



**Western  
Bay of Plenty**  
District Council



# **Mā tō tātou takiwā For our District**

Notice of Requirement to  
Designate Land for Ōmōkorōa  
Active Reserve

Section 42A Report for  
Independent Hearings Panel

James Danby  
Planning Consultant

9 August 2023

## **Summary**

This report provides an assessment of a notice of requirement (NOR) submitted by Western Bay of Plenty District Council (WBOPDC), pursuant to Section 168A of the Resource Management Act 1991 to designate land for Active Reserve purposes at the corner of Ōmokoroa Road and Prole Road, Ōmokoroa.

The designation is a key part of a wider comprehensive structure planning process to implement the requirements under the National Policy Statement on Urban Development 2020 (NPS-UD) and provide for integrated population growth within the local area.

Having considered the proposal this report makes a recommendation to confirm the designation, subject to conditions.

## **1. Introduction**

- 1.1 My name is James Danby. I am an independent planning consultant and have been in this position since 2015. Prior to that I was employed by the Tauranga City Council for a period of 12 years in both implementation and policy roles. This included processing complex subdivision and land use applications and plan changes. I have also appeared as a witness in the Environment Court.
- 1.2 I have over 20 years' experience, the majority of which has been gained within Tauranga and the Bay of Plenty region.
- 1.3 I have a BA (Hons) degree in Town Planning and a postgraduate Diploma in Town Planning both from the University of Newcastle-upon-Tyne, England. I am a Full Member of the New Zealand Planning Institute and Royal Town Planning Institute (UK).
- 1.4 I have visited the site and I am familiar with the area.
- 1.5 This report has been prepared in accordance with Section 42A of the RMA to assist the Commissioners in considering the NOR and the submissions received. The recommendations of this report are not binding on the commissioner's decision.
- 1.6 I confirm I have read the Code of Conduct for expert witnesses contained in the Environment Court's Practice Note 2023 and agree to comply with it.

## **2. Proposal**

- 2.1 The proposal is a Notice of Requirement (NOR), issued by WBOPDC, to designate land as Active Reserve at the corner of Ōmokoroa Road and Prole Road. The site includes a total of six titles with a total land area of 9.47ha and is shown in Figure 1 below.



Figure 1 - Designation extent.

- 2.2 The purpose of the designation is to secure land for recreational purposes as part of a comprehensive structure planning process for the projected population growth within the local area.
- 2.3 The proposal is described in detail in the NOR application prepared by ECO Ltd, dated August 2022 (Attachment 1). In summary WBOPDC, as the requiring authority, are proposing to designate land for recreation purposes to include the following:
- Playing fields.
  - Clubrooms and changing facilities.
  - Playgrounds.
  - Indoor sports centre.
  - Aquatic centre.
  - Associated service connections, access and parking facilities.
- 2.4 The requiring authority seeks a designation period of 15 years.

- 2.5 It is noted that an area along the western side of the reserve may also be used to accommodate part of a proposed park and ride area. However, this does not form part of the NOR.

### **3. Background**

- 3.1 The land to which the NOR relates is currently identified as having an underlying Future Urban Zone that forms part of the Ōmokoroa Structure Plan – Stage 3. More specifically the Future Urban Zone incorporates land at the southern end of Ōmokoroa peninsula, between State Highway 2 and the railway corridor, and was promulgated into the second-generation District Plan (2012) with the purpose of identifying land required for future urban growth requirements.
- 3.2 Additional zone changes and the Housing Affordability and Special Housing Area Act also facilitated additional residential and non-residential development within this area to the north-east of the site – in an area identified as Stage 1A. The balance of Future Urban Zone was subsequently ringfenced as Ōmokoroa Stage 3 with detailed structure planning for that area commencing in 2017. That process was undertaken in consultation with the community with the ultimate intent of undertaking a plan change to codify those outcomes and manage the roll out of urban development within the Future Urban Zone. The need to secure sufficient reserve land in strategic locations within this area has been an integral part of this process and discussions with the community.
- 3.3 By mid 2021 WBOPDC was preparing to notify this plan change using the RMA Streamlined Planning Process (SPP). Using the SPP to progress the plan change required presentation of a comprehensive detailed application to the Minister for the Environment Court for approval. That in turn included the site being identified as the preferred location for the active reserve.
- 3.4 Following the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 coming into force WBOPDC was subsequently required to initiate a plan change to incorporate Medium Density Residential Standards (MDRS) into the District Plan in order to give effect to the NPS-UD. This legislation also introduced the ability to progress the changes through a new Intensified Streamlined Planning Process (ISPP).
- 3.5 Plan Change 92 and the NOR application were publicly notified concurrently on that basis.
- 3.6 The requirement for a large active reserve (and its location) in the Ōmokoroa Future Urban Zone has been subject to on-going public consultation through the WBOPDC's Long Term Plan community engagement processes and pre-notification consultation associated with Plan Change 92.

### **4. Site and locality**

- 4.1 The subject site (the site) is located on the western side of the intersection between Ōmokoroa Road and Prole Road. The site consists of six properties identified as follows:



- 452 Ōmokoroa Road.
- 454 Ōmokoroa Road.
- 468 Ōmokoroa Road.
- 474 Ōmokoroa Road.
- 476 Ōmokoroa Road.
- 7 Prole Road.



Figure 2 - The site and property boundaries.

