

IN THE MATTER OF: The Resource Management Act 1991

AND

IN THE MATTER OF: An application under the aforesaid Act, 1991 by the Minister of Education

APPLICATION NUMBER RM: 230077

Hearings application for a Notice of Requirement for Designation – to designate land for educational purposes to enable the relocation of Te Kura Kaupapa Māori O Ngaringaomatariki to 9 Tawa Avenue, Kaiwaka and to enable the use of the site as a Kura Kaupapa Māori for years 0 to 13 and a Puna Reo.

The property in respect of which the application is made, is situated at 9 Tawa Avenue, Kaiwaka being Lot 5 DP 388478.

HEARING

Before the Independent Hearings Commissioner of the Kaipara District Council, on the 21 November 2023.

Independent Hearings Commissioner William (Bill) Smith was appointed to hear the Notice of Requirement lodged by the Minister of Education for a new requirement for the above designation. The Notice of Requirement was lodged in accordance with the Resource Management Act 1991 (“the Act”) with the Kaipara District Council (KDC) and referenced RM: 230077.

Present: **Independent Hearings Commissioner William (Bill) Smith**

Applicant: **Minister of Education**

Mr D Sadlier and Ms A Devine – Counsel, Ellis Gould for Minister of Education.

Mr C Huggins – Director Land Investment and Planning, Ministry of Education.

Ms L Leitch – Senior Acoustic Consultant, Tonkin and Taylor Ltd.

Mr C Shields – Senior Transport Planner, Tonkin and Taylor Ltd.

Mr N Scarles, Senior Landscape Architect, Jasmex.

Mr T Ensor – Principal Planner, Tonkin and Taylor Ltd.

Consent Authority: Kaipara District Council

Mr A Hartstone, Consultant and Reporting Planner

Ms J Tollemache, Council's Technical Support Officer

Submitters/Observes

There were a large number of submitters and others (observers) in attendance, with some wishing to be heard, some not wanting to be heard and some purely supporting those present. Also, at the start of the hearing the tamariki (children) from the existing Kura (school) were present with some of the staff and parents from the Kura. Listed below are those that were heard at the hearing and who also, in some cases, represented other submitters who either could not attend or did not wish to speak in person. The list included all the names that were provided to me at the start of the hearing and I read out each name in the order shown but did offer the opportunity to all submitters to be heard earlier if they had work, time or other commitments. I have shown the submitter number, the name, whether they support or oppose the NoR and whether they were heard, not heard, tabled evidence or were heard and also spoke on behalf of other submitters. After going through the list, I did ask all those still in attendance whether there was anyone else present who had indicated a wish to be heard. No one responded.

Submission #	Submitter	Support or oppose?	Comments
C5	Thomaseena Paul	Support	Heard
C166	Stephen Matthews	Support	Heard
C44	Joshua Moana Hoani Parone Wikiriwhi-Heta	Support	Not Heard- Withdrew
C65	Fiona Marks-Heemi	Support	Heard
C68	Shelly Lambert	Support	Not heard
C70	Graham Paniora	Support	Not Heard
C89	Luke Williamson	Support	Heard
C104	Te Aroha Dawn Marshall	Support	Not heard
C121	Wikitoria Edmonds	Support	Not heard
C123	Ana Morgan	Support	Not heard – Withdrew
C124	Alamein Drummond	Support	Not heard – Withdrew
C144	Anita Hemara	Support	Not heard – Withdrew

C152	Te Arahi Kapea	Support	Not heard – Withdrew
C161	Tawhiri Peters	Support	Not heard
C171	Karen Williamson	Support	Heard
C230	Brenda Salt	Support	Withdrew wish to be heard
C231	Leon Salt	Support	Withdrew wish to be heard
C306	Debroah Nathan	Support	Heard
C307	Elijah Joshua-Bennett-Kuarju	Support	Heard
C326	Anthony Thompson	Support	Heard
C331	Kerri Mahara Nathan	Support	Not Heard
C333	Cindy Hampsall c/- Environs Holding Ltd	Support	Heard
C336	Alice Morris c/- Heritage New Zealand	Support	Not heard
C344	Reno Hemi Skipper (Principal)	Support	Heard
C349	Lincoln Paikea	Support	Not heard
C350	Zakarigh Erumiha Paikea	Support	Not heard
C383	Ruth Lemon	Support	Not heard
C387	Aronui Wata	Support	Not heard
C389	Cataleya Nahona	Support	Tamariki of the Kura
C393	Marino Waipo	Support	Tamariki of the Kura
C397	Te Ahurmowai Marsh/Maihi	Support	Tamariki of the kura
C398	Te Ao Marama Martin	Support	Tamariki of the kura
C395	Maikaere Mahona	Support	Tamariki of the kura
C212	Mike Henderson	Support	Not Heard
C289	Leonie Hayden	Support	Not heard
C1	Allan Leslie	Oppose	Heard
C8	Susan and Gordon Joll	Oppose	Heard
C194	Barbara Leslie	Oppose	Heard
C210	Fiona, Ian, Greg Hunter and Jim Hogg	Oppose	Heard
C293	Sydney Wayne and Linda Elizabeth Leslie	Oppose	Heard
C347	Elizabeth Thaisen	Oppose	Tabled Evidence
C356	Diamond Family Trust – Jenni deVilliers	Oppose	Heard
C337	Greg Pinker	Oppose	Heard and who spoke on behalf of submitters C368 to C379

C368	Esther and Epili Emmanuel and Grace	Oppose	C368-C379 All submitted under visionarycreations@xtra.co.nz
C369	Dean and Vicki Gray	Oppose	
C370	John Leslie	Oppose	
C371	Catherine Barr	Oppose	
C372	Keirin and Chelsea Dheda	Oppose	
C373	Roger and Ann England	Oppose	
C374	Linda Leslie	Oppose	Heard
C375	Bill and Mal Warren	Oppose	
C376	Simon and Lesley Armitage	Oppose	
C377	Noeline Anderson	Oppose	
C378	Edward Fitzmaurice	Oppose	
C379	Peter Anderson	Oppose	
C409	Dawson Hunter	Oppose	C210 Fiona Spoke on D Hunters behalf
C167	Richard Te Haara		Observing only
C176	Sheryl Tomas (Puha)		Observing only

Opening

On behalf of Te Uri o Hau (local Hapu) Mr Skipper, other whānau and Tamariki from Te Kura Kaupapa Māori o Ngāringaomatariki commenced the hearing with a karakia tīmatanga, mihi and waiata.

Opening (formal) of the meeting and Procedural Issues

At the start of the hearing, I explained the format of the hearing and also that I had dealt with two issues and requests from some submitters for the hearing to be adjourned until the New Year. These were dealt with by me and the requests were denied. The issues related to the following:

- The acceptance of the Archaeological Report dated 29 April 2023 which had not (unfortunately) been circulated with the application and was received by me on Friday 10 November 2023 and placed on the Council's website. After reading the report and referring to the AEE submitted with the application it was very clear to see that the conclusions/findings in the AEE and in the Report were the same/similar and that any person, who wished to, would have been aware of the applicant's opinion that there were no Archaeological sites on the proposed school site and no sites or features are likely to be modified by future development of the school. A standard accidental archaeological protocol will be in place when earthworks are undertaken.
- The acceptance of the applicant's expert evidence, corporate evidence and legal submissions which some submitters considered to be further 'submissions' to the

application and which they did not have time to respond to. I outlined that the legal submissions and evidence from the applicant were all received correctly and in line with the directions and that NO further submissions had been received to the application. I also outlined that in regards to Mr Huggins Corporate Evidence that I had sought legal advice through the Council and that the legal advice that I had received, and had accepted, was that the evidence was corporate evidence of a factual nature, rather than expert opinion. A copy of the legal advice to me was tabled at the hearing and copies were made available to submitters.

Introduction

I (Commissioner) have been delegated full responsibility to consider submissions and determine the Council's recommendation to the Requiring Authority pursuant to Section 34 and 34A of the RMA. Accordingly, the recommendation in this report is made directly to the MoE. In relation to the NoR I am required to consider whether the MoE has satisfied the statutory tests under Section 171 of the RMA, which are set out later in this report. Having regard to these matters, under section 171 (2) I may recommend to the Requiring Authority that it confirm or modify the requirement, impose conditions, or withdraw the requirement.

The MoE must make a decision within 30 working days of receiving the recommendation as to whether or not it is accepted, including the conditions. The MoE may only modify the requirement if that modification has been recommended in this report, or the modification is not inconsistent with the NoR as notified. If the decision on the recommendation is not appealed, the designation will then be included in the Kaipara District Plan.

Notwithstanding the level of agreement between the MoE and KDC Reporting Officer and other experts, and submitters in opposition and support and in attendance at the hearing it is my duty as an Independent Commissioner to consider the proposal without bias or pre-determination and I have taken a broad view of the issues within the statutory framework that guides my decision-making.

My overall conclusions and reasons for the recommendation and decisions are covered later in this report. For a full understanding of the proposal (NoR), the background documents lodged on behalf of the MoE and the planning report prepared under section 42A of the Act are relevant. Copies of those documents as well as all the submissions and evidence presented at the hearing and the actual submissions lodged in support and opposition to the NoR are held by the KDC and can be viewed on the Council's website.

My recommendation is that the NoR should be confirmed subject to conditions which are shown towards the end of this report along with the reasons for my recommendation.

Background Information for Submitters

As there were a significant number of submitters and those who gave evidence at the hearing (mainly lay people) who may or may not be conversant with hearing proceedings and what a Notice of Requirement (NoR) and designation are I have set out below some of the information that was included in the s42A Report (Mr Hartstone's Report) and the AEE submitted with the application for the purpose of providing some clarity to the submitters and also to set out what a NoR and designation are, what they allow for, and the process prescribed in law in making a decision on a NoR application and to an extent the Council's (and in this case) my role in the proceedings.

Section 168 of the RMA provides the MoE (Requiring Authority) to give notice to the Council of a requirement for a designation for a project or work (called a NoR). The project or work in this case is the establishment and operation of a Kura and Puna Reo on the subject site. A designation is a planning tool used to define the extent of public assets and any associated works and it authorises the MoE in this case to undertake works and activities to manage and maintain any public asset.

