

# **Wellington City Council**

**Hearing of Submissions and Further Submissions**

**on**

**Proposed District Plan**

**Report and Recommendations of Independent Commissioners**

**Hearing Stream 10**

**Report 10**

**Designations**

**Commissioners**

**Trevor Robinson (Chair)**

**Jane Black**

**Heike Lutz**

**Robert Schofield**

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## **1. INTRODUCTION**

### **1.1 Topics of Hearing**

1. This Report addresses Designations, which were heard as part of Stream 10 of the PDP process.
2. The Council Reporting Officer was Mr Jamie Sirl.
3. Mr Sirl provided a comprehensive Section 42A Report addressing the designations of 19 requiring authorities in turn.
4. Each requiring authority's designations address a separate set of activities. Our Report, therefore, follows the approach of the Section 42A Report of addressing each set of designations by a requiring authority in turn (and in alphabetical order according to requiring authority) after a discussion of the statutory framework that applies to designations considered in the review of a District Plan.

### **1.2 Hearing Arrangements**

5. The Commissioners who sat on Hearing Stream 10 were:
  - (a) Trevor Robinson (Barrister) as Chair;
  - (b) Jane Black (Urban Planner and Designer);
  - (c) Heike Lutz (Building Conservation Consultant);
  - (d) Robert Schofield (Planner).
6. Commissioner Black declared a conflict in relation to Wellington City's Moa Point Wastewater Treatment Designation (WCC6) and took no part in the Panel's consideration of that designation.
7. Commissioner Schofield declared a conflict in relation to the designations of Transpower Limited, Airways Corporation of NZ Limited, and the Minister of Corrections. He also took no part in the Panel's consideration of those designations.
8. The Stream 10 hearing commenced on 15 July 2024 and concluded the following day.
9. Over the course of the hearing, we heard from the following parties:
  - (a) For Council:
    - Nick Whittington (Counsel).

- Jamie Sirl (Planning).
- (b) For Council as requiring authority:
- Chris Matthews (Manager Waste, Water and Resilience).
  - Darren Hoskins (Manager, Landfill Operations).
- (c) For Wellington International Airport Limited (**WIAL**)<sup>1</sup>:
- Amanda Dewar (Counsel).
  - Jo Lester (Airport Planning Manager).
  - Lachlan Thurston (Airport Head of Operational Readiness).
  - Natalie Hampson (Economics).
  - John Kyle (Planning).
- (d) For the Board of Airline Representatives of New Zealand Inc (**BARNZ**)<sup>2</sup>:
- Cath O'Brien.
- (e) For Guardians of the Bays Inc<sup>3</sup>:
- Yvonne Weeber.
- (f) For Best Farm Limited and Lincolnshire Farm Limited<sup>4</sup>:
- Rod Halliday.
- (g) For Friends of Owhiro Stream<sup>5</sup>:
- Martin Payne.
10. We also received tabled material from:
- (a) Kāinga Ora – Homes and Communities (Kāinga Ora)<sup>6</sup>;
- (b) Ara Poutama Aotearoa, The Department of Corrections<sup>7</sup>;

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<sup>1</sup> Submission #406, Further Submission #36

<sup>2</sup> Further Submission #139

<sup>3</sup> Submission #452, Further Submission #44

<sup>4</sup> Submission #26, Further Submission #75

<sup>5</sup> Submission #403

<sup>6</sup> Submission #391, Further Submission #89

<sup>7</sup> Submission #240

- (c) KiwiRail Holdings Limited (**KiwiRail**)<sup>8</sup>.
11. Following the hearing we received additional information, as follows:
- (a) Mr Halliday provided us with title plan information mapping what, in his view, was the appropriate area for GWRC's Stebbings Valley Flood Detention Dam Designation (WRC6);
  - (b) WIAL provided us with:
    - (i) A Supplementary Statement of Evidence by Mr Thurston answering a question we had posed at the hearing which he required time to research and proving amended cross sections of WIAL's Obstacle Limitation Surfaces (**OLS**) Designation (WIAL1);
    - (ii) An Evaluation of WIAL's OLS Designation under Sections 77J and 77K of the RMA authored by Mr Kyle;
    - (iii) A copy of a case decision referred to by its counsel Ms Dewar in her submissions.
12. We also received further material from KiwiRail stemming from an application its counsel had made immediately prior to the hearing commencement, seeking deferral of consideration of KiwiRail's designations so that they might be considered in an exchange of written material following the hearing, or alternatively in the wrap-up hearing.
13. Our verbal decision (confirmed in Minute 52) was that we should hear from the Council in relation to KiwiRail designation issues and then seek to obtain further information subsequent to the hearing, in order to give KiwiRail the opportunity to undertake further research and put before us historical material related to its Wellington Railway Lines Designation (KRH1). As a result, we received a memorandum of Counsel for KiwiRail on 13 August 2024 enclosing information relevant to its designation and advising of a change in KiwiRail's position.
14. The Council provided its written Reply on all designations other than those related to KiwiRail on 16 August 2024. Its Reply on KiwiRail issues was provided on 28 August 2024.

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<sup>8</sup> Submission #408

### 1.3 Statutory Background

15. The Stream 10 hearing proceeded pursuant to Part 1 of the First Schedule to the RMA. We refer readers to the Hearing Panel's Report 1A for a discussion of the background to our Reports, noting that matters discussed in Report 1A specific to the Intensification Streamlined Planning Process (**ISPP**) are not relevant to this hearing stream. In particular, Report 1A sets out relevant background on:
  - (a) Appointment of Commissioners;
  - (b) Notification and submissions;
  - (c) Procedural directions;
  - (d) Conflict management;
  - (e) General approach taken in Reports; and
  - (f) Abbreviations used.
16. As foreshadowed in Report 1A, we have adopted an exceptions approach to the matters before us, focussing principally on the matters put in contention by the parties who appeared before us and aspects of the Section 42A Report we felt required closer examination. If we have not addressed a submission point in our Report, it is because we agree with the recommendations of the Section 42A Reporting Officer.
17. Hearing Panel Report 1B addresses Strategic Objectives, and together with the Council's decisions on our recommendations in that report, also provides relevant background to this Report.
18. The RMA provides a varied process for designations in a District Plan review that we need to record. Firstly, in terms of process, requiring authorities were given the opportunity to 'roll over' existing designations in the Operative District Plan (ODP) with or without modification. All but two of the designations we considered were rolled-over in this way<sup>9</sup>.
19. Clause 9(3) of Schedule 1 of the RMA directs that where a designation has been rolled-over from the ODP into the PDP without modification, and no submissions have been received on it, the rolled-over designation must be included in the PDP. We have no jurisdiction to make recommendations in respect of such designations.

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<sup>9</sup> The two new designations were Minister of Education Designations for two existing school sites (St Francis Xavier School and Sacred Heart Cathedral School)

20. Mr Sirl advised that where, in his view, modifications to designations were immaterial in nature, he had treated those as rolled-over with no modifications from a procedural perspective. The nature of the modifications in question (updated legal descriptions and/or street addresses where the mapped area has not changed) supports that approach, and we too have adopted it.
21. Mr Sirl identified some 17 designations in this category. We will note the relevant designations as part of our discussion.
22. Also outside our jurisdiction were designations that were in the process of being considered under Part 8 of the RMA when the PDP was notified. Pursuant to Section 175, the final decision on those designations is imported automatically into the PDP. Two WIAL designations were in this category and have not been considered further in this Report.
23. The other important procedural difference between designations and other provisions in the PDP is that the Council's 'decisions' on our recommendations in respect of designations other than those of the Council itself take the form of recommendations to the relevant requiring authority. For those designations, it is the requiring authorities themselves that make the decisions (subject to appeal), not the Council.
24. There are also substantive differences in the matters considered in relation to designations. These are set out in Section 168A (for the Council's designations), and Section 171 (for those of other requiring authorities).
25. The material parts of Section 168A relating to consideration of the Council's own designations state:

*(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)*

26. The relevant provisions of Section 171, relating to the designations of other requiring authorities, states:

(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).*

27. Key differences between the approach to designations, compared to other Plan provisions are:

- (a) The requirement to have ‘particular regard’ to higher order planning direction in relation to designations, compared to the obligation to give effect to such direction in relation to other Plan provisions<sup>10</sup>;
  - (b) The need to consider whether adequate consideration has been given to alternative sites, routes or methods in the situations specified in Sections 168A(1)(b) and 171(1)(b);
  - (c) The need to consider whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority.
28. The last point means that the objectives stated in each designation acquire particular significance.
29. Some requiring authorities sought to utilise the opportunity to delete or amend conditions on the rolled-over designation(s). Under Section 181 of the RMA, such changes are subject to the same tests, as above. The District Plan review was also used as an opportunity to amalgamate designations that had been inserted into prior Plans at different times, in order to reduce the number and complexity of the designations.
30. As above, 19 requiring authorities sought that their designations be recorded in the PDP, as follows:
- (a) Airways Corporation of NZ Limited (6 designations, including two rolled-over without modification);
  - (b) Chorus NZ Limited (14 designations);
  - (c) KiwiRail Holdings Limited (2 designations);
  - (d) Kordia Limited (2 designations);
  - (e) Metrological Service of New Zealand Limited (4 designations, including two rolled-over without modification);
  - (f) Minister of Corrections (2 designations, both rolled-over without modification);
  - (g) Minister of Courts (4 designations, including two rolled-over without modification);
  - (h) Minister of Defence (2 designations);
  - (i) Minister of Education (75 designations including, as above, two new designations);
  - (j) Minister of Police (2 designations, of which one was subsequently uplifted);

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<sup>10</sup> Although the decision of the majority of the Supreme Court in *Royal Forest and Bird Protection Society Inc v New Zealand Transport Agency* [2024] NZSC 26 at [108] suggests that the difference may not be material.

- (k) New Zealand Media and Entertainment (1 designation);
- (l) Waka Kotahi New Zealand Transport Agency (5 designations);
- (m) The Prime Minister (1 designation);
- (n) Spark New Zealand Trading Limited (7 designations);
- (o) Transpower New Zealand Limited (6 designations, of which two were rolled-over without modification);
- (p) Wellington City Council (13 designations, of which 10 were rolled-over without modification);
- (q) Wellington Electricity (3 designations, of which 2 were rolled-over without modification);
- (r) Wellington International Airport Limited (3 designations, of which 1 was subsequently uplifted); and
- (s) Greater Wellington Regional Council (6 designations).

## 2. AIRWAYS CORPORATION OF NEW ZEALAND LIMITED

### 2.1 Introduction

31. Airways Corporation of New Zealand Limited (**ACNZ**) sought roll-over of six of its existing nine designations with amendments. In each case, ACNZ sought insertion of a condition to create an 'Air Traffic Control Information Overlay' around the designated area. ACNZ also sought that four of the designations have a modified purpose.
32. The designations were notified without the condition sought, apparently on the basis that it was inconsistent with Section 176, because it would apply outside the designated area.
33. The only submissions on the ACNZ designations were from the requiring authority itself. ACNZ<sup>11</sup> sought the introduction of 'Air Traffic Control Information' overlays around their radar designations ACNZ3 and ACNZ4 to provide a 500m radius buffer around the designations located on Hawkins Hill. These submissions were supported by WIAL<sup>12</sup> and one was opposed by Kāinga Ora<sup>13</sup>.
34. The submission outlined that the purpose of the overlays would be to require plan users to consult with ACNZ before undertaking any activity within the area of the

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<sup>11</sup> Submission #100.1, 100.2

<sup>12</sup> FS #36.255-256

<sup>13</sup> FS #89.43

overlay. This would give ACNZ the opportunity to adjust its technology in advance of the activity occurring. Alternatively, they sought that the overlay include specific restrictions and requirements for new activities within the overlay.

## **2.2 Modifications to Rolled-Over Designations**

35. Mr Sirl considered the modifications to the designation purpose to be minor amendments, necessary to accurately reflect the purpose and area of the designations.
36. Mr Sirl considered that the conditions that had been sought, but not included, were not enforceable because they were outside the scope of Section 176 of the Act and outside the designation area. In his view, a variation would need to be lodged to extend the designation areas to include the overlays.
37. Mr Sirl considered an alternative whereby the proposed conditions could be added to the 'additional information' section of the designation tables, but did not recommend that course. Overall, he found that the conditions as suggested were unworkable and unenforceable.
38. Mr Sirl noted that the designations are already in existence and therefore given effect to. He did not expect there to be any additional, or changes to, adverse effects on the environment. Mr Sirl also considered that the consideration of alternative sites, routes or methods is not necessary for the same reasons and that the designations are reasonably necessary in terms of providing certainty for the ongoing operation and maintenance of the infrastructure they cover. He also considered that any adverse effects were able to be adequately managed through the Outline Plan process. We agree with and adopt Mr Sirl's assessment under the statutory tests.

## **2.3 Response to Submissions**

39. Mr Sirl recommended rejection of ACNZ's submissions, largely for the same reasons as discussed above.
40. ACNZ did not appear at the hearing to expand on their submission, so we were unable to pursue this further. We agree with Mr Sirl that the designation could not be extended, or overlays introduced through this process. If the designation is to be used as the vehicle for controls beyond the site, the areas designated need to be altered by way of a variation to the designation.

41. We did, however, note that the area around the designations are zoned Natural Open Space and General Rural, and consideration could be given to achieving the outcomes sought through rules in those zones, or alternatively in the Infrastructure Chapter. We consequently referred the matter for consideration at the wrap up hearing.
42. We discuss the issue further in Report 9.

### **3. CHORUS NZ LIMITED**

43. Chorus NZ Ltd sought the roll-over of its existing 14 designations with some modifications. Mr Sirl considered the modifications specific to two of the designations (modified mapping to correctly describe the site) to be minor in nature.
44. Mr Sirl noted that the designations are already in existence and therefore given effect to. He did not expect there to be any additional, or changes to adverse effects on the environment. Mr Sirl also considered that the consideration of alternative sites, routes or methods is not necessary for the same reasons, and that the designations are reasonably necessary in terms of providing certainty for the ongoing operation and maintenance of the infrastructure they cover.
45. Chorus NZ Ltd sought the removal of conditions previously contained in the ODP and applying to all designations. These conditions related to the ODP zone provisions and set out the constraints on the size and area of antennae. The reason given being that, as the provisions of the ODP are out of date, they no longer applied.
46. Mr Sirl agreed with Chorus NZ Ltd that reliance on the Outline Plan process adequately provides for the management of effects of any works within the designation.
47. Through Minute 53, the Panel asked Mr Sirl to comment further on why the approach taken in the ODP (that key constraints should be in the conditions rather than reliance being placed on the Outline Plan process) was no longer valid.<sup>14</sup>
48. In his Reply, Mr Sirl outlined the approach he had taken. He said that the conditions would need to be updated to be consistent with the provisions of the Infrastructure Chapter or the NESTF (depending on relevance to the proposed work). He pointed out that this then makes the designation largely redundant as any works that comply

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<sup>14</sup> Minute 53

with the provisions of the plan, but do not meet the designation conditions, would be required to go through an RMA process – Outline Plan or alteration to the designation to amend or remove the condition. Without the designation, the work could be undertaken in accordance with the relevant Permitted Activity rules of the plan. In his view, removal of the conditions and reliance on the Outline Plan process better aligns with the Permitted Activity standards.

