

## RECOMMENDATIONS OF COMMISSIONERS FOLLOWING THE HEARING OF A NOTICE OF REQUIREMENT ISSUED BY THE HASTINGS DISTRICT COUNCIL

SUBJECT: Notice of Requirement pursuant to section 168A of the Resource Management Act 1991.

### APPLICATION DESCRIPTION

Notice of Requirement for **‘Omahu Industrial Infrastructure Servicing Corridor’** pursuant to section 168A of the Resource Management Act 1991

### GLOSSARY OF ABBREVIATIONS AND TERMS

The following abbreviations and terms have been used in this report:

DHB or HBDHB	Population Health Service - Hawke’s Bay District Health Board
GNS	The Institute of Geological and Nuclear Sciences Limited ('GNS Science')
HDC	Hastings District Council
HBRC	Hawke's Bay Regional Council
Infiltration basin	Proposed stormwater soakage area within the service corridor
NES	National Environmental Standard
NESCS	National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011
NOR	Notice of Requirement
Omahu North variation/zoning	Proposed Variation 1 - Industrial General Zone (Omahu (North))
PC 57	Plan Change 57
RPS	Regional Policy Statement
RRMP	Hawke's Bay Regional Resource Management Plan
section 42A report	Report prepared by the Council's planner (Ms Hart) under section 42A of the RMA
Swale	In the context of this report, swale has the same meaning as 'infiltration basin'

### 1.0 INTRODUCTION

This report contains the recommendations of independent Hearing Commissioners on a Notice of Requirement (“NOR”) issued by the Hastings District Council to designate land on the northern side of Omahu Road, Hastings for a public work being a proposed **‘Omahu Industrial Infrastructure Servicing Corridor.’**

The Hearing Commissioners have been delegated full responsibility to consider submissions and make recommendations to the Requiring Authority pursuant to Section 34 of the

Resource Management Act 1991 (RMA). In relation to the Requirement, we are required to consider whether the applicant Council has satisfied the tests under section 168A (3) of the RMA. Having had regard to these matters, we may recommend to the Requiring Authority that it confirm or modify the requirement, impose conditions, or withdraw the requirement under section 168A(4).

For the reasons given later in this report, we have recommended that HDC confirm the Requirement, with the modifications made by its agents and consultants during the hearing and subject to modified conditions as set out at the end of this report.

The Hastings District Council as Requiring Authority must make a decision within 30 working days of receiving these recommendations as to whether or not they are accepted, including the conditions that are annexed to it. HDC may only modify the requirement if that modification has been recommended in this report, or if the modification is not inconsistent with the Notice of Requirement as notified. If its decision is not appealed, the altered designation will then be included in the District Plan.

Much of the documentation that is applicable to the NOR is also contained and referenced in the reports on the Omahu North Variation and in our recommendation report on that Variation. In the expectation that our recommendation and decision reports will be considered together, this NOR decision contains an abridged discussion of environmental effects. A more comprehensive analysis is incorporated into our recommendations on the variation. In the circumstances, it seems to us to be unnecessary and inefficient to repeat the background material. The issues in contention were largely common to both the Variation and the NOR. For a full understanding of the project, the background documents lodged on behalf of HDC and the section 42A report are relevant. Copies of those documents as well as all of the evidence and submissions presented at the hearing are held by the Council.

## **2.0 THE PROJECT**

### **2.1 Project Objective**

The NOR outlines the Requiring Authority's stated project objectives as being to:

- Provide sufficient land for the infrastructure servicing of a new industrial zone on the northern side of Omahu Road, Hastings.
- Enable the efficient, effective and timely implementation of the physical infrastructure necessary to service the area.
- Manage stormwater via a Council-owned infrastructure servicing corridor.

The background to the proposed provision of a service corridor, and the integral nature of the NOR to Variation 1, has been documented in the supporting information and section 42A reports on the Variation and the NOR. For completeness, the following is a brief summary of key points taken from the supporting documentation<sup>1</sup>:

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<sup>1</sup> Notice of Requirement May 2016, supporting documentation paragraphs 2.26 - 2.30

The rezoning proposal as at July 2015, involved an expansion of the zone from an area of 36ha to an area of 63ha.

The alternative stormwater solution to service the proposed zone involves the use of a 24m wide detention and soakage infiltration basin located to the rear of the zone. The principle of this approach is that stormwater would be both treated and disposed of by the infiltration basin. There is not therefore any requirement for reticulation of stormwater along the length of the swale.

Properties fronting Omaha Road that do not extend as far back as the proposed swale would have their stormwater conveyed to the swale via piped service connection corridors through the neighbouring property. The swale would also function as a services corridor for reticulated sewer and water services.

This stormwater disposal method does away with the need for staging. This is significant as the ongoing industrial development that has established via resource consent within Stage 2 (as proposed in PC 57) in anticipation of a future industrial zoning, would have made the enforcement of a delay in the development of Stage 2 very difficult.

This designation is required to ensure that the proposed industrial area can be adequately serviced.

The Council holds a resource consent for the discharge of stormwater from the proposed zone from the Hawke's Bay Regional Council. That application for the consent (DP120072L and DP120073W) includes a detailed description of the proposed system and of the potential effects on the environment. This proposal will continue to meet the outcomes of that consent, but Council has the option to either vary this consent or apply for a new consent. The Regional Council has indicated that this is an acceptable approach.

The preparation of both the Variation and the stormwater resource consent application have included the commissioning of specialist reports to assess and evaluate the potential for adverse effects on the surrounding environment and confirm the feasibility of providing for the new industrial area, in particular in relation to the essential servicing infrastructure.

## **2.2 Proposed Works**

The NOR is to support the provision of infrastructural services for the new General Industrial Zone - Omaha North.

The public work to be authorised by the designation is the construction, operation and maintenance of an infrastructure servicing corridor to provide reticulated water supply, reticulated waste water disposal, and stormwater disposal. This is to ensure that the new General Industrial Zone (Variation 1 to the Hastings Proposed District Plan) can be appropriately serviced. The proposal is described in Part 1 of the NOR as follows:

- *A corridor of land extending in a north west direction from the corner of Omaha Road and Raupare Road to Kirkwood Road (which is on the southern side of Omaha Road);*
- *The corridor of land is approximately 3km long;*
- *The infrastructure servicing corridor is 24 metres wide at the points where there will be a stormwater soakage area also;*

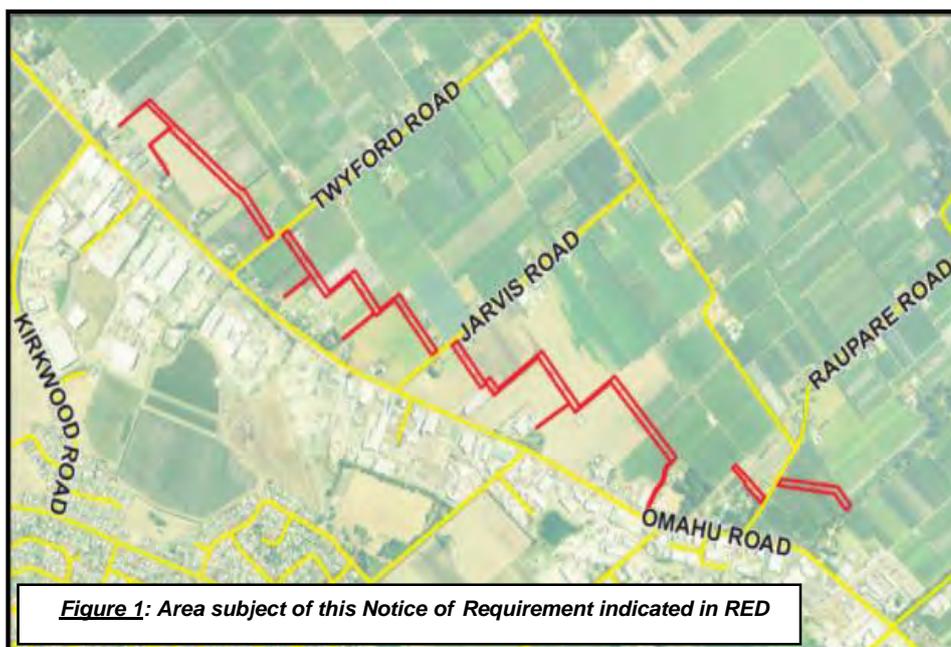
- *The infrastructure servicing corridor is approximately 7 metres wide where there is no stormwater soakage area, but provides for maintenance access, water and waste water pipes;*
- *The infrastructure servicing corridor will be set back from Omaha Road at a distance varying from approximately 150 metres and 300 metres.*

The nature of the work is described in section 3 of the Notice thus:

- Council will construct the sewer, and water pipelines and the access road to service the proposed industrial zone;
- Council will purchase land for the services corridor (including stormwater swale corridor)
- Individual land owners will construct their stormwater swale within the corridor
- Easements will be provided for properties in the proposed industrial zone that do not have direct access to the infrastructure services corridor.

### 2.3 Extent of Proposed Designation

The extent of the proposed designation is shown below, and in more detail in Figures 4 and 5 of the section 42A report. A typical cross section and aerial conceptual diagram of the proposed stormwater infiltration area and access corridor is also reproduced from the NOR as Figure 6 of the section 42A report. In response to a request from the commissioners for further clarification of the concept in plan view, showing how the water and wastewater services would be placed within the corridor, a further diagram was produced at the hearing by Mr O'Callaghan.



## **2.4 Affected Land**

The land subject to the Notice consists of 13 privately owned parcels of land which are located adjacent to the proposed Omahu Road North industrial zone that is the subject of Variation 1 to the PDP. The alignment of the proposed corridor has mostly been located along existing property boundaries.

The affected land is shown on a series of 17 aerial photo overlays and plans which form part of the NOR documentation, and a detailed schedule is set out in table format in section 1.4 of the section 42A report.

## **2.5 Surrounding Environment**

Comprehensive descriptions of the site and the surrounding environment are provided in Part 2, Section 3 of the supporting information for the Notice of Requirement.