Designations are often referred to as 'spot zonings' on a specific site intended for a specific purpose and in this case, the result of the NoR process, should the designation be confirmed, is the identification of the subject site on planning maps as being designated for Educational Purposes, which allows the MoE to develop the site for that purpose subject to any conditions that may be imposed.

The Council (me as Commissioner) are **required** to follow a process as set out in Section 169 of the Act to consider the NoR which has been subject to public notification as requested by the MoE . A substantial number (459) of Submissions were received and the hearing which was required to consider them, the s42A Report, the evidence (expert and lay) and legal submissions has been held.

Section 171 of the RMA sets out the matters that Council (me) must have 'particular regard to' when considering the application and submissions received. Section 171 was set out in full in the s42A report and also referenced in the legal submissions from Mr Sadlier on behalf of the MoE.

My recommendation under Section 171(2) is then referred to the MoE for consideration under Section 172 of the RMA. The MoE is then required to make a decision on the recommendation made by me, where any decision may be to accept or reject the recommendation in whole or in part.

Any works proposed on a designated site are generally subject to an Outline Plan (OP). An OP is required under Section 176A of the RMA and provides the Council with the opportunity to review specific details for proposed works on a designated site, and request changes if it considers such changes are necessary. It does not allow the Council to enforce any changes to the activity the OP relates to, nor is the OP subject to consideration of affected persons as has happened with the NoR – in other words the OP will not be publicly notified and submissions allowed.

The specific engineering design(s) for servicing (water, stormwater, wastewater etc) of the site, the design of the buildings, landscaping etc will be required as part of the OP and other processes such as the building consent process and may also include addressing Northland Regional Council (NRC) standards for wastewater disposal to land and possible other consents required.

Section 6 of the AEE also referred to 'Other Consents and Approvals' – which illustrates the nature of the NoR and any resulting designation, where several other statutory processes and requirements need to be met before any development on the site may proceed in accordance with a designated purpose. These were listed under the headings: Resource Consent under the NES Soil, NES Freshwater, Regional Consents and Archaeological Authority.

Once the NoR is confirmed, the Minister will be able to undertake works to establish the Kura on site, in accordance with the purpose of the designation. Section 176A of the Act requires requiring authorities to submit an OP to the local authority prior to undertaking works in accordance with a designation, where the necessary details of work to be undertaken were not included in the designation itself. This is something that happens with nearly all designations. The application from the MoE stated that as HAIL activities (NES.Soil) have previously occurred on the site, resource consent will be required under the NES Soil and that once the detailed design and earthworks volumes are known the appropriate consent will be sought under the NES Soil.

Also, there were some natural wetlands and intermittent streams identified on the site, therefore, there is the potential that resource consent will be needed under the NES Freshwater. The NES Freshwater regulations consider vegetation and earthworks within, or within a 10 m setback, from natural inland wetlands, a non-complying activity; and diversions of water within a 100 m setback from natural wetlands as a non-complying activity unless hydrological neutrality is maintained. Once the specific site design details are confirmed, a further planning assessment will confirm any consent requirements under the NES Freshwater.

Once designs have been developed by the MoE (OP stage), it will identify and apply for any regional consents required for the construction of the Kura from Northland Regional Council. It was anticipated by the MoE that regional consents will be required for earthworks, discharge to land and/or water (e.g. stormwater) and potentially consents to take and use water for potable supply. The actual resource consent requirements will be confirmed based on the specific site design details.

The s42A report provided comment (paragraph 6.22 to 6.24) on the provision of on-site wastewater treatment and disposal which was subsequently dealt with by the MoE in a Wastewater Feasibility Assessment which was accepted by the Council's Reporting Engineer. However, the specific engineering design for servicing of the site will be required as part of the building consent process noting that this would include addressing the Northland Regional Council's standards for wastewater disposal to land. Mr Hartstone commented on the discussions between the Council and MoE and that in principle a connection to the Kaiwaka public system was available at the MoE cost.

As I have dealt with the issue of the Archaeological Report not being received until 10 November 2023 (which was unfortunate) I can confirm for the submitters that The Heritage New Zealand Pouhere Taonga Act 2014 requires an archaeological authority to be obtained for

works that may modify an archaeological site. This includes both known and previously unrecorded sites where there is evidence of pre-1900 human activity. Both the Archaeological Report and the New Zealand Archaeological Associations 'Archsite' database did not identify any known sites on or near the proposed works site, nor was there any reason to suspect that archaeological items or sites will be discovered during the physical works. However, should accidental discovery of archaeological material occur during construction, protocols will be initiated to ensure compliance with the Heritage New Zealand Pouhere Taonga Act 2014.

The procedure for dealing with this NoR was the same as most other NoRs with nothing (in my opinion) out of the ordinary with it although I accept that some submitters may have a different view. Once the NoR was advertised and submissions (459) lodged the application and submissions were reported on by Mr Hartstone in his s42A Report. My First Direction was issued on the 3 October 2023 and this was generally complied with although I acknowledge that some submitters were not aware (and I accept that those not involved in consent hearings before could make this mistake) of the difference between submissions and evidence and also expert evidence and lay evidence.

The notification period commenced on the 17 July 2023 and closed on the 14 August 2023 and only those submissions (the vast majority) received during that period plus a few late submissions were accepted. For clarity I can confirm that the majority of submissions were from lay people and the MoE did not submit any submission.

My Direction followed a format that was very similar to the Directions used in most Resource Consents and NoR that I have been involved in or are aware of and it was to assist all parties to the hearing to understand the format for providing evidence. Copies of my two directions are on the Council's website for viewing.

As I stated in my first direction the purpose of it was to provide the opportunity for me and all the other parties (all the submitters who wished to be heard, the reporting officer, experts, counsel and other people appearing before me at the hearing) to have read and considered any legal submissions, evidence (expert and lay) or statements in advance of the hearing to assist in understanding the case being presented. This benefits everyone attending the hearing. I also stated that I will have read all the pre-circulated material before the hearing, so there will be no need for it to be read out. An executive summary maybe read out or the key points highlighted and this is what the MoE did with expert evidence and legal submissions and what some submitters did.

Description of the Proposed Activity

Mr Hartstone in Sections 3.0 to 3.7 outlined the Proposed Activity and I have shown this below in 'italics':

"Section 4 of the application prepared by Tonkin and Taylor Limited dated April 2023 ('the application') sets out the nature of the proposed designation sought. Briefly, the application states that the Minister of Education '....gives notice of his intention to designate an area of 4.6 ha of land located at 9 Tawa Avenue for 'Educational purposes' for use as a Kura Kaupapa Māori for Years 0 – 13, and a Puna Reo.....Consequently, the designation will enable the relocation of Te Kura Kaupapa Māori O

Ngāringaomatariki to a suitable site, and its future expansion to accommodate secondary school students.'

It is noted that in this case the designation for 'Education Purposes' is specific to use of the site by a Kura Kaupapa Māori and a Puna Reo. The Notice of Requirement does not provide for any other activity that may fall within the definition of 'Educational Purposes' to be provided for on the site. A set of draft conditions offered as part of the NoR is contained at Section 9 of the application. Draft condition 1.1 helpfully includes a list of activities a) – g) that are considered to fall within the scope of the designation sought for 'Educational Purpose'.

Section 4.4 of the application requests a lapse period of 15 years for the designation sought, noting that the default lapse period for a designation is 5 years under Section 184 of the RMA.

A summary of the information provided that is considered to form part of the application is set out below. The application as lodged included the following supporting information and technical reports:

- a) 'Assessment of Environment Effects' prepared by Tonkin and Taylor Limited dated April 2023*
- b) 'Landscape Visual Assessment' Report prepared by Jasmax Limited dated April 2023*
- c) 'Integrated Transport Assessment' Report prepared by Tonkin and Taylor Limited dated February 2023*
- d) 'Geotechnical Pre-Purchase Investigation and Assessment' Report prepared by Tonkin and Taylor Limited dated November 2021*
- e) 'Ecological Opportunities and Constraints Assessment' prepared by Tokin and Taylor Limited dated 30 July 2021*
- f) 'Detailed Site Investigation' Report (Contaminated Soils) prepared by Tonkin and Taylor Limited dated November 2021*
- g) 'TKKOM Ngāringaomatariki Relocation – Acoustics Assessment' Report prepared by Tonkin and Taylor Limited dated March 2023.*
- h) Letters of Support from Te Runanga o Ngāti Whatua and Te Uri o Hau*

Subsequent to lodgement of the application, the information provided was reviewed by various technical experts either as KDC staff or consultants engaged by KDC. As a result, a request for further information was issued on the 8th May 2023. The further information sought was provided in a complete response provided under cover of email dated 26th June 2023. Further information addressing on-site wastewater treatment and disposal was provided under cover of email dated 10th July 2023.

The Section 92 response included provision of an additional technical report entitled 'Wastewater Feasibility Assessment' prepared by Ministry of Education dated 7th July 2023. Following receipt of this report, further discussions were held regarding the possibility of the site being connected to the Councils reticulated sewer scheme for Kaiwaka. Advice was received from the KDC Infrastructure staff and provided to the applicant under cover of email dated 11 July 2023 advising the Ministry that 'I received advice from KDC engineers this morning that a wastewater connection is possible. This would be conditional on the results of a capacity assessment of the existing reticulation from the connection point, which would need to be done at Min of Eds cost. I've cc'ed David Usmar of KDC into this advice as he

would oversee the capacity assessment – it may be best to contact him directly at this point to make any arrangements to pursue that option.’ The MoE has not provided further advice on the option of connecting to the reticulated public sewer system at the time of preparing this report.

No changes to the application have been made since the time of lodgement.”

Mr Hartstone also referred to the description of the site and surrounds which was provided in Section 3.0 of the application and considered that this, read in conjunction with the Landscape Visual Assessment report prepared by JASMAX Limited dated 6 April 2023 (‘the Landscape report’), provided an accurate and detailed description of the site and surrounds. Having visited the site and surrounding area on Friday 3 November 2023 and after the hearing on 21 November 2023 I agree with the description and have no further comment.