49. Mr Sirl did, however, offer an amendment to this approach. He suggested that a condition could be included in the designation that would provide additional clarity. The condition would state that *“an outline plan is not required for works that comply with the relevant permitted standards of the Infrastructure chapter and sub-chapters or NESTF. Where works cannot comply with relevant permitted standards, an outline plan would be required, noting that, under s176A(3)(f) of the RMA, an outline plan is required to detail matters to avoid, remedy or mitigate any adverse effects on the environment.”*<sup>15</sup>
50. In his opinion, this would address any non-compliance with the permitted standards of the plan provisions.
51. The Panel agrees that this amendment provides greater clarity to the processes required to carry out work within the designations and adopts Mr Sirl’s recommendation in that regard. We do not recommend any other changes to the notified Chorus NZ Ltd designations, and we agree with Mr Sirl’s reasoning, as summarised above.

#### **4. KIWIRAIL HOLDINGS LIMITED**

##### **4.1 Introduction**

52. Two KiwiRail designations were notified. The second (KRH2) relates to a single facility, a radio station on Hawkins Hill. It rolls-over ODP Designation R3, with the inclusion of the mapped designation area.
53. The first designation (KRH1) includes the balance of KiwiRail’s rail network within the city. It rolls-over and amalgamates four ODP designations (R1, R2, R4 and R5) with modifications that Mr Sirl summarised as:

*“Modifications to update the site identifier and mapping to include rail bridges, tunnels, level crossings, and include rail land that is currently undesignated, or*

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<sup>15</sup> Reply of Jamie Sirl 16 August 2004

*rail land which has been deemed surplus and therefore no longer needed in the designation area. Minor modifications to conditions to update new names of entities.”*

54. These designations were the subject of multiple submissions:
- Council<sup>16</sup> sought to amend the KRH Designation to differentiate underground and above ground features on the ePlan maps;
  - Century Group Limited<sup>17</sup> sought to retain the extent of Designation KRH1 so that it does not apply to 83-87 Waterloo Quay;
  - KiwiRail<sup>18</sup> sought to amend KRH1 to ensure that the Johnsonville line designation extent of Tunnel 6 is accurately designated;
  - KiwiRail<sup>19</sup> sought that Condition 1 applying to KRH1 be modified; and
  - KiwiRail<sup>20</sup> sought that the KRH1 label be removed on the planning maps from the KRH2 Designation at Hawkins Hill.

#### **4.2 Modifications to Rolled-Over Designations**

55. Mr Sirl considered that most of the modifications sought were of minor effect. The modification to the mapped designation area to remove surplus rail land would affect only the requiring authority. Applying the statutory tests, he considered that those modifications are necessary to accurately reflect the purpose of the designations and existing rail infrastructure. In addition, the designations are already in existence and therefore given effect to. He did not expect there to be any additional, or changes to adverse effects on the environment. Mr Sirl also considered that the consideration of alternative sites, routes or methods is not necessary for the same reasons and that the designations are reasonably necessary in terms of providing certainty for the ongoing operation and maintenance of rail infrastructure.
56. The one issue Mr Sirl did have with the proposed modifications is that the designation of tunnels was unclear as to whether the overlying properties are affected by the designation. He returned to this issue in the context of his discussion of submissions. We will do the same. For the moment, it is sufficient to record that we accept and

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<sup>16</sup> Submission #266.38

<sup>17</sup> Submission #238.3

<sup>18</sup> Submission #408.3

<sup>19</sup> Submissions #408.158-159

<sup>20</sup> Submission #408.3

adopt Mr Sirl's assessment of the proposed modifications in terms of the statutory tests.

#### **4.3 Response to Submissions**

57. Mr Sirl recommended acceptance of KiwiRail's proposed modifications to conditions. The modifications relate only to the heritage features of Wellington Railway Station and, in our view, improve the English without altering the substantive effect. We therefore agree with and adopt Mr Sirl's recommendation in that regard.
58. Mr Sirl noted further that there was no proposal to alter the spatial ambit of KRH1 in a way that would affect 83-87 Waterloo Quay. We agree with his recommendation that the Century Group Limited submission therefore be accepted.
59. Mr Sirl likewise agreed with the KiwiRail submission seeking correction of the planning maps which refer to KRH1 at the site of the KRH2 Designation at Hawkins Hill. We also agree that reference to that location is an error and recommend that it be removed.
60. The remaining two submissions seeking change to the designations, those of the Council and KiwiRail, brought into focus the point Mr Sirl had raised, as above, namely whether designation of the tunnels on the rail network includes the land overlying the tunnels, and thereby potentially restricts the exercise of third-party property rights at the ground surface.
61. Mr Sirl's view was that the existing designations did not affect the ground surface, and therefore, showing them as doing so would mean that they apply to a large number of new properties not previously impacted by the designations in a way that had not been adequately addressed by KiwiRail in its request to modify the designation area, or in its submission.
62. As above, we gave KiwiRail additional time to research the history of the designations that have been amalgamated into KRH1, to ascertain whether showing the designations as applying to the overlying land would be a material change, or alternatively, perpetuates the status quo.
63. The Memorandum of Counsel for KiwiRail dated 13 August traversed the provisions in the City of Wellington District Scheme 1959, the Wellington City District Plan 1985, and the Wellington City District Plan 2000. Counsel's Memorandum also provided

information from the titles related to a selection of properties overlying KiwiRail's tunnels, to see what light that sheds on the issue.

64. Counsel's conclusion from this historical review was that there was no clear evidence that the land above rail tunnels within the district had previously been designated, but it was clear that the tunnels themselves had been. It proposed that the designation continue to relate to tunnels and that the description of the designation make it clear that it is a strata designation in those areas: i.e., it does not include the land up to and including the ground surface.
65. In his Reply specifically in relation to this issue, Mr Sirl advised that he had discussed with KiwiRail's representatives how the position might best be captured and proposed an agreed description for this purpose.
66. We agree with the suggested outcome. In the absence of clear evidence that the ground overlying rail tunnels was previously designated, a modification to the designation to make that change would have potentially significant implications for the use of land at the ground surface over which KiwiRail does not appear to currently hold property rights. That would have required significant justification and analysis in terms of the statutory tests that we did not have evidence on.
67. It follows that we adopt Mr Sirl's recommendations in this regard.

## **5. KORDIA LIMITED**

68. Kordia Limited sought the roll-over of its two existing designations at Mt Kaukau and Makara with modifications to the designation purpose. These both now state: "*A facility for linking telecommunications and broadcast services and the supporting infrastructure and access.*" Neither designation was the subject of submission and Mr Sirl considered that application of the statutory tests supported roll-over on the notified terms and conditions.
69. The Panel asked Mr Sirl to consider whether the purpose might be better expressed in plain English<sup>21</sup>. Mr Sirl responded that there was additional detail on the purpose of the designations in the following detailed section on each designation. He also considered that the wording was consistent with other Kordia designations in NZ.<sup>22</sup>

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<sup>21</sup> Minute 53

<sup>22</sup> Reply of Jamie Sirl 16 August 2004

70. The Panel considered that the wording could be improved for easier reading and clarity. To that end we recommend that the purpose of both designations be amended to read: “A facility at Mt Kaukau/ Makara [as applicable] for linking telecommunications and broadcast services, ~~and~~ including the supporting infrastructure and access to the site.” In our view, these are minor changes to aid understanding.
71. Otherwise, we adopt Mr Sirl’s recommendation that these designations might remain as notified.

## **6. METROLOGICAL SERVICE OF NEW ZEALAND LIMITED**

72. Metrological Service of New Zealand Limited (**MetService**) sought to roll-over four existing designations. Two of the designations, MSNZ3 (MetService Mt Kaukau Automatic Weather Station) and MSNZ4 (MetService Wellington Airport), were the subject of modification in the form of mapping corrections.
73. No submissions were received in relation to the four MetService designations. That means that we have no jurisdiction in relation to two designations that were not the subject of modification (MSNZ1 and MSNZ2). As regards the two designations we do have jurisdiction over, Mr Sirl noted that the designations are already in existence and have been given effect. He did not expect there to be any changes to or additional adverse effects.
74. For similar reasons, he considered that consideration of alternative sites, routes or methods was not necessary and that the designations are reasonably necessary in terms of the relevant statutory test.
75. Lastly, Mr Sirl’s view was that no new conditions were either sought or necessary, noting that existing conditions apply to the designations proposed to be rolled-over.
76. We accept and adopt Mr Sirl’s recommendation that MSNZ3 and MSNZ4 might be confirmed without change.

## **7. MINISTER OF CORRECTIONS**

77. The Minister of Corrections sought to roll-over two existing designations, now identified as MCOR1 and MCOR2 in the PDP. The Minister did not seek substantive modifications to the designations, but did seek updated legal descriptions and physical addresses.

78. These designations were the subject of submissions from Department of Corrections<sup>23</sup> seeking that in each case, the designation be retained as notified.
79. While in theory we therefore have jurisdiction to recommend changes to the designation, we note Mr Sirl's opinion that the designations are reasonably necessary to provide certainty for the ongoing operation and maintenance of the operational facilities covered by the designations.
80. Having said that, he noted his understanding that the Wellington Prison – Mt Crawford facility the subject of MSOR1 is no longer an operational facility. He advised that the requiring authority had indicated in correspondence that the designation will be uplifted upon the land transfer process being completed.
81. The purpose of the designation is widely framed ("*corrections activities*"). In the circumstances we consider that the designation remains reasonably necessary to preserve the current legal status of the Prison until such time as the land is transferred and that in both cases, because these are existing facilities it is not necessary to consider alternative sites, routes or methods to undertake the work.
82. Accordingly, we accept and adopt Mr Sirl's recommendation that the Minister's designations be confirmed as notified.

## **8. MINISTER OF COURTS**

### **8.1 Introduction**

83. The Minister of Courts sought roll-over of four existing designations. Modifications were sought to two designations to update relevant information and in relation to MCOU4 (Wellington Supreme Court)-to remove construction conditions.
84. Taranaki Whānui<sup>24</sup>, opposed by Te Rūnanga o Toa Rangatira<sup>25</sup>, sought that Conditions:2.5 be amended to state "*Taranaki Whānui hold ahi ka and primary mana whenua status in Wellington City*". It also sought the removal of references to Wellington Tenth Trust<sup>26</sup>.

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<sup>23</sup> Submissions #240.79-80

<sup>24</sup> Submission 390.132

<sup>25</sup> Further Submission FS138.69

<sup>26</sup> Submission 389.131, 390.133

## 8.2 Modifications to Rolled-Over Designations

85. Mr Sirl considered the suggested removal of construction conditions appropriate, as the works have been completed, and that the balance of modifications sought were of minor effect.
86. Mr Sirl noted that the designations are already in existence and therefore given effect to. He did not expect there to be any additional, or changes to adverse effects on the environment. Mr Sirl also considered that the consideration of alternative sites, routes or methods is not necessary for the same reasons and that the designations are reasonably necessary in terms of providing certainty for the ongoing operation and maintenance of the infrastructure they cover.

## 8.3 Response to Submissions

87. In his Section 42A Report, Mr Sirl did not support recognition of Taranaki Whānui as holding ahi kā and primary mana whenua status, for reasons discussed in Hearing Stream 1. We concur and refer to the reasoning in Report 1A.
88. In relation to the requested deletion of reference to the Tenth Trust, Mr Sirl considered that reference to the “*relevant iwi authority*” was appropriate and consistent with the approach taken elsewhere in the plan.
89. In Minute 53, the Panel asked Mr Sirl to provide further advice on this matter and, in particular, whether it was intended to imply that Taranaki Whānui may not be the relevant authority. Mr Sirl responded that this was not the intention, but rather he “*sought to respond to the submission from Taranaki Whānui in a manner consistent with the wider approach of the plan, which is to be agnostic on who is mana whenua*”.<sup>27</sup> He added that he discussed this with Port Nicholson Block Trust representing Taranaki Whānui interests, who confirmed that their intention was to replace reference to Wellington Tenth Trust (previously representing Taranaki Whānui) with Taranaki Whānui. Mr Sirl however maintained that he preferred a consistent approach across the plan with reference to “*relevant iwi authority*”. This enables iwi to decide which is the relevant iwi authority as required.
90. Considering the relief sought by Taranaki Whānui, the Panel considered that it is clear the submitter did not seek to imply through deletion of reference to Wellington Tenth Trust that Taranaki Whānui were not mana whenua in relation to this particular site

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<sup>27</sup> Reply of Jamie Sirl 16 August 2004

and activity. Neither did the submitter seek a broader reference to “*relevant iwi authority*”, and amendment to put that in question, as proposed, is in our view out of scope. We note that Ngāti Toa’s further submission did not address this issue.

91. The Panel accepts that the intention of the submission was to seek reference to Taranaki Whānui, and therefore recommends that the reference in conditions to Wellington Tenth Trust be replaced with reference to Taranaki Whānui.

## **9. MINISTER OF DEFENCE**

92. The Minister of Defence sought to roll-over two existing designations, now identified as MDEF1 and MDEF2. One of those designations (MDEF2 – HMNZS Olphet Defence Establishment) was the subject of modifications to update the designation purpose to explicitly include ceremonial activities, and to correct the legal descriptions.

93. The two designations were the subject of submissions from New Zealand Defence Force<sup>28</sup> seeking they be retained as notified.

94. Mr Sirl’s view was that the modifications to MDEF2 are of minor effect.

95. While in theory NZDF’s submissions give us jurisdiction to recommend changes to both designations, we record Mr Sirl’s advice that the designations are already in existence and have been given effect, and his view that they are not expected to have any additional or changes to adverse effects from ongoing exercise. We agree with those conclusions, and with Mr Sirl’s view that there is no need to consider alternative sites, routes or methods in the circumstances, and that the designations are reasonably necessary in order to provide certainty for the ongoing defence activities and facilities they cover.

96. We therefore accept and adopt Mr Sirl’s recommendation that both designations be confirmed without amendment.

## **10. MINISTER OF EDUCATION**

### **10.1 Introduction and Overview**

97. As notified, the MEDU designations in the Proposed Plan included a set of explanatory notes and two conditions applying to the designations generally

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<sup>28</sup> Submissions #323.43-44

(Conditions 1) and four conditions applying to MEDU 67 – Wellington Girls College (Conditions 2). We refer to these conditions as the proposed conditions.