4.2 The NOR application provides an accurate description of the site (including land ownership and land uses) and the surrounding environment, and that description is adopted for the purpose of this report. In addition to that I also note the following:

- The topography of the site drops away to the northern boundary creating a split level running east / west through the site.
- A gully head is located partly within the northern edge of the site.
- Small localised areas within the site are identified as being flood prone during extreme rainfall events.
- The Ministry of Education designation directly opposite the site to the East.
- A new commercial centre under development directly adjacent to the Ministry of Education designation.
- The existing Industrial Zone directly opposite the site to the South.
- The proposed Rural-Residential Zone and Active Space Zone under Plan Change 92 to the north and south

- Ōmokoroa Road is classified as Secondary Arterial Road under the District Plan / PC92.
- A registered archaeological site (U14/3695) is located partly over the southern boundary of the site.

4.3 For completeness the location of the site in context with the operative District Plan and Plan Change 92 zoning is shown in the Fig.3. and 4 below.

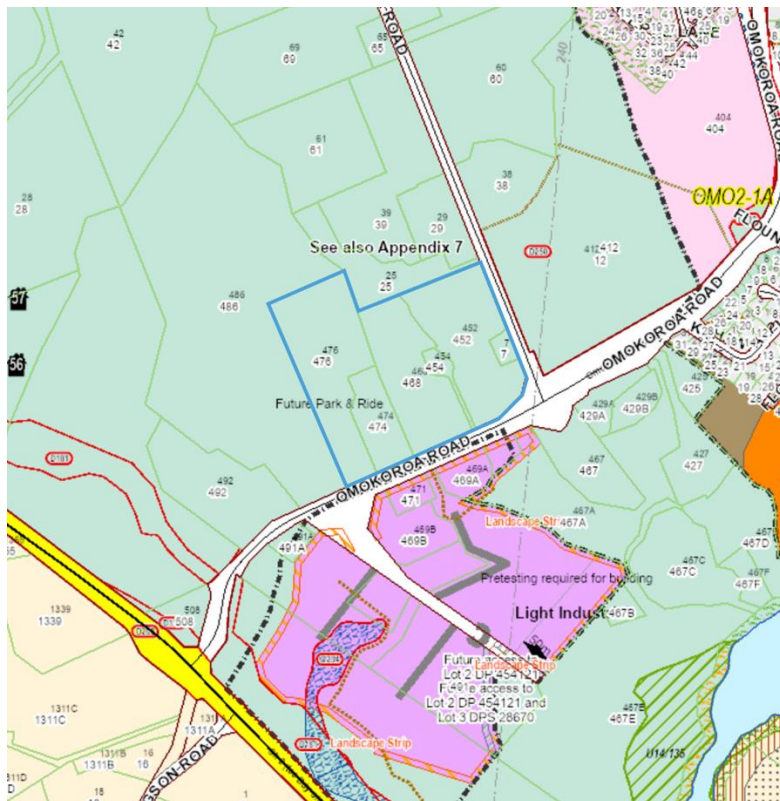


Figure 3 – The site (blue) and operative District Plan zoning.

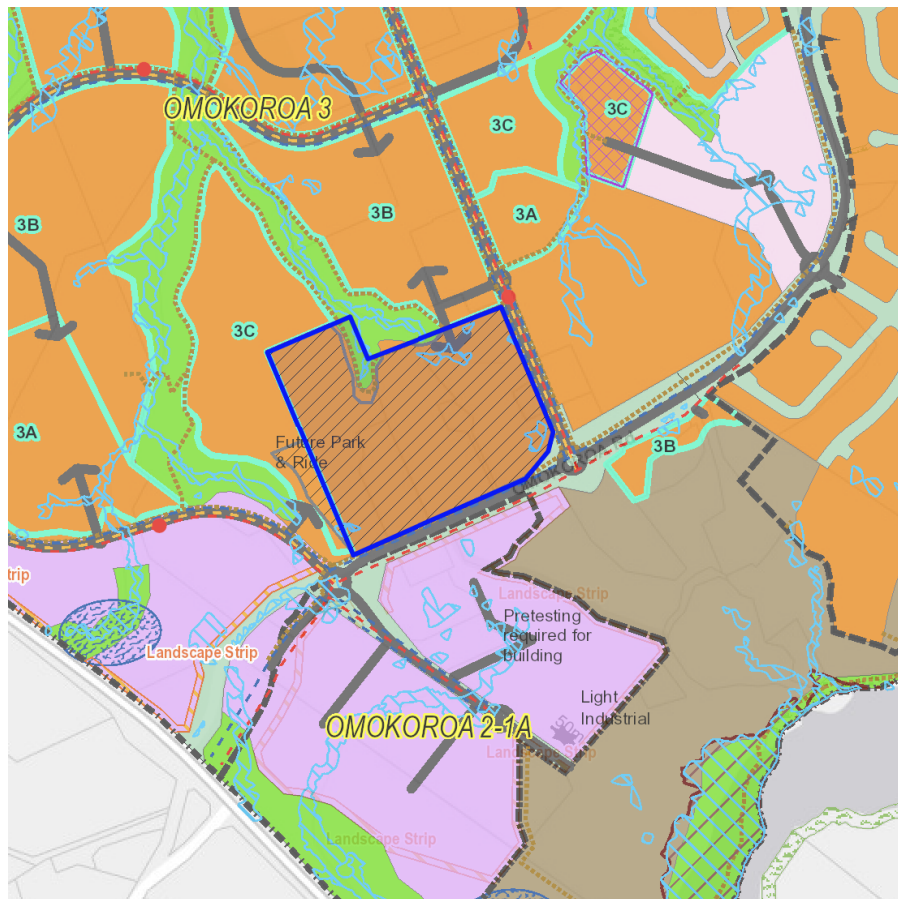


Figure 4 - The site (blue) and Plan Change 92 zoning.