Notification and Submissions

The applicant formally requested public notification as part of the application as lodged. The notification period commenced on the 17 July 2023 and closed on the 14 August 2023. A total of 459 submissions were received, inclusive of the late submissions that were formally accepted by me following the close of submissions. Mr Hartstone in 4.2 to 4.5 of his Report outlined the submissions and issues raised and I have shown his comments below in ‘italics’. I had read all of the submissions before the hearing and in regards to the late submissions I read them before deciding to accept them. I agree with Mr Hartstone’s analysis of the submissions and have taken the submissions into account when making my recommendation and have re-read those submissions from those that attended and spoke at the hearing.

“Of those submissions received, 31 submissions (including a joint submission lodged by 13 persons) oppose the NoR, while the balance support it. Of the 459 submissions received, 52 have indicated a wish to be heard. By necessity due to the volume of submissions, a summary of the submissions and a copy of each submission is provided as an attachment to this report, and individual submissions are not identified and addressed in this report. None of the submissions received have any technical information or reports attached.

Those issues that have been raised in the submissions that are relevant to the application and can be considered are briefly summarised below:

- *Positive effects arising from the establishment and operation of the Kura and Puna reo, including educational opportunities / pathways, improved site (more central location) compared to the existing Kura site, and will increase cultural and language capacity in Te Uri o Hau.*
- *Traffic safety concerns relating to increased traffic and pedestrian flows on Settlement Road and Tawa Avenue.*
- *Concerns regarding the adequacy of on-site servicing, particularly waste-water treatment and disposal and water supply for fire-fighting purposes.*
- *Concerns regarding noise generated by school activities, including after-hours activities.*
- *Concerns about nuisance effects such as rubbish and dust*

- *Concerns regarding loss of amenity values by increased noise and traffic, loss of privacy and rural vista / views.*

Some matters have been identified in the submissions received that are considered to fall outside the scope of the current application. These matters are briefly summarised below:

- *The potential devaluation of properties is not an environmental effect under the RMA and cannot be considered when assessing the application.*
- *Some submissions appear to suggest that KDC will be liable for costs associated with infrastructure to support the proposed Kura and Puna reo. However, the MoE will be responsible for any and all funding required to construct and operate activities on the site, and provision of infrastructure that may be required, as would any other private developer or person developing a site. There is no suggestion that KDC will incur any costs should the designation be confirmed and works undertaken.*
- *There are comments in some submissions suggesting that the Kaipara Spatial Plan should be used to inform the identification of a site for a Kura or school. There is no legal impediment to the MoE seeking a NoR outside the development of any spatial plan or proposed district plan.*
- *Concerns are expressed regarding a lack of consultation or meetings regarding the proposal. The RMA does not require any applicant (including MoE in this case) to consult with any person, either prior to or after lodgment of any application, although it is recognised as good practice. Section 8 of the application provides a summary of the consultation undertaken with the community at the time of lodgment of the NoR.*
- *There are comments regarding potential for increased crime associated with truancy and other social issues. There is no evidence to suggest that any such adverse social issues may arise as a result of a school being established in any particular location.”*

Statutory Procedures

This section of the report sets out what a Notice of Requirement and Designation are, what they allow for, and the process prescribed in law in making a decision on a NoR application.

Section 168 of the RMA provides for a Requiring Authority (in this case Minister of Education - MoE) to give notice to a territorial authority (in this case KDC) of a requirement for a designation for a project or work (called a NoR). The project or work in this case is the establishment and operation of a Kura and Puna Reo on the subject site. A designation is a planning tool used to define the extent of public assets and any associated works. It authorises a requiring authority (being the MoE in this case) to undertake works and activities to manage and maintain any public asset. Designations are often referred to as 'spot zonings' on a specific site intended for a specific purpose. In this case, the result of the NoR process, should the designation be confirmed, is the identification of the subject site on planning maps as being designated for Educational Purposes, which allows the MoE to develop the site for that purpose subject to any conditions that may be imposed.

The Council was required to follow the process as set out in Section 169 of the RMA to consider the NoR. The application has been subject to public notification as requested by the MoE in the NoR application. Submissions were received and a hearing has been held.

Section 171 of the RMA sets out the matters that Council (Me – Commissioner) must have 'particular regard to' when considering the application and submissions received. Section 171 is set out in full below.

"171 Recommendation by territorial authority

- (1A) *When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.*
- (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) *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 recommendation on the requirement.*
- (1B) *The effects to be considered under subsection (1) may include any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation, as long as those effects result from measures proposed or agreed to by the requiring authority.*

- (2) *The territorial authority may recommend to the requiring authority that it—*
- (a) *confirm the requirement:*
 - (b) *modify the requirement:*
 - (c) *impose conditions:*
 - (d) *withdraw the requirement.*
- (2A) *However, if the requiring authority is the Minister of Education or the Minister of Defence, the territorial authority may not recommend imposing a condition requiring a financial contribution (as defined in section 108(9)).*
- (3) *The territorial authority must give reasons for its recommendation under subsection (2)."*

Mr Sadlier, Mr Ensor and Mr Hartstone helpfully set out and/or referred to the statutory requirements that I had to take into account and I have done so when making my recommendation to the MoE. The recommendation made by me under Section 171(2) is then referred to the MoE for consideration under Section 172 of the RMA. The MoE is then required to make a decision on the recommendation made by me, where any decision may be to accept or reject the recommendation in whole or in part. The decision-making process differs from a resource consent application, with the Council making a recommendation to the MoE rather than a final decision on the NoR. Appeal rights apply under section 174 of the Act which sets out the appeal process and confirms the Environment Court's discretion in determining any appeals.

Mr Hartstone's s42A report provided me with his assessment of the NoR application against the matters prescribed under Section 171, and provided me with a recommendation for me to consider under Section 171(2) on behalf of the Council.

Mr Hartstone's report also noted that any works proposed on a designated site are generally subject to an OP. An OP is required under Section 176A of the RMA and provides a Council with the opportunity to review specific details for proposed works on a designated site, and request changes if it considers such changes are necessary. It does not allow a Council to enforce any changes to the activity the outline plan relates to, nor is the outline plan subject to consideration of affected persons.

Section 171(1) and (1A) Assessment of Effects on the Environment

With regard to Section 171(1A), Mr Hartstone's opinion was that there are no known issues in the consent application or as a result of the submission process that raise questions of trade competition or the effects of trade competition. Having read everything, I agree with his opinion.

Mr Hartstone's position adopted in his report was that the assessment of effects on the environment under section 171(1) of the RMA provided in the NoR application supported by expert evidence and/or technical information is accepted and adopted for the purpose of his report. This being subject to his assessment in his report which focused generally on those matters raised in the submissions. His assessment used the headings as set out in the NoR

application with additional headings included to address site servicing and the lapse period being sought by the MoE which was for 15 years rather than the standard 5 years. The issues covered in Mr Hatrstone's report are shown below (heading only):

- Landscape character and visual amenity effects.
- Traffic and transportation effects.
- Noise effects.
- Natural hazard effects.
- Effects associated with contaminated land.
- Cultural effects.
- Ecological effects.
- Site servicing effects.
- Positive effects.
- Lapse period.

Mr Hartstone's conclusion/opinion on the environmental effects was outlined in paragraphs 6.28 to 6.32 of his report and I have shown this below in 'italics':

"Based on the above assessment, it is considered that the adverse effects arising from the proposal on the receiving environment as set out in the information provided generally will be acceptable. While the concerns expressed in submissions are acknowledged, a number of the issues particularly related to noise, visual amenity, and site servicing matters can be addressed through conditions and specific design of components of the proposal.

Section 6 of the application refers to 'Other Consents and Approvals' – this illustrates the nature of the NoR and any resulting designation, where several other statutory processes and requirements need to be met before any development on the site may proceed in accordance with a designated purpose.

The RMA does not require all adverse effects to be avoided. Invariably, a proposal of any significant scale such as that proposed will result in some form of adverse effect on the environment. In this case, MoE are seeking a designation on a piece of land for Educational Purposes. The information provided with the application for the proposed activities covers a wide suite of adverse effects and proposes means to avoid or mitigate these effects. Much of the more detailed information will be considered through other statutory processes such as the outline plan, building consent, and potentially resource consent process should activities be undertaken following any confirmation of the designation.

A number of conditions have either been offered as part of the NoR application or identified as necessary in responding to concerns raised. It would be beneficial for the applicant to address the matters identified above notably in relation to the proposed screening vegetation and cultural conditions.

Positive effects associated with the provision of public infrastructure such as schools and Kura is a relevant consideration in considering the extent of effects on the environment. The positive effects arising

from allowing the requirement are considered to weigh heavily in favour of allowing the NoR to be confirmed with conditions.”

His conclusion/opinion was that the positive effects arising from allowing the requirement are considered to weigh heavily in favour of allowing the NoR to be confirmed with conditions.

Evidence Heard/Considered

I heard submissions and evidence from the applicant’s legal Counsel, the applicant’s expert witnesses, submitters, and the Council’s Reporting Officer.

Corporate Evidence (lay evidence) was received from Mr Huggins on behalf of the MoE and this was taken as read and was also made available before and at the hearing to the other parties.

The vast majority of evidence was in writing and forms part of the Council’s records on this hearing. I have carefully listened to all the evidence presented, read all the other evidence and revisited the evidence and submissions during the writing of this decision. I can also confirm that I have read the evidence provided by some submitters to the Council after the adjournment on 21 November 2023 and which was placed on Council’s website. I consider that a general summary only of the evidence will be of great assistance to understanding the decision.

I also undertook a detailed site visit before the hearing and as a result of issues raised carried out a brief visit after the hearing. The following is a summary of the evidence heard at the hearing.

Council’s Reporting Officer’s Report and other Council Evidence

Mr Hartstone’s report having been circulated prior to the hearing was taken as read. It is noted that Mr Hartstone’s report recommended that the Council recommend to the MoE that the NoR be confirmed subject to some conditions although he did raise some issues for the applicant to consider and address at the hearing.