## 10.2 Modifications to Rolled-Over Designations

98. Mr Sirl expressed concern about the proposed deletion of ODP conditions governing demolition of heritage buildings and structures on four school sites. He did not consider that an advice note recording the need to obtain approvals, as required, under the Heritage New Zealand Pouhere Taonga Act 2014 to be sufficient. While the Outline Plan process would still apply, he foresaw the potential for significant adverse effects to occur.
99. Mr Sirl recommended, therefore, that the condition currently governing the issue in the ODP (Appendix E, condition 1(i)) be reintroduced. That would require resource consents to be obtained for demolition or partial demolition of heritage buildings on four school sites.
100. We agree with Mr Sirl's reasoning. Demolition, by its nature, does not lend itself to management of adverse effects on the heritage values of a building. Given the statutory direction in Section 6(f) of the Act, we do not consider the District Plan should entirely rely on the operation of the Heritage New Zealand Pouhere Taonga Act 2014 either.
101. There was one aspect of the ODP condition Mr Sirl recommended reintroducing, however, that we found confusing. The existing condition contains the sentence:
- “(a) For the avoidance of doubt this condition does not cover repairs or maintenance, or additions or alterations, or any other activity requiring an outline plan under s.176A.”*
102. We asked whether that meant that an Outline Plan was required for additions and alterations to the heritage buildings in question. In his Reply, Mr Sirl confirmed that was the intention. He also advised that we did not have scope to alter that situation (and put alterations and additions on the same footing as demolition). We did not intend to infer that that was in fact in contemplation, and we accept Mr Sirl's advice that there would not have been scope for such a change in any event. However, we consider that the condition might be clarified so that the intention is more obvious. We also recommend that reference be made to “*maintenance and repair*” since the Plan consistently orders the terms in that manner (and defines them as such). We therefore recommend a slightly amended condition wording, as follows:

*“(a) For the avoidance of doubt maintenance and repair, and additions and alterations to the above buildings and any other activity on those sites undertaken for Education Purposes not involving their demolition or partial demolition are authorised by this designation, subject to compliance with the outline plan provisions under s.176A.”*

103. We consider these are neutral changes within the ambit of Clause 16 of the First Schedule.
104. Mr Sirl did not have the same concern with the Minister’s request to modify the ODP conditions governing retention of sunlight access controls, considering that a generalised reference to the recession planes required in an adjoining residential zone would adequately manage the issue, subject to clarification that it did not apply where a designation boundary fronts a road or other education designated land.
105. Mr Sirl explained in his Section 42A Report that the ODP condition would be more constraining than the underlying PDP zone rules and therefore is not appropriate.
106. We agree with Mr Sirl’s reasoning in principle, although the modification did prompt us to ask if the notified recession plane controls governing the Wellington Girls College site were also required. In his Reply, Mr Sirl confirmed that the specific conditions for Wellington Girls might be deleted. We concur.
107. We note that the Plan does not now refer to recession planes. The rules governing that issue refer to *“height in relation to boundary.”* We recommend that both the heading and the condition be changed to use that terminology, for consistency with the balance of the Plan. We regard that as a minor change within the First Schedule of the RMA.
108. Mr Sirl also picked up other apparent errors in the conditions. We agree with his recommendations in that regard also.

### **10.3 Response to Submissions**

109. The Ministry of Education lodged a submission<sup>29</sup> seeking an additional amendment to the advice note to education designations that would confirm that community education provided on school premises is not restricted to the school’s primary syllabus.

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<sup>29</sup> Submission #400.161

110. Mr Sirl recommended that relief be granted.
111. The Panel was not, however, persuaded that the proposed amendment to Explanatory Notes: Designation Purpose is necessary. In our view, the purpose of community education is already clear in its predominant focus on adult learning, encompassing a variety of educational and special interest courses. Therefore, this clarification seems redundant, particularly in light of clause d) that already broadens the education content beyond the school's primary syllabus. We recommend rejecting this submission point.

#### **10.4 New Designations**

112. As above, the Minister of Education lodged notices of requirement for two additional designations for St Francis Xavier School and Sacred Heart Cathedral School.
113. Mr Sirl provided us with a separate evaluation of these notices of requirement in terms of the statutory tests in his Section 42A Report<sup>30</sup>. Both schools already exist and they were not the subject of submission. We agree, therefore, with Mr Sirl that no significant adverse effects will occur if the notices of requirement are confirmed, that no detailed consideration of alternatives is required, and that no site-specific conditions need be imposed.
114. We therefore recommend confirmation of the notices of requirement, subject only to the standard conditions (and advice notes) to the Minister's rolled-over designations.

#### **11. MINISTER OF POLICE**

115. The Minister of Police sought to roll-over two existing designations without modification. Mr Sirl advised that there were no submissions on these designations. Accordingly, we have no jurisdiction to make any recommendation in relation to them.

#### **12. NEW ZEALAND MEDIA AND ENTERTAINMENT**

116. Mr Sirl advised that the single designation this requiring authority had was sought to be rolled-over without modification and that no submissions had been received in respect of it. This means we have no jurisdiction, and the designation should be included without further formality.

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<sup>30</sup> Paragraphs 180-195

117. We do note, however, that correspondence in relation to the designation roll-over suggested that the requiring authority had sold the site, and therefore no longer has financial responsibility for the designation. We recommend that the Council follow up on this information and ascertain whether the designation should be uplifted.

### **13. WAKA KOTAHI NEW ZEALAND TRANSPORT AGENCY**

#### **13.1 Introduction and Overview**

118. Waka Kotahi sought to roll over ODP designations H1, H2, H3, H9, H10, and H11, with some modifications. In the PDP, these designations are now referred to as NZTA1, NZTA2, NZTA3, NZTA4, and NZTA5. ODP designations H6, H7, and H8, which were intended for road widening projects that were not completed before their expiry dates, have not been included in the PDP.

119. The changes sought include:

*modifications to the designation purpose, site identifier, designation hierarchy, conditions, and mapping for designations NZTA1, NZTA2, NZTA3, and NZTA 4;*

*modifications to the designation hierarchy and mapping for NZTA5.*

120. No submissions were received in relation to these designations other than Waka Kotahi's own submission<sup>31</sup> supporting the notified designations.

#### **13.2 Modifications to Rolled-Over Designations**

121. Mr Sirl considered that the modifications sought by Waka Kotahi are minor amendments and reflect the existing roading network.
122. In his assessment, the modifications are a result of Waka Kotahi restructuring the designations to better align with network classifications, update the mapping to echo NZTA's GIS files, and amalgamate previous designations (i.e. the Transmission Gully designation).
123. The Panel noted a partially displaced table relating to noise control in the copy of NZTA36 (Conditions 2) attached to the Section 42A Report during the hearing, and asked Mr Sirl to provide us with the entire table. In his Reply, Mr Sirl confirmed that the displacement was a formatting error in the document, and that the notified ePlan

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<sup>31</sup> Submission #370.452

had the entire table displayed. He provided the Panel with a copy of the correctly formatted table in his Appendix A to his Reply.

124. In his Section 42A Report, Mr Sirl assessed the modifications sought by Waka Kotahi against the statutory tests and we concur with his reasoning. In line with Mr Sirl, we accept the modifications sought are minor and recommend the designations be confirmed as notified.

#### **14. THE PRIME MINISTER**

125. The Prime Minister sought roll-over of the existing designation for Government House with modification to conditions and mapping. There were no submissions on this designation.
126. Mr Sirl was comfortable with the suggested modifications, considering that any additional effects could be appropriately managed through the Outline Plan process.
127. Mr Sirl noted that the designations are already in existence and therefore given effect to. Mr Sirl also considered that the consideration of alternative sites, routes or methods is not necessary for the same reasons and that the designation is reasonably necessary in terms of providing certainty for the ongoing operation and maintenance of the facility it covers.
128. The Panel queried an apparent naming error in Condition 1:1(c). Mr Sirl agreed that this was an error and should be amended from “*Weston*” College to “*Wellington*” College. We also suggested that a clearer map of the designation boundaries was required.
129. Mr Sirl also noted that while reviewing the designation boundary an error on one boundary had been identified. He had checked this with the Office of the Prime Minister and it was proposed that the map be amended accordingly.
130. We agree with and adopt Mr Sirl’s recommendations.
131. Mr Sirl noted that a further minor error in the boundary between Wellington College and Government House was still being resolved between the two requiring authorities but could be corrected under Clause 16(2).

#### **15. SPARK NEW ZEALAND TRADING LIMITED**

132. Spark New Zealand Trading Ltd sought roll-over of its existing seven designations with modifications which involved the removal of the conditions previously contained

in the ODP. Five of those designations are secondary to Chorus NZ Ltd's designations. This matter is addressed in the Chorus NZ Ltd designation above and the Panel's reasons for accepting the suggested deletion also applies to the Spark New Zealand Trading Ltd designation. In relation to the Chorus NZ Ltd definition, Mr Sirl recommended, and we accepted that an additional condition was desirable, clarifying the situations where an Outline Plan is not required. The same logic would apply to the Spark New Zealand Trading Ltd designations, and we make the same recommendation in this context.

133. We agree with and adopt Mr Sirl's analysis of the statutory criteria and otherwise recommend these designations be confirmed as notified.

## **16. TRANSPOWER NEW ZEALAND LIMITED**

134. Mr Sirl advised that Transpower had sought to roll-over its six ODP designations. These have been given the names TPR1-6 inclusive in the PDP. Four of the designations were the subject of amendments to legal descriptions and mapping to accurately reflect their location and extent as part of the roll-over. One (TPR2 – Wilton Substation) is the subject of a condition amendment to update the reference to electric and magnetic field guidelines (to reference the current international guideline).
135. Mr Sirl advised that the only submissions on the six Transpower designations were from Transpower itself seeking that the both the text of the designation and its mapping be retained as notified.
136. While, in theory, we therefore have jurisdiction to make recommendations, as Mr Sirl noted, the only changes are either minor in extent or necessary to align with updated international guidelines, as recommended by the Ministry of Health.
137. More generally, as Mr Sirl noted, the designations are already in existence and have been given effect to. He did not expect there to be any additional or changes to the adverse effects on the environment from the designations, and nor do we. Mr Sirl likewise did not consider that alternative sites, routes or methods needed to be considered for the same reason and that the designations are necessary to provide certainty for the ongoing operation and maintenance of the infrastructure they cover.
138. We agree with Mr Sirl's analysis on all points and adopt his recommendations that each designation be retained as notified.

## 17. WELLINGTON CITY COUNCIL

### 17.1 Introduction

139. Mr Sirl advised that the Council had sought to roll-over 13 ODP designations that are now identified as WCC1-13 (inclusive) in the Plan.
140. He also advised that three only of the designations had been rolled-over with modifications. In two cases (WCC1 – Western Wastewater Treatment Plant and WCC13 – Prince of Wales – Omāroro Reservoir), the designation purpose had been modified. In the third case (WCC6 – Moa Point Wastewater Treatment), the designation purpose, site identifier and mapping had been modified.
141. Four designations are the subject of submission.
142. Designation WCC8 (Carey’s Gully Landfill) is the subject of two sets of submissions as follows:
- Friends of Owhiro Stream<sup>32</sup> sought that the extent of the designation be amended to the operational footprint of the landfill, including Stages 1, 2 and 3, the Proposed Southern Landfill Extension – Piggyback Option (**SLEPO**) and associated working areas in areas required for remediation of legacy issues relating to Stages 1, 2 and 3;
  - Owhiro Bay Residents Association<sup>33</sup> sought to amend the extent of the designation to the area of the current landfills and planned SLEPO works;
143. Designation WCC9 (Christeson Lane Service Lane) is the subject of Council submissions<sup>34</sup> seeking to exclude privately owned land at the rear of 88 Manners Street, 90-92 Manners Street and 94 (part) to- 100 Manners Street and 70-72 Cuba Street, and to amend the site identifier to reflect the updated mapped extent.
144. Designation WCC10 (Bond Street Service Lane) is similarly the subject of Council submissions<sup>35</sup> seeking to remove 11 Manners Street from its mapped extent and amend the site identifier correspondingly.

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<sup>32</sup> Submission #403.1

<sup>33</sup> Submissions #477.1-2

<sup>34</sup> Submissions #266.35 and #266.165

<sup>35</sup> Submissions #266.36 and #266.166

145. Lastly, Designation WCC12 (Green Street and Wilson Street Service Lane) is the subject of a Council submission<sup>36</sup> seeking that the designation be amended to remove reference to Green Street.
146. As Mr Sirl noted, five of the 13 Council designations (WCC2, WCC3, WCC4, WCC5 and WCC7) were neither the subject of modification nor submission, and accordingly, we have no jurisdiction to consider them further. It appears to us from Mr Sirl's analysis that WCC11 (Hanson Street Service Lane) is in the same category.

## 17.2 Modifications to Rolled-Over Designations

147. Mr Sirl supported the modifications sought in each case. He noted that the designations were already in existence and being given effect, and were therefore unlikely to produce additional or different adverse effects. He did not consider that alternative sites, routes or methods needed to be evaluated for the same reasons and considered that in each case the designations were reasonably necessary, with adverse effects able to be adequately managed through the Outline Plan process.
148. Mr Sirl did note two issues with WCC6. The first was with Condition 4.3 which references District Plan Maps 36 and 37 with respect to Airport height controls. These have been overtaken by WIAL's designation WIAL1 (Obstacle Limitation Surfaces). Mr Sirl's recommendation (in his Reply) was that the condition be deleted in its entirety on the basis that WIAL1 will apply to any future structures on the Treatment Plant site.
149. The problem we foresee with that suggestion is that, as Mr Sirl observed, WCC6 is the primary designation. Under Section 177(1)(b), Council can proceed without regard to WIAL's obstacle limitation surface designation; presumably the reason why the limitation on height was imposed to start with.
150. The alternative option Mr Sirl discussed in his Reply was to provide reference to the obstacle limitation surfaces, but he was concerned that as the obstacle limitation surface heights may have reduced as a result of WIAL's modification of WIAL1, "*the wording of the condition may impose an unachievable designation condition*". We think that the latter concern can be addressed by making the condition specific to any new building or structure. The obstacle limitation surface within the area of WCC6 is

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<sup>36</sup> Submission #266.167

12 metres (taken from the ePlan maps) and accordingly, we recommend a replacement condition reading:

*“Any new building or structure shall be no higher than 12 metres above ground level, unless Wellington International Airport Limited agrees otherwise.”*

151. The other point Mr Sirl made was that some of the conditions in the ODP needed to be carried over into the PDP as a result of finalisation of an alteration to the ODP designation for the Sludge Minimisation Facility. Mr Sirl noted that this was a process that would occur independently of our recommendations. The relevant conditions (19-32 inclusive) are included in Appendix A for convenience.
152. We had an additional issue about the conditions for WCC6. This related to the reference in Condition 16.1 to formation of a community liaison committee, referring to specific individuals and organisations who were required to be consulted. We asked Mr Sirl whether that committee was already in place and if so, whether the condition should be updated to delete reference to those individuals and to recognise that the existing committee now just needs to continue in operation. Mr Sirl agreed with that. Having taken legal advice from Mr Whittington, he considered that the issue could be addressed on a clause 16 basis, and he suggested alternative wording, which we adopt.
153. Mr Sirl also recommended that a better Site Development Plan was required for WCC8 (Conditions 2). We concur, and recommend the requiring authority substitute a clearer plan, that can be read.