**5. Notification and Submissions**

- 5.1 The NOR application was publicly notified on 20 August 2022 with submissions closing on 16 September 2022. Although the NOR application was notified concurrently with Plan Change 92 it is separate to it.
- 5.2 A total of six submissions were received. There were no further submissions. The submission points on this topic are summarised in Table 1 below. A full copy of the submissions is included as Attachment 2.

Table 1 - Submission Summary.

Name & Address	Position	Key Issues	Relief Sought	To be heard?
A Giles (Trustee) 468 Ōmokoroa Rd	Oppose	Loss of Property / Land Acquisition – The NOR over the submitter's property is a breach of rights and contrary to other legislation (e.g. Crimes Act 1961).	Not stated	Y



Heritage New Zealand Pouhere Taonga	Support (conditional)	<i>Archaeology</i> – Ōmokoroa peninsula is a rich archaeological landscape. Future site development will require HNZPT authority.	HNZPT authority to be obtained prior to development	N
M & R Jacobs (The Garden Early Childcare Centre) 7 Prole Road	Oppose	<i>Loss of business</i> – Significant cash investment into the business to date. Future sale of business part of submitters retirement plan. <i>Loss of education facility</i> – The preschool provides high quality education for 68 children that is in high demand within local community. <i>School Designation</i> – Business is a good fit with future school development opposite. <i>Loss of employment</i> – Business currently employs 18 local staff. <i>Existing Resource Consent</i> – Childcare centre approved through resource consent that did not mention future reserve plans.	Exclude property from NOR or fund suitable alternative location.	Y
D & P Cummins (Rascal Holdings) 7 Prole Road	Oppose	<i>Suitability of alternative sites</i> – limited suitable and cost effective options available within the locality. <i>Loss of education facility</i> – The preschool provides high quality education for 68 children that is in high demand with the local community. <i>Compensation</i> – Closure of business requires compensation. <i>School Designation</i> – Business is a good fit with future school development opposite. <i>Existing Resource Consent</i> – Childcare centre approved through resource consent that did not mention future reserve plans.	Exclude property from NOR or fund suitable alternative location.	Y
Ōmokoroa Country Club	Support	Support additional green space and active reserves within	Confirm the NOR as notified	Y

		Ōmokoroa.		
TDD Ltd 477 Ōmokoroa Road	Oppose	<p><i>Consultation</i> – lack of meaningful consultation has created uncertainty.</p> <p><i>Property demand</i> – Not clear why submitters property is required.</p> <p><i>Development Timing</i> – Development timing of the reserve uncertain.</p> <p><i>Designation effects</i> – Development plan should be submitted to confirm effects.</p>	<p>Provide a masterplan of reserve development and confirm timing of works.</p> <p>Consult with TDD Ltd on timing, process and land acquisition.</p>	Y

## 6. Post Notification Consultation

- 6.1 Since the close of submissions the requiring authority has continued to engage with property and business owners directly affected by the NOR over matters of land purchase and property valuations.
- 6.2 Whilst these discussions are ongoing the applicant has provided a summary of the most recent consultation which is included in Attachment 3. The requiring authority can provide an update on this process at the hearing.

## 7. Planning Framework

- 7.1 As a NOR, the proposal falls outside the rule framework of the Operative District Plan and is subject to the provisions in of the Resource Management Act 1991.
- 7.2 In this instance Section 168A of the RMA applies because the NOR been issued by a territorial authority for work within its District.
- 7.3 In addition to the RMA there are other statutory requirements to be considered.
- 7.4 The relevant provisions of the RMA and statutory documents are discussed in more detail below.

### Section 168A of the RMA – Notice of requirement by territorial authority

- 7.5 Section 168A(1) establishes how this section of the RMA is to be applied when a territorial authority issues a NOR
- 7.6 Section 168A(1A), (1AA) and (1AB) identify the notification procedures for the NOR

7.7 Section 168A(1B), (2), (2A) and (2AA) confirm how submissions, prehearing mediation and the hearings process applies to the NOR.

7.8 Section 168A(2A), (3), (4) and (5) confirm the decision-making process of the NOR as follows:

*(2A) When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.*

*(3) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—*

*(a) any relevant provisions of—*

*(i) a national policy statement;*

*(ii) a New Zealand coastal policy statement;*

*(iii) a regional policy statement or proposed regional policy statement;*

*(iv) a plan or proposed plan; and*

*(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—*

*(i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or*

*(ii) it is likely that the work will have a significant adverse effect on the environment; and*

*(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*

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

*(3A) The effects to be considered under subsection (3) 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 requirement, as long as those effects result from measures proposed or agreed to by the requiring authority.*

*(4) The territorial authority may decide to—*

*(a) confirm the requirement;*

*(b) modify the requirement;*

*(c) impose conditions;*

*(d) withdraw the requirement.*

*(5) Sections 173, 174, and 175 apply, with all necessary modifications, in respect of a decision made under subsection (4)*

- 7.9 Although Section 168(2A) directs that, no regard shall be had to trade competition or the effects of trade competition; I note there are no submission points on this issue. In addition, as an NOR for an Active Reserve I do not consider trade competition a relevant matter for this proposal.
- 7.10 In terms of the matters under Section 168A(3) and (3A) these are assessed further in Section 8 of my report.