Evidence (joint statement) was tabled at the hearing from Sine O’Sullivan, Civil Engineer and Nat Jull, Civil Engineer, Chester Consultant Ltd which addressed the issues of ‘Three Waters and Earthworks’ and ‘Traffic’ and in respect of the first issue confirmed that they did not consider that the additional evidence, that they had reviewed, raised any new issues to what had been set out in their assessment memo. In regards to the second issue they were not qualified to provide an opinion of traffic safety matters, nor were they engaged by the Council to do so as it is the role of NTA and as Mr Shields had now acknowledged the lack of the shoulder and stands by his recommendations for no modifications they defer to the professional opinions of Mr Shields and the NTA on this matter. They now agreed that no Safe System Assessment Audit (SSA) was warranted for the proposed Kura and that condition 14.a) could be removed. They also recommended some conditions regarding the Kura being responsible for associated school/Kura signage and new speed signage and the requirement to submit a Construction Temporary Traffic Management Plan (TMP) to the Council.

MoE Tabled Evidence

A statement of Corporate Evidence from Mr Huggins, which I have referred to above, dealt with the MoE responsibilities under the Education and Training Act 2020, the project

objectives for the NoR and the site selection process and property acquisition. As I had no questions for Mr Huggins the evidence was taken as read and tabled.

Applicant's Legal Submissions and Evidence (all of which had been pre-circulated and read by me)

Mr Sadlier – Counsel for the MoE referred to his written submission in support of the application and answered questions from the Commissioner. A brief summary of Mr Sadlier's submission follows:

- The Minister's experts and Council's Reporting Planner are generally aligned on the conditions of consent.
- The establishment of the Kura would allow the Kura to continue operations in a purpose-built facility better suited to its needs, allowing it to expand its roll, and reinforce and enhance its education outcomes achieved to date.
- That as outlined in the evidence from the MoE there is a need to relocate the Kura due to the state of the buildings on the existing site, the leasehold arrangements and challenges regarding the justification of long-term capital investment by the MoE, lack of room to grow and ability of the Kura to provide the full continuum of Māori Medium education and how the geographical location of the current site presents challenges in terms of the viability of development onsite.
- The Minister is keen to establish the Kura as soon as possible.
- Outlined the legal framework.
- Council will be entitled to seek changes via the Outline Plan of Works process and other consents will likely be required for other aspects of the proposal.
- The designation of the site will not generate significant adverse effects on the environment, is consistent with Part 2 of the Act, is consistent with the objectives and policies of the relevant planning documents and is reasonably necessary for achieving the objectives of the Minister.
- Designation of the site offers the community a higher degree of continued certainty as to what the site is to be used for, as well as providing the planning certainty required by the Minister to invest in the development and maintenance of the facilities.
- The Minister asks that Council make a recommendation upholding the NoR subject to the suggested conditions attached to Mr Ensor's evidence.

Ms L M Leitch, Senior Acoustic Consultant

Ms Leitch tabled her evidence in support of the NoR and read a summary of her evidence and also answered questions from me. A brief summary follows:

- The MoE has a standard noise condition for educational establishments, which is proposed to be applied here.
- Her assessment considered noise from the Kura and the effects of the existing noise sources on the Kura (reverse sensitivity).

- That although s171 states that particular regard must be had to the provisions of a District Plan there is no requirement to comply with them. However, she had assessed the proposal against the permitted levels in the DP, had identified that there is potential for the average noise level to exceed 50 dB LAeq (DP permitted daytime noise level) and had identified an area (buffer area) which should be provided rather than a 2m high acoustic barrier along some of the boundaries.
- She supported the Officer's recommendation to include the MoE standard noise condition.
- That she had reviewed the submissions and still reached the same conclusion.
- There may be benefits in providing a buffer zone between the site and number 163 Settlement Road and the parcels of land (vacant sites) between the site and 163 but dwellings further away would normally experience lower levels of noise effects and the noise levels at the notional boundaries of the dwelling at 163 would be below the DP levels.

Mr C R Shields, Senior Principal Transport Planner

Mr Shields tabled and read a summary from his written statement of evidence in support of the NoR and answered questions from me. A brief summary follows:

- His report had assessed the likely staff and student numbers and the likely mode of transport for passenger and private vehicles to the site and these assumptions had informed his calculations of the number of vehicle movements to and from the site.
- His report had been based on the **reported** (my emphasis) traffic accident figures obtained from the Waka Kotahi Crash Analysis System (CAS) for the last 6 year period of 2017 to 2022 and this had indicated a low number of crashes with no crashes at the Settlement Road/Tawa Avenue or the SH1/Settlement Road intersections and there were no crashes reported on Tawa Avenue. In addition, he had reviewed the crash data for the 2023 situation and so far in 2023 there has only been one minor crash reported which occurred 270m southeast of the Settlement Road/Wattle Lane intersection. Based on this reported data he considered there were no inherent safety issues present in the vicinity of the site.
- That he can confirm that the speed limit on Settlement Road has been set at 60kmh and on Tawa Avenue 40kmh and he did not see any need to have a further reduction on Tawa Avenue. He also acknowledged that the new speed limit signs had not been erected yet.
- He had considered the submissions to the transport related matters, dealt with in his evidence and considered there were no outstanding transport matters.
- He had read the officer's report and suggested conditions and did not agree with condition 14a) which required an SSA for the intersection of Settlement Road/Tawa Avenue.
- That the ITA report supporting the designation looked at a wide range of issues such as site access, traffic safety, crash analysis figures, numbers attending the school while a SSA (new terminology) tended to look at a specific site where

improvements were required as a result of fatal or serious accidents occurring at the location and in the case of Settlement Road/Tawa Avenue this was not required. Also, that SSA's were not normally carried out for minor improvements.

Mr N C Scarles, Senior Landscape Architect

Mr Scarles tabled and read from a written statement of evidence in support of the NoR and answered questions from me. A brief summary follows:

- That the Kura buildings can be contained within the existing landscape which provides some protection and with the application of further mitigation measures it will result in very low adverse effects on the rural landscape character.
- That he was involved in the Kura at Hokianga and was of the opinion that the buildings would result in low level effects and that the LVA describes that the effects may be beneficial from mana whenua's perspective.
- The development of the Kura is not dissimilar from development that could occur on the site under the current district plan permitted activity standards for building controls, such as 10metre high buildings and 5,000m² of commercial/industrial buildings.
- That as a result of comments a sixth property (148 Settlement Road) has been added to those properties which require careful consideration through the design process.
- In answer to a question from me Mr Scarles said that it was difficult to assess the effects on vacant properties as you do not know where any dwelling will be positioned and also what the outlook will be from the dwelling.

Mr T Ensor, Principal Planner

Mr Ensor tabled and read from a written statement of evidence in support of the NoR. A brief summary follows: -

- That consultation has been undertaken with iwi and the existing Kura.
- That consultation/engagement with neighbours was carried out after purchase of the site and while there were challenges the feedback received has informed the NoR.
- The positive effects of the proposal which will enable the existing Kura to continue operations in a purpose-built facility better suited to its needs, allow the roll to expand (200 students) and enable provision of a Puna Reo.
- Based on the evidence of the other expert witnesses his opinion was that the actual and potential effects could be adequately avoided, remedied or mitigated and will achieve the objectives of the KDP.

- He generally agreed with the s42A report and the recommended conditions but had prepared a schedule of conditions showing what is agreed and where the MoE would prefer amendments.
- His opinion that designating the site for 'Educational Purposes' was the best available mechanism to facilitate the development of the site for use as a Kura.

Submitters Evidence (both in Support and Opposition)

I have listed at the start of this report the details of those submitters who spoke at the hearing and a majority of them provided written evidence which has been placed on the Council's website and which was also circulated to myself and the other parties. The first thing I wish to say is that **ALL** of the submitters were in favour of a new Kura but not on the proposed site as it was considered by some to be an inferior site and other sites were considered to be available and more suitable for the Kura both now and in the long term. I deal with the issue of alternative sites later in this report.

Also, although some of the submissions/evidence was given in a vigorous and passionate way the parties at the hearing acted in a courtesy manner when others were giving their evidence. This is greatly appreciated. A summary of the issues covered by the submitters is shown below and I can confirm that I have read the evidence of those submitters who provided written copies to the Council. A number of submitters also posed a number of questions for the MoE to consider and these were circulated to the MoE. Some of the issues raised in the submissions and the evidence were out of scope as identified in both Mr Hartstone's report, Mr Ensor's evidence and Mr Sadlier's legal submissions:

- Support for the Kura in total and Support for the Kura but not on the Tawa Avenue site.
- Positive effects and the need for a new site for the Kura and benefits it will bring to the Tamariki and their whanua and Te Reo language. Some of the Tamariki from the Te Kura Kaupapa Maori o Ngarangaomatariki spoke in Te Reo and English about the benefits of the school and how it had helped them.
- Wrong location and wrong site and better sites available and locals could have helped the MoE if approached. The MoE paid too much for the site. Examples of other sites was given.
- Lack of detail on what is proposed, building design, height/size etc, landscaping and site services.
- Lack of consultation from the MoE and the fact that the MoE did not consult until after the property was purchased.
- Landscape character and visual amenity effects and effects on other properties has not been adequately looked at.
- Traffic and transportation effects and effects on local roads. The fact that not all accidents have been reported on in the assessment, with specific details

given of recent accidents. The effects have been downplayed and the assessment is biased towards the MoE.