### **17.3 Response to Submissions**

154. Mr Sirl recommended acceptance of the Council’s own submissions in relation to WCC9, WCC10 and WCC12 on the basis that in each case, they reduce the extent of the designations to only apply to land owned by the Council. He noted that these service lanes are already formed and legalised as road, and have been as such for many years.
155. We agree with Mr Sirl’s reasoning and adopt his recommendations with one exception. Mr Sirl recommended that designation WCC 10 be uplifted, not just from the back of 11 Manners Street, as sought, but also from the back of 9 Manners Street. We do not consider that this additional change could be classed a consequential change, and we had no evidence that it qualified as a minor correction

within the jurisdiction provided by Clause 16 of the First Schedule either. We find that we have no scope to recommend that additional change.

156. Turning to the issues raised by the Friends of Owhiro Stream and Owhiro Bay Residents Association in relation to WCC8, they stem from the fact that the active landfill area forms a relatively small proportion of the designated area, at the bottom of a large gully. Council witnesses advised us that the active Landfill area occupies 345 hectares of a total site of 819 hectares. The designation boundary stretches up the sides of the gully to the north and north-west, with its boundary sitting approximately at the line of the formed Hawkins Hill Road<sup>37</sup>. Our reading of the topographical map Mr Matthews provided to us is that there is in excess of 100 metres difference in elevation from Hawkins Hill Road down to the edge of the currently worked landfill, most of which is identified in the Plan as a Significant Natural Area.
157. When Mr Payne appeared for Friends of Owhiro Stream, he emphasised the biodiversity values of that part of the site which is not currently being worked, along with the efforts the community is making to enhance those values through planting of native vegetation. He observed that the latter is problematic because of the way the Council operates.
158. Mr Payne also emphasised the natural values of the streams coming down the gully, through the landfill site and exiting down the lower Owhiro Valley to the sea. He noted in particular the extent to which the very high water quality in those streams was being compromised by the effects of the landfill as they traversed the actively worked parts of the site, leading to poor water quality in the stretch of the Owhiro Stream between the lower boundary of the landfill and where it reaches the sea, at Ōwhiro Bay.
159. Mr Payne also provided his perspective on the consenting of Landfill operations. He advised that the Council had proposed a Stage 4 Landfill extending part way up the gully, but abandoned that option in the face of public opposition, choosing instead to proceed with the SLEPO option, which involves reusing a previously filled area (Stage 2). From his perspective, given the Council commitment to a policy of zero waste, there should be no need for any further extension of the Landfill.

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<sup>37</sup> We were advised that Hawkins Hill Road is not formalised as road and the legal boundary is the Barking Emu track

160. Council in its capacity as requiring authority was represented by Mr Chris Matthews, Manager of Waste, Water and Resilience, and his colleague Mr Darren Hoskins, Manager of the Landfill. They advised that SLEPO had been consented in March of this year and taking it into account, the Landfill would cater for another 20 years waste disposal at current rates of disposal, or possibly up to 35 years with greater minimisation of waste.
161. Whereas Mr Payne considered that the community had a non-enforceable commitment from Council not to proceed with Stage 4, Mr Matthews' position was that Stage 4 had not been ruled in or out, and that it was important to retain it from a resilience point of view.
162. Mr Hoskins also noted the importance of the Council's control of the site as providing a buffer to Landfill activities. More generally, Mr Matthews emphasised the limited alternative choices in the wider Wellington metropolitan area. His summary was that while he was not sure that the remaining area of the Southern Landfill would be required, equally, he was not sure it was wise to let it go.
163. We have considerable sympathy for the frustration expressed by Mr Payne on behalf of his group. However, as Mr Sirl pointed out in his Reply, irrespective of the designation position, the Landfill is Council land. The Council has the ability to control what third parties do on its land.
164. We also have sympathy for Mr Payne and his group's concern about water quality values. However, ultimately that is a matter within the jurisdiction of GWRC and we do not think it should determine the outcome of a designation. Any further expansion of the Landfill will require consents from GWRC, which we anticipate will consider carefully any incremental adverse effects on downstream water quality.
165. Ultimately, although, we consider that this is the classic example of the utility of the designation process. It seeks to protect strategic infrastructure options that may be required in the future. Based on Mr Matthews' evidence, we do not think that we can conclude that the Landfill will never need to expand up the gully, and we agree with his view that alternative options for solid waste disposal are non-existent within Wellington City and limited in the broader Wellington Metropolitan Area.
166. We might have considered additional conditions to control the land use effects of future landfill expansion, but Mr Payne did not provide evidence as to what form such conditions should take, and Mr Sirl's opinion (in Reply) was that the Outline Plan

process would adequately address adverse effects on the environment. We do not consider that we can take that option further.

167. In summary, we accept Mr Sirl's recommendation that we recommend WCC8 remain in place without change.

## **18. WELLINGTON ELECTRICITY LIMITED**

168. Wellington Electricity Limited had three designations in the ODP and sought that they all be rolled-over. These have been given the names WEL1, WEL2 and WEL3. Mr Sirl advised that WEL1 and WEL3 had not been modified and were not the subject of submissions. Accordingly, we have no jurisdiction in respect of them.
169. Designation WEL2 Substation (Bond Street) was the subject of modifications to the legal description and mapping.
170. In his Section 42A Report, Mr Sirl noted that the mapped area of WEL2 extended to include Lot 1, DP 83937, which does not appear to be owned by WEL.
171. In his Reply, Mr Sirl advised that he had checked with the requiring authority, who had confirmed that the area to be mapped for WEL2 should cover the full extent of Lot 6, DO 83937 and Section 1 SO 37596.
172. We accept that advice and accordingly adopt Mr Sirl's recommendation that it be confirmed on that basis.
173. Mr Sirl noted that WEL3 had a lapse date of 7 October 2023. He was not able to confirm that the designation had been given effect to prior to the lapse date and recommended that it be confirmed that it was given effect prior to our recommending it be included in the decisions version of the Plan.
174. It seems to us that this is a matter for Council to pursue independently of our recommendation. As above, we have no jurisdiction to make recommendations on this particular designation. We do, however, draw the issue to the Council's attention.

## **19. WELLINGTON INTERNATIONAL AIRPORT LIMITED**

### **19.1 Introduction**

175. Wellington International Airport Limited (**WIAL**) is an Airport Authority under the Airport Authorities Act 1966 and is therefore a network utility operator pursuant to s

166 of the RMA. WIAL is also a requiring authority pursuant to s 166 having been approved as such pursuant to s 167 of the RMA<sup>38</sup>. Accordingly, WIAL is able to utilise the designation provisions in Part 8 and Schedule 1 of the RMA in relation to:

- (a) public works; or
- (b) in relation to land, water, subsoil or airspace where a restriction is necessary for the safe or efficient functioning or operation of the public work [emphasis added].

176. WIAL is requiring authority for five designations in the ODP:

- (a) Designation G2 – Airspace in the vicinity of Wellington International Airport: the purpose of this designation is to limit any structure, including any building, aerial, antennae, or other objects, from protruding into set obstacle limitation surfaces which may inhibit the safe and efficient operation of the Airport;
- (b) Designation G3 – Runway End Safety Area Extension (RESA) – Southern End: the purpose of this designation is to provide for the construction and operation of the Runway End Safety Area (RESA) at the southern end of the runway;
- (c) Designation G4 – Airport Purposes – Miramar South Area: covering the former Miramar South School site, this designation is for airport purposes, including flight catering, rental car storage, freight reception, storage and transfer;
- (d) Designation G5 – Airport Purposes – Wellington Airport Main Site Area: this designation, for airport purposes, covers the majority of the Airport’s landholdings (including the main operational area) situated between Lyall Bay and Evans Bay over an area of approximately 105 hectares; and
- (e) Designation G6 – Airport Purposes – Wellington Airport East Side Area: this designation largely comprises the southern portion of the Miramar Golf Course, an area of about 15.5 hectares. The purpose of this designation is to provide for the future provision of aircraft stands and aprons, as well as interim parking activities.

177. Designation G3 has been subsumed by Designation G5, and a formal request for an uplift of G3 has been made. That is a matter for the Council to address separately. Designations G5 and G6 were both recently confirmed by the Environment Court<sup>39</sup>,

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<sup>38</sup> Resource Management (Approval of Wellington International Airport Limited as Requiring Authority) Order 1992

<sup>39</sup> Guardians of the Bay v Wellington International Airport [2022] NZEnvC 106

pursuant to Part 8 of the RMA<sup>40</sup>. Accordingly, under s 175 of the RMA, these two designations are not subject to the Schedule 1 process under the RMA.

178. Of the other designations, WIAL sought to roll-over with modification existing ODP designations G2, G3 and G4, identified in the PDP as WIAL1, WIAL2 and WIAL3 respectively. The modifications proposed are as follows:
- (a) WIAL1 - Wellington Airport Obstacle Limitation Surfaces [OLS]: Modifications to conditions to ensure the requiring authority meets its responsibilities and obligations under Civil Aviation Regulations and international best practice with respect to the provision of OLS surrounding Wellington International Airport. WIAL also sought to include a new OLS for the northern approach to Wellington International Airport only (i.e., over Evans Bay);
  - (b) WIAL2 - Wellington Airport Miramar South Area: Modifications to update the correct lot descriptions/street address and the conditions as they relate to noise, earthworks, night-time activities, and Outline Plan requirements; and
  - (c) WIAL3 - Wellington Airport Runway End Safety Area: Modifications to uplift the temporary designation area, and delete the construction related conditions.
179. The modifications to the Airport's OLS under WIAL1 undoubtedly represent the most significant change to WIAL's existing designations. Understanding the changes to the OLS and the effects of these changes is complicated as the OLS involves a complex pattern of three dimensional planes and angles across most of the city, which interact with the city's topography. To assist District Plan users, the City Council uploaded a GIS information layer to the planning maps to provide spatial information on the effect of the changed OLS across the City, and through which map users are able to select a particular property to identify the specific effect of the OLS on that site. We commend the Council and WIAL for providing this information.
180. As part of the Hearing process, the Council also posted a link to a web-based map viewer to help visualise the differences between the ODP OLS and PDP OLS designations: we describe these changes in more detail shortly.
181. While WIAL1 is technically a roll-over of the existing OLS designation, the changes in the conditions that implement the OLS would result in a much greater spatial application, as well as a greater level of control over the heights of buildings and structures. Such a change could not be considered to be a minor alteration in terms

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<sup>40</sup> Part 8 of the RMA sets out the processes and powers relating to designations and heritage orders

of s181(3) RMA, and therefore, as we explained at the beginning of our report, Sections 168 to 179 of the Act apply to the consideration of this designation. In particular, as helpfully outlined in the legal submissions for WIAL, we must:

- (a) identify the relevant provisions of the relevant statutory planning documents to which we must have particular regard to under Section 171(1)(a), as well as relevant provisions of any documents or any other matter we consider reasonably necessary to make our recommendations under Section 171(1)(d);
- (b) consider and evaluate the adverse and beneficial effects on the environment of the OLS;
- (c) consider whether adequate consideration has been given to alternative sites, routes, or methods (Section 171(1)(b));
- (d) consider and evaluate whether the modified designation is reasonably necessary for achieving the stated objectives of WIAL for the modified designation (Section 171(1)(c)); and
- (e) consider our evaluations above through the lens of Part 2 to determine whether the modified designation achieves the RMA's purpose, with Part 2 matters prevailing in the event of any conflicts with the matters for consideration in Section 171.

182. In relation to designations WIAL2 and WIAL 3, while a number of modifications were proposed by WIAL as outlined, these were relatively minor in nature and effect, and no submitters sought changes specific to these designations. We therefore do not need to consider the matters made relevant by Section 171 at the same level of detail in relation to these designations.

## 19.2 Other Relevant Statutory Requirements

183. In terms of WIAL1, which applies the OLS, it is important to understand the wider statutory framework relating to airports.

184. As usefully described in legal submissions for WIAL and in the evidence of Lachlan Thurston, the Airport's Head of Operational Readiness, WIAL has to operate under other statutory and policy requirements that are directly relevant to the purpose of the WIAL1 designation. Given their importance to the proposed changes to the OLS, we provide a short summary of these requirements.

185. Globally, civil aviation activity is governed by the International Civil Aviation Organisation (**ICAO**), a sub-organisation of the United Nations. New Zealand is a

member state and signatory to the Convention on International Civil Aviation 1944: ICAO was formed as a result of that Convention. The role of the ICAO is to secure the highest practicable degree of international uniformity in regulations, standards and procedures in relation to aviation practices so as to facilitate and improve air navigation globally.

186. ICAO sets Standards and Recommended Practices (**SARPs**), as well as provides guidance material for various aspects of global aviation activity in the interests of promoting aviation safety and consistency of standards across the international aviation community. SARPs are used by ICAO member states such as NZ to ensure that their local civil aviation operations and regulations conform to global norms to ensure that the global aviation network operates safely and reliably worldwide.
187. New Zealand's civil aviation system operates under the Civil Aviation Act 1990 (**CAA1990**)<sup>41</sup>, one of the purposes of which is to establish rules in order to promote aviation safety and to ensure that New Zealand's international obligations are implemented. Rule-making under Part 3 CAA1990 undergoes a rigorous process, subject to a range of considerations. Civil Aviation Rules are administered by the Ministry of Transport and the Civil Aviation Authority (**CAA**).
188. WIAL is required to have an aerodrome operator certificate under Civil Aviation Rules Part 139 Aerodromes Certification, Operation and Use (CAR Part 139). CAR Part 139, along many other matters, places an obligation on WIAL to have and manage OLS, the purpose of designation WIAL1. Every CAA certified airport with scheduled aircraft traffic in New Zealand is required to have set OLS commensurate with the type of aircraft operation that it serves.
189. The CAA issues Advisory Circulars that set out standards, practices, and procedures the CAA considers to be an acceptable means of compliance with the associated Civil Aviation Rules. CAA Advisory Circular AC139-6 Aerodrome Design Requirements sets out how OLS can be achieved and is based on International ICAO-SARPs. Section 4 of AC139-6 provides descriptions and specifications for the geometry of OLS in New Zealand. Although not specifically stipulated in the Rule Part itself, it is considered best practice for airport operators such as Wellington Airport to work with territorial authorities to ensure that these surfaces are incorporated into land use planning documents as height zoning protection.