### **National Environmental Standards**

- 7.11 Under Section 43D(4) of the RMA a national environmental standard (NES) that exists when a designation is made prevails over that designation.
- 7.12 In this instance the NES for Assessing and Managing Contaminants in the Soil to Protect Human Health 2011 (NESC) is considered most relevant on the basis the site includes land currently (and historically) used for orchard activities.
- 7.13 The extent of land currently identified by the Bay of Plenty Regional Council (BOPRC) as being affected by land uses on the Hazardous Activities and Industries List (HAIL) is identified in yellow in Figure 5 below.



*Figure 5 – Potential HAIL sites identified by BOPRC*

- 7.14 Because the site includes land covered by the NESC any future earthworks and land use activities are required to comply with the NESC regulations and most likely require consent from WBOPDC.
- 7.15 This is discussed further in Section 8 of this report.

## Regional Plans

- 7.16 Whilst a designation trumps a District Plan rule that is not the case for regional plan rules.
- 7.17 As a result, the rules under the relevant BOPRC planning documents still apply to any work undertaken within the proposed designation. In my opinion the Natural Resources Plan (NRP) is most relevant to the site and includes rules relating to bulk earthworks, discharge and disturbance of contaminated land that will most likely result in a resource consent being required for future works on the site.

## 8. Assessment of effects on the environment

- 8.1 As previously identified in this report the Council is required to consider the effects on the environment of allowing the NOR in accordance with Section 168A(3) and (3A) of the RMA.
- 8.2 For this purpose, the effects I consider most relevant to the NOR are identified and assessed below under topic headings.

## Transport Network

- 8.3 The site is located on the corner of Prole Road and Ōmokoroa Road. Under the District Plan Rooding Hierarchy Prole Road is classified as a Local Road and Ōmokoroa Road is classified as a Secondary Arterial Road. Both roads are currently formed as two-way single carriageways.
- 8.4 Future upgrades to both Prole Road and Ōmokoroa Road are proposed and identified in the Structure Plans notified under Plan Change 92. These Structure Plans also reflect the Council's growth funding allocation under the Long Term Plan 2021-2031. I note that the Structure Plans proposed under Plan Change 92 represent a more up to date iteration of the Structure Plans identified in the operative District Plan.
- 8.5 As it relates to the NOR the most recent Structure Plan provides for:
- Upgrading Ōmokoroa Road to an urban standard with four lanes.
  - Upgrading Prole Road to an urban standard.
  - Roundabouts at the intersection of Prole Road / Ōmokoroa Road and along Prole Road itself at the north-eastern corner of the site.
- 8.6 These works form part of a comprehensive suite of transport network upgrades within Ōmokoroa Stage 3. Whilst these upgrades relate to the local road network it is noted that they will be occurring in conjunction with upgrades to the State Highway 2 corridor and its intersection with Ōmokoroa Road.
- 8.7 The requiring authority has advised that vehicle access to the reserve will be Francis Road (through the proposed Park and Ride area) and Prole Road. Whilst no direct vehicle access is proposed onto Ōmokoroa Road there may be pedestrian entry points along this frontage.



- 8.8 The purpose of this NOR is to designate land as an Active Reserve space for recreation and sporting activities and the use of playing fields and a future sports / aquatic centre will clearly generate traffic movements within the network. In my view it is reasonable to expect that the numbers and characteristics of those vehicle movements will be commensurate with the associated use of the reserve. For example, weekend sporting event vehicle generation will be different compared to weekday use of a sports / aquatic centre.
- 8.9 In considering these transport network effects it is important to remain cognisant of the fact that the reserve area has been identified as a preferred location through an extensive community consultation and an integrated structure planning process; and that an outline plan process (s176A RMA) is required to be followed to confirm development details and associated effects.
- 8.10 In terms of the transport network effects I am satisfied that these have been adequately addressed in principle through the wider structure planning process and identification of road upgrade requirements. This includes ensuring good connectivity to the road network, park and ride opportunities; walking and cycling networks; proximity to medium / high density residential neighbourhoods; and proximity to a town centre and school.
- 8.11 In terms of the outline plan process the NOR does not propose to approve work as part of the designation. As a result, any future work within the designated land will be subject to an outline plan. The purpose of an outline plan process is to enable the territorial authority to request changes before works commence. In this context s176A(3)(d) and (f) require an outline plan to show access, circulation, parking and any other matters to avoid, remedy or mitigate related adverse effects.
- 8.12 Whilst the outline plan provides scope to assess effects on the transport network a condition is proposed to require new vehicle access and exit points and parking areas to be subject to a transport assessment. The purpose of this condition is to provide for the continued safe, effective and efficient operation of the surrounding transport network.
- 8.13 Based on the comprehensive structure planning process; outline plan requirement and the proposed condition I consider that any actual or potential adverse effects on the transport network will be appropriately mitigated to ensure the safe, efficient, and effective function of the network is not compromised.