- Natural hazards and effects associated with contaminated land and existing buildings and use of 245T on the site and that 245T causes shortening of lives, cancer the list goes on.
- Cultural and ecological effects.
- Noise effects. from the school, traffic and children and the fact that only some properties have been assessed by the experts when more should have been assessed.
- The concerns with stormwater run-off down the road, volumes will increase as the school develops and system will not cope.
- Site servicing effects and the lack of any detail on such things as sewage disposal systems/issues and effects downstream on streams/rivers and wildlife (for example tuna (eels). Also, type of system (on site or connected to Council system) and who will pay.
- Fencing and security, having some sort of boundary fencing for safety, conflict of usage – farming, agriculture, stock, horse training/rehabilitation and health and safety issues.
- Would like to see landscape buffer between site and other properties to the north – two vacant titles and 163 Settlement Road.
- Other properties further up Tawa Avenue should benefit from the buffer and should be included in assessment condition.
- Use of the private part of Tawa Avenue.
- Kura generous with their time, greater benefit to community, there are 3 Official languages Māori, English, and sign language and want thriving Māori communities who need to be educated.
- There are high attendance rates across all Kura's and they educate children on the environment.
- Iwi fully support the proposal, there are more people returning back to the north and need support and it will bring Communities together.
- Teach the children about their environment and how to protect it and they can learn how to mitigate issues like run off etc,
- Learning about who you are, where you have come from, learning their Māori heritage will benefit the children and their families. Not knowing where you come from is like a tree without roots.
- The current space at the Kura is very hard to teach in and the new school will be great and will create better learning. There are more non-Māori's learning, than there are Māori's learning their own language, great for non-Māori's but not for Māori.

- In favour of the Kura but not where they are proposing to build it and commends how much passion the supporters of the Kura have.
- Lack of knowledge and consultation by the MoE, Values rural lifestyle.
- Requested 163 Settlement Road Property to be included in the Acoustic and Landscape expert evidence but it wasn't. Peak school time traffic will increase 325% not 1.9, there will be more learner drivers and teenagers driving, at high crash zone. Settlement Road and state highway is a very dangerous intersection.
- Challenged planner on saying his soils was not highly productive. He sprays his properties from Airplane and Helicopter, and the spray will go over the kids in the playground.
- No confidence in the applicants reports. Any increase in noise levels is unacceptable, the stormwater system in Tawa Avenue already floods and it cannot handle anymore.
- Concerned with the late reports, experts couldn't get places names correct and acoustic report ignored 163 Settlement Road and 2 young kids live there. Understand that there was a mail drop and Council ran out of pamphlets so didn't bother to notify everyone and the Mangawhai Focus magically disappeared from all outlet stores.
- Could add a classroom to each local school for full Māori classes, save kids on travel and these schools already have well rung Kapa haka. There are a lot of holes in the Traffic report which says no crashes when there have been two serious crashes in the last 3 months.
- Opposes the location of the proposed Kua, reports are factually incorrect, a lot of cyclists and pedestrians walk on these roads and they are very dangerous. More appropriate site would be Bickerstaff, Maungaturoto. No consultation was carried out between the MoE, Kura and the Community and if they had done this a hearing may not have needed. Will devalue their land because of rezoning for a school and if you buy next to a school you know what you are getting, but we are having a school thrown at us with no compensation.
- Lack of communication, reports lacking information and animosity created.
- Traffic is the biggest concern and the crash statistics are not complete as aware that a car hit a girl and broke her arm. Other and better sites available and knows of local lady who would have gifted 20 acres but due to the lack of consultation with the community the opportunity has been lost.
- Broken community, because this has caused a huge divide and believes that the MoE has done everything underhand and should have consulted with the community.
- Has farmed his land for years and offended with the MoE saying the soil is not suitable and rears over 200 calves a year. There are 6 tankers a day, stock trucks, concrete trucks, the road is not a double lane, if you meet these trucks on a blind corner this will certainly cause an accident.

Council's Reporting Officer's Response

Mr Hartstone's report, as I have said above, was circulated prior to the hearing and was taken as read. Mr Hartstone's report recommended that the Council (me) recommend to the MoE that the NoR be confirmed subject to some conditions which were similar to what Mr Ensor had recommended subject to a few that were in contention. Mr Hartstone response after hearing the submissions and evidence was that he stood by his recommendation and that in regards to the provision of an SSA he agreed, based on the expert evidence from others, that the condition could be deleted. He was still not in agreement with a lapsed period of 15 years and as a result of a question from me confirmed that he was willing to liaise/caucus with Mr Ensor to produce a schedule of conditions (in a similar format to the schedule attached to Mr Ensor's evidence) for my consideration and they would highlight where a difference in opinion still occurred.

Minister of Education Right of Reply

Mr Sadlier said that he would provide the right of reply in writing as there was a large volume of evidence and issues raised today which would have to be considered and responded to on behalf of the Minister where relevant. He also confirmed that Mr Ensor would liaise/caucus with Mr Hartstone in regards to the recommended conditions and he would aim to have both the right of reply and the schedule of conditions with the Council by 4pm on Friday 1 December 2023.

Adjournment of the Hearing

I adjourned the hearing at 4.56pm on the understanding that:

- The two planning experts (the only planning experts at the hearing) were directed to confer to see if they can reach agreement regarding the wording of a set of draft conditions. A single document specifying the draft conditions, including those that are agreed and any not agreed between the planners, and any alternative wording for any draft condition/s, is to be provided to the Council by 4pm on Friday 1 December 2023.
- The Applicant's Legal Counsel is to provide the Right of Reply in writing to Council by 4pm on Friday 1 December 2023.
- As indicated at the hearing the recommended conditions and Right of Reply provided to the Council (Ms Tollemache) will be circulated by the Council to all of the parties (for their information only) to the hearing and myself as soon as possible.
- As agreed at the hearing Mr Sadlier will seek an extension of time if the Right of Reply cannot be supplied on time. *Note: There was a lot of evidence given verbally at the hearing and I did request those parties who read from notes to supply a copy to Council so that it could be downloaded onto the Council's website as soon as possible.*
- In the unlikely event that as a result of receiving the written right of reply from Mr Sadlier or the recommended conditions from the two planning experts that I need the hearing to be re-convened I will notify the Council as soon as possible so that suitable arrangements can be made.

- If I decide that I have all the information needed to make a decision I will close the hearing and advise the Council so it can advise all parties of my decision to close the hearing.
- Once the hearing is closed, I will endeavour to provide my written recommendation on the NoR within 15 working days and once this is done it will be supplied to all parties to the hearing.
- Any questions regarding this Direction should be directed to Jodi Tollemache () at the Council.

On behalf of Te Uri o Hau Mr Skipper closed the meeting with a karakia whakamutunga

On the 22 November 2023 I issued Direction 2 which outlined the details above and this was published on the Council's website and sent to the other parties for their information.

Written Right of Reply and Draft Recommended Conditions

On 1 December 2023 I received both the written right of reply and the draft recommended conditions of consent in line with my Direction 2. These were placed on the Council's website for information for the other parties.

In summary the right of reply referred to the following:

- the permitted activities and built form anticipated within the Rural zone which could be built without any mitigation of landscape or visual effects, planted buffers or design and materiality of the buildings.
- the effects of the proposed design compares favourably to what could be anticipated to occur on site as of right.
- a design condition has been included which requires the provision of a statement outlining the outcomes of the internal design review process and this will be submitted at the OP stage.
- the amended landscape plan and reference to 40 Tawa Avenue and the vacant lot – Lot SEC2 SO 2191 and amendments to condition 8.1 to include both properties.
- the acoustic and noise effects on other properties which will not be inappropriately affected by noise and the fact that requiring a buffer for sites that may not ever be developed are not justified.
- intersection delays will not occur and no expert evidence to contradict the conclusions of Mr Shields have been provided and the Commissioner should rely on his evidence.
- anecdotal evidence suggests other non-reported accidents have occurred but Mr Shields has relied on the figures provided by the CAS. Also, it is intended to have less off-site travel for activities.
- the lapse period has been agreed between the experts to be 10 years.

- the establishment of a marae on site is likely to fall outside of the scope of education purposes.
- comment on other sites better suited for the Kura and comments that the MoE experts are bias and that there is no basis for that assertion.
- there will be no reverse sensitivity issues.
- that the land classification in the Manaaki whenua online GIS identifies the land as class 4 which under the NPS-HPL is not classed as highly productive.
- there is no evidence that the children will trespass onto private property etc.
- there are options for dealing with wastewater but no option has been chosen at this stage.
- Tawa Avenue is a public road where the Kura is proposed and there is no need for Kura traffic to use the private section which is the responsibility of the owners and users.
- lack of consultation and insufficient time to consider the MoE evidence etc which did comply with the direction issued.
- the positive benefits of the Kura for the students, wider whanau and the community.

In regards to the draft recommended conditions both Mr Hartstone and Mr Ensor were in total agreement.

After reading and considering the right of reply and draft conditions and reviewing the other evidence from the hearing I decided that I had enough information to enable me to make my recommendation to the MoE and closed the hearing at 9am on 6 December 2023 and advised Ms Tollemache at the Council so that she could advise the other parties.

As I indicated at the hearing my intention was to complete my recommendation report to the MoE within 15 working days.

Principal Issues

The principal issues that were in contention were:

- (a) Is the designation generally consistent with the relevant statutory planning documents?(s171 (1) (a)).
- (b) Has adequate consideration been given to alternative sites, routes and methods for the works? (s171 (1) (b)).
- (c) Is the designation sought necessary to achieve the Minister of Education's objectives? (s171 (1) (c)).
- (d) Visual and Amenity Effects, Landscaping Noise, Cultural, Archaeology, Ecology and Infrastructure (site servicing) and Traffic etc. (s171(1)(d)).
- (e) Lapse Period (s184 and 184A)

Main Findings of Fact

The Commissioner considers that the following are the main facts relating to this application:

- (a) Is the designation generally consistent with the relevant statutory planning documents?

It is the commissioner's view that the designation is consistent with the relevant statutory planning documents and, in particular, will help to establish and maintain a Kura Kaupapa Māori for years 0 to 13 and a Puna Reo in the area.

Under the District Plan the site is zoned Rural. This zone applies over the majority of the rural parts of the district and allows for a wide range of activities and these were referred to by the MoE witnesses and by submitters. In particular Mr Scarles referred to Rule 12.10.4 which identifies that commercial and industrial buildings are possible and can cover a maximum of 5,000m² or 10% of the site area whichever is the lesser and Rule 12.10 which states a maximum height for those buildings of 10 metres and that these were relevant when comparing the potential Kura buildings.