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<sup>41</sup> The Civil Aviation Act 2023 comes into effect on 5 April 2025, and will replace the CAA 1990

### 19.3 General Submissions and Assessment

190. There were a number of submissions made in regard to the WIAL designations, with several general submission points and a number specifically related to the conditions of WIAL1. No submissions sought specific changes to the conditions applying to WIAL2 and WIAL3.
191. In relation to WIAL designations generally, Bruce Crothers sought stronger noise restrictions for aircrafts, including limits on the number of flights allowed and restrictions on aircraft flight hours<sup>42</sup>. These submissions are not within the scope of the three designations being considered as part of the Plan review, and therefore we have no scope to consider these submission points.
192. Yvonne Weeber sought to amend the WIAL designations chapter to have each designation's unique identifier at the beginning of each designation<sup>43</sup>.
193. We note also that Strathmore Park Residents' Association Inc sought to amend Conditions 5 (which applies to the East Side Area, designation WIAL5)<sup>44</sup>. However, as this designation does not come within the Schedule 1 process (as explained in paragraph 177), we have no scope to consider this matter.
194. We also note that WIAL had submitted seeking to remove the duplication of PDP provisions with a number of designation conditions<sup>45</sup>, which was addressed in Hearing Streams 5 and 6; WIAL had not sought to amend the duplicated designation conditions themselves.

### 19.4 Designation WIAL1 – Wellington Airport Obstacle Limitation Surfaces

#### Overview

195. An Obstacle Limitation Surface is a defined surface in the airspace above an airport and the adjacent ground to prevent obstacles such as buildings over a certain height from penetrating into the safe operating manoeuvring space for aircraft landing and taking off from that airport. Under the District Plan, the OLS is implemented by way of designation conditions, and acts as a trigger point for applying WIAL's ability as a requiring authority under Section 176 RMA to provide its prior written consent to do

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<sup>42</sup> Submissions #319.17 and 319.18

<sup>43</sup> Submission #340.134

<sup>44</sup> Submission #371.9 and 371.10

<sup>45</sup> Submission #406.546 and 406.547

something that may prevent or hinder the public work to which the designation relates: that is, proposed structures that would potentially penetrate into the safe operating manoeuvring space for aircraft around the airport.

196. WIAL's Head of Operational Readiness, Lachlan Thurston, presented evidence on the purpose and derivation of OLS. Mr Thurston defined OLS as conceptual three-dimensional surfaces that exist in the airspace above and around an airport. These surfaces should be free of obstacles to enable the safe operation of airports. The OLS actually comprises a number of conjoined surfaces with different angles and heights that collectively define the lower boundary of navigable airspace above and in the vicinity of an airport.
197. Mr Thurston stated that the easiest way of envisaging the concept is that the OLS surfaces create a 'bowl shape' with the airport runway being at the bottom of the bowl. Through the centre of the 'bowl' are the take-off and approach surfaces that are narrow fan-shaped surfaces that emanate from each end of the runway that have a gentler slope to allow aircraft to descend or climb safely within defined paths.
198. Around the remainder of the airport are:
  - (a) The Transitional Surface, the purpose of which is to protect an area immediately around the runway strip and the final stages of the approach fan and to the sides of the runway in case the aircraft deviates from its take-off or approach flight path for any reason;
  - (b) The Inner Horizontal Surface, a flat surface the purpose of which is to protect the aerodrome traffic circuit, mainly used by aircraft flying Visual Flight Rules, used to provide an orderly flow of aircraft positioning for landing while avoiding other aircraft;
  - (c) The Conical Surface, which forms the sloping sides of the 'bowl', the purpose of which is to create an area of safe airspace further out from the runway so that aircraft may safely descend as they get closer to the airport; and
  - (d) The Outer Horizontal Surface, another flat surface, the purpose of which is to create a space for aircraft to navigate safely at low level as they prepare to intercept the final instrument approaches to the runway.
199. The Outer Horizontal Surface is particularly pertinent to Wellington Airport operation given the terrain that surrounds the airport environs.

200. It is important to highlight that these surfaces – or restrictions – take no cognisance of hills and topography. In other words, the existing terrain can already be penetrating the airspace that the OLS seek to manage, and in practice, this occurs at a number of locations. Nothing can of course be done about that fact.

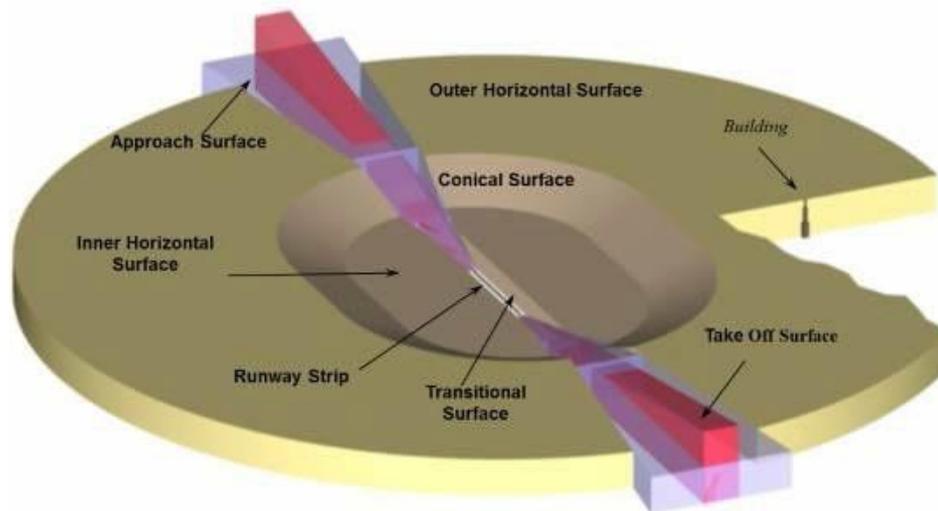


Figure 1: Conceptual diagram of Obstacle Limitation Surfaces<sup>46</sup>

201. In terms of the reasonable necessity for the amended OLS conditions, we were advised by Mr Thurston that OLS are necessary to ensure that aircraft can maintain a satisfactory level of safety whilst manoeuvring at a low altitude in the vicinity of an airport through the avoidance of obstacles. He advised that their provision assists not just to provide an area for aircraft to safely approach and depart the airport under normal circumstances, but importantly also when the flight performance of the aircraft is impaired, such as when an engine is inoperative.

202. Mr Thurston stressed that it is important to understand that many accidents happen at low altitudes during a departure from or approach to an airport so there is a need for sufficient air space in order for an aircraft to safely manoeuvre especially if it has lost some of its performance capabilities and has to return to the runway.

203. For these reasons, Mr Thurston advised that certain areas of the local airspace must be regarded as integral parts of the airport environment and that the degree of freedom from obstacles in these areas is as important to the safe and efficient use of the airport as are the physical attributes like the runway. He advised that OLS are

<sup>46</sup> Taken from paragraph 4.4 of L Thurston Evidence-in-Chief

intended to be permanent in nature, and the key methods available in New Zealand are either as District Plan provisions (height controls) or the designations of air space around airports, the latter being the most common approach. An OLS designation is the only process through which airport operators such as WIAL themselves can control obstacles in its environs. Otherwise, they are dependent on other methods outside their immediate control, such as District Plan controls regulated by the City Council.

204. Mr Thurston advised us that the proposed modified OLS designation aligns with current national and international standards, and dovetails with other regulatory standards and processes used to ensure the safety of aircraft in flight, such as the design of instrument flight procedures. He stated that the WIAL1 designation seeks to preserve the margin of safety for continued aircraft operation to and from the Airport and enables WIAL to be advised and respond where a proposed building, object or structure is proposed to penetrate the OLS above the specified maximum height levels.
205. We were also advised by Mr Thurston that Wellington Airport has had airspace protections in place since 1984 through designations in the 1984 Operative District Scheme. He informed the hearing that, when first introduced, the standard OLS were considered to be impracticable for Wellington because of the rugged nature of the terrain and its closeness to the airfield, as well as being too restrictive on development within the city. Thus, the Designation G2 provisions in the ODP did not conform with the CAA Rules or ICAO Standards, but instead were formed by a *“compilation of compromises”*<sup>47</sup>.
206. In particular, the surfaces within the ODP G2 designation were largely set to avoid the surrounding terrain and existing obstacles, thereby minimising the necessity for WIAL to engage more resources to assess potential obstructions to air, given the available technology at the time, as well as to reduce the impact on city development.
207. Mr Thurston stated that WIAL now considers it is important to address these non-compliances, as is the intent of CAR Part 139, while also taking into account the city’s urban form and terrain through conditions on the Designation which allow for penetrations into the OLS in certain circumstances. The need to address these non-compliances stems from the Airport’s function as an international airport and the

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<sup>47</sup> L Thurston Evidence-in-Chief, at paragraph 7.2

increasing importance that the CAA places on conforming to agreed international standards, ensuring that New Zealand itself is meeting its international obligations with ICAO as far as is practicable in the context of Wellington. In these circumstances, Mr Thurston stated that WIAL considers it is no longer acceptable for WIAL to continue with the previous designated surfaces and to continue to do so could result in restrictions being imposed on the Airport's operation<sup>48</sup>.

208. He further stated that, from a safety perspective, new structures that might not have penetrated the previous designated surfaces and to which WIAL would not have been made aware of their existence, would today potentially be considered to have an adverse impact upon the airport operations and on the safety of aircraft navigating to and from the airport<sup>49</sup>.
209. Mr Thurston provided a table summarising the regulatory genesis of the OLS proposed in WIAL1, showing how the elements comply with various regulatory sources<sup>50</sup>.
210. Finally, Mr Thurston identified a number of amendments that need to be made to designation WIAL1:
- (a) The Overview section, paragraph 3, incorrectly refers to CAR 139-7 and should be deleted.
  - (b) The Take-off and Approach Surface referred to in clause 1 should refer to a gradient of 2% rather than 1.2% (noting the WCC GIS maps already depict a 2% gradient, so no updates to them are needed); and
  - (c) The Visual Segment Surface referred to in clause 2 has been deleted.
211. To assist in visualising the differences between the ODP OLS and the PDP OLS, Mr Thurston helpfully provided an appendix to his evidence, comprising a series of cross elevations comparing Designations G2 ODP and WIAL1 PDP. In response to a request from the Panel, through his supplementary evidence, Mr Thurston had these cross-elevations revised to include various geographic identifications to assist in interpretation. Cross-elevation 4 runs East/West from north of the suburb of Miramar to Zealandia, and continues west on the south side of the suburb of Karori. It is shown in Figure 2 below to illustrate the differences between the ODP and PDP OLS.

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<sup>48</sup> At paragraph 7.6

<sup>49</sup> At paragraph 7.7

<sup>50</sup> At paragraph 7.9

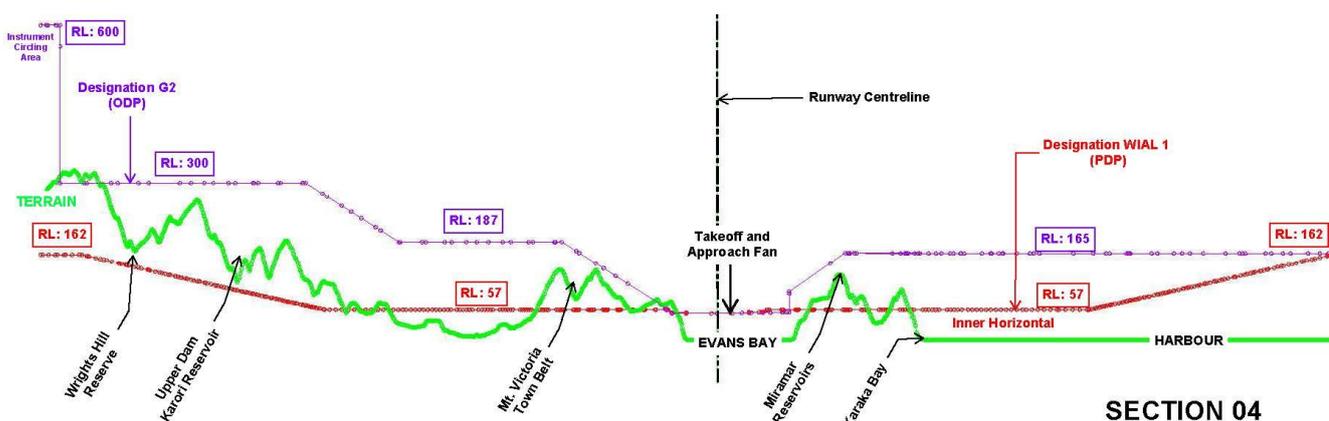


Figure 2: Cross-Elevation of OLS<sup>51</sup>

212. As shown, the OLS in the ODP (coloured purple) is predominantly at a much greater elevation than the OLS in the PDP (coloured red), and steps upwards at each successive ridgeline, including Mt Victoria (to the west) and the Miramar Peninsula (to the east), whereas the WIAL1 OLS makes no allowance for the underlying terrain. In the application of the OLS under WIAL1, an 8m 'tolerance' has been made in the designation conditions to enable proposed structures to penetrate the OLS without requiring the prior consent of WIAL under Section 176 above existing ground level (or a 30m tolerance in the case of the Outer Horizontal Surface).
213. Thus, for a hillside site within the area of the Inner Horizontal Surface with an elevation well above the OLS elevation, a structure up to 8m high may be built without necessitating a Section 176 consent from WIAL. For example, a randomly chosen site along cross-section 4, at 66 Rakau Road in Hataitai, has a maximum ground elevation of 118 amsl, well above the OLS at 57 amsl, but a building up to 8m above ground level can be constructed on the site without the prior written consent of WIAL.
214. We note the OLS designation does not apply to structures located below the OLS.
215. We were informed by the Airport Planning Manager, Ms Lester, that the information required for WIAL to make a reasoned and accurate decision on any request for written consent is outlined in the application form that can be downloaded from WIAL's website.