## **3.0 NOTIFICATION AND SUBMISSIONS**

The NOR was publicly notified on 21 May 2016 and the submission period closed on 20 June 2016. The Requiring Authority requested public notification in conjunction with the Omahu North Variation so both aspects could be considered simultaneously. At the close of the submission period, a total of 8 submissions were received. Two submissions support the NOR. A further four submissions seek that the NOR be modified. Six submissions seek that conditions to be imposed and one submission opposes the stormwater design and seeks that this be reconsidered. No submissions were received after the submission closing date.

A full summary of submissions received on the NOR, including reasons, is contained in the section 42A report. The main submission points are:

- Support, or support in principle
- Location and alignment of proposed service corridor
- Stormwater options
- Water quality
- Considerations under the NES for Assessing and Managing Contaminants in Soil to Protect Human Health 2011
- Land acquisitions and easements (compensation)
- Provision for other network utility services

Figure 7 in the section 42A report identifies the location of submitters within proximity to the proposed infrastructure corridor. In giving consideration to the submitters' concerns, we have generally incorporated our comments into the topic headings that follow.

## **4.0 STATUTORY CONSIDERATIONS**

Under Section 168A(3) of the Act, when considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to:

- (a) *Any relevant provisions of —*
  - (i) *a national policy statement:*

- (ii) *a New Zealand coastal policy statement;*
  - (iii) *a regional policy statement or proposed regional policy statement;*
  - (iv) *a plan or proposed plan; and*
- (b) *whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—*
- (i) *the requiring authority does not have an interest in the land sufficient for undertaking the work; or*
  - (ii) *it is likely that the work will have a significant adverse effect on the environment; and*
- (c) *whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*
- (d) *any other matter the territorial authority considers reasonably necessary in order to make a decision on the requirement.*

We have addressed all of these matters, while reiterating our earlier comment that a more wide-ranging discussion of environmental effects is incorporated into our recommendation report on Variation 1.

## **5.0 ENVIRONMENTAL EFFECTS**

The Assessment of Environmental Effects ('AEE') provided by the Requiring Authority and Planner's report comprehensively identified and addressed the potential effects the project may have on the environment. These included the positive effects of providing for the economic wellbeing of the area by assisting to facilitate industrial growth in the district.<sup>2</sup>

Issues addressed in the reports were:

- effects on water quality
- effects on Heretaunga Plains Unconfined Aquifer
- construction effects
- effects from earthworks
- landscape and visual effects
- cultural effects
- ecological effects
- natural hazard effects
- effects on productive land use
- economic effects
- effects of contaminants, and archaeology and cultural matters.
- effects on stormwater
- effects on transport network

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<sup>2</sup> section 42A report, section 9.5

- effects on adjacent properties

It is not necessary for us to repeat the detailed discussion of all these effects, the majority of which were not in contention. We are generally satisfied that the Requiring Authority had identified all of the relevant environmental effects in the AEE. Accordingly, we have focussed on the key issues only.

## **5.1 Water Quality Effects**

The effects of a change in land use as proposed in Variation 1 and the associated effects of the proposed stormwater solution are the principal issue in contention and the main focus of submissions from the HBRC, the DHB and Mr D Renouf.

We have considered the inter-related effects on water quality and on the Heretaunga Plains Unconfined Aquifer together. The NOR states that the proposed stormwater solution meets the principles and design objectives relating to low impact design, the specific characteristics of the potential stormwater receiving environment, climate change, the HBRC Stormwater Guidelines, the Councils LTP, Engineering Code of Practice and Best Practice Design Guide for Subdivision and Development, and the On-Site Stormwater Management Guideline (NZWERF/MfE 2004).

The servicing report as referred to in the NOR application documents, prepared by Ray O'Callaghan describes the design features as including:

- A design event of no overflow to surrounding areas in events up to the 50 year ARI
- Discharge of roof water for up to 10 year ARI to be on individual sites
- Management of potential contaminants through the use of pre-treatment devices
- Discharge to ground through a conveyance swale and large areas for detention and infiltration
- Use of larger swales on individual sites to provide storage and discharge to ground via infiltration, without the need to convey stormwater to a separate location
- Use of a standard soakage rate enables a uniform swale to be formed as a permitted activity
- Stormwater from parking and hardstand areas will be passed through on-site settlement devices prior to discharge to the swale servicing the specific site
- Regular monitoring of performance and maintenance of vegetation, to ensure surface of the swale is not clogged.
- Council will maintain swales once formed and accepted by Council
- The proposed swale size has been based on infiltration rates that are lower than those observed during a comprehensive soakage testing programme across the zone.

Mr O'Callaghan's supplementary report responded to the specific concerns and questions of submitters as part of the section 42A report on Variation 1, which we have referred to in detail in our recommendation report on the Variation. Notwithstanding the proposed controls to be introduced by the Variation, the DHB and Regional Council reiterated their concerns at the hearing that there was still a degree of uncertainty and risk to the Heretaunga Plains Unconfined Aquifer associated with the proposed methodology.

In the light of the Earthtech, GNS and Tonkin and Taylor reports, we are confident that the expert advice provided by Mr O'Callaghan (which was not challenged by any other expert evidence) can be relied upon. We note that Mr O'Callaghan had previously represented appellant submitters on PC 57 who did not support the stormwater solution originally envisaged, and who was subsequently engaged by the HDC. For completeness, we have referred briefly to the key points (which largely follows Mr O'Callaghan's summary<sup>3</sup>), and the further refinements to the stormwater solution now recommended.

The proposed use of pre-treatment devices and the infiltration basin is based on the principle that there will not be uncontrolled release of contaminants to the ground water system.

The proposed solution for Variation One involves a larger infiltration basin to provide the storage and treatment along the length of the zone in individual "cells." Each section of the infiltration basin will have the sand/gravel treatment zone in the bottom of the infiltration basin instead of in one specific treatment area beyond the zone.

The need for specific on-site pre-treatment devices is dependent upon the specific activity on each site. The Variation will exclude wet industry, heavy industrial activity and other activities which might give rise to high risks of contaminants being released from the site<sup>4</sup>. The combined processes of Variation One and HDC's By-Laws provide a management regime to ensure that only those activities envisaged for the zone will be permitted to occur.

The infiltration tests carried out within the zone<sup>5</sup> varied in infiltration rates throughout the infiltration basin alignment. The average longer term infiltration rate was 49mm/hr and a test as low as 30mm/hr was recorded at one site. The shorter-term infiltration rates were much higher, typically over 100mm/hr for the first 1 – 2 hours of soakage".

The infiltration basin sizing was carried out using a design infiltration rate of 40mm/hr. This rate is considered to be conservative because the actual infiltration will be higher in the earlier phase of the rain event and thus a greater volume of runoff will be discharged to soakage in the earlier phase. However, a relatively conservative design infiltration rate will ensure sufficient storage is provided to avoid undesirable discharge to the downstream land during the design event.

The building roof areas will not have contaminants and this flow will be discharged directly to the infiltration basin. The yard areas may have a risk of contaminants from vehicles and this can be assessed by HDC when the land owner applies for a building consent to construct the building and yard and establish the new land use. The existing HDC By-Laws require the developer to submit details on stormwater disposal as part of their Building Consent Application.

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<sup>3</sup> Mr O'Callaghan's Supplementary Report on Variation 1, 8 November 2016, ENV-9-19-1-16-161, Page 143 Attachment 3, Open Agenda.

<sup>4</sup> It is noted that neither Variation 1 nor the 'Omahu North General Industrial Zone' restricts such activities; instead it is the hazardous substances provisions of section 29.1 of the Proposed Plan that achieves this, in combination with there being no access to trade waste sewer or a water supply suitable for wet industry.

<sup>5</sup> Attached to Mr O'Callaghan's report dated 8 November 2016, Attachment 3, Page 149 Open Agenda

However, Mr O'Callaghan agreed with the comment in Mr Renouf's submission that infiltration basins do not remove all contaminants. He reiterated that:

- *the zone is for light industrial activity that is not expected to generate high contaminant runoff*
- *The stormwater system is not reliant on just the infiltration basin to remove the contaminants that are generated with each site;*
- *there are four key elements to remove contaminants being*
  - *the on-site pre-treatment devices (eg interceptor traps etc)*
  - *the attachment of contaminants to the vegetation in the infiltration basin,*
  - *the filtration system in the base of the infiltration basin and*
  - *the filtration effect/die-off provided from the ground/soil through which the discharge slowly flows after discharge to ground.*
  
- *The system is essentially the same discharge proposal as has been consented under Plan Change 57 in that it is discharge to ground after passing along a swale, entering a detention area and discharge to ground through a filtration zone.*

Mr O'Callaghan's recommendation that the Variation include a rule in the Plan that requires the developer to submit a Stormwater Management Plan to HDC as part of the building consent application was supported by submitters at the hearing, subject to amendments to the wording to clarify the process. We agree with that approach. This Plan would outline what is proposed for the specific site, the area proposed to be developed as building, yard etc, a calculation check on discharge volumes, a description of the specific land use along with an assessment of any risks associated with contaminants on the site and how they are to be managed (e.g. pre-treatment prior to discharge to the infiltration basin, containment areas etc), and how the consent holder intends to monitor the performance of their pre-treatment devices prior to discharge to the infiltration basin.

As the HDC is, and will in future continue to be, the consent holder for the stormwater discharge, including any variation to the existing consent, it will be responsible for the regular monitoring and maintenance of the infiltration basin. It is understood that HDC will prepare and implement an overall Management Plan for the stormwater disposal infiltration basin. The Plan will set out monitoring requirements, maintenance of vegetation, inspection of properties if there is evidence in the infiltration basin of a specific property discharging something that was not expected or envisaged at time of granting of the building consent, and general reporting to HBRC as part of the expected discharge consent variation.

We assume that a change of land use from pastoral/agricultural/viticulture to dry industry will reduce the risk of pathogenic contaminants entering the Unconfined Aquifer. Although we received no expert evidence on the relative risks of different land uses it is apparent to us that the existing land use is not without its contamination risks, notwithstanding that the HBRC acknowledges in its submission that the overall groundwater quality in the Aquifer is high. The source contaminants of pastoral/agricultural/viticulture may well be different in composition to those associated with light industrial land use, but there seems to be general agreement by all parties that the Aquifer is sensitive to the ingress of a wide range of substances that can lead to a deterioration in quality. The GNS report has confirmed that parts of the Unconfined Aquifer near the Omaha North Industrial Area have short travel times to public supply wells, confirming the sensitivity of the Aquifer to land use contamination sources.