The establishment of a school will remove the site from productive rural use. However, the site has not been utilised for this use for some time and the land use capability is Class 4 which means that the National Policy Statement for Highly Productive Land does not apply. At present the site contains a residential dwelling and some additional sheds and is vacant.

The site will retain a large amount of open space, including the covenanted area, not covered by buildings or other hard surfaces. The first Outline Plan (OP) is to contain details of the design and layout of the Kura, as well as a landscaping plan. This will ensure the protection of amenity values and the mitigation of adverse effects on the environment. In summary, it is believed that the proposed use of the site for an education facility is not contrary to the objectives and policies of the Rural Zone.

Other relevant objectives and policies in the District Plan include those relating to traffic, parking and access. Conditions imposed on the NoR will ensure adequate traffic management, both on-site and external.

The Regional Policy Statement and the Regional Water and Soil Plan for Northland are of relevance with the Regional Policy Statement containing policies relating to water quality, soil conservation and land management, and natural hazards. The NoR has had regard to all these issues and they will be considered further when completing final design specifications. Evidence was presented at the hearing that the MoE will most likely need to obtain some consents from the Northland Regional Council.

It is noted that the Northland Regional Council did not make any submission or comment on the NoR.

- (b) Has adequate consideration been given to alternative sites, routes and methods for the works? (s171 (1) (b)).

If the MoE did not own the site, section 171 of the Act would have required the Council to have particular regard to whether adequate consideration had been given to alternative sites, routes or methods for the work.

Evidence was presented at the hearing that ownership of the site was with the Crown and that the proposed development of the site in accordance with the designation will not result in significant adverse effects and therefore an assessment of alternatives was not required. Mr Huggins and Mr Ensor for the MoE did however, provide evidence that investigation of alternatives had been undertaken and that this was sufficiently robust to meet the requirements of the Act if it had been needed.

The Commissioner's view is that the MoE did not need to satisfy s 107 of the Act but accepts that if needed the work undertaken in looking at alternatives before the ownership of the site transferred to the Crown would have satisfied s 107.

A number of submitters did raise the issue of other sites being available and better for the establishment of the Kura now and in the long term and I acknowledge their evidence and accept that they have local knowledge and generally believe that there are better and more suitable sites. This may well be true, but in making my recommendation I am compelled to apply the legislation appropriately and there is no obligation on the MoE to determine that a designated site is the best for an activity as in this case the site is owned by the crown and the MoE has a sufficient interest in the land to undertake the work and the evidence (the only expert evidence that I was presented with and heard) demonstrates that the proposed works will not have any significant adverse effects on the environment.

- (c) Is the designation sought necessary to achieve the Minister of Education's objectives?

It is the Commissioner's view that the MoE has demonstrated that the site is the obvious and preferred site and it would be unreasonable to use an alternative site.

Use of the designation process is consistent with the means of identifying other school sites in the Kaipara District Council and throughout New Zealand and the designation sought is deemed necessary to achieve the MoE's objectives which were clearly outlined in the evidence presented.

Council needs to have regard to whether the public work (i.e. the school) and the designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought. The NoR states that the Minister of Education's principal objective in serving the Notice of Requirement is to fulfil a statutory obligation under the Education Act to provide a suitable facility for students who require/wish to be educated at the school (Kura).

The designation is required to:

- Identify and protect the site for Kura (school) including a Puna Reo

(early childhood education centre);

- Identify in the Kaipara District Plan the location of the Kura for the
- information of current and future residents of Kaiwaka and the surrounding area; and
- Provide for the development and operation of the new school and early childhood education centre at the appropriate time.

The Minister of Education has identified the future need for the school and the objectives for the project are increased participation and success by Māori through education initiatives, including in Te Reo Māori, provide an alternative learning pathway from early childhood education (Puna Reo) through to secondary school (Wharekura) and to provide a new site to establish a new purpose-built facility for the Kura to operate from.

Overall, it is considered that the designation is reasonably necessary to achieve the objectives of the requiring authority.

- (d) Other Matters - Visual and Amenity Effects and Landscaping, Noise, Cultural, Archaeology, Ecology and Infrastructure (site servicing)

The Council can consider any other matter considered reasonably necessary in order to make a recommendation on the NoR. In this instance, the upgrade and provision of infrastructure (where needed) such as stormwater reticulation; wastewater reticulation or on-site disposal, water supply. These issues were all considered to be able to be provided and the expert evidence (from the MoE and Council) all indicated that the services could be provided and the exact design and provision of the services would be dealt with at the OP stage and during further consent processes, such as building consent stage, regional consents etc.

Evidence at the hearing indicated that all the above issues could be satisfactorily resolved and that there would be some localised environmental effects. The only expert evidence that I heard was from the MoE and the Council. However, it was agreed that through sensible design (the Ministry has its own design protocol and design panel and I was also told that the local Iwi would have input into the design of the Kura buildings) and conditions to apply to the Designation (including information to be provided at OP stage) that these effects can be avoided, remedied or mitigated such that they will be no more than minor.

Visual and Amenity and Landscaping

The landscape character and visual amenity effects of the NoR, were assessed in the Landscape Visual Assessment report prepared by JASMAX Limited (Landscape report). The report noted that there are existing buildings on site consisting of a dwelling and ancillary garage and farm shed with an established curtilage area. It appears from the initial

report that the proposed buildings would likely occupy the same or similar location, being the more elevated area of the site running parallel with Tawa Avenue.

As was stated at the hearing the lack of definitive plans for the site is not fatal to nor determinative of the application and this is not unusual in a NoR for a designation. The NoR enables the land to be designated for a particular purpose while the height, shape, bulk and location of proposed buildings constructed under the designation and any mitigation is a matter that is addressed in the OP application/s prepared under the Act. I was told that once the designation is in place the MoE will initiate the master planning and design process which is coupled with the RMA OP process which requires the MoE to address landscape and visual amenity effects. The OP stage will provide an opportunity to potentially avoid or mitigate effects that may have been identified through the NoR as there is a much greater level of certainty regarding actual effects which enables a more targeted approach to effects management. The landscape planting and buffer zone can be defined once the height, shape bulk and location of the buildings is known.

The conclusion regarding effects on landscape character was that the scale and mass of the potential buildings associated with the Kura can be accommodated within the existing landscape subject to some mitigation. With regard to visual amenity, the original assessment identified five dwellings (not vacant properties) that may have potential to experience moderate or high adverse visual amenity effects. It then applied a permitted baseline assessment of what could occur on the site in terms of built form under the Kaipara District Plan and identified specific measures that may be utilised to mitigate visual amenity effects.

As a result of questions regarding why other properties had not been included in the suggested landscape condition assessment there are now eight properties included (being 148 and 178 Settlement Road, 4 and 15 Vista Lane, 22, 40 and 50 Tawa Avenue and vacant lot being SEC2 SO21917 – situated on part of the northern boundary of the site). with conditions specifically tailored to require specific consideration of the visual amenity effects on the eight properties, and clarity provided as to when the planting should be completed. The assessment will be based on any existing or consented dwellings on the properties.

Noise

The application addressed noise effects, noting that the assessment relied on the Acoustic Assessment report by Ms Leitch who also provided expert evidence (only acoustic expert) at the hearing. Several submissions raised concerns about additional noise in what they considered to be a quiet rural area and expressed the view that neighbours have a right to peaceful enjoyment of their property. This issue was also raised in evidence by the submitters at the hearing and considered that the noise will be intrusive. Some of the submitters also referred to the buffer (landscape planting) proposed by the MoE and

suggested that it should also take into account their property and that landscape planting should be undertaken on other boundaries.

The off-site noise associated with the activity relates to vehicle movements, building service noise, and children playing outdoors and the effects of noise from the identified sources was assessed in regards to the closest properties to the site. The application stated that noise effects associated with the increased traffic and associated movements, and building servicing (notably air conditioning units) is expected to be less than minor.

Noise associated with children and the use of the facility as a Kura and Puna Reo, assumed that a 23-metre setback from 178 Settlement Road and 18 Vista Lane will be imposed for outdoor play areas. The report and evidence also referred to the mandatory Designing Quality Learning Spaces Acoustics Guide that will be applied to the design of the Kura and Puna Reo. A condition was also offered by the MoE that specifies noise limits specifically relating to the proposed activities on the site and as a result of the expert caucusing on the draft conditions a condition has been recommended to the MoE.

Traffic and Transportation

Traffic and transportation effects were reported on and assessed in the integrated Transport Assessment prepared by Tonkin and Taylor Limited which had been reviewed by Northland Transport Alliance on behalf of the Council and addressed in the Reporting Engineers report.

A large number of the submissions raised concerns regarding the extent of traffic that will be generated and how it will be managed and this was expanded on at the hearing by a number of submitters who questioned the accuracy of the Report and also gave evidence and details of accidents in the area that had not been taken into account in the Traffic Report. The concerns raised included pedestrian safety, the use of buses, concerns regarding the suitability of the Settlement Road / Tawa Aveue intersection and the SH1/ Settlement Road intersection. The only expert on this subject that I heard from was Mr Shields and his assessment which was criticised by some submitters was based on figures obtained the from Waka Kotahi Crash Analysis System (CAS) which has been in existence since 1980 and commonly used to carry out assessments. The figures are based on crashes reported to police and it is unfortunate if crashes are not reported and able to be taken into account.

I was also told in the right of reply that Mr Shields had checked the CAS database and found one additional reported crash in August 2023 near 1800 SH1. As a result, his assessment conclusion remained unchanged regarding the safety of the SH1/Settlement Road intersection. While I accept, and do not discount the evidence from some submitters (local residents) regarding other traffic accidents that they spoke about I accept the evidence of Mr Shields that the Kura will have a negligible impact on the intersection and traffic in general.

By the time of the hearing the Traffic report was accepted on the basis that it addressed the likely traffic generation from the activity and respecting the fact that it is an NoR application. The Council's Reporting Engineer had provided comments on the Traffic Report and referenced the advice received from the Northland Transport Alliance which by the time of the hearing agreed with the Traffic Report.