### **Character and Amenity**

- 8.14 My assessment of character and amenity effects is informed by the RMA definition of *amenity values*; the zoning of the operative and proposed District Plan and having regard to the land use change proposed through this NOR. To assist with this assessment the requiring authority has provided me with a working draft concept plan that identifies a playing field and building layout. Because this is a working draft it is not included as part of this report, however, my expectation is that a finalised draft concept plan will be provided at the hearing. I understand

that the purpose of the concept plan is to guide future development of the site through the outline plan process and it is not a tool to be used to avoid submitting an outline plan.

- 8.15 In my opinion the key potential character and amenity effects relate to visual effects and noise associated with the change of use.
- 8.16 In terms of visual effects, the key changes are the introduction of playing fields and ancillary structures, buildings and parking areas. As the playing fields are formalised areas of open space ancillary structures are likely to include such things as lights poles and goal posts etc. Given the scale of the open space within the reserve I consider the appearance of such ancillary structures will be complimentary to its use and are unlikely to have a significant visual effect in the context of the wider surrounding open space.
- 8.17 As for the buildings the NOR identifies the provision of clubrooms and changing sheds and possibly an indoor sports venue and aquatic centre. The draft concept plan identifies the likely location of these buildings at the northern ends of the site, where the ground level is lower than the southern part of the site. Whilst there are no detailed design plans at this stage it is reasonable to assume the character and scale of those buildings will reflect their intended use and function i.e. the scale and form of a bowls pavilion will likely be less significant compared to a pool and indoor sports facility.
- 8.18 Whilst this level of built form may be apparent within the surrounding open space, there is a significantly greater ratio of open space to buildings. In addition, I note that under Plan Change 92 the site and the surrounding land has an underlying Medium Density Residential Zone where the permitted building height is mostly between 11m-12m<sup>1</sup>, with building height up to 20m proposed within land identified as being within Stage 3C adjoining the north-west site boundary. Whilst the 11-12m height is a central government mandate with legal effect the 20m height is not.
- 8.19 In that context confirming the NOR will result in those reserve buildings being viewed against a backdrop of comprehensive medium density residential development. Conversely assuming the NOR does not proceed the proposed underlying zoning and associated MDRS enable significant change to the existing amenity values of the site. In my opinion that outcome would have a greater effect on amenity values compared to what is proposed through the NOR.
- 8.20 Whilst the outline plan process also requires information on building height, shape and bulk<sup>2</sup> a condition is proposed to enable the effects of buildings that do not comply with MDRS height or height in relation to boundary to be assessed in more detail. This condition will enable the amenity effects of buildings with a height and location not consistent with MDRS to be assessed in more detail.

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<sup>1</sup> In accordance with MDRS standards

<sup>2</sup> S176A(3)(a)

- 8.21 Regarding noise effects the NOR application identifies that noise associated with the site will be intermittent and most likely noticeable during peak use times of outdoor sports fields.
- 8.22 The draft concept plan identifies that playing fields are proposed to be located in areas that are adjacent to road frontages, access and parking areas and the stormwater gully reserve. As a result, there is some separation to offset these active outdoor spaces from the Medium Density Residential Zone to the north. Whilst the outdoor use of the reserve has the potential to generate noise effects on future surrounding residential uses to the north, in my view this is unlikely to be unreasonable. That is on the basis that confirming the NOR will clearly identify the intended use of the site and that in turn provides the opportunity for residential development design to respond to that use.
- 8.23 In terms of noise effects on land directly opposite the site to the south and east this consists of an underlying Light Industrial Zone (with established industrial / commercial uses) and a designated school site. In my view, noise effects from use of the reserve on these activities, is highly unlikely to be significant.
- 8.24 Overall, based on the assessment above I am satisfied that any potential effects on character and amenity from building bulk and scale and noise will be acceptable.

### **Large Scale Earthworks**

- 8.25 Bulk earthworks will be required across the site to create the Active Reserve. As noted previously in this report a designation does not exempt the proposed work from compliance with regional rules.
- 8.26 Whilst the Regional Natural Resources Plan includes permitted standards for large scale earthwork activities it is likely that the cut and fill required to create the reserve playing fields, buildings and structures will require resource consent from the Bay of Plenty Regional Council (BOPRC).
- 8.27 Overall, I am satisfied that the BOPRC consent process will provide the appropriate opportunity for considering the potential effects of large-scale earthworks. I also note that any outline plan submitted will be required to show finished contours of the site<sup>3</sup>.

### **Contaminated Land**

- 8.28 As previously noted, the site includes land that is identified as being potentially contaminated due to existing and previous land use activities.
- 8.29 Whilst disturbance and use of potentially contaminated land is primarily managed under the NESCS the BOPRC NRP also includes standards for contaminated land disturbance.
- 8.30 As noted in the NOR application a Detailed Site Investigation will be required before works commence on the site to confirm soil contamination profile and how the NESCS and NRP

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<sup>3</sup> S176A(3)(c)

standards apply. Overall, I am satisfied that these consent processes are appropriate for managing any potential contaminated land effects associated with development of the site.