Under these circumstances, we consider that whatever the land use activity may be, the risk to the underlying Aquifer is best managed by control of the potential contaminants at source, either by restricting the activities on the land to avoid the use of hazardous substances, and/or by containing and removing the contaminants before they enter the ground at recharge sites. The Earthtech report provides a detailed assessment in support of this approach and concludes that a combination of land use restriction and stormwater treatment will address the risks to the aquifer. Therefore, we concur that an appropriate Stormwater Management Plan process, monitored by HDC and as outlined above, will ensure that suitable pre-treatment devices are operated to protect the Unconfined Aquifer and that the suite of measures outlined above is sufficient to maintain and enhance water quality. One further recommendation has been made, as agreed to by the HDC in response to further information and submissions received following the hearing, which is to use pumice sand in the infiltration basins. We consider this to be a matter for detailed design of the infiltration basins so that they, together with the pre-treatment systems are engineered to meet a standard of performance that will protect the Aquifer quality. This is best managed through the building consent process and is therefore recommended as an Advice Note only.

Mr Renouf's submission asked the Requiring Authority to consider the conveyance of all road runoff from the north eastern side of the road carriageway to the upper Southland Drain catchment. We note the comments in the section 42A report which outlined the research undertaken by the Requiring Authority into seven stormwater options (four in respect of Southland Drain and three in respect of the Raupare catchment). These options were:

Direct flows to the Upper Southland Drain with detention pond

Direct flows to Omaha South infiltration basin

Direct flows from zone rear to Upper Southland with detention pond

Direct flows from zone rear to Omaha South infiltration basin

Direct to infiltration basins alongside zone

Detention and slow release to Raupare Catchment

Direct to Thompson Road infiltration basin.

We have had regard to the evaluation of these options and the reasons why the preferred option is considered to be the most appropriate solution, based on the assessment in the NOR application and supporting studies. We note the HBRC's opposition to the suggested connection to the Southland Drain as this is at capacity and therefore does not provide a viable alternative option. Mr Renouf also submitted at the hearing that yard water from bunded areas be discharged to the sewer. Mr O'Callaghan addressed this by saying that it is not best practice to discharge stormwater into a sewer because of the risks of overloading the system during high rainfall events. We agree with his advice, and note that councils throughout NZ are focussed on reducing or eliminating this practice. Furthermore, diversion of stormwater into a piped system may have adverse effects as a result of potentially not recharging the Aquifer.

Mr Renouf's concerns regarding protection of the Unconfined Aquifer by avoiding discharging potentially polluted stormwater from the road to ground is acknowledged, but on the evidence before us, the suite of measures currently proposed is the best practicable option while enabling the wider objective, of providing suitable infrastructure to support industrial growth in the District, to be achieved.

## **5.2 Construction Effects**

Construction effects have been identified in section 9.6.2 of the section 42A report as those resulting from noise and dust, as a result of constructing swales, infiltration areas, traffic and earthworks. They will be of a temporary nature and we assume will not be of long duration. We agree that construction noise effects on surrounding owners and occupiers can be mitigated through compliance with NZS 6083:1999 “Measurement of Noise from Construction, Maintenance and Demolition Work”<sup>6</sup>.

Dust effects have been identified as those associated with construction of infiltration basins. Dust control measures are to be put in place through best practice construction management processes, and soil will be stabilised to mitigate the effects of dust.

We agree that the proposed conditions to address the construction effects are appropriate. These include:

Requirement for a Dust and Sediment Control Management Plan

Requirement to stipulate hours of operations including times and days when construction activities cause noise and/or vibration would occur

A requirement to comply with NZS 6803:1989 “Measurement and Assessment of Noise from Construction, Maintenance and Demolition Work.”

### **5.3 Landscaping and Visual Amenity Effects**

The current appearance of the environment, which is currently rural and orchards, will change as a result of the formation of the infiltration basins and access road. Visual effects will therefore be associated with the removal of vegetation and orchard trees along the length of the designation. These effects will be noticed mainly by properties directly adjacent to the designation and when viewed where this intersects with Twyford Road, Jarvis Road, and Raupare Road.

In referring to the NOR assessment, the section 42A report comments that while this area is currently rural in nature, once Variation 1 is confirmed along with the General Industrial zoning (as we have now recommended), the amenity of the area will be modified. The designation corridor will form the rear boundary of future industrial activities and create a transition between those activities and the existing Plains Production Zone. The area’s amenity will be influenced by those industrial activities but once the stormwater soakage areas have been established and grassed, the corridor will not be out of character with the surrounding area.

We note that no landscaping details have been provided as part of the NOR and during the hearing it was clarified that little, if any landscaping is now envisaged within the corridor for the reason that any vegetation other than grass could impede the function of the infiltration basins. We have therefore determined that a condition recommending landscaping of the corridor is not appropriate. We also note that no submissions were received that relate to landscape and visual effects or identify loss of amenity.

### **5.4 Cultural Effects**

The section 42A report contains a brief assessment of cultural effects<sup>7</sup>, in which reference is made to the consultation undertaken by the Requiring Authority with Ngati Kahungunu and Te

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<sup>6</sup> this is a more recent version of the standard than the 1984 version referred to in the section 42A report

<sup>7</sup> section 9.6.6

Taiwhenua O Heretaunga. This did not result in any substantive issues being raised in relation to the proposed new industrial area and no submissions were received that relate to cultural issues.

No archaeological sites have been identified and a section 12 Authority from Heritage NZ is to be sought if an accidental discovery is made during construction works.

A review of the Proposed District Plan also confirmed that there are no known waahi tapu or other cultural sites on or in the vicinity of the affected properties that would be affected as a result of the proposal.

We agree with the recommendation that a condition be imposed regarding obtaining a section 12 Authority from Heritage NZ if an accidental discovery is made during construction works.

## **5.5 Natural Hazards Effects**

We have had regard to the consideration of potential effects of liquefaction in the light of the recently identified Hastings Fault Avoidance Zone 2015, which runs through part of the area of Variation 1 and the NOR, as shown in Figure 8 of the section 42A report.

We are satisfied, based on the expert advice provided by MWH and referenced in the section 42A report, that there is not a significant risk for the shallow swale from either liquefaction or lateral spreading.

The provisions of the Proposed District Plan do not prevent or restrict land use activities in respect of these hazards; instead building standards are considered more appropriate to mitigate or minimise the hazard.

The assessment and consideration of discretionary and non-complying land use activities, subdivision applications and plan change requests will take into account the most up to date information on seismic hazards, where the focus will be on managing the avoidance of significant earthquake hazards in order to protect human life.

In such assessments, the Council will have regard to the Ministry for the Environment (MfE) and Institute of Geological and Nuclear Sciences (GNS) guidelines 'Planning for Development of Land on or Close to Active Faults (2003)' in respect of development applications located on or near 'fault avoidance zones' identified by GNS. In some instances, this may require geotechnical investigations to be carried out by the applicant to determine the suitability of the site for building purposes.

The section 42A report concludes that *"land use activities within this earthquake hazard and fault avoidance area will therefore need to be addressed as part of any future building or land use consent. The Proposed Plan states this as being the most appropriate method to mitigate effects"*. We accept that further assessment will be undertaken when building consent or land use consent is sought for any development within the identified area, which we assume includes construction of the proposed services within the affected portion of the corridor.

## **5.6 Effects of Hazardous Substances**

Most of the area within Variation 1 and accordingly the proposed Designation Corridor, lies above the Heretaunga Plains Unconfined Aquifer. Any land use, activity or effects thereof has the potential to contaminate this significant water resource if not managed correctly and appropriately.

This issue has been identified by the **Hawkes Bay Regional Council (Submission #4/1)**. The Regional Council is not entirely satisfied that the stormwater services proposal underpinning Variation 1 and the NOR gives effect to Objectives 21 and 22 and associated policies of the Regional Policy Statement.

Contamination from industrial activities (hazardous substances) and in the case of the NOR, contamination from stormwater runoff entering the stormwater soakage areas from those activities, are of concern to the HBRC.

We have had regard to the methods by which effects of hazardous substances are managed. The primary control is the Hazardous Substances and New Organisms Act 1996 (HSNO) which provides the general framework for controlling hazardous substances during their entire life-cycle. Compliance with the HSNO Act will generally ensure that any adverse effects arising from an accident or incident will be internalised within the hazardous facility site. The District Plan therefore seeks to avoid any duplication of regulation with the HSNO Act.

Provisions within the District Plan to manage the effect of land uses on water quality include

- the inert roofing requirement (standard 14.1.6A.6(d)i)).
- rules controlling the use of hazardous substances (section 29.1).
- controls for the handling and storage of hazardous substances (including in regards to stormwater management) and resource consent (discretionary activity) would be necessary to establish a 'Major Hazardous Facility' in Section 29.1 of the Proposed District Plan.

These methods provide an extra layer of protection in respect to the Heretaunga Plains Unconfined Aquifer. Where resource consent is required, as for major hazardous facilities, these can be rigorously assessed and if consented, appropriate conditions can be imposed to ensure protection of the environment from the adverse effects of such activities. Where an activity is permitted, there are accompanying standards (29.1.6A of the Proposed District Plan) that will ensure that there will be no untreated stormwater runoff into the stormwater system. If these standards cannot be met, the proposal will be assessed at a higher level in the hierarchy where a full discretionary activity assessment will be made. Discharge consents are however, the responsibility of the HBRC.

We are accordingly satisfied that the Proposed District Plan provides sufficient guidance and control over those activities that have the potential to contaminate groundwater.

## **5.7 Effects on Productive Land Use**

This is an issue which must be addressed in terms of Part 2 of the RMA. We have considered this in relation to Variation 1, and note that the NOR is to provide for the necessary infrastructure to support the change of land use to dry industry in accordance with the Variation. While the land subject to the NOR represents approximately 8 hectares of either Karamu silt loam/clay or Hastings silt loam, this is a small percentage (0.3%) of versatile soils being taken out of production<sup>8</sup> and is less than the 63 hectares subject to the proposed rezoning in the Variation. We accept that the section 32 report on Variation 1 and the prior assessments for PC 57 have given full consideration to the conflicting objectives of retaining productive soils while enabling economic development of the district's natural resources.