The Kaipara District Plan does specify that educational facilities should provide 2 parks per classroom, while childcare centres should provide 1 park per 4 children. However, these requirements are not binding on the MoE should the NoR be confirmed, however, it does provide a good guideline for the extent of on-site parking that is considered adequate to service the proposed activities. Conditions of consent relating to 'On-Site Car Parking', Pick-Up/Drop-Off Facility and a 'Travel Plan' have been recommended to the MoE and both of the planning experts agreed that the conditions should be included.

Hazards and Contamination

In regard to natural hazards a report was prepared by Tonkin and Taylor Limited and this had been reviewed by the Council's Reporting Engineer and confirmed as acceptable, noting that the proposed buildings will require specific engineering design of foundations and services at the time that building consents are applied for, and all earthworks on the site will need to comply with the Northland Regional Council requirements, particularly in terms of erosion and sediment control.

A number of submissions and submitters stated that the land and buildings may be contaminated (asbestos and chemicals such as 245T). The application addressed contaminated land and relied on the Detailed Site Investigation report prepared by Tonkin and Taylor Limited. While the report identified potential soil contamination, it confirmed that this could be addressed through appropriate means and there are processes in place for dealing with any possible asbestos within the existing buildings on site and there is a National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health ('NESCS') that the MoE is required to comply with separately from the NoR and designation process. This may require a resource consent to be lodged with Council prior to a building and/or earthworks being undertaken on the site. A possible outcome of that process is removal and disposal of any identified contaminated soils from the site.

Cultural

The application also addressed potential cultural effects associated with the proposal and for the purpose of his report Mr Hartstone accepted and adopted the assessment, noting that the application was supported by Te Uri o Hau in principle and Te Runanga o Ngati Whatua as attached to the application. The existing Board of Trustees of the existing Kura and local iwi also supported the application.

However, Mr Hartstone did invite the applicant to advise me whether further discussions had been held with Te Uri o Hau regarding the proposal, given the 'in principle' nature of the advice to date and noting the condition 12.1 under Section 9 of the application refers to '*Placeholder for cultural condition for Environs Te Uri o Hau*'. This issue was dealt with at

the hearing and as a result of a question from me Ms Hemsall from Environs Te Uri o Hau stated that no Cultural Impact Assessment report was required and that they were happy with the discussions they have had, and are having, with the MoE and did not require a condition of consent to be imposed.

Ecological

The effects on ecological values provided with the application relied on the Ecological Opportunities and Constraints Assessment prepared by Tonkin and Taylor Limited ('Ecology report'). For the purpose of his report Mr Hartstone accepted and adopted the assessment provided. The report, I was told, was completed as part of the pre-purchase of the site and set out a number of recommendations. The key one being provision of an Ecological Management Plan depending on the scale of the development on the site but the NoR application, as noted by Mr Hartstone and myself when reading the application, did not offer a condition to avoid the QEII covenant area, The applicant was invited to provide further clarity regarding the ecological effects and how they may be managed given the recommendations in the Ecology report. This was addressed at the hearing and I was told that no condition was required as the MoE had acknowledged all of the ecological values, including potential avoidance and enhancement opportunities and these would form part of the Outline Plan. The MoE was well aware of the covenant area and its restrictions.

The reports also referred to some wetlands on the site and any works that may affect any natural inland wetland is subject to the NES-FW. If needed/necessary a consent application will be required to be lodged with the Northland Regional Council where earthworks and/or vegetation clearance may have an effect on existing wetlands.

On-site Servicing

As with the majority of NoRs a report was provided by the MoE with the application which provided some high-level commentary on the provision of wastewater, stormwater management and water supply. As part of the processing of the NoR by the Council further information was sought from the MoE to address the provision of on-site wastewater treatment and disposal to confirm that an adequate system could be utilised on the site. The MoE subsequently provided a Wastewater Feasibility Assessment that addressed wastewater, water, and stormwater management for the site and this was reviewed by Council's Reporting Engineer and confirmed as acceptable.

Specific engineering design for servicing of the site will be required as part of the building consent process, noting that this would also include addressing the Northland Regional Council standards for wastewater disposal to land if that is the chosen option. With regard to wastewater, I was told that discussions had been held with the Council's Infrastructure team who have confirmed in principle that a connection to the Kaiwaka public sewerage scheme can be provided to the site and that the MoE would need to fund the extension of a suitable service line from the existing scheme to the site. At the time of writing his report Mr Hartstone had received no further advice about this option. However, it was confirmed at the hearing that for the NoR there were two possible options available for dealing with wastewater and this would be dealt with in detail if the NoR is adopted.

Given the potential for significant stormwater run-off from both buildings and any proposed access and parking areas on the site, the Council's Reporting Engineer had recommended

that a Stormwater Management Plan should be provided as part of any OP and this has been included as a recommended consent condition.

Positive Effects

When considering the effects of a designation the positive effects are a relevant consideration under the RMA and in this case, the NoR is intended to provide for a Kura and Puna Reo with the provision of new educational facilities for children which is a significant positive effect resulting in opportunities for education and social and cultural development. The provision of a suitable and safe learning environment is an important component as part of that development and learning experience for children.

The application and evidence presented by the relevant experts (MoE and Council) in the reports and evidence confirmed that the site can be appropriately developed for the Kura, albeit that at the stage of the hearing they had not assessed a particular development proposal. The actual development proposal will be part of the OP that will be submitted to Council and it will take into account site servicing, design and location of buildings, landscaping etc and any potential effects of the proposal can be avoided, remedied or mitigated through the conditions that I have recommended to be imposed and through good design and assessment through the MoE internal design review processes.

Lapse Period

The lapse period for a NoR (designation) in the Act is five (5) years but in this case the MoE requested a lapse period of 15 years. Sections 184 and 184A relate to lapsing of the consent and extension to lapse date of a designation. The lapse period of five (5) years to implement a designation is what the Act states unless a longer date is specified. The lapse period is to provide the public and affected landowners with certainty over the timing of the project of the activities of the designation.

The MoE evidence supported a lapse period of 15 years and in Mr Ensor's evidence he referred to the issue of Covid (global pandemic) and recent adverse weather events or natural disasters around the country which has taught us that projects delays can happen and that the designation process is time consuming and expensive. He also referred to the designation lapsing as a result of circumstances beyond the MoE controls and how it would be inefficient to have to repeat the process.

Mr Hartstone in his s42A report did not support a lapsing of period of 15 years and considered five years was appropriate and that an extended lapse date creates uncertainty for neighbours. As a result of a question from me Mr Hartstone said that 10 years may be acceptable but that he would have to consider the matter.

Mr Ensor in his evidence also referred to the MoE being motivated to relocate the Kura to 9 Tawa Avenue as soon as possible and Mr Sadlier also stated verbally that the MoE was motivated to have the Kura built as soon as possible. Some submitters who were in support of the requirement stated that they wished to have the Kura open by 2025.

Mr Hartstone and Mr Ensor as a result of their discussion/caucusing over the recommended conditions considered that a lapse period of 10 years was appropriate.

The default lapse period for designations is five years. Giving effect to a designation does not require the full activity to be established and operating on the site and a portion of the Kura could be constructed and operational in order to deem the designation as being given effect to. An extended period of time does increase the extent of uncertainty for surrounding property owners and the public. Having re-read the legislation and having considered the evidence and submissions on this issue I am of the view that the lapse period should (on balance and noting that I did not receive any evidence to impose the five-year period) should be ten years as it is in my view this is adequate time for the MoE to implement the project and/or make progress towards implementing the project and applying for an extension if enough progress has been made.

Relevant Statutory Considerations - Policy Statements and Plan Provisions

In considering this application, the Commissioner has had regard to the matters outlined in Section 171 of the Act. In particular, the Commissioner has had regard to all of the relevant provisions (which have been referred to throughout this report) and specifically to the following planning documents:

1. The Kaipara District Operative District Plan
2. The Regional Policy Statement for Northland
3. The Regional Water and Soil Plan for Northland

The proposed NoR has had regard to the Regional Water and Soil Plan, and further regard will be had to this plan when completing final design specifications regarding storm water management and on-site waste water treatment and disposal (if necessary). It was acknowledged at the hearing that resource consent/s may have to be applied for from the Northland regional Council.

It is noted that the Northland Regional Council did not make any submission or comment on this Notice of Requirement.

The proposed NoR has been assessed against the relevant objectives and policies in the District Plan. Under the District Plan the site is zoned Rural. This zone applies over the majority of the rural part of the District and allows for a wide range of activities.

Objectives and policies applying to this zone emphasise sustainable management of natural and physical resources, protecting the life supporting capacity of soils, the avoidance, remedy or mitigation of adverse effects on the environment, and promotion of amenity values.

The site will retain a large amount of open space, not covered by buildings or other hard surfaces. The first OP is to contain details of the design and layout of the school, as well as a landscaping plan. This will ensure the protection of amenity values and the mitigation of adverse effects on the environment. In summary, it is

believed that the proposed use of the site for an education facility is not contrary to the objectives and policies of the Rural Zone.

Other relevant objectives and policies in the District Plan include those relating to traffic, parking and access. Conditions imposed on the NoR will ensure adequate traffic management, both on-site and external.

Section 176A – Outline Plans

An Outline Plan (OP) is a plan or description of works that a requiring authority submits to the Council when it intends to carry out works on the designated site. OPs often contain details that are not available at the time the site is first designated in the District Plan. Usually, before a requiring authority starts work on the site, it submits an OP to the Council.

In this instance, the MoE considers it impractical to submit detailed design at this early stage, and is looking to defer this to the OP stage. This is not unusual, and it has been common practice, where the MoE has a designation for a school on a site, but at the time the designation is confirmed there are no final plans of the development. Once the Minister wishes to begin construction, they, or their agent, will lodge OPs of the proposed building works (and associated carparking / landscaping / ancillary works) with the Council for comment. Public comment is not sought on OPs, but the consent authority can choose to consult.