### **Cultural Effects and Historic Heritage**

- 8.31 The submission from Heritage New Zealand Pouhere Taonga identifies that the Ōmokoroa peninsula is a rich archaeological landscape. Ōmokoroa is also recognised as having highly significant cultural values and Pirirakau are recognised as holding mana whenua over the peninsula.
- 8.32 Under the operative District Plan the Ōmokoroa Structure Plan section includes a comprehensive list of earthworks procedures as 'best practice' to ensure cultural values are appropriately managed through subdivision and development. As noted in the Plan Change 92 Section 32 report Pirirakau have developed an Ōmokoroa Urban Design Cultural Overlay to inform and influence the Stage 3 Structure Plan<sup>4</sup>. This pulls through the operative 'best practice' earthworks procedures and applies them to Stage 3.
- 8.33 Given the outline plan process does not include specific reference to cultural / historic heritage values in my opinion Pirirakau's expectations around potential effects of land development on cultural values should be given appropriate consideration through the outline plan process.
- 8.34 On that basis a condition is proposed to reflect what is currently included in the operative District Plan (and Plan Change 92). Subject to this condition I consider any effects on cultural values will be acceptable.
- 8.35 In regard to archaeological sites Heritage New Zealand Pouhere Taonga (HNZPHT) Act 2014 provides protection for all archaeological sites. Any modification or destruction of archaeology requires an authority from Heritage New Zealand Pouhere Taonga. In my opinion the HNZPHT Act 2014 enables any potential adverse effects on archaeology to be appropriately managed.

### **Positive Effects**

- 8.36 In considering positive effects the Notice of Requirement has been issued to provide active open space and community facilities that will meet the requirements of projected population growth. In terms of managing potential adverse effects on the environment proposed conditions are included in Attachment 4. These have been reviewed and agreed to by the requiring authority.

## **9. Statutory Planning Documents**

- 9.1 The objectives and policies considered most relevant to this proposal are included in Attachment 5 and are discussed in more detail below.

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<sup>4</sup> Section 5.2.6, Section 32 Evaluation Report

**National Policy Statements**

- 9.2 The National Policy Statement Urban Development 2020 (NPS-UD) is considered most relevant to this proposal.
- 9.3 It is noted that the NPS for Highly Productive Land does not apply to land identified for future urban development, and that the other NPSs cover matters that are not relevant to this proposal (e.g. electricity transmission).
- 9.4 Objective 1 of the NPS-UD identifies the importance of delivering well-functioning urban environments that enable people and communities to provide for their social, economic and cultural wellbeing. Objective 4 recognises that these urban environments will need to change over time to meet the needs of people, communities and future generations. Objective 5 and 6 identify that planning decisions need to take account of Te Tiriti o Waitangi principles and be integrated with infrastructure planning and funding decisions.
- 9.5 In achieving these outcomes the supporting Policies 1 and 6 make specific reference to ensuring well-functioning urban environments have good access to open spaces; and that planning decisions have particular regard to the planned urban built form. Policy 9 identifies how to take account of the principles of Te Tiriti o Waitangi in planning decisions, with specific reference to designations.
- 9.6 The NOR forms part of a wider integrated strategic planning approach to accommodate population growth and deliver infrastructure within the Ōmokoroa peninsula. The identification of the site has also been refined through engagement with the community, tangata whenua and Elected Members. In my opinion the designation will overall provide for a well-functioning urban environment that implements the policies of the NPS-UD and achieves its objectives.

**NZ Coastal Policy Statement**

- 9.7 The provisions of the New Zealand Coastal Policy Statement (NZCPS) are not relevant to the proposal as the NOR is not within the coastal marine area or the coastal environment as identified under the operative Regional Coastal Environment Plan

**Bay of Plenty Regional Policy Statement**

- 9.8 Objective 23 of the operative Regional Policy Statement (RPS) identifies that the Region's growth must be effectively and efficiently accommodated within compact, well designed and sustainable urban form. In achieving this objective supporting Policy UG 9B identifies the need to co-ordinate new urban development and infrastructure, whilst Policy UG 12B makes specific reference to the provision of quality open space, and how that should be achieved.
- 9.9 The purpose of Plan Change 6 is to implement the requirements under the NPS-UD. As Objective 25 and supporting Policy UG6A identify that urban use and development must integrate with the long term planning of local councils, central government agencies and network utility providers to ensure efficient use of land for urban growth.



- 9.10 Based on the purpose of the designation and its location within an urban growth area I am satisfied the NOR is consistent with the operative and proposed RPS objectives and policies.

### **Operative District Plan**

- 9.11 The relevant objectives and policies under the ODP relate to the transport network, historic heritage and the Future Urban Zone.
- 9.12 Objective 4B.2.1 identifies the importance of ensuring development does not compromise the integrated, efficient, safe and sustainable functioning of the transport network. Supporting Policies 4B.2.2(1), (2), (3), (9) and (11) identify this will be achieved by managing land use to achieve compatibility with the local and wider transport network and ensuring vehicle access location does not compromise the safe and efficient function of those networks. In my opinion the NOR will enable development and use of land that is consistent with the objective and policies.
- 9.13 Objective 7.2.1(3) and supporting Policy 7.2.2(7) recognise the involvement of tangata whenua through the use and development of land. Although tangata whenua have been consulted through the Plan Change 92 community engagement process the proposed 'cultural values' condition reinforces the requirement for meaningful consultation as part of the outline plan process. I consider the NOR will be consistent with the objective and policy on this basis.
- 9.14 Objective 15.2.1(1) and (5) and supporting Policies 15.2.2(4) and (5) identify the need to ensure that land use development does not compromise the functioning of Ōmokoroa Road and the wider transport network; and that future urban development potential is not undermined through land fragmentation.
- 9.15 Overall, I consider that the NOR will implement the identified policies of the operative District Plan and achieve its objectives.