Having considered all of the relevant information on this important issue, we accept the conclusion in the section 42A report that

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<sup>8</sup> The section 42A report notes that there are 1,420 hectares of Twyford soils on the Heretaunga Plains and approximately 816 hectares of Karamu soils

*"the loss of productive land resulting from developing the Omaha Industrial Infrastructure Servicing Corridor is an unavoidable consequence of providing this strategic stormwater solution for the future Omaha North industrial area".*

## **5.8 Contaminated Land (NES Soil Contamination) Effects**

Under Section 168A(3) of the Act, 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:

...any other matter the territorial authority considers reasonably necessary in order to make a decision on the requirement.

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NESCS) is triggered in any of the following circumstances:

Subdivision

Land-use change

Soil disturbance

Soil sampling

Removal of fuel storage systems

The land over which the proposed designation is to be placed has been in horticultural use since the early 1950's. We agree that the NESCS applies because the works subject to the NOR will involve a change of land use, soil disturbance and subdivision. In terms of the NESCS this means that most of the properties must be considered HAIL sites due the storage and use of pesticides associated with the land activities.

Submissions lodged by **K & K Bayley, Bayley Family Trust, Totara Hastings Ltd, Rimu Hastings Ltd (submission # 5/2), Development Nous (submission # 6/3)** sought clarification of how the NOR addresses the NESCS.

In response, the Requiring Authority commissioned MWH to undertake a DSI (NES Detailed Site Investigation - Attachment A of the section 42A report) along the proposed NOR designation. Hill Laboratories have undertaken the analysis (HDC Ref: 54875#0076). The location of soil sampling locations and references are illustrated in Figure 9 of the section 42A report, as well as tabulated results against the corresponding sampling locations.

Conditions are recommended in the section 42A report that reflect the findings of the MWH investigation, being:

The concentrations of the contaminant present are below the NES SCS for commercial/industrial land use scenario and in fact, in most instances are below the NES SCS for the more conservative residential (10% produce) with one area below established background levels of relevant determinands in Hawkes Bay.

The installation of the pipeline will occur on land that is designated (collectively) as a HAIL site because of past orcharding and market garden uses and the associated application of persistent pesticides (most noticeable lead arsenate).

There are residual levels of certain contaminants in site that are below relevant NES Soil Contamination Standards but may still represent some risk to human health.

The proposed activity should be considered as a controlled activity for both change of use and disturbance of soil and a resource consent under the NES is therefore required.

The report suggests a precautionary approach be undertaken during construction and that normal health and safety precautions for handling potentially contaminated soils should be put in place by the Contractor.

The recommended conditions<sup>9</sup> were not disputed at the hearing and we accept that they are appropriate.

### 5.9 Land Requirement and Property Effects

While the designation will affect the rear boundaries of thirteen properties, and will reduce the overall area of the properties, the overall outcome is beneficial to both the landowners and the District as a whole, by enabling the land to be used for industrial growth.

Submissions relating to the location of the service corridor are as follows:

**AJ & RL Hope (submission # 2/1)** support the location of the proposed infrastructure corridor.

**Rachel Sherratt (submission # 1/1)** owns the property at 7 Raupare Road as shown below; PID54986.



**Sherratt Property (Figure 11 of section 42A report)**

The submission states that the property is isolated from others (within the proposed Industrial zone) and the corridor lacks continuity and therefore may be inappropriate for the property.

<sup>9</sup> conditions numbered 15 and 16 in the section 42A report

The section 42A report assumes that this submission is referring to the service corridor and not the stormwater soakage area, in which case the reason for the corridor is to ensure that any future industrial development of the adjacent property (PID 59723) will be able to be serviced from within the designated corridor, thus not be totally reliant on servicing to Omaha Road.

We had no further information on this matter and the submitter did not attend the hearing. We accept the reasoning in the section 42A report for retaining the service corridor and therefore conclude that the designation for this property should remain, without alteration.

DW Renouf (submission #3/1) is seeking that the infrastructure services corridor be extended to include the four properties west of Kirkwood Road as shown outlined in yellow on the map below.



**DW Renouf Submission (Figure 12 of section 42A report):**

The section 42A report has commented that the four sites in question are all fully serviced on to Omaha Road, precluding the necessity to provide alternative infrastructure to service these sites.

**K & K Bayley, Bayley Family Trust, Totara Hastings Ltd, Rimu Hastings Ltd (submission # 5/1)** support the terms of the NOR and the nature of the proposed work; however are seeking that in respect of their property (PID 101508) that the alignment be amended as shown on the map below (Figure 13 in the section 42A report):



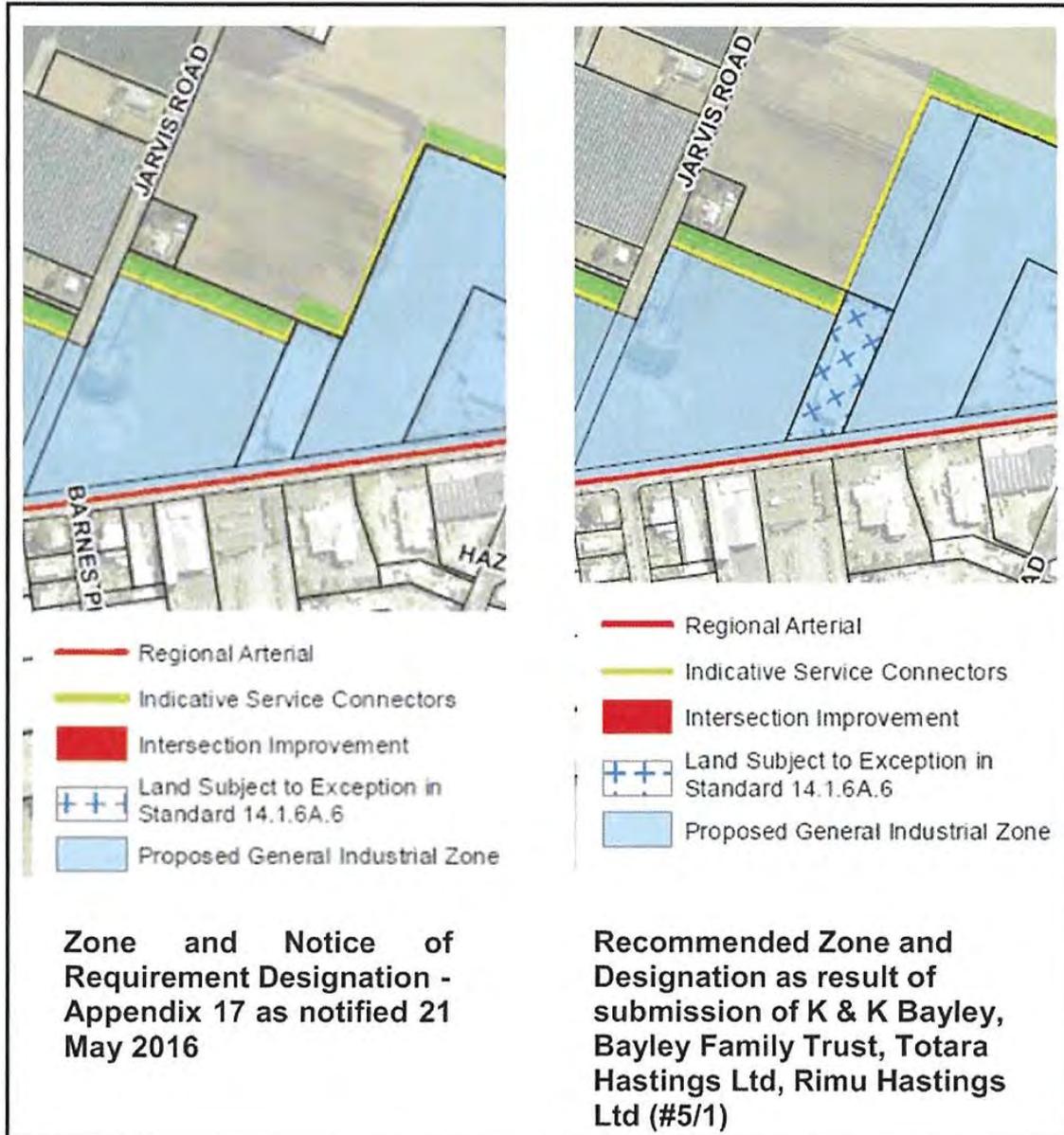
**Existing Alignment**



### **Requested Alignment**

The reason given for this request is to maintain land in regular shapes to avoid and minimise corners which become difficult to cultivate. A similar request has been made in a submission on Variation 1, and seeking the rezoning of the land within the relocated boundary. We have accepted the submission on the Variation and to ensure a consistent approach is undertaken for the NOR and Variation 1 it will be necessary for the designation alignment to be amended.

An addendum to the section 42A report on the NOR provided an updated map to illustrate the realignment, below:



The area of land involved will result in a further 0.8900ha loss of productive soils should the landowner develop this land for industrial activities. In balancing this loss of soils against the strategic importance of providing a long term solution for stormwater management in the Omaha North industrial area, we conclude that the effects of this loss of an additional 0.8900ha soils over the Heretaunga Plains will be indiscernible.

Development Nous (submission # 6/1) and Raupare Partnership (submission # 7/1), while supporting the NOR overall, are requesting that in terms the land owned by Raupare Partnership (PID 55033) requests that the designation width be reduced by not including the access/service corridor (shown as a yellow strip next to green) and that this strip be included within the proposed industrial zone.