<sup>51</sup> Supplementary evidence of L Thurston

216. Ms Lester advised that, as a consequence of the PDP OLS being more restrictive than the G2 designation in the ODP, members of the public proposing to carry out work within the spatial extent of the designation will need to seek WIAL's written consent more often than previously. She stated that WIAL's internal processes have therefore been updated considerably to streamline the process for WIAL and the community to ensure that consistent, robust decisions are made.
217. Ms Lester advised that, after considering a proposal, the WIAL planner undertakes an initial assessment and WIAL Operations personnel then determine whether or not WIAL is prepared to provide written consent for the proposal from an operational perspective. Ms Lester stated that WIAL does not charge for this assessment, but if an aeronautical assessment is required, this is at the applicant's expense.
218. If WIAL does not provide its written consent, the proposal cannot go ahead as to do so would breach Section 176 of the RMA<sup>52</sup>. Any person seeking WIAL's written consent has a right of appeal to the Environment Court under Section 179 of the RMA if dissatisfied with WIAL's decision. In saying that, Ms Lester advised that WIAL has not and will not arbitrarily withhold consent without robust reasoning that relates back to the purpose of the Designation.
219. As a final matter, the conditions for WIAL1 (Figure 1) also stipulate specific height limits for properties west of the Airport Runway, between Coutts Street and Cobham Drive, including the eastern side of Bridge Street, ranging between 4m and 12m, other than those properties where the specified height limit is "*no higher than existing roof line*".
220. With this understanding of WIAL1, we have given consideration to the matters set out in Section 171 of the Act.

### **Section 171 Considerations – Relevant Planning Instruments**

221. In his planning evidence for WIAL, Mr Kyle addressed the planning instruments that are relevant to this designation, referring us to the National Policy Statement for Urban Development, the Wellington Regional Policy Statement and the operative and proposed Wellington City District Plan (including the now operative intensification provisions of the District Plan). He identified two key 'themes' in these instruments

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<sup>52</sup> Section 176 requires that no person may, without the prior written consent of that requiring authority, do anything in relation to the land that is subject to the designation that would prevent or hinder a public work or project or work to which the designation relates

that are relevant to the consideration of WIAL1: (1) enabling residential development or intensification, and (2) protecting regionally significant infrastructure such as the Airport.

222. The first theme is predominantly focused on whether the proposed designation would have a debilitating effect on the enablement provisions of the District Plan: that is, would it be contrary to the intensification direction of the District Plan and NPSUD? The second theme Mr Kyle identified is directed around whether the designation is consistent with protecting the functioning and future potential of the airport as regionally significant infrastructure.
223. We agree with Mr Kyle's appraisal of the relevant planning provisions as they relate to WIAL1, and have assessed:
- (a) The relationship of the proposed altered designation with the intensification policies as part of our consideration of the effects on the environment below; and
  - (b) The consistency of the designation as part of our consideration of the reasonable necessity of the designation alterations.

### **Section 171 Considerations – Effects on the Environment**

224. The imposition of the OLS limitations across most of the city does not or would not directly generate adverse effects on the environment, unlike most designations which typically authorise the construction and operation of public works that directly produce effects on the environment. In terms of direct effects on the environment, we are satisfied that the alterations to designation WIAL1 would not have significant adverse effects on the environment.
225. The imposition of controls on development proposed under WIAL1 could potentially affect the form and location of development within the city and thus influence environmental outcomes in the city. In particular, potentially the OLS may limit or suppress development capacity through restraints (real or perceived) on the height of proposed buildings. Given national direction for enabling much greater levels of intensification in our cities, especially in high growth urban areas such as Wellington City, the potential effects of the limitations imposed by the OLS on the city's development capacity were a particular consideration of the Hearing.
226. We acknowledge Mr Kyle's point that the OLS designation is not an outright bar on development, but rather imposes an approval process on proposed structures that would penetrate the OLS. Proposals that do penetrate the OLS are assessed to

determine whether aeronautical safety would be compromised. To date, all of the proposals that have triggered an assessment have been consented by WIAL. We were informed that the approval process provides a means for the Airport to ensure they are made aware of proposed OLS penetrations and have a record of such situations.

227. In his Section 42A Report, the Reporting Officer, Mr Sirl, considered that the modifications to WIAL1 are in practice unlikely to result in significant adverse effects in the form of impacting development potential when taking into consideration the high likelihood of development proposals that penetrate the OLS being approved by WIAL<sup>53</sup>. This conclusion was supported by WIAL's consultant planner, Mr Kyle, who agreed that there is no benefit to the requiring authority to limit development beyond that required to ensure the safe and efficient operation of aircraft using the Airport<sup>54</sup>.
228. Notwithstanding this broad agreement, WIAL engaged Savvy Consulting Limited to assess the potential loss of residential, commercial and industrial development capacity if WIAL1 is confirmed, and, in particular, the difference in capacity with the OLS related height restrictions set at 8m compared to 11m above ground level (as sought by the WCC submission). The results of this assessment were presented in the evidence of Natalie Hampson.
229. Ms Hampson evaluated the impact on feasible and realisable dwelling capacity potentially arising from the proposed modifications to the Wellington Airport OLS designation. She considered whether and how this change in capacity may affect the ability of Wellington City to provide sufficient capacity to meet projected housing demand over the medium and long-term in accordance with Policy 2 of the NPSUD. Ms Hampson outlined the methodology she used in her evaluation, as well as the data sources, assumptions and limitations. Ms Hampson worked closely with Property Economics to use their capacity model to run the two designation height allowances (8m and 11m) against the most current baseline of capacity (the Minister's decisions on the IPI provisions). That model was established to understand the demand, capacity and sufficiency of development capacity in the city, provided under the District Plan.
230. Based on the analysis, Ms Hampson concluded that the impact of the proposed WIAL1 height restrictions on realisable dwelling capacity in Wellington City, under a

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<sup>53</sup> At paragraph 318

<sup>54</sup> J Kyle Evidence-in-Chief, at paragraph 37

worst case scenario of no shielding exceptions, is very minor and unlikely to affect the ability of the Council to meet the needs of the NPSUD Policy 2 over the long-term (2021-2051)<sup>55</sup>. The key conclusions of Ms Hampson's evaluation can be summarised as follows:

- (a) Under the OLS height restriction, in a 'worst case' scenario (i.e., where terrain shielding does not apply and if WIAL did not grant development approval) approximately 20,200 (20%) of properties have the potential to be affected across Wellington City<sup>56</sup>;
- (b) Not all opportunities to develop residential dwellings to Plan enabled heights will be commercially feasible within the next 30 years or reasonably expected to be realised: over the long term (under a worst-case scenario with no shielding exceptions) realisable capacity is only reduced by 3%<sup>57</sup>;
- (c) Once greenfield development capacity is accounted for<sup>58</sup>, the OLS designation height restrictions of 8m+30m would not impact on Wellington City Council's ability to provide at least sufficient capacity in the short, medium or long-term<sup>59</sup>; and
- (d) The proposed height limits associated with the OLS designation are the most efficient option due to increased safety benefits and ability for WIAL to adhere to relevant ICAO Guidelines and Civil Aviation Rules<sup>60</sup>.

231. Ms Hampson's analysis also found that the net changes to the sufficiency of commercial and industrial floor space under the 8m height restriction would also be very minor<sup>61</sup>.

232. Ms Hampson concluded that the minor potential opportunity costs on development height for what is expected to be a relatively small share of properties across the city that cannot demonstrate shielding, plus the very minor additional transaction/ compliance costs applicable to impacted properties seeking consent for development that would exceed the WIAL1 conditions, must be compared with the significant economic benefits of Wellington International Airport.

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<sup>55</sup> Natalie Hampson, Evidence-in-Chief, at paragraph 54

<sup>56</sup> Table 2, at page 9

<sup>57</sup> At paragraphs 32-37

<sup>58</sup> We were advised that there is realisable capacity of over 4,000 dwellings in greenfield areas in the Northern catchment that are not included in the Property Economics model (Hampson Evidence-in-Chief at paragraph 45)

<sup>59</sup> At paragraphs 42-46

<sup>60</sup> At paragraphs 54-59

<sup>61</sup> At paragraphs 47-53

233. We consider that Ms Hampson's assessment of the worst-case effects of the OLS designation on development capacity was a little misleading. While, as she noted, the reduction in total realisable capacity appears quite small (at 3%), the effect on the long-term surplus of realisable Plan-enabled capacity over predicted demand is in our view a more relevant indicator of the potential effect. Our calculation of the reduction in surplus capacity (excluding greenfield development) is approximately 10%, or approximately 7.7% including greenfield capacity<sup>62</sup>.
234. However, we need to factor in that in almost all cases to date, WIAL has given approval within a few days. We discuss the detail below, but we have no reason to believe that that will change. We were therefore satisfied that the effects of the proposed changes to the OLS under WIAL1 on the development capacity enabled by the PDP would be less than minor, and any such effects would be outweighed by the safety benefits provided by the OLS.

### **Section 171 Considerations – Alternatives**

235. Section 171(1)(b) of the RMA directs territorial authorities to have particular regard to whether adequate consideration has been given to alternatives if it is likely that the work will have a significant adverse effect on the environment. In his planning evidence for WIAL, Mr Kyle considered that the proposed modifications to WIAL would not have a significant adverse effect on the environment and are in fact seeking to avoid significant adverse effects – that is, potential air accidents<sup>63</sup>.
236. Nevertheless, Mr Kyle outlined three alternative options for the OLS designation that were considered by WIAL:
- (a) Retain the existing operative designation; or
  - (b) Propose an OLS designation that strictly aligns with Civil Aviation and ICAO regulations; or
  - (c) Implement the proposed OLS designation.

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<sup>62</sup> Table 3 of Ms Hampson's evidence quantified the effect of the OLS designation with an 8m height limit as a reduction of realisable capacity of 1,321 dwellings (from 39,678 to 38,357, excluding greenfield capacity) over the long term. In Appendix C Ms Hampson recorded predicted demand over the long term as being 30,407, including the competitiveness margin (15%) required by the NPSUD, suggesting a predicted demand of 26,441 without that margin, making a surplus of plan-enabled capacity without the designation of 13,237. A reduction of that surplus by 1,321 equates to approximately 10%. Taking account of greenfield capacity of 'over' 4,000 (para 45 of Ms Hampson's evidence, citing Property Economics), the surplus is conservatively estimated at 17,237 and the reduction of 1,321 equates to approximately 7.7%

<sup>63</sup> John Kyle Evidence-in-Chief, at paragraph 43

237. In Mr Kyle's opinion, the proposed designation is the most suitable of these options for the following reasons:
- (a) The existing ODP G2 Designation does not align with modern ICAO guidance and Civil Aviation Regulations and has resulted in situations where objects and structures have historically penetrated the OLS without WIAL's knowledge or approval, which is inherently undesirable from a safety perspective.
  - (b) Strict alignment with Civil Aviation regulations and ICAO guidance would result in quite stringent limitations on development rights across a number of urban zones around the Airport and in some areas of elevated terrain affected by the surfaces in question. Such an approach may potentially restrict development unnecessarily.
  - (c) The proposed modifications to the designation, as set out in the Notice, seek to achieve greater alignment with Civil Aviation Regulations and ICAO guidance, while acknowledging that existing development patterns mean that the OLS is already affected in some locations. The proposed OLS seeks to strike a balance between providing development capacity and ensuring airport operational safety is not further compromised (via the inclusion of conditions associated with the setting of building or structure height restrictions).
238. We agree with Mr Kyle that the proposed OLS does appear to provide a generally appropriate balance between the OLS in the ODP and strict adherence to Civil Aviation Regulations and ICAO guidance. As illustrated in Figure 2, the current ODP OLS would enable very tall buildings, evidently well outside international direction for the management of airspace around airports. While the ODP OLS considerably reduces the administrative burden for WIAL in its implementation, this benefit is to the detriment of the absence of a robust checking and control system, with the consequential risks for airspace safety. We agree that this is not satisfactory.
239. Alternatively, full compliance with Civil Aviation Regulations and ICAO guidance would undoubtedly impose much more stringent limitations on development across Wellington, particularly as the city's topography takes little heed of such surfaces. Given WIAL's approval rate to proposed penetrating structures since January 2023 (as referred to in paragraph 253 below), we were satisfied that it is unlikely that a more stringent OLS would generate comparatively greater benefits in terms of airport airspace safety.

240. Therefore, we have concluded that the proposed approach does strike an appropriate balance between providing for the city's development capacity while ensuring airport operational safety is not further compromised.
241. Another alternative approach is to refine the settings of the PDP OLS in the manner sought by the WCC in its submission, which sought to amend the designation conditions to enable an 11m tolerance rather than the 8m limit proposed by WIAL. We address this option as part of our assessment of submissions on WIAL1 designation.

### **Section 171 Considerations – Reasonable Necessity**

242. Section 171(1)(c) requires particular regard be given to whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought. As set out in the Notice, the objectives of the requiring authority WIAL1 are:
- (a) To provide for the safe operation of aircraft approaching and departing the Airport;
  - (b) To maintain and enhance operating capacity at the Airport;
  - (c) To meet international aviation standards and CAA regulations in relation to the protection of flight paths, whilst acknowledging historical development patterns; and,
  - (d) To provide the community with certainty and clarity as to the height restrictions for properties affected by the OLS.
243. We were satisfied that the proposed modifications to the OLS designation are reasonably necessary for achieving these objectives as outlined in the evidence of Mr Kyle, because:
- (a) They are the most effective and efficient method of achieving the safety obligations placed on the Airport in order to meet ICAO guidance and Civil Aviation Regulations as far as is practicable in the Wellington context, thereby ensuring that the Airport's operating capacity is maintained;
  - (b) The designation provides the most effective method of controlling obstacle heights around the Airport by significantly contributing to the safe operation of aircraft using the Airport for the long-term; and
  - (c) The designation provides a way of ensuring that the community is advised about the height limitations that apply to land affected by the OLS and a mechanism for the requiring authority to be advised of potential penetrations and to undertake an

assessment of such proposals in terms of their potential impact on airport operational safety. As outlined in the evidence of Ms Lester, penetrating proposals are authorised unless safety would be compromised and where they are authorised, Mr Thurston explains that advisory material and airport operating procedures can be adapted to recognise their presence.

244. We also note that the controls are consistent with the approach taken by NZ's other major airports.

### **Section 171 Considerations – Part 2, RMA**

245. The purpose of the RMA is to promote the sustainable management of natural and physical resources, which includes enabling people and communities to provide for their social, economic, and cultural well-being and for their health and safety. Section 7 identifies that particular regard should be given to, amongst other things, the efficient use and development of natural and physical resources.
246. We are satisfied that the proposed amendments to WIAL1 represent an efficient use and development of natural and physical resources. By ensuring that appropriate obstacle limitation surfaces are applied to the airspace around Wellington International Airport, the operational safety of aircraft is supported, with flow-on benefits to social and economic wellbeing.