The Minister of Education has indicated that in submitting an OP (in accordance with Section 176A(3) of the Act), it will include the following:

- height, shape, design and bulk of buildings, courtyards, playing fields and car parking;
- location on the site of the facilities and likely finished contour of the site;
- intended vehicular access, circulation and provisions for parking and drop-off;
- proposed landscaping along some of the boundaries of the site;
- any other matters proposed to avoid, remedy or mitigate adverse effects on the environment.

Part II Matters

In considering this application, the Commissioner has taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act as well as the overall purpose of the Act as presented in Section 5.

Decision/Recommendation

DECISION:

That, pursuant to Section 37 of the Resource Management Act 1991, the Kaipara District Council accepts all of the late submissions received.

RECOMMENDATION TO THE MINISTER OF EDUCATION:

That, pursuant to Section 171(3) of the Resource Management Act 1991, the Kaipara District Council recommends that the Minister of Education confirms the Notice of Requirement for designation of property legally described as Lot 5 DP 1388478 at 9 Tawa Avenue, Kaiwaka, for educational purposes to enable the relocation of Te Kura Kaupapa Māori o Ngaringaomatariki and to enable the use of the site as a Kura Kaupapa Māori for years 0 to 13 and a Puna Reo, subject to the following conditions:

Recommended Conditions

Designation Purpose - 1.1

Educational Purposes” for the purposes of this designation shall, in the absence of specific conditions to the contrary:

- a) Enable the use of the facilities on the designated site by and for the educational benefit of any pre-school and school age students (i.e.: years 0 to 13) regardless of whether they are enrolled at an institution located on that designated site;
- b) Enable the provision of supervised care and study opportunities for students outside school hours in school facilities;
- c) Enable the provision of community education (e.g.: night classes for adults) outside school hours in school facilities;
- d) Include but not be limited to the provision of academic, sporting, social and cultural education including through:
 - i. Formal and informal recreational, sporting, and outdoor activities and competitions whether carried out during or outside school hours;
 - ii. Formal and informal cultural activities and competitions whether carried out during or outside school hours; and
 - iii. The provision of specialist hubs and units (including language immersion units and teen parenting units) for students with particular educational requirements or special needs;
- e) Enable the use of facilities for purposes associated with the education of students including school assemblies, functions, fairs and other gatherings whether carried out during or outside school hours;
- f) Enable the provision of associated administrative services; car-parking and vehicle manoeuvring; and health, social service and medical services (including dental clinics and sick bays); and

Enable housing on site for staff members whose responsibilities require them to live on site (e.g. school caretaker) and their families.

Designation Lapse Period - 2.1

The designation shall lapse on the expiry of 10 years from the date on which it is included in the District Plan if it has not been given effect to before the end of that period.

Definitions – 3.1

In these conditions the following terms are used, as defined:

“District Council” means the Chief Operating Officer, Kaipara District Council or their delegate.

“Requiring Authority” means the Minister of Education or their nominee.

General - -4.1 and 4.2

The Requiring Authority shall give notice in writing to the District Council of the intention to commence works at least two months prior to the start of any construction activities on site.

The Requiring Authority shall ensure that all contractors working within the site have been provided with a copy of these conditions and are aware of their requirements.

Outline Plan – 5.1

That an outline plan of works shall not be required for:

- a. Any internal building works other than those that result in a net increase in the number of classrooms or classroom equivalents;
- b. General building maintenance and repair including but not limited to re-painting, recladding, and re-roofing;
- c. Installing, modifying, and removing playground furniture and sports structures (e.g. goal posts), and shade canopies;
- d. Amending any internal pedestrian circulation routes/pathways;
- e. Installing, maintaining or repairing any in ground infrastructure services such as stormwater, sewerage and water lines and connections, including any ancillary earthworks;
- f. Provision of landscaping and gardens, provided that it does not conflict with any designation condition or alter landscaping required as mitigation as part of an outline plan for other works;
- g. General site maintenance and repair work, or boundary fencing otherwise permitted by the Kaipara District Plan;
- h. Installing, modifying, or removing minor ancillary buildings and structures (e.g. garden / storage sheds, temporary construction buildings / offices); or

Any temporary mobile facilities or structures (e.g. oral health clinic, life education class, emergency generator).

Noise – 6.1

The noise level arising from the operation of the school must comply with the following noise levels when measured within the boundary of any residentially zoned site, or within the notional boundary 20 m from any dwelling on any site in any rural zone:

Time	Noise Level (Leq) dBA
Monday to Saturday	55 dB <small>L_{Aeq} (15 min)</small>

7am to 10 pm	
Sunday 9am to 6pm	
All other times	45 dB L _{Aeq} (15 min) 75 dB L _{AF} max

These noise levels shall not apply to noise from standard school outdoor recreational activities occurring between 8am and 6pm Monday to Saturday.

Noise levels shall be measured and assessed in accordance with NZS 6801: 2008 "Measurement of Environmental Sound" and NZS 6802:2008 "Environmental Noise".

Noise from construction shall not exceed the limits recommended in, and shall be measured in accordance with, New Zealand Standard NZS 6803:1999 "Acoustics – Construction Noise".

Setbacks – 7.1

The minimum building setback from boundaries shall be:

- a) 10 m from road boundaries
- b) 3 m from all other boundaries

"Building" in the context of this condition means a permanent structure intended for occupation by people or chattels.

Landscape Plan – 8.1

As part of the first Outline Plan, the Requiring Authority shall prepare a Landscape Plan to be implemented to mitigate the landscape and visual effects of the project on any existing or consented dwellings at 148 Settlement Road, 178 Settlement Road, 4 Vista Lane, 15 Vista Lane, 22 Tawa Avenue, 40 Tawa Avenue, 50 Tawa Avenue and the lot legally described as SEC2 SO 21917. The Landscape Plan shall be prepared by a suitably qualified and experienced Landscape Architect and shall include:

- a) A site layout plan showing areas to be planted to mitigate visual amenity effects.
- b) A schedule of the species to be planted including botanical name, average plant size time of planting, plant density and average mature height of each.
- c) Maintenance requirements for a three-year period following planting.

Details regarding the timing of all plantings and intended time frame by which suitable mitigation will be achieved.

Design Statement – 9.1

As part of the first Outline Plan and any subsequent outline plan to increase classrooms or classroom equivalents, the Requiring Authority shall provide in writing a statement summarising the outcomes of any internal design review process in relation to the layout and design of buildings, including any building design features to reduce the apparent bulk and scale of the proposed building/s

Stormwater Management Plan – 10.1

As part of the first Outline Plan and any subsequent outline plan to increase classrooms or classroom equivalents, the Requiring Authority shall provide a Stormwater Management Plan prepared by a suitably qualified and experienced engineer. That Plan shall address the collection, diversion, and disposal of stormwater generated on the site from any / all buildings and impervious surfaces. Where any specific stormwater management (such as attenuation) or treatment is required, that shall be identified and installed at the appropriate time. Any upgrading of existing Council drainage channels identified in the Plan (including any new discharge structures) shall be undertaken subject to approval of the Council's appropriate asset manager.

On-Site Carpark – 11.1

As part of the first Outline Plan and any subsequent outline plan to increase classrooms or classroom equivalents, the Requiring Authority shall undertake a parking study. The parking study shall be done by an appropriately qualified engineer and/or transportation planner to determine the appropriate amount of staff and visitor car parking. Any recommendations made in the parking study are to be incorporated into the Outline Plan.

Pick-Up/Drop-Off Facility – 12.1

An on-site pick-up and drop-off facility designed to accommodate buses and private vehicles shall be provided. The number and design of pick up and drop off bays shall be determined by an assessment of the peak demand, to be demonstrated by a transport assessment by an appropriately qualified engineer and/or transportation planner. This assessment is to be submitted as part of the first outline plan and any subsequent outline plan to increase classrooms or classroom equivalents.

Travel Plan – 13.1

Prior to opening of the school, the Requiring Authority shall, either directly or through the School Board of Trustees, develop a Travel Plan which provides specifically for measures to reduce private motor vehicle dependence. The Travel plan shall be maintained and regularly updated to respond to changes to the school and transport system while the school is operating under this designation.

10. Reasons for the Recommendation:

Pursuant to section 171 (3) of The Resource Management Act 1991, the reasons for this recommendation are as follows:

1. The proposed designation is consistent with Part II of the Resource Management Act 1991 in that it will ensure the development of a significant resource, being 'for educational purposes to enable the relocation of Te Kura Kaupapa Māori o Ngaringaomatariki and to enable the use of the site as a Kura Kaupapa Māori for years 0 to 13 and a Puna Reo', enabling the community to provide for its social, economic and cultural wellbeing of the current and future community.
2. The designation is considered necessary for achieving the objectives of the Minister of Education.

3. The establishment and the relocation of Te Kura Kaupapa Māori o Ngaringaomatariki and to enable the use of the site as a Kura Kaupapa Māori for years 0 to 13 and a Puna Reo is important as part of the overall strategy for the provision of state educational facilities in the area.
4. The designation is not contrary to the objectives and policies of the District Plan and has had regard to relevant Regional Planning documents and other Planning Documents.
5. An adequate consideration of alternative sites has been undertaken by the Ministry of Education through its formal site evaluation process. However, since the subject site has been purchased by the Crown and the adverse effects from the proposed school and early childhood education centre will not be more than significant, the statutory test on consideration of alternative sites does not apply.
6. The main issues identified related to traffic and transport, noise, natural hazards, contaminated land, cultural, ecological, site servicing, positive effects and lapse period, visual amenity and security, traffic and pedestrian safety, and site servicing, including water supply, management of stormwater run-off, and disposal of waste water. It is considered that potential adverse effects relating to these issues can be adequately avoided, remedied or mitigated such that they are no more than minor. In addition, the degree of any adverse effects can be mitigated by imposition of the recommended conditions.
7. The designation status will provide the Minister of Education with a level of planning protection and certainty while identifying to the public, neighbours, and potential purchasers the significance of the site and its use.
8. The site is physically able to be developed as a school site and is ideally located, being in close proximity to the Kaiwaka township and surrounding area.

Issued this 19th day of December 2023



Mr William (Bill) Smith
Independent Hearings Commissioner