**Figure 14: Raupare Partnership Property**

The submitter's reasons for this request are:

The service corridor does not connect to any adjoining property

The access will not link with any other easement or designation

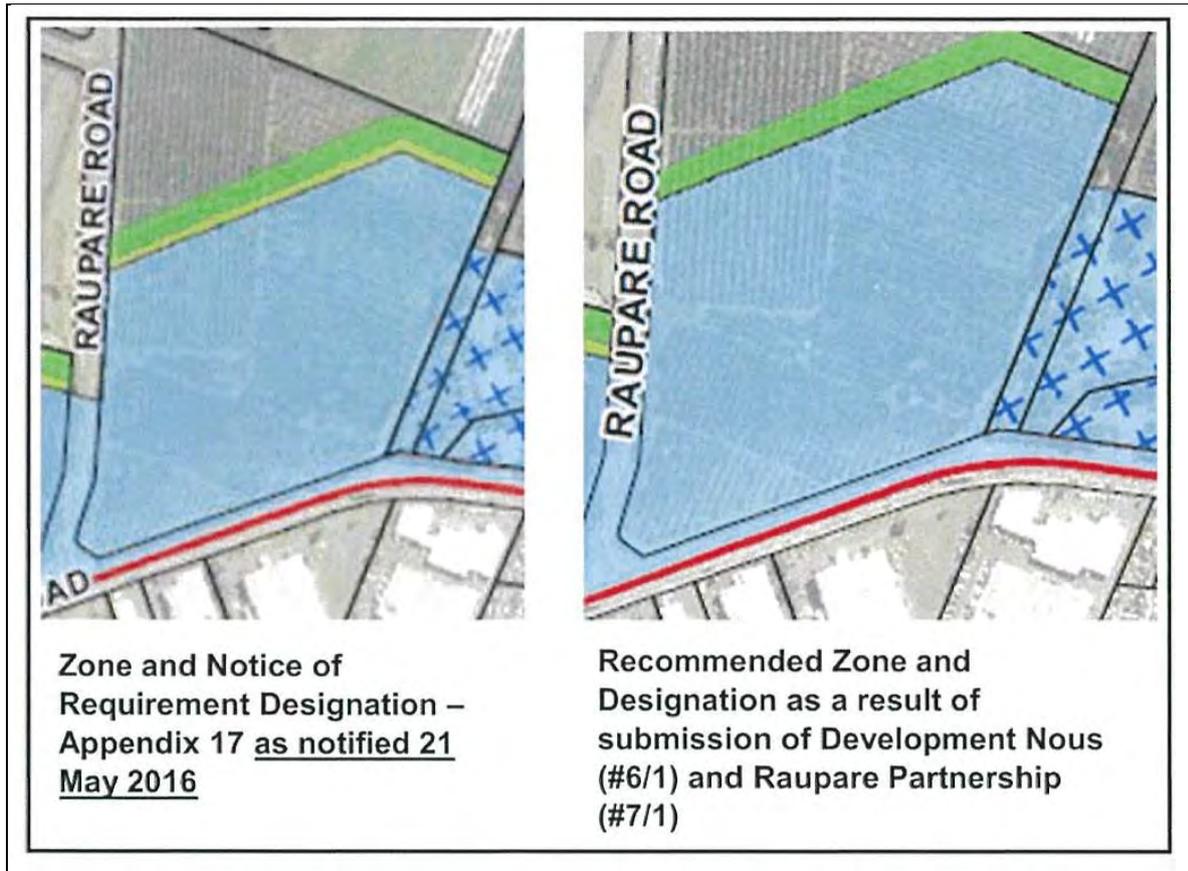
The cost to install services for the full length of the designation outweighs the benefit which is limited

The proposed use of the site does not require the access or services to be installed the length of the rear boundary

The section 42A report records that the requested amendment to the designation has been discussed between the Requiring Authority's engineer and the submitter. Whilst it is possible to accommodate this request, it will mean that the rear of the site between Raupare Road and the eastern boundary of the site would be prevented from future subdivision. The submitters are aware of this and have indicated that it is their intention to build a coolstore in this location. Provision for stormwater access will need to be taken into account in the design of the coolstore, as stormwater from future development along the Omaha Road frontage of the site would need to be conveyed into the stormwater infiltration basin. This access could be secured by way of an agreement between HDC and the landowner (outside the District Plan).

We accept the fact that there is no fundamental opposition from the Requiring Authority to this request, but in order to ensure that there is a record of the need to make appropriate provision for future development of the Omaha Road frontage and associated stormwater discharge to the infiltration basin, we have recommended the inclusion of a condition that alteration to the designation is based on a satisfactory agreement being entered into between with Hastings District Council and the landowner to ensure suitable protection of access to the infiltration basin. In the absence of an agreement between the landowner and the Requiring Authority to protect future access, we do not recommend that the designation should be amended.

The addendum to the section 42A report has provided the following map to accompany the recommendation to accept the submission.



### **Overall Findings in Relation to Environmental Effects**

For the reasons discussed above, we are satisfied that any adverse effects of the project will be avoided, remedied or mitigated so that they are no more than minor.

Having regard to all the evidence, comments from Council staff and submissions, we find that there will be positive effects from the proposal, in enabling the servicing of land for industrial purposes as envisaged by Variation 1, which will in turn have economic benefits for the district and it is in this context that the loss of versatile soils has been determined to be acceptable. We consider that the Requiring Authority has addressed all of the relevant issues raised by submitters.

## **6.0 OTHER MATTERS RAISED IN SUBMISSIONS**

### **6.1 Compensation**

Two submissions raised the issue of compensation, namely **K & K Bayley, Bayley Family Trust, Totara Hastings Ltd, Rimu Hastings Ltd (submission #5/3)** and **Development Nous (submission #6/2)**. We agree with the advice of Ms Hart in the section 42A report that the issue of compensation is not within the scope of the NOR. This is more appropriately addressed with individual property owners outside of the NOR process and pursuant to the specific legislation designed for this purpose within the Public Works Act 1981.

### **6.2 Provision for other Network Utility Operators**

**Unison Networks Limited (submission #8/1)** have requested that the scope of the service corridor be expanded to provide for 'Electricity and Telecommunications Services'.

The Requiring Authority has responded to the submission by stating that the service corridor will be a dedicated drainage reserve and not a public road or road reserve. It also stated that it will provide access for firefighting equipment and appliances in the case of a fire within the industrial zone. The requiring authority has raised concerns that including external services within the service corridor could complicate the purpose of the corridor and could lead to difficulties with access in the event of an emergency (for example if the electricity and telecommunications infrastructure was in the process of being installed or maintained).

We accept that these concerns are valid and conclude that the request would be inconsistent with the specialised purpose for which the designation is sought.

## **7.0 STATUTORY ASSESSMENT**

### **7.1 Section 168A (3) (a) (i) Relevant Provisions of National Policy Statements**

The *National Policy Statement for Freshwater Management 2011* is relevant and in particular, Objectives A1 and A2 (water quality), and Objective D1 (iwi/hapu matters). The focus of these objectives is maintaining and improving fresh water quality and in ensuring that iwi and hapu are involved in the management of fresh water, so that tangata whenua values and interests are identified and considered.

Based on the evidence and reports considered in more detail in our recommendation report on Variation 1, the proposed stormwater management measures are the best practicable option to attenuate stormwater runoff from the new industrial zone and form part of a suite of measures to maintain and enhance water quality. In addition, construction works are to be undertaken in accordance with best practice erosion and sediment control measures.

Consultation has been carried out with local iwi as outlined in the section 42A report and there were no submissions from iwi when the application was publicly notified.

Accordingly, we find that the proposed works are consistent with this National Policy Statement.

## **7.2 Section 168A (3) (a) (iii) and (iv) Relevant Provisions of the Regional Policy Statement and Plan**

The Hawke's Bay Regional Resource Management Plan 2006 (RRMP), which includes the Regional Policy Statement, is the applicable regional policy statement and plan. The section 42A report agrees with the Requiring Authority's assessment of the relevant provisions<sup>10</sup> which we adopt accordingly. There were no issues in contention regarding their relevance. However, these are set out below for completeness.

### Regional Policy Statement - Significant resource management issues for the region.

*The risk of contamination of groundwater arising from:*

Horticultural, agricultural and industrial land use practices

Discharges of contaminants, including the cumulative effects of domestic sewage discharges from unsewered communities

Spills particularly in the Heretaunga Plains and Ruataniwha Plains aquifer systems

The susceptibility of the region to flooding, droughts, earthquakes, volcanic ash falls, and tsunami, and the potential impact if these on people's safety, property, and economic livelihood.

### Objectives

The following objectives have been adopted by Hawke's Bay Regional Council to set the overarching resource management framework for the Region's resources:

*OBJ1 To achieve the integrated sustainable management of the natural and physical resource of the Hawke's Bay region while recognising the importance of resource use activity in Hawke's Bay and its contribution to the development and prosperity of the Region.*

*OBJ2 To maximise certainty by providing clear environmental direction*

*OBJ3 To avoid the imposition of unnecessary costs of regulation on resource users and other people.*

Urban Development Objectives and Policies

*Objective UD 3 – Provision for Business Land*

*Policy UD 4.5 – Appropriate Industrial Greenfield Growth Areas*

*Policy UD 10.1 – Structure Plans (Heretaunga Plains Sub Region)*

*Policy UD 10.3 - Structure Plans (Region)*

*Policy UD 10.4 – structure Plans (Region)*

*Policy UD 12 f), k), l), m), n), o) and p) – Matters for Decision Making*

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<sup>10</sup> section 42A report, section 10.4

*Objective OB 16 – Future land uses -conflicting land uses*

*Objective OB 17 – Existing land uses - mitigation of conflicting land uses*

### Regional Plan Objectives and Policies

Chapter 3 of the RRMP outlines regionally significant issues, objectives and policies. These include:

- *Effects of conflicting land use activities (OBJ 16)*
- *Maintenance and Enhancement of Physical Infrastructure (OBJ 32)*
- *Sustainable management of land (OBJ 38)*
- *Groundwater Quality (OBJ 42, OBJ 43, POL 75)*

We accept the conclusions in the section 42A report that the NOR proposal is consistent with Regional Policy Statement and Regional Plan objectives, noting the submissions from **Hawke's Bay Regional Council (#4/1)** to this effect.

We also concur that, as a significant services project for Hastings, the NOR is entirely consistent with the planned approach sought by objectives OBJ UD3 (Provision for Business Land (Heretaunga Plains Sub-Region), OBJ 32 (Maintenance and Enhancement of Physical Infrastructure) and Anticipated Environmental Results 6, 5 and 10, that seek to balance protection of the Heretaunga Plains and provision for planned infrastructure development.

We accordingly find that the designation is generally in accordance with the objectives and policies of the Hawke's Bay Regional Policy Statement and Regional Resource Management Plan.