### **Submissions on Designation WIAL1 – Wellington Airport Obstacle Limitation Surfaces**

247. Kāinga Ora sought to include additional diagrams and detail in Condition 1 of Designation WIAL 1 to provide more detail and clarity on height restrictions<sup>64</sup>.
248. In addition, WCC sought to amend the designation as displayed on the ePlan maps, inclusive of polygon boundaries, visual display elements, and any additional mapping elements required to improve useability<sup>65</sup>. Since the notification of the PDP, a non-statutory Obstacle Limitation Surfaces layer introduced into the ePlan mapping has considerably improved the ability of a Plan user to understand the effect of the OLS, not only at a city-wide spatial level, but also on a property-by-property level: anyone can now click on a particular property and will be informed at what elevation the OLS

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<sup>64</sup> Submissions #391.763 and 391.764

<sup>65</sup> Submission #266.34

is above (or below) that site, the OLS height above the ground elevation of that site, and the approvals required from WIAL. We agree with the Reporting Officer that this information substantially goes towards meeting the relief sought by these submitters.

249. WCC also sought to amend Condition 1(b)(i) and (ii) of WIAL1 to remove the prohibition of objects penetrating the Take-off and Approach Surfaces and exceeding a specified height above ground level, and to amend that height limit from 8m to 11m.<sup>66</sup>
250. The Reporting Officer agreed that the use of the term 'prohibited' in the condition is unnecessary and inappropriate, as non-compliance with the designation condition simply requires approval from WIAL as the requiring authority, and, as he understood, approval for height infringements are largely granted following a detailed assessment undertaken by WIAL. The Airport's consultant planner, Mr Kyle, agreed and supported the recommended amendment in this regard<sup>67</sup>.
251. In relation to the other element of WCC's submission, raising the height tolerance below which approval from WIAL is not required from 8m to 11m, the Reporting Officer agreed broadly with this relief, as it would align with the 11m permitted height limit within most of the MRZ and that it would reduce the administrative burden on the requiring authority. Mr Sirl noted that information provided by WIAL to the Panel in the IPI Wrap-up Hearing in late 2023 was that, in the preceding four years, all applications for penetration of the OLS had been approved.
252. In her Evidence-in-Chief, the Airport's Planning Manager, Ms Lester, helpfully provided an updated summary of requests for WIAL's written consents for OLS penetrations since January 2023 to the present, covering a full period during which the amended OLS conditions have applied<sup>68</sup>. We note that all 16 applications were approved, including transmission line tower replacements on the Newlands Ridge, located within the Airport's Take-off and Approach Surfaces. We also note that all proposed penetrations less than 11m were approved.
253. In response to the submission from WCC, as outlined in his summary of evidence, Mr Thurston contacted Aeropath, who are responsible for the design of the instrument flight procedures, to assess the likely effect on safety that would arise from increasing the designation height allowance to 11m. Mr Thurston informed us that Aeropath had

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<sup>66</sup> Submission #266.168

<sup>67</sup> Evidence-in-chief of John Kyle, at paragraph 41

<sup>68</sup> Table 1, Evidence in Chief, Jo Lester

advised that such an increase would certainly have an adverse impact on safety and, in turn, on the efficiency of operations at Wellington Airport.

254. In practical terms, Mr Thurston outlined the implications of raising the tolerance to 11m by explaining that the minimum altitude that pilots are allowed to descend, in landing from the north using the instrument landing system, and to be clear of low cloud and see the runway, would have to increase from 300 feet to 340 feet amsl, a difference of about 12.2 metres. Responding to the Panel's query why a 3m difference in building height tolerance would result in a 12m change in minimum altitude, Mr Thurston advised, through his supplementary evidence, that the relationship between the increase in the OLS and the effects in terms of the airport's Decision Altitude is not a linear relationship and is assessed using a particular Instrument Landing System obstacle environment model which he described in more detail in his evidence.<sup>69</sup>

255. As regards retaining the 8m tolerance, Mr Kyle deferred to the evidence of Mr Thurston and Ms Lester:

*As Mr Thurston explains, the OLS is a critical tool in ensuring airport's overall operational safety and enabling WIAL to be the determiner in this regard is essential. As Ms Lester explains, WIAL has developed an efficient approach to assessing proposals that penetrate the OLS and consistent, robust decisions are made about such proposals based on an assessment of aeronautical safety.<sup>70</sup>*

256. While the Reporting Officer agreed in a broad sense that an 11m tolerance would be more advantageous than the notified 8m, he conceded that:

*However, ultimately I consider the height limit is best determined by the requiring authority and in lieu of evidence that demonstrates that any risk associated with a more permissive height limit is of an acceptable level with respect to the safe and efficient operation of the Airport, in my opinion the Panel is not well-placed with respect to adequate information to recommend that the requiring authority amend the 8-metre height limit.<sup>71</sup>*

257. Considering this matter, while we fully accept and acknowledge that any penetration into the OLS represents a potential risk to aeronautical safety, we agree with the Reporting Officer that, in principle, an 11m tolerance would appear more appropriate,

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<sup>69</sup> L Thurston supplementary evidence, at paragraphs 6-11

<sup>70</sup> At paragraph 35

<sup>71</sup> S42A report, at paragraph 325

because of its alignment with the 11m height standard mandated by the MDRS (and the NPSUD). It appeared to us also that the speed and ease with which WIAL has been able to determine that the requests made to it to date should be approved indicated that the OLS limits were excessively conservative, and that a more site-specific inquiry would likely produce less restrictive height limits in specific areas, particularly in locations on the far side of significant ridgelines from the Airport. In cases such as the area of Mount Victoria on the underside of the Town Belt for instance, much of which is now zoned HRZ with a 22m height limit, we struggled to think of a scenario where a building of that height could pose a problem for any aircraft circling the Airport. In our lay view, any aircraft flying close enough for the presence of such a building in the vicinity to be relevant would likely have bigger problems than that it might fly into a building.

258. Ultimately, however, our issues are just the result of our lay impressions and like Mr Sirl, we have concluded that we have to accept that 8m is the appropriate tolerance level for the implementation of the OLS on the basis of the technical evidence before us. In the absence of any other technical evidence, we therefore cannot recommend amending the height tolerance from 8m to 11m (or any other figure for that matter).
259. Therefore, we agree with Mr Sirl, and recommend to the requiring authority that the wording of the designation condition, WIAL1 Wellington Airport Obstacle Limitation Surfaces Conditions 1.1 Take-off and Approach Surfaces, is amended thus –

*1. Take-off and Approach Surfaces*

*(...)*

*b. Conditions*

*i. With the exception of the properties identified in Figure 1 below, new objects or extensions of objects that penetrate the Take-off and Approach Surfaces ~~and shall not~~ shall not exceed a height of 8m above existing ground level, ~~shall be prohibited~~ except where the new object or extension is shielded by an existing immovable object, or the penetration is a temporary short term penetration (e.g. construction machinery or equipment) and that penetration has been approved by Wellington International Airport Limited.*

*ii. With respect to the properties shown in Figure 1 below, new objects or extensions of objects that penetrate the take-off and approach surfaces ~~and shall not~~ shall not exceed the height limits specified in Figure 1 ~~shall be prohibited~~, except where the new object or extension is shielded by an existing immovable object or the penetration is a temporary short term penetration (e.g.*

*construction machinery or equipment) of these surfaces and that penetration has been approved by Wellington International Airport Limited.*

260. However, given our reservations, we have determined that we should recommend that WIAL further consider whether site-specific refinements might be made to the height tolerance.
261. We note that Yvonne Weeber sought to amend Figure 1 – 'Designation WIAL 1 Properties affected by specific height restrictions' to have a height indicated for the grey area (east side of Bridge Street next to the airport runway)<sup>72</sup>. The Reporting Officer disagreed with Ms Weeber as he considered that the figure is clear in that it allows additional objects on the properties identified in grey that do not exceed existing rooflines. He advised that many, but not all, of these properties are owned by WIAL and do not contain any structures.
262. We disagree with the Reporting Officer that the use of the existing rooflines is an appropriate form of limit, given only one of these properties has any existing buildings remaining (a single storey house at No.23 Bridge Street). There is therefore no existing roofline on the balance of Bridge Street sites. We also observe that other properties adjacent to the runway have height limits shown between 4m and 12m. Accepting these may be in different ownership and are at different elevations relative to the runway, our preference would be to specify a height limit along the eastern side of Bridge Street and consider 4m (one-storey) to be an appropriate limit. Given WIAL's ownership of all of these sites (other than No.23), such a height limit would be arbitrary as the ultimate control of any development would be in the hands of WIAL.

## **19.5 Section 77J Assessment**

263. We asked the Council to consider whether the OLS designation constrained development of residential sites in a way which required justification as a qualifying matter under Section 77J of the Act. Mr Whittington did not consider it did. His submission was that a residential development did not cease to be a Permitted Activity by virtue of the designation, and accordingly, the OLS designation did not 'qualify' the MDRS standards. WIAL adopted his reasoning.
264. We agree that a development does not cease to be a Permitted Activity because of the designation, but we do not consider that a complete answer. Sections 77H(5) and

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<sup>72</sup> Submission #340.135

77I test whether the MDRS and the relevant building height or density requirements under policy 3 of the NPSUD are made “*less enabling of development in relation to an area within the relevant Residential Zone*”. We considered the OLS designation has that effect. Consent is required from WIAL to develop meeting the permitted activity standards across a broad area of the city, and while the evidence is that WIAL has to date granted such consents, it retains the ability to reject them.

265. We also note that the need to give effect to a designation is one of the situations specifically identified as a potential qualifying matter in Section 77J. It seems to us that the only way in which a designation can affect the ability of a landowner to construct dwellings of the specified standards in practice is through exercise of the power under Section 176(1)(b) to withhold consent to an activity preventing or hindering the designated activity.
266. We asked Mr Kyle to supply a statutory evaluation of the OLS designation without prejudice to WIAL’s contention that it was not required. Mr Kyle supplied an evaluation under Section 77J for a new or modified OLS constraints, along with a separate evaluation under Section 77K for those OLS elements that had not changed. Unsurprisingly, in view of WIAL’s case discussed in Section 19.4 above, he concluded in both cases that the OLS designation was an appropriate qualifying matter. We concur. It seems to us that the key point is the conclusion we have arrived at that given the likelihood that the vast majority of applications that might be made to it will likely be granted by WIAL in a matter of a few days and without cost to the landowner, any restriction on development capacity is in the vast majority of cases theoretical only.
267. Accordingly, we adopt Mr Kyle’s evaluations.

## **19.6 Terminology**

268. A final matter related to the WIAL designations is a question of consistent terminology. As we addressed in Section 2 of the Panel report on Hearing Stream 6 in relation to the Special Purpose Airport Zone, the term ‘precinct’ has been applied to distinguish between different areas within the Airport designations. This terminology derived from the original designation conditions and was proposed to be carried through into the Airport Zone. The precincts covered the following aspects of Airport operations:

- Terminal: terminals, support services, airport facilities;

- Airside: runway, taxiways, associated aprons;
- East Side: presently containing the southern part of Miramar Golf Course, future displaced car parking and redevelopment for aircraft parking and taxiing;
- West Side: retail park, flight control, some support services;
- Broadway: entrance 'gateway' and transitional function;
- South Coast: future multi-user freight facility;
- Rongotai Ridge: non-airport purposes with development constraints relating to the obstacle limitation surface (OLS) designation (WIAL1); and
- Miramar South: entrance 'gateway' and future support services.

269. The term 'precinct' pre-dates the National Planning Standards, which came into effect in November 2019. The Standards have established a framework for the consistent use of spatially based terms in District Plans across the country. Under Section 12 of the Standards, *"a precinct spatially identifies and manages an area where additional place-based provisions apply to modify or refine aspects of the policy approach or outcomes anticipated in the underlying zone(s)."*

270. In the PDP, there are ten zone-based precincts that modify the particular zone provisions in relation to identified areas: for example, the Curtis Street Precinct modifies the application of the Mixed Use Zone for a site in Northland. Each precinct has its objectives and policies to direct the policy approach for achieving the outcomes anticipated, which are implemented through specific rules and standards.

271. However, none of the objectives and policies for the Airport Zone are formulated at a level exclusive to one or more of the precinct(s). Rather, they apply equally to all areas subject to the zone. The precinct-specific provisions in the PDP as notified control only maximum height and location of buildings and commercial, retail and access restrictions. As we concluded in the report on Hearing Stream 6, the approach taken in the Airport Zone as notified is not consistent with the rest of the PDP, but rather the limited number of controls for the precincts lend themselves to being reconstituted as provisions relating to 'specific control areas'. For those reasons, we have recommended that all references to 'precincts' are replaced with references to 'specific control areas' in the Airport Zone provisions.

272. The continued use of the term 'precinct' in the designation conditions would continue this inconsistency, particularly if our recommendation is adopted in relation to the Airport Zone. Accordingly, we recommend that the conditions are amended to replace any reference to 'precinct' with 'specific control area'.

## **19.7 Conclusions and Recommendations**

273. In respect of rolled-over designation WIAL1, we have concluded that:

- (a) The modifications to the OLS sought by the requiring authority are considered to be necessary to better comply with Civil Aviation Regulations and international obligations, and therefore safeguard aeronautical safety and movement around Wellington Airport;
- (b) No additional or changes to adverse effects on the environment are expected from the altered OLS requirements;
- (c) The limitations imposed by the OLS on the city's development capacity enabled by the PDP are in practice very minor to negligible;
- (d) The designation is reasonably necessary in respect of providing certainty for the ongoing and safe operation of the airport; and
- (e) There has been an adequate consideration of alternative methods.

274. Notwithstanding our finding, we recommend that the requiring authority consider opportunities for refining the OLS. In particular, assessing whether the risks to aeronautical safety may be sufficiently safeguarded with an enabling tolerance of 11m rather than 8m to align with the MDRS permitted height limit, particularly in areas of the city where it can be identified in advance that the shielding effect of topography would occur.

275. We also recommend that the height limit for eastern Bridge Street currently shown in grey be 4m rather than the "existing roofline".

276. In respect of rolled-over designations WIAL2 and WIAL3, we have concluded that:

- (a) The modifications sought by the requiring authority are necessary to accurately reflect the area of the designations, and that the modifications to the designation purposes are considered to provide a more accurate summary of the purpose of each of the designations;
- (b) The designations are in existence, and no additional or changes to adverse effects on the environment are expected;

- (c) The designations are reasonably necessary in respect of providing certainty for the ongoing and safe operation and maintenance of the infrastructure covered by the designations;
- (d) The consideration of alternative sites, routes or methods is not necessary given the existence of the designations and associated infrastructure and that the designations are not changing in geographic extent; and
- (e) The Outline Plan process would include consideration of the effects of any future works proposed within the designations, and no conditions are considered necessary as the activities already exist.