### **Plan Change 92**

- 9.16 Although Plan Change 92 implements the requirements of the NPS-UD, in my opinion, there are no objectives or policies directly relevant to the NOR. However, I note that the site is identified as both a Reserve Area and Active Reserve in the proposed density area plan, Structure Plan and zoning map. In that context the NOR is consistent with the outcomes proposed under Plan Change 92.

## **10. Alternative Sites, Routes and Methods**

- 10.1 Adequate consideration of alternative sites, routes and methods of undertaking the work is required in this instance because the requiring authority does not have an interest in the land sufficient for undertaking the work.
- 10.2 The NOR application includes a detailed discussion of the alternative sites that were considered. Appendix 6 of the NOR application also includes a staff report presented to

Elected Members on options for active reserve locations within Ōmokoroa Stage 3. This report provides a comprehensive assessment of that process and identifies a total of seven potential sites; including a cost benefit analysis for each site.

- 10.3 Through the informal community consultation process the potential active reserve site was narrowed to two options with the NOR site ultimately emerging as the preferred option (refer Figure 6)

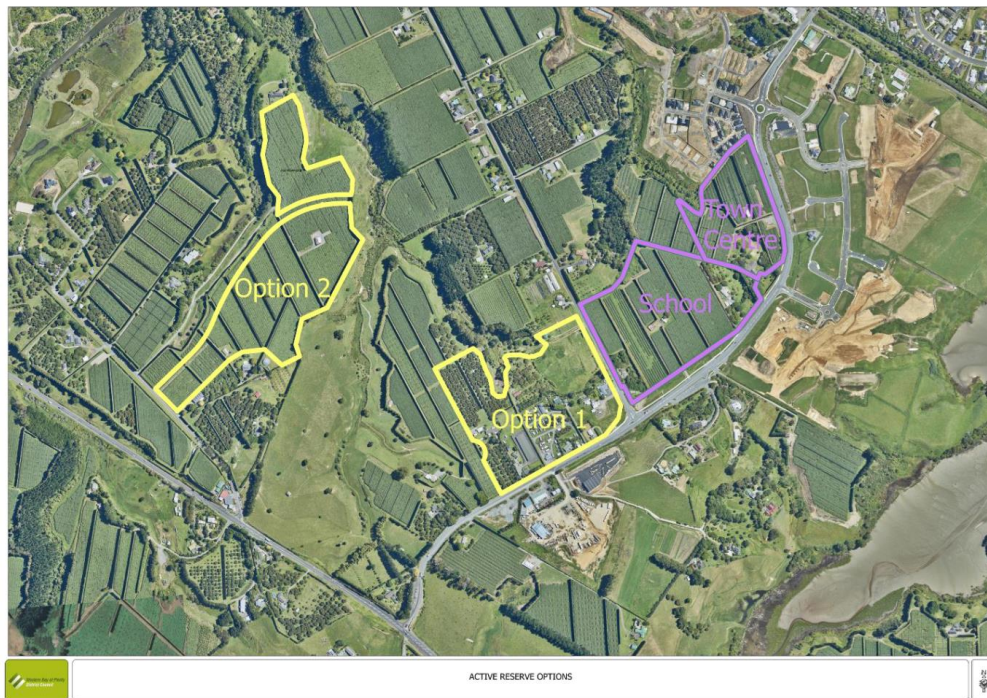


Figure 6 – Active Reserve Options (Policy Committee Agenda 6 July 2021).

- 10.4 Based on the information provided in the NOR application I am satisfied that there has been adequate consideration of alternatives sites.

## 11. Necessity for the Designation

- 11.1 Under Section 10 of the Local Government Act 2002 (LGA) one of the purposes of local authorities is to promote the social, economic, environment and cultural well-being of their communities in the present and for the future. This requirement is subsequently distilled into the various plans and strategies developed by councils, in consultation with their communities.
- 11.2 The objectives of the work and the designation are set out in the NOR application. Based on this information and noting that the NOR is a key part of responding to future growth within the area, I am satisfied that the purpose of the designation (and associated work) are reasonably necessary to achieve the objectives of the requiring authority.

## **12. Other matters**

- 12.1 The other relevant matters to be considered are the issues raised by submitters and not otherwise assessed in this report.

### **Property Loss / Land Acquisition**

- 12.2 In my opinion the effects of loss of land / land acquisition under the RMA relate to how the subsequent construction and operation of the work will affect the environment. Whilst the RMA provides for land to be designated the process of acquisition, valuation and compensation are set out under Public Works Act 1981 (PWA). A requiring authority is required to follow these statutory requirements outside of an RMA process.
- 12.3 Appendix 5 of the NOR application includes a record of consultation with directly affected parties up to the time the application was lodged. Since lodging the NOR the requiring authority has continued to engage and negotiate with these parties and the requiring authority can provide any updates on this at the hearing.
- 12.4 Given the PWA sets out the statutory framework for land acquisition to ensure fair treatment of parties. I consider that the issues associated with valuation and compensation are best resolved through that process.

### **Loss of Childcare Centre**

- 12.5 The childcare centre is located at 7 Prole Road and was granted resource consent in March 2017. In terms of the prospect of future reserve plans not being identified through that process I can only assume that was down to timing i.e., the resource consent application preceded the investigation of potential active reserve areas.
- 12.6 In terms of the business itself I understand the requiring authority is engaged with the affected parties and is actively seeking suitable alternative sites to relocate the business to. As noted above this process, including any compensation, will be subject to the PWA and is best left to that process.