## **7.3 District Plan Objectives, Policies and Rules as they relate to Notice of Requirement**

### ***Operative Hastings District Plan 2003***

We note the following statement in the section 42A report. "*Clause 16B(2) of Schedule 1 of the RMA states that 'From the date of public notification of a variation the proposed plan shall have effect as if it had been so varied.'* In other words once a variation has been notified, the proposed plan (decisions version) is to be ignored and only the operative plan and proposed plan (as if varied under the variation) should be considered. There is some confusion with the application of Section 86B which states that rules in proposed plans (which a variation is considered to be) do not have effect until decisions are issued".

We do not consider it necessary to seek a legal opinion on this matter and have adopted the approach taken in the section 42A report, which is to consider all of the provisions.

The Hastings District Plan sets out Council's approach to the management of effects of the use, development and protection of the natural and physical resources within the Hastings District. It provides an overview of the resource management issues of the District and identifies objectives, policies and methods to achieve integrated management of these. The provisions of the Operative District Plan for industrial activities apply. The relevant objectives and policies of the Operative District Plan have been identified in the section 42A report as follows:

## Unconfined Aquifer

*AQ01 To ensure that the life supporting capacity of the Heretaunga Plains Unconfined Aquifer Water Resource is not compromised by the effects of land use activities occurring above it.*

## Industrial Zones

*IZ02 To ensure that adverse effects of industrial use, development or subdivision are avoided, remedied or mitigated*

*IZ05 To enable the efficient and effective use of the District's resources by providing for the development of new industries.*

*IZP7 Protect the vital water resource contained in the unconfined aquifer from contamination risks from industrial uses and development.*

## Rural Resource Strategy

In the section 42A report, Ms Hart has also discussed the rural resource strategy, which outlines the District's approach towards the sustainable management of its rural resources. She has commented that the strategy "*recognises the importance of the long term availability of a sustainable land resource while ensuring that the Plan should not unnecessarily hinder the development of associated infrastructure and processing linkages*".

A sustainable approach to management of the soil resource is considered to be the key consideration. The difficulties in reconciling conflicting objectives of enabling industrial development while maintaining the life-supporting capacity of the Heretaunga Plains soil resource are acknowledged, and fully considered in the section 32 analysis of Variation 1. In our findings on Variation 1, we have concluded that the overall benefits of enabling industrial growth outweigh the loss of a comparatively small area of versatile soils. It therefore follows that the development of the service corridor, which will utilise productive soils located within the District's Plains Zone, is necessary to give effect to the variation. The loss of the productive soils has been minimised by, where possible, following existing property boundaries, however loss of productive land has not been completely avoided.

We agree that overall, the designation in tandem with the variation, is a sustainable approach to the development of a servicing solution for the Omahu Road North industrial area and therefore consistent with the approach outlined in the Rural Resources Strategy.

## Plains Zone Provisions

The Plains Zone is the District Plan method for sustainably managing the life supporting capacity of the finite soil resource of the Heretaunga Plains. Similar comments apply to the Plains Zone as to the Rural Resource Strategy.

We concur that the NOR is generally in keeping with the broader outcomes anticipated by the Hastings District Plan. Whilst the project is not entirely consistent with the Plains Zone provisions in that it will result in the loss of fertile land, through its design and route choice the soil resource as a whole can be sustained at a level that contributes to the economic well-being of the district's and region's communities.

## ***Proposed Hastings District Plan (as Amended by Decisions - September 2015)***

Section 86B(3) of the Resource Management Act 1991 states that certain provisions of a proposed district plan take immediate effect from the date of notification. This applies where provisions protect or relate to water, air, or soil (for soil conservation); protect areas of significant indigenous vegetation; protect areas of significant habitats of indigenous fauna; protect historic heritage; or provide for or relate to aquaculture activities.

The section 42A report advises that the following provisions of the Proposed Hastings District Plan had immediate effect from 9 November 2013:

- *Section 16.1 Waahi Tapu – all rules*
- *Section 18.1 Heritage Items and Notable Trees: Rules and Assessment Criteria relating to listed Heritage Items in Appendix 47 and 48 and the Historic Areas listed in Appendix 51; Rules relating to Notable Trees that are listed with a 'H' classification (trees of historical value) in Appendices 52 and 53*
- *Section 7.3 Hastings Commercial Environment - Rules CC-R10-R18 to the extent that assessment criteria 7.3.7.1A, 7.3.7.2L, 7.3.7.2M and 7.3.7.3C are triggered, and then only in the Central Character Precinct*
- *Section 19.1 Riparian Land Management and Public Access District Wide Activity - Rules RM1, RM2, insofar as assessment criterion 19.1.7 identifies the area as significant*
- *Section 20.1 Indigenous Vegetation and Habitats of Indigenous Fauna – Rule IN2, Rule IN3. Rule IN1 and IN4, insofar as assessment criterion 20.1.7A identifies the indigenous vegetation or habitat of indigenous fauna as significant*

None of these sections are applicable to the NOR, although in terms of s168A (iv) and s104 (1) (b) (vi) of the RMA it is appropriate to consider any relevant objectives and policies of a proposed plan, which have been identified as:

- IZ02 To enable a diverse range of industrial activities within the Hastings District while ensuring adverse effects on the environment, human health and safety are avoided, remedied or mitigated.*
- IZP7 The Protection of the vital water resource contained in the unconfined aquifer from contamination risks from industrial uses and development.*
- HS01 To enable activities to utilise hazardous substances where necessary for their operations, in appropriate locations.*
- HSP1 Ensure that where activities involving hazardous substances are located in proximity to the sensitive environment of the Heretaunga Plains Unconfined Aquifer, they are designed and managed to reduce risks to the environment and community.*

The explanations associated with these objectives and policies emphasise the importance of the protection of the Heretaunga Plains Unconfined Aquifer as a source of high quality drinking water.

**7.4 Section 168A(3)(b)(i) – Adequate consideration has been given to alternative sites, routes, or methods of undertaking the work; or (ii) that it is likely that the work will have a significant adverse effect on the environment.**

Section 168A(3)(b)(i) provides that if a Requiring Authority has an interest in the land then it is not required to consider alternative sites, routes or methods. In this instance, the Requiring Authority does not have an interest in the land and alternative sites, routes or methods must be evaluated. We have referred above to the detailed assessment of the options undertaken by the Requiring Authority (broadly speaking, the Southland Drain, Raupare Catchments, and infiltration versus a discharge to the Raupare catchment) before arriving at the preferred option, being infiltration to ground at locations adjacent to the new General Industrial zone. We are satisfied that the consideration of alternatives has been rigorous and the conclusions based on sound reasons and was neither arbitrary nor cursory. For the purposes of Section 168A (3) (b) we find that adequate consideration has been given to alternatives and that the selected option is appropriate for the reasons given in evidence and as summarized in the section 42A report.

**7.5 Section 168A(3)(c) - Whether the work and designation are reasonably necessary for achieving the objectives of the Requiring Authority for which the designation is sought.**

We accept for the reasons given in the NOR that the work subject to the designation is necessary in order for the Requiring Authority to achieve its objectives (as stated in section 2.3 above) and to enable it to undertake the proposed works.

We are also satisfied that the necessity for the use of the designation procedure is appropriate for the reasons that:

- It provides certainty to the Requiring Authority that the land can be used for the purpose of undertaking the proposed works.
- Designating the land enables the subject land to be used for its intended purpose, while accurately specifying the boundaries of the land within which construction of the proposed works will be undertaken.
- A designation sets out conditions under which works can be undertaken, as established by the Notice of Requirement process.
- Without the designation, an array of land use and discharge consents would have to be obtained by the Requiring Authority and/or individual landowners. This approach would be expected to cause greater time delays and uncertainty for the Requiring Authority, and could jeopardise the objectives for which the project/work is being undertaken.

Accordingly, we find that the alteration to the designation is in accordance with Section 168A (3) (c) of the Act.

## **7.6 Section 168A (3) (d) Other matters considered reasonably necessary in order to make a recommendation on the requirement.**

Section 168A (3) (d) of the Act enables the territorial authority to have regard to any other matters it considers reasonably necessary in order to make its decision.

### *Relevant Provisions of National Environmental Standards and other Regulations*

The National Environmental Standards for assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) are relevant to the proposal, which we have considered above in section 5.8.

The NES for Sources of Human Drinking Water is also applicable and its provisions are satisfied through the rules, methods and practices to be adopted in managing the risks of contamination of the Heretaunga Plains Unconfined Aquifer discussed in this decision and in our recommendations on Variation 1.

### Non-statutory and other statutory documents

We note that a number of non-statutory and other statutory documents are of relevance to the Notice of Requirement and have had due regard to the Planner's comments and conclusions in relation to:

- Plan Change 57
- 2003 Industrial Strategy
- Long Term Plan & 2015/16 Development Contributions Policy
- Heretaunga Plains Urban Development Strategy

We agree with the Requiring Authority's assessment, and endorsed by Ms Hart in the section 42A report, that "*the proposed designation is consistent with the relevant objectives and policies of these documents and will enable safe, efficient, and cost-effective servicing of this locally significant industrial area*".

## **7.7 Lapsing of Designation**

Section 184(1) of the RMA states that a designation will lapse after a 5 year period of its inclusion in a plan unless it has been given effect to before the end of that period or if the territorial authority determines, on an application made within 3 months before the expiry of that period, that substantial progress or effort has been made and fixes a longer period. The period may also be different if confirmed as part of the designation process.

In its Notice, the Requiring Authority sought a lapse period of 10 years because the implementation of the stormwater soakage area is dependent on the adjoining industrial land owners to construct it, and this is dependent on when they choose to develop their land for

industrial use. The Council's section 42A report supports this designation period. Guidelines established by case law<sup>11</sup> relate to:

- The timeframe in which the project was likely to be constructed;
- Safeguarding the alignment from inappropriate use and development;
- Certainty for affected landowners and the local community; and
- The ability to implement the designation in due course.

The Environment Court has provided guidance on this matter by stating that "*discretion [to extend the designation period] has to be exercised in a principled manner, after considering all of the circumstances of a particular case... Such circumstances need to be balanced against the prejudicial effects to directly affected property owners who are required to endure the blighting effect on their properties for an indeterminate period. The exercise of the discretion needs to be underlain by fairness*<sup>12</sup>".