277. Accordingly, we recommend the requiring authority confirm its requirements subject to the modifications it sought, the corrections identified by Mr Thurston, amendment of the Bridge Street height limit as above, and the replacement of any reference to 'precinct' with 'specific control area' in the designation conditions.

## 20. GREATER WELLINGTON REGIONAL COUNCIL

### 20.1 Introductions

278. Greater Wellington Regional Council (GWRC) is a requiring authority under Section 166 of the RMA. GWRC sought to roll-over its existing ODP designations, being W1, W2, W3, W4, W5 and W6, all with some with modification. In the PDP, these are identified as WRC1, WRC2, WRC3, WRC4, WRC5 and WRC6 respectively as follows:

<b>PDP Designation</b>	<b>Roll-over with modifications</b>
WRC1 - Beacon Hill Signal Station	Modifications to legal description / site identifier
WRC2 - Seton Nossiter flood detention area	Modifications to purpose, legal description, a mapping amendment to cover the entire legal parcel and the removal of the reference to approved Outline Plan and conditions
WRC3 - Upper Karori Reservoir	Modifications to purpose, and legal description / site identifier

WRC4 - Karori Reservoir Reserve	Modifications to purpose, legal description
WRC5 - Ngauranga water supply reservoir	Modifications to purpose, legal description
WRC6 - Stebbings Valley Flood Detention Dam	Modifications to purpose

## 20.2 Submissions and Assessment

279. The only submissions seeking changes to GWRC designations were from Rod Halliday on behalf of Lincolnshire Farm Ltd, Hunters Hill Ltd, Best Farm Ltd, Stebbings Farmlands Ltd, Ohau Land and Cattle Ltd. in relation to *WRC2 – Seton Nossiter flood detention area* and *WRC6 – Stebbings Valley Flood Detention Dam*<sup>73</sup>. Mr Halliday's submission was lodged in respect of the development areas in the north of the city.
280. In relation to designation WRC2, Mr Halliday sought to retain it but update the designation with wording to reflect the designation is designed to hold a 1 in 100-year event as per on-site information boards.
281. In regard to designation WRC6, Mr Halliday sought to have the designation re-modelled and re-mapped, based either on the existing flooding easements in this part of Stebbings Valley or on the corrected 92m contour, to take into account the changes to ground levels as a result of approved earthworks. While Mr Halliday did not present evidence to the hearing, he did supply two Title Plans (LT556896 and LT591132) for Stebbings Valley to show the boundaries of the existing flooding easements within the valley.
282. We note that no response from GWRC was provided to the hearing in relation to these submission points.
283. In respect of the submission on WRC2, the Reporting Officer disagreed that the level of information being sought by the submitter was necessary. We agree.

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<sup>73</sup> Submission #25.7, 25.46-48

284. In respect of the submission on WRC6, the Reporting Officer considered there would be value in the requiring authority reviewing and amending the designation boundary to better reflect the existing environment and the development that has been approved and built north of Westchester Drive and along Farnworth Terrace and Melksham Drive. Mr Sirl provided some examples of the overlap of the WRC6 designation with recently developed areas, two of which we show in Figure 3 below.



Figure 3: Examples of WRC6 (blue boundary) extending into recently developed areas (from s42A report)

285. The Reporting Officer recommended that GWRC confirm its designations subject to the requiring authority reviewing the mapped designation area for WRC6 and reducing, where appropriate, the designation area where it is no longer applicable as a result of approved land modification and development.

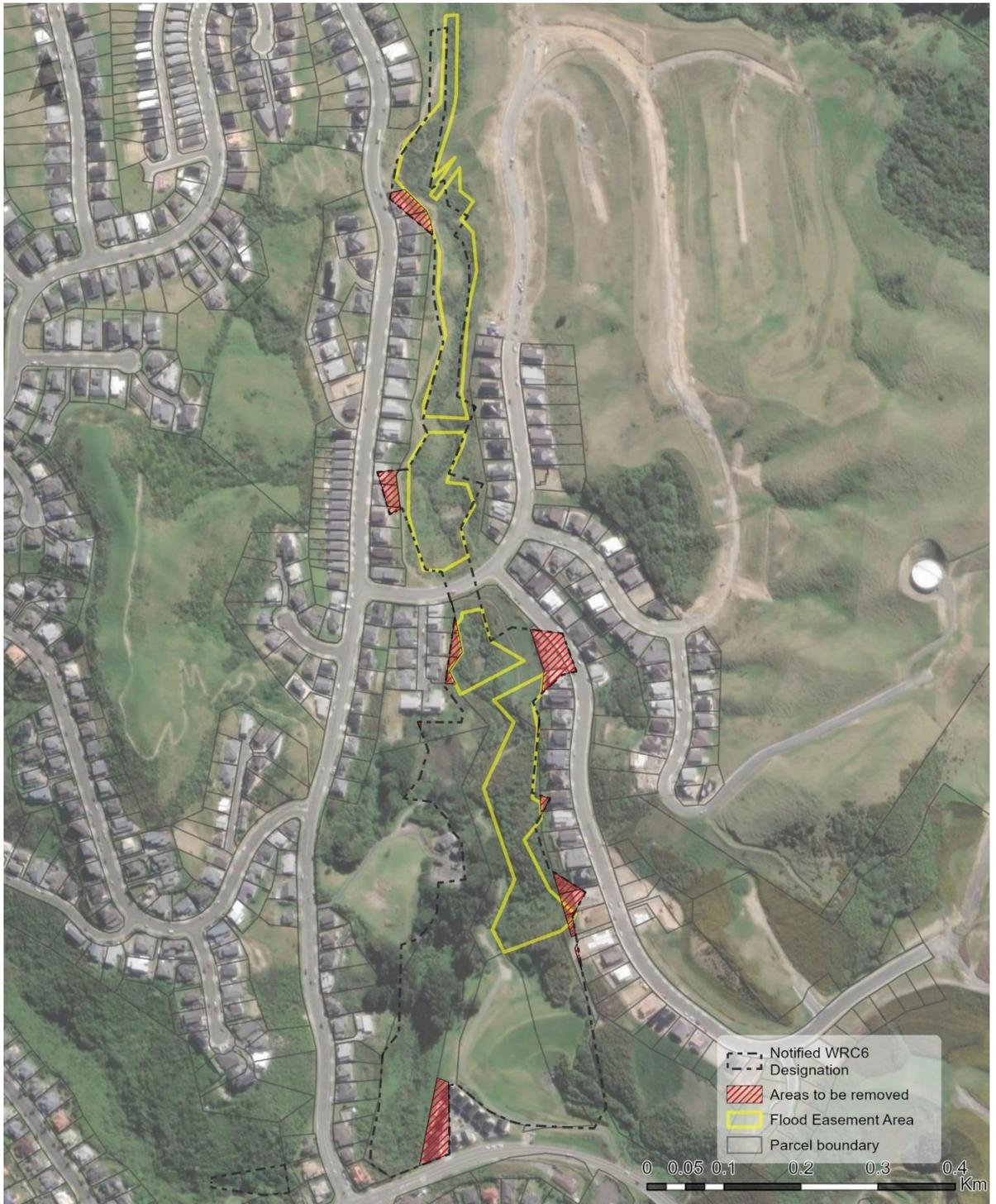
286. Following the hearing, through Minute #53, the Panel requested that the Reporting Officer liaise with Mr Halliday, ideally with the benefit of feedback from the requiring authority, to address whether the maps of the flooding easement that Mr Halliday supplied more accurately describe the area intended to be designated for the purposes of flood protection and control purposes.

287. In response, Mr Sirl reported that he had liaised with GWRC who did not consider the easement area was the appropriate basis for revising the designation boundaries and who indicated that a technical assessment would be required to alter the designation boundaries. He supplied a letter from GWRC's Group Manager, Environment, that formally confirmed their response (appended to his Reply).

288. Mr Sirl stated that, while he remained in broad agreement with Mr Halliday that the designation area should be updated to accurately reflect the flood detention area, the easement areas provided by Mr Halliday do not provide the degree of certainty

needed to support a recommendation to the Panel that the easement area would form a more appropriate and accurate extent of the designation.

289. Helpfully, in his Reply, Mr Sirl provided three maps in relation to this designation:
- (a) An overlay of the WRC6 designation area with the easement areas provided by Mr Halliday;
  - (b) A map showing where the exclusion of developed areas from designation WRC6 would occur together with the areas of flooding easement; and
  - (c) A map showing how designation WRC6 could be amended to exclude the developed areas.
290. We show the second of these figures below, in Figure 4, that best illustrates the matter in contention.



### Amended WRC6 designation that excludes developed areas

Map shows notified extent of WRC6 designation and proposed amendments to the designation to exclude developed areas in Stebbings valley flood detention area

Date: 15/08/2024  
Credit: City Insights GIS Team

Basemap credits: LINZ

**Absolutely Positively  
Wellington City Council**  
Me Heke Ki Pōneke

Figure 4: Map of upper Stebbings Valley showing flood easement areas overlying the WRC6 designation, and showing (in red hatching, notated as 'areas to be removed') areas of developed land that currently come within the designation<sup>74</sup>

291. In his Reply, Mr Sirl suggested that an option that the Panel may wish to consider is recommending that the designation area is at least revised to no longer apply to the developed areas of private property (shown in red hatch in Figure 4). Whilst Mr Sirl advised this would not align perfectly with the easement information provided by Mr Halliday, it would remove the designation from areas that have had their landform modified and have been developed for housing. Mr Sirl noted this option is based on the assumption that the requiring authority had provided approval under Section 176 of the RMA for this development, and therefore these areas should no longer form part of the detention area due to the modification. Overall, Mr Sirl considered this recommendation represents a fair and reasonable amendment that removes the unnecessary encumbrance of the designation from these properties.
292. We acknowledge the point made in the letter from GWRC that the presence and continued unhindered operation of the Stebbings Detention Dam is important for flows into the Porirua Stream to be managed in high rainfall events, protecting numerous landowners downstream from the impacts of flooding. We accept that it would be inadvisable to make any alterations to the designation boundaries without a technical assessment to validate the designation against current topographical data and flood control requirements. Although it was not stated by GWRC, we also accept that the final hydrological characteristics of the upper Stebbings Valley may yet be subject to change as the urban development of the valley proceeds.
293. However, in our opinion, the GWRC's response to this matter appears to be a case of "kicking the can down the road". There is a clear need to realign the designation boundaries to correlate the detention area behind the Stebbings Dam with the final form of development in the valley. The misalignment of the flooding easement with the detention dam designation boundaries also appears to be an incongruity requiring resolution. Among other things, it means that while flooding of land in accordance with the designation meets the requirements of the Act, GWRC has no legal right to flood land not the subject of easement. It could be sued for damage to the property that results. We would have thought that GWRC might be anxious to resolve the issue given that clear risk of civil liability.
294. The inverse is also true. If the easement reflects the actual area likely to be flooded, flooding of those parts of the easement area not also designated would be a breach

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<sup>74</sup> Appendix G, Council Reply

of the Act. We would have thought that as a responsible public authority, GWRC might be concerned about that possibility also.

295. Be that as it may, we agree with the Reporting Officer that it can safely be concluded that the development of the sites on the periphery of the designation shown in Figure 4 (which would have been subject to resource consent from the Regional Council) has occurred presumably on the basis that such development would not prevent or hinder the work to which the designation relates.
296. While the final development of the upper valley has yet to be completed, the final pattern of future land use has been confirmed through the structure plan of the area. Further, the Panel's recommendations arising from Hearing Stream 6 would 'fix' the final zoning boundaries for land use within upper Stebbings Valley. Given this context, we would have considered it timely for the hydrological capacity and operation of the detention dam to be reviewed.

### **20.3 Conclusions and Recommendations**

297. In respect of the rolled-over designations of GWRC, we have concluded that:
- (a) The modifications sought by the requiring authority in relation to the site identifiers/physical and legal descriptions are considered to be necessary to accurately reflect the area of the designations, and that the modifications to the designation purposes are considered to provide a more accurate summary of the purpose of each of the designations;
  - (b) The designations are in existence, and no additional or changes to adverse effects on the environment are expected;
  - (c) The designations are reasonably necessary in respect of providing certainty for the ongoing operation and maintenance of the infrastructure covered by the designations, and consideration of alternative sites, routes or methods is not necessary given the existence of the designations and associated infrastructure and that the designations are not changing in geographic extent; and
  - (d) The Outline Plan process would include consideration of the effects of any future works proposed within the designations, and no conditions are considered necessary as the activities already exist.
298. In respect of the rolled-over designations of GWRC, we therefore recommend the requiring authority confirm the requirements subject to the modifications it sought.

299. In addition, in relation to designation WRC6, we recommend that the requiring authority either:
- (a) As a minimum, adjust the designation boundaries to exclude the residential properties that have been developed since the designation was originally confirmed; or alternatively
  - (b) Exercise its statutory functions, power and duties in a reasonable and timely manner by committing to undertake the necessary technical assessment required to update and revise the designation boundaries.

## **21. CONCLUSIONS**

300. We have sought to address all material issues of the parties who have appeared before us put in contention in relation to the topics discussed in this report.
301. To the extent that we have not discussed submissions on this topic, we agree with and adopt the reasoning of the Section 42A Report prepared by the Reporting Officer, as amended in his written Reply.
302. Appendix 1 sets out the amendments we consider should be made to the designations as notified as a result of our recommendations.
303. Appendix 2 sets out in tabular form our recommendations on the submissions considered in this report.
304. As previously noted, the Council's decisions on our recommendations take the form of recommendations to the relevant requiring authority, except for those designations in respect of which the Council itself is the requiring authority, in which case, they are final save for appeal.
305. We draw the attention of Council to our recommendations that:
- (a) It ascertain whether New Zealand Media and Entertainment designation NZME1 should be uplifted because the requiring authority no longer has a financial interest in the works the subject of designation (refer Section 12 of our report above);
  - (b) In its capacity as requiring authority for designation WCC8, it provide a legible version of the Site Development Plan in Conditions 2 (refer Section 17.2 of our report above); and

(c) It ascertain whether Wellington Electricity Limited designation WEL3 has lapsed and therefore should be removed from the Plan (refer Section 18 of our report above).

306. In relation to designation WIAL1, we draw WIAL's attention (as the relevant requiring authority) to our recommendation that it give further consideration as to whether there might be opportunities for refining the OLS, particularly in areas of the city where it can be identified in advance that shielding effects would occur (refer Section 19.4 of our report above).

307. Lastly, in relation to designation WRC6, we draw GWRC's attention (as the relevant Requiring Authority) to our recommendations that it update and revise the boundaries of this designation (refer Section 20.3 of our report above)

For the Hearing Panel:



**Trevor Robinson**

Chair

Wellington City Proposed District Plan Hearings Panel

**Dated: 28 January 2025**