### **Proposed Work / Reserve Masterplan**

- 12.7 The requiring authority is in the process of finalising a draft concept plan. The purpose of that concept plan is to guide strategic development of the reserve. It is not intended to be approved as part of the designation to avoid the need for an outline plan. As previously noted, a confidential working draft was provided to assist with the drafting of this report. Based on the plan provided to me I am satisfied that the NOR includes all the land reasonably necessary to give effect to the purpose of the designation.
- 12.8 It is my expectation that the draft concept plan will be available at the hearing for the benefit of the commissioners and submitters.

### **Development Timing**

- 12.9 Assuming the NOR is confirmed the effect of the designation will be to restrict subdivision and development within the designated land. The NOR application identifies a lapse period of 15 years for that purpose.
- 12.10 The timing for developing the designated land will largely depend on the PWA negotiations and the processes surrounding that. The requiring authority have advised they anticipate the land acquisition process being completed within ten years with development of the reserve following that. I am also advised that the timing of development will be subject to demand, and it may be developed in stages. If that occurs development of access / carpark by the proposed Prole Road roundabout will be first followed by playing fields; the Francis Road access / car park; sports buildings; gym and pool.

### **13. Part II of the Resource Management Act 1991**

- 13.1 Consideration of a NOR and submissions received is subject to Part 2 of the RMA.

#### **Section 5 – Purpose**

- 13.2 Section 5 of Part 2 identifies the purpose of the RMA as promoting the sustainable management of natural and physical resources. This means managing the use of natural and physical resources in a way that enables people and communities to provide for their social, cultural and economic well-being while sustaining those resources for future generations, protecting the life supporting capacity of ecosystems, and avoiding, remedying or mitigating adverse effects on the environment.
- 13.3 In my opinion the NOR will enable the social, cultural, economic and health and safety needs of people, communities and future generations to be met through the provision of public active open space. Based on the proposed use and design, the proposed conditions and the outline plan process I consider the NOR will be able to avoid, remedy and mitigate any adverse effects on the environment.

#### **Section 6 – Matters of National Importance**

- 13.4 In my opinion Section 6(e) and (f) are relevant to the NOR.
- 13.5 Section 6(e) identifies the need to recognise and provide for the relationship of Māori with their culture, traditions, ancestral lands and other taonga. As noted in Section 8 of this report designation conditions are proposed that incorporate the earthworks procedures from the Ōmokoroa Structure Plan. In my view this will ensure there is meaningful engagement and consultation with Pirirakau, the hapu holding mana whenua on the peninsula.
- 13.6 Section 6(f) provides for the protection of historic heritage. The site is not identified in the operative District Plan or Plan Change 92 as having any significant historic heritage features. As noted previously in this report the discovery of unrecorded archaeology is best managed through the authority process under the Heritage New Zealand Pouhere Taonga Act 2014.

**Section 7 – Other matters**

13.7 The other matters most relevant to this NOR are:

- 7(b) – The efficient use and development of natural and physical resources.
- 7(c) – The maintenance and enhancement of amenity values.
- 7(f) – Maintenance and enhancement of the quality of the environment.

13.8 In my opinion the NOR will provide for efficient use and development of the land resource within the site through the creation of an Active Reserve area to support population growth. As Active Reserve the site will include a combination of open space and buildings that reflect its purpose. The concept plan will also assist guiding future development through the outline plan process. In this context, given the location of the site and the surrounding zoning it is my opinion that the development of the site as an Active Reserve will maintain amenity values and the quality of the surrounding environment.

**Section 8 – Treaty of Waitangi**

13.9 Whilst I am not aware of any specific Section 8 matters relevant to the NOR I note that consultation with local hapu has occurred through the development of Plan Change 92. To ensure a consistent approach to future land development the earthworks procedures from the Ōmokoroa Structure Plan are recommended to be included as conditions for this designation. Overall, based on the consultation to date and proposed conditions, I consider the principles of the Treaty have been taken into account.

**14. Conclusion and Recommendation**

14.1 In accordance with s168A(4) of the RMA the Commissioners may decide:

- (a) Confirm the requirement;*
- (b) Modify the requirement;*
- (c) Impose conditions; or*
- (d) Withdraw the requirement.*

14.2 I have considered the potential effects of the requirement within the context of the surrounding environment and against the relevant provisions of the RPS, the Operative District Plan and other relevant legislation and strategies. I am satisfied that adequate consideration has been given to alternative methods of undertaking the work and that the designation is reasonably necessary for achieving the objectives of the requiring authority.

14.3 In achieving the purpose of the RMA, I consider that any potential adverse effects on the environment of allowing the requirement can be adequately mitigated through conditions.

14.4 Overall, I consider that the requirement represents the most efficient management and use of a physical resource to enable people and communities, including future generations, to provide for their social and economic well-being.



14.5 In accordance with s168A(4)(a) and (c) I recommend that the Council confirm the requirement and impose conditions in accordance with those set out in Attachment 4.



.....  
James Danby  
**Consultant Planner**

Date: 9 August 2023



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Natasha Ryburn (Delegated Officer)  
**Environmental Consents Manager**  
**Western Bay of Plenty District Council**

Date: 9 August 2023