We find that the proposed lapse period is fair and reasonable given the circumstances, and, in contrast with the majority of designations, enabling the work is of direct benefit to the affected landowners by facilitating the change in land use anticipated by Variation 1.

#### **7.8 Section 176 - Requirement of Outline Plans of Works**

We have considered the Requiring Authority's request that the requirement for an outline plan be waived for the proposed works. The provisions of section 176 are set out below.

*Under Section 176A (1), a requiring authority may submit an outline plan to the Territorial Authority for a public work to be constructed on designated land.*

*Under Section 176A (2) an outline plan need not be submitted to the territorial authority if—*

- (a) the proposed public work, project, or work has been otherwise approved under this Act; or*
- (b) the details of the proposed public work, project, or work, as referred to in subsection (3), are incorporated into the designation; or*
- (c) the territorial authority waives the requirement for an outline plan.*

*An outline plan must show*

- (a) the height, shape, and bulk of the public work, project, or work; and*
- (b) the location on the site of the public work, project, or work; and*
- (c) the likely finished contour of the site; and*
- (d) the vehicular access, circulation, and the provision for parking; and*
- (e) the landscaping proposed; and*

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<sup>11</sup> *Beda Family Trust v Transit NZ* A139/04

<sup>12</sup> *Beda* para 113

- (f) *any other matters to avoid, remedy, or mitigate any adverse effects on the environment.*

In this instance, the Requiring Authority has requested Hastings District Council (Territorial Authority) to waive the requirement for an outline plan on the basis that sufficient information has been provided with the NOR and will be incorporated into the designation.

During the course of the hearing it became apparent that certain matters were either yet to be finalised in regard to the proposed work, or which remained unresolved. Currently, the design for the infiltration basins, access road(s), water and wastewater services and connections from sites that do not directly adjoin the designation boundaries is conceptual only. Aspects of the corridor relating to landscaping and fencing were not certain and the Council's position (as Requiring Authority) changed from providing landscaping (trees) in the corridor to having no vegetation at all, except grass, on the basis that this could impede the function of the infiltration basins.

We note the recommendation in the section 42A report that an outline plan should be required for the purpose demonstrating how stormwater management will avoid, remedy, or mitigate adverse effects on the environment from flooding. While we had evidence from Mr O'Callaghan that the effects of flooding beyond a 50 year event would result in temporary but widespread land inundation, and that it was therefore not necessary to design the infiltration basins beyond a 50 year ARI, we are of the opinion that the Requiring Authority has provided an adequate level of detail for the proposed works. The key aspects which have not been finalised are details of the alignment and sizes of wastewater and water pipes, and the detailed design of the infiltration basins (which can be addressed at building consent stage). We therefore agree that a waiver of the outline plan requirements under section 176 is appropriate.

## **8.0 CONSIDERATION OF PART 2 (PURPOSE AND PRINCIPLES) OF THE RMA**

Sections 5, 6, 7 and 8 are all relevant to the proposal. In regard to the Notice of Requirement, we conclude that the proposed Notice is consistent with Part 2 in that:

- a) Through project design and mitigation methods the Requiring Authority has taken a considered approach to the use, development and protection of the surrounding area and physical resources in order to meet the social, economic and cultural well-being and health and safety of the district and regional communities. In doing so it is recognised that there is an impact on the life supporting capacity of the Heretaunga Plains versatile soils. However as a strategic project in this location, complete avoidance of localised land loss is unavoidable.
- b) The proposed route has sought to minimise this impact as much as possible while enabling the necessary infrastructure to be provided to support the consolidated development of the land to be rezoned General Industrial by Variation 1;
- c) It enables a servicing solution that appropriately addresses the adverse effects of stormwater discharges on water quality generally and the Heretaunga Plains Unconfined Aquifer in particular;
- d) Assists in sustaining the potential of natural and physical resources to meet the needs of future generations.
- e) The relevant matters of national importance and other matters have been appropriately provided for.

The conditions address the maintenance and enhancement of amenity values and quality of the environment. In addition, a condition is included which addresses the protection of any archaeological sites that may be found during the construction phase of the proposed works.

Through implementation of recommended conditions, as well as attenuation and treatment of stormwater discharges in accordance with the best practicable option, the life supporting capacity of water, soil and ecosystems will be safeguarded and any adverse environmental effects of the works will be mitigated.

With reference to sections 6(e), 7(a) and 8 of the RMA, the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga has been considered. HDC has carried out consultation with the relevant iwi authorities as part of Variation 1 (integral to the NOR) and this process identified that the most significant issue is the quality of the water resources of the Heretaunga Plains Unconfined Aquifer or Te Raupare Stream. This has been a key focus of both the Variation and NOR, and the suite of rules and conditions that will apply is sufficiently robust to ensure that water quality will be protected.

Overall, we find that the Notice of Requirement is consistent with Part 2.

## 9.0 CONCLUSION AND RECOMMENDATIONS

We conclude that the proposed designation is reasonably necessary for the Requiring Authority to achieve its objectives. The designation method would secure the land for the project and, unlike a resource consent, its inclusion in the District Plan would clearly indicate the proposed works and activities to the community.

We are satisfied that alternative options have been appropriately and adequately considered on behalf of the Requiring Authority, as discussed above.

### Recommendation to the Requiring Authority

It is recommended that:

- (i) Pursuant to Section 168(4) of the Resource Management Act 1991, the Notice of Requirement to designate land for service corridor (**Omahu Industrial Infrastructure Servicing Corridor**) is **confirmed** subject to the modifications and conditions recommended in Section 12 of this decision, and included in the Proposed Hastings District Plan, with a ten (10) year lapse period.

The Notice of Requirement more fully describes the Requirement as:

- (i) A corridor of land extending in a north west direction from the corner of Omahu Road and Raupare Road to Kirkwood Road (which is on the southern side of Omahu Road);
  - (ii) The corridor of land is approximately 3km long;
  - (iii) The corridor is 24 metres wide at the points where there will be a stormwater soakage area;
  - (iv) The corridor is approximately 7 metres wide where there is no stormwater soakage area, but provides for maintenance access, water and waste water pipes;
  - (v) The corridor is set back between Omahu Road at a distance varying from approximately 150 metres and 300 metres.
- (ii) That the necessary amendments be made to the Proposed District Plan incorporating:
  - Amendments to the Proposed District Plan maps to show the additional areas of land to be designated.
  - Amendments to the Designation Schedule, including insertion of the final version of the conditions.
- (iii) That pursuant to Section 176A (1) and (2) (c) of the Resource Management Act 1991, the request to waive the requirement for an Outline Plan **be accepted**

## 10.0 REASONS

### The reasons for these recommendations are:

1. The designation is reasonably necessary for achieving the objectives of the Requiring Authority.
2. Adequate consideration has been given to alternative sites, routes, or methods of achieving the project.
3. It is unreasonable to expect the Requiring Authority to use an alternative site, route or method.
4. The designation is generally in accordance with the relevant regional and district planning documents.
5. The designation is generally in accordance with Part 2 of the Resource Management Act 1991.
6. The amendments that have been made to the proposal as a result of further investigations, or in response to submitters' concerns, are within the scope of changes that can be authorised.
7. Restrictions, by way of conditions, imposed on the designation have been included to avoid as far as practicable, remedy or mitigate adverse environmental effects of the designation.

## 11.0 RECOMMENDED CONDITIONS

### GENERAL

1. Except as modified by the conditions below, and subject to final design, the Project shall be undertaken in general accordance with the information provided by the Requiring Authority in the Notice of Requirement dated May 2016 and supporting documents referenced as HDC Ref:54875#0074. If a conflict arises between any conditions of this designation and the Notice of Requirement, the conditions of this designation shall prevail.
2. That the property subject to the designation and identified as **PID 101508 - K & K Bayley, Bayley Family Trust, Totara Hastings Ltd, Rimu Hastings Ltd** be altered in accordance with Figure (a) below:

