenua on which Waikeria Prison is situated.
122. The requiring authority shall ensure that all TWLG representatives have sufficient time and resources to prepare for agenda items to be discussed at each TWLG meeting by the:
- (a) development of an annual program of activities;
  - (b) provision of sufficient time and resources to seek input and direction from their constituent group; and
  - (c) provision of cultural, landscape or ecological expertise necessary to provide input into the plans referred to in condition 74 a) and b).
123. The requiring authority shall meet the actual and reasonable costs incurred as a result of the commitments made under Conditions 74 - 77 and 80 above.



### Recognition and commemoration implementation plan

124. The TWLG will prepare a Recognition and Commemoration Implementation Plan ("RCIP") within 6 months after [date of confirmation of NoR] that, as a minimum, will provide for appropriate cultural recognition or commemoration for:

- (a) the turning of the first sod;
- (b) ~~Karakia~~ for the start of earthworks;
- (c) commissioning of carvings, monuments and/or commemorative plaques;
- (d) unveiling of the name of the new prison facility and any carvings, monuments and/or commemorative plaques;
- (e) the use of bilingual signage within the new prison facility;
- (f) naming of the new prison facility and significant rooms and spaces within it; and
- (g) opening of the new prison facility.

Advice note: There is no requirement that the delivery of carvings, monuments and/or commemorative plaques be undertaken by prisoners unless agreed by the TWLG.

125. The TWLG may identify in the RCIP where matters are unable to be finalised within the 6 month timeframe, and set a new timeframe for completion and approval of these matters.

The processes and timeframes for approval by the requiring authority and the resolution process in the event approval is not given as set out in conditions 84 - 86 also apply to these matters.

126. Within 20 working days of receipt of the RCIP from the TWLG, the requiring authority shall provide, in writing, either its approval to the RCIP or the reasons why it does not approve the RCIP. The requiring authority's approval shall not be unreasonably withheld.

127. Where the requiring authority does not approve the RCIP it shall request a meeting with the TWLG at the same time it provides the written response required by condition 84. The purpose of the meeting is for the parties to try to agree on the contents of the RCIP.



128. In the event the requiring authority and the TWLG are unable to agree on the contents of the RCIP:

- (a) the requiring authority shall engage a suitably qualified independent cultural expert, agreed by the TWLG, to consider the draft contents of the RCIP and the views of the parties and make a binding recommendation on the appropriate contents of the RCIP having had regard to the objectives, purpose, and minimum requirements of the RCIP and whether the contents are reasonable and proportionate in that context; and
- (b) the independent expert shall consult directly with the TWLG and/or its members and the requiring authority as necessary in order to fulfil his or her functions under these conditions before making a recommendation.

129. For the avoidance of doubt, the requiring authority shall fund the preparation of the draft RCIP and implementation of the approved RCIP.

#### **MANA WHENUA RECOGNITION** ~~ana whenua recognition~~

130. Prior to the end of the operation of the TWLG under **condition 116 e)**, the requiring authority shall invite Maniapoto ki Te Raki (or its successor or assignee) to enter a relationship agreement to recognise and provide for the enduring relationship of mana whenua with the whenua, natural resources and assets comprised within the Waikeria Prison site, including to provide for ongoing exercise by mana whenua of kaitiakitanga. The requiring authority shall not be in breach of this condition if Maniapoto ki Te Raki (or its successor or assignee) do not wish to enter into a relationship agreement.

#### **CONDITIONS IMPLEMENTATION OFFICER (CIO)** ~~Conditions Implementation Officer (CIO)~~

131. The Department of Corrections shall appoint an appropriately qualified Conditions Implementation Officer to have oversight of and be responsible for the implementation of the conditions of designation. The CIO shall prepare and submit a compliance report to Otorohanga District Council annually on [date that the NOR is confirmed].



## Attachment B: New Prison Facilities<sup>1</sup>

The activities and facilities likely to be undertaken within the secure perimeter as part of the further development of the prison site include:

- surveillance equipment and lighting;
- gatehouse;<sup>2</sup>
- management, security and operations support;
- receiving centre;
- prisoner accommodation;
- specialised units including special treatment, at-risk and drug treatment unit;
- prisoner visits area;
- health centre;
- workshops/industries facilities;
- kitchens/laundries;
- cultural buildings;
- sports hall/gymnasium and sports field; and
- programme facilities such as classrooms, meeting rooms and staff offices.

The facilities and activities that are likely to be located outside of the secure perimeter include:

- additional surveillance equipment and lighting;
- prison control point (boom gate);
- visitors' reception centre;
- external deliveries store;
- internal roading;
- staff and visitor car parking;
- administration and staff amenities; and
- facilities management and trade parking.

The secure perimeter may include a secure three-layer perimeter barrier, external perimeter road, internal perimeter road and camera posts.

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<sup>1</sup> Described in the NoR at [6.2 Site Layout and Design].

<sup>2</sup> The gatehouse accommodates all functions associated with the processing and controlling of all movements into and out of the secure area. The gatehouse includes a sally port(s) which provides vehicle/pedestrian access/egress to the secure part of the facility.