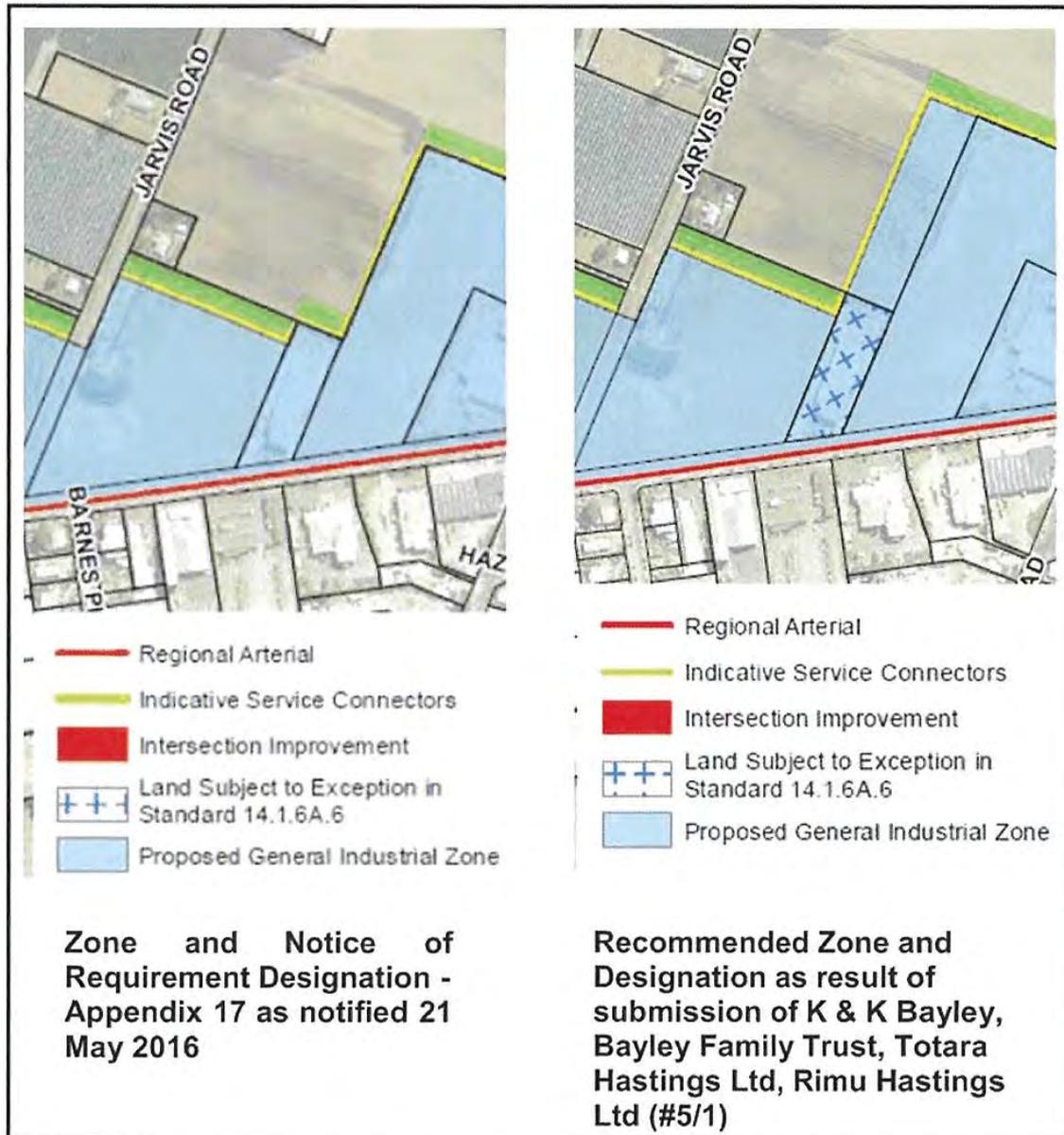
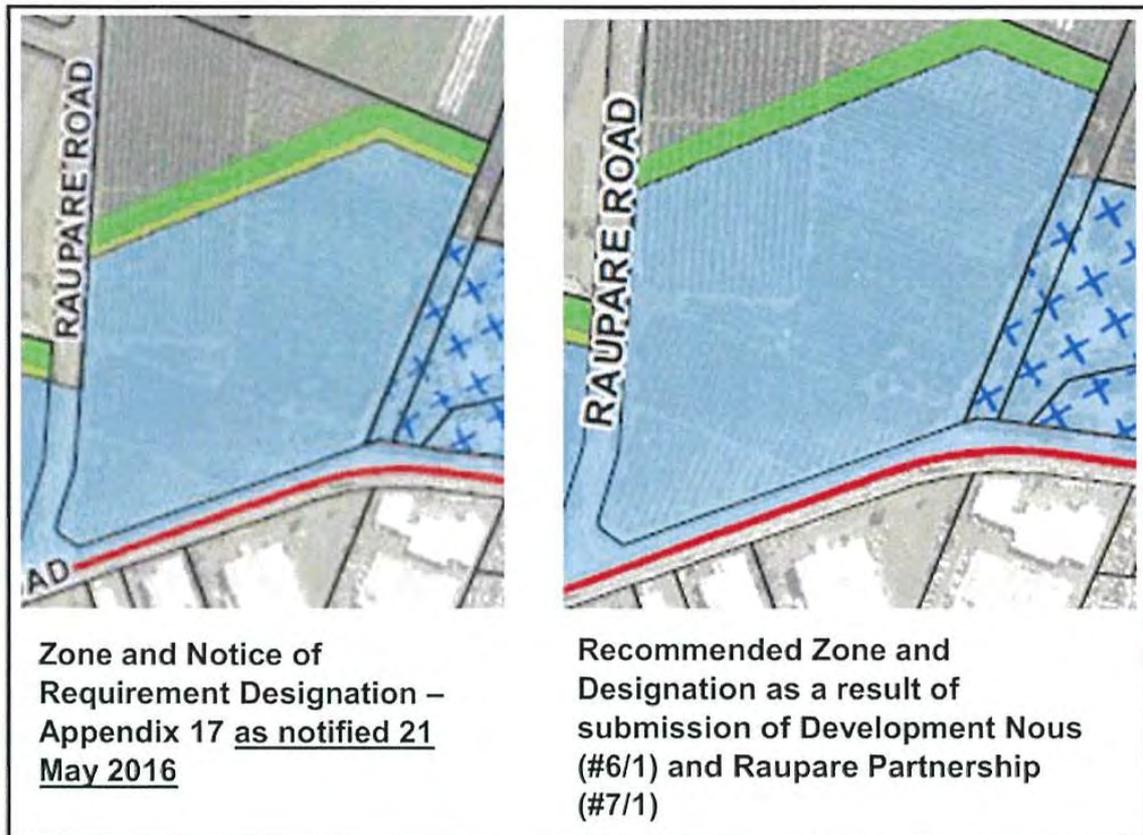


Figure (a) K & K Bayley, Bayley Family Trust, Totara Hastings Ltd, Rimu Hastings Ltd

- That the property subject to the designation and identified as **PID 55033 - Raupare Partnership** be altered in accordance with Figure (b) below, subject to a satisfactory agreement being entered into by the landowner with Hastings District Council to ensure appropriate protection of access to the infiltration basin.



**Figure (b) Raupare Partnership PID 55033**

## **MANAGEMENT PLANS**

4. The following management plans listed below shall be submitted to the Environmental Consents Manager, Hastings District Council (or Nominee) for approval prior to the commencement of any construction activities:
  - a. Construction Management Plan (CMP);
  - b. Dust Management Plan;
  - c. Traffic Management Plan; and
  - d. Construction Stormwater Management Plan
  
5. The final plans listed in Condition 4 (with the exception of the Construction Stormwater Management Plan) shall be submitted to the Environmental Consents Manager at least 20 working days prior to the commencement of any construction activities for certification that the plans are generally in accordance with the draft plans, including their objectives and environmental performance standards.
  
6. Construction activities shall not commence until the management plans have been certified by the Environmental Consents Manager (or Nominee) and written confirmation of certification from the Environmental Consents Manager (or Nominee) has been received. If a written response is not provided by the Environmental

Consents Manager (or Nominee) within 20 working days of the Requiring Authority/consent holder submitting the management plans for certification, the certification shall be deemed to be confirmed.

7. The Requiring Authority/consent holder may amend the management plans (including the approved Construction Stormwater Management Plan referred to in Condition 5) at any time. Any changes shall remain consistent with the overall intent of the relevant management plan and shall be submitted to the Environmental Consents Manager for certification, following the same process outlined in Conditions 3 to 5 above. Construction activities subject to the amendment shall not commence until the amendment has been certified by the Environmental Consents Manager.
8. All construction works shall be carried out in general accordance with the CMP and all supporting management plans required by these conditions.

#### **CERTIFIED MANAGEMENT PLANS TO BE HELD ON-SITE**

9. A copy of the certified versions of the management plans shall be kept on each construction site to which the plan relates at all times and the Requiring Authority/consent holder shall ensure that the contractors and all key personnel are aware of each plan's contents.

#### **CONSTRUCTION NOISE**

10. That all work shall be limited to between the hours of 7:30am to 6:00pm, Monday to Saturday. No work is to be undertaken on Sunday or during Public Holidays.
11. All works shall be so conducted as to comply with the provisions of New Zealand Standard NZS 6803:1999 "Construction Noise".

#### **EARTHWORKS / DUST**

12. That while the earthworks are being undertaken and prior to re-vegetation, areas of exposed earth shall be regularly dampened with water to ensure that no wind born dust is able to be deposited outside the property boundaries.
13. That all areas of earthworks associated with the Omaha Infrastructure Servicing Corridor (includes stormwater soakage areas) shall be re-grassed, planted or developed to an erosion proof state within 1 month of the earthworks being completed, to the satisfaction of the Environmental Consents Manager (or Nominee), Hastings District Council.

#### **CULTURAL/ARCHAEOLOGICAL DISCOVERY PROTOCOL**

14. In the event of any archaeological site, waahi tapu, taonga or koiwi being discovered during the works authorised by this designation/consent, the Requiring Authority/consent holder shall immediately cease work at the affected site and secure the area. The Requiring Authority/consent holder shall contact the Council to obtain contact details of the relevant hapu and/or marae. The consent holder shall then consult with the appropriate tribal entities and Heritage New Zealand Pouhere Taonga, and shall not recommence works in the area of the discovery until the relevant Heritage New Zealand Pouhere Taonga and appropriate tribal entity approvals (including associated affected party approvals) to damage, destroy or modify such sites have been obtained.

## MANAGEMENT OF POTENTIAL SOIL CONTAMINANTS

15. That no construction works commence within the Designated Servicing Corridor until the required resource consent(s) are obtained under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.16. At the completion of the works a completion report and as-built plan shall be provided to the Environmental Consents Manager, Hastings District Council (or Nominee), Hastings District Council, to confirm the location of the contaminated soil as a result of the construction of the access and servicing corridor.

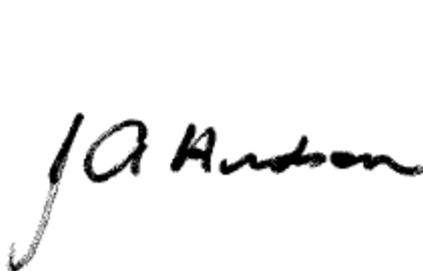
## TRAFFIC MANAGEMENT

17. That the entry and exit points along the designated corridor be constructed in accordance with the Engineering Code of Practice 2011.
18. That gates be installed at the points where the service corridor meets Twyford Road, Jarvis Road and Raupare Road.
19. That a Traffic Management Plan be submitted to the Hastings District Council for approval of the Environmental Consents Manager (or Nominee), Hastings District Council, prior to construction commencing on the Infrastructure Servicing Corridor and for each individual stormwater soakage areas where the access points are off Twyford Road, Jarvis Road and Raupare Road.

### Advice Notes

- (a) *A portion of the land subject to the designation is within an earthquake hazard and fault avoidance area. Further assessment is therefore required of the proposed works and any necessary consents obtained prior to construction within the identified area.*
- (b) *It is recommended that the Requiring Authority investigate the use of pumice sand in the infiltration basins as an additional method of treating sediment in the basins.*

DATED AT AUCKLAND THIS 14TH DAY OF MARCH 2017



JENNY HUDSON (CHAIRPERSON)



ALAN PATTLE (COMMISSIONER)