



**Mackenzie**

**DISTRICT PLAN REVIEW**

TOMORROW'S MACKENZIE  
KA AWATEA HŌU

**Section 42A Report: Plan Change 27 –  
Earthworks, Subdivision, Public Access and  
Transport**

**Reply Report**

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**Date: 14 June 2024**

## 1. Purpose and Scope of Report

1. The purpose of this Reply Report is to outline where my recommendations on PC27 have altered, as a result of the questions arising from the Hearing Panel, submitter evidence or matters traversed at the hearing. It also addresses other matters arising in submitter evidence or during the course of the hearing where I consider further comment may be of benefit to the Hearing Panel. As such, other than where stated in this Reply Report, my opinions and recommendations remain as set out in the Section 42A Report<sup>1</sup> and in the Response to Minute 12.<sup>2</sup>
2. For the avoidance of doubt, where I do not comment further, this is not because I have not carefully considered matters raised in any evidence and in the presentations made by submitters. Rather, I am not persuaded that there is a need to alter my recommendations from that in the Section 42A report, and my reasoning has not changed from what is set out within that report.

## 2. Format of Report

3. This report is divided into four primary sections, EW, SUB, PA and TRAN. For the reasons noted above, it does not however traverse all matters/topics discussed at the hearing.
4. A full set of the changes recommended to provisions are contained in **Appendices 1 to 5** to this Report, incorporating recommendations made in the Section 42A Report, the Response to Minute 12 and in this Reply Report. Changes recommended in the Section 42A Report are shown by way of ~~strikeout~~ and underlining. Changes recommended in the Response to Minute 12 and in this Reply Report are shown by way of ~~red strikeout~~ and red underlining. Changes previously recommend to be deleted but now recommended to be reinstated are shown in ~~red without underlining~~. Changes previously recommended to be added but now recommended not to be included are shown in ~~red strikethrough with black underlining~~. Footnoted references to the relevant submitter(s), and where applicable, submitter evidence, identify the scope for each recommended change.
5. Where required, an evaluation under s32AA of the RMA is undertaken of any further changes recommended.

## 3. Earthworks

### New Zealand Pork

6. Mr Vance Andrew Hodgson, as detailed in his evidence, is not comfortable that the burying of infected material under the Biosecurity Act 1993 appropriately fits within the provision of offal or farm rubbish pits in EW-R2. Mr Hodgson therefore seeks that EW-R2 is amended to permit earthworks associated with the disposal of material infected by unwanted organisms as declared by the Ministry of Primary Industries Chief Technical Officer or an emergency declared

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<sup>1</sup> Section 42A Report: Plan Change 27 – Earthworks, Subdivision, Public Access and Transport, 19 April 2024.

<sup>2</sup> PC27 Section 42A Report Author's Response to Hearings Panel Questions

by the Ministry under the Biosecurity Act 1993. Mr Hodgson refers to the Opotiki District Plan approach and supports linking any earthworks permitted under EW-R2 to specific directions of an authorised person under the Biosecurity Act 1993, as this essentially limits the circumstances where the provision can be relied on.

7. While, in my view, burying of material infected by unwanted organisms falls within the realm of an offal or farm rubbish pit, for the avoidance of doubt, I support the evidence of NZ Pork. I therefore recommend that EW-R2 is amended to permit any earthworks associated with the burying of material infected by unwanted organisms as declared by the Ministry of Primary Industries and carried out as directed by a person authorised under the Biosecurity Act 1993 as set out in **Appendix 2**.

#### **Recommendation**

8. I recommend, for the reasons given above, that:
  - EW-R2 is amended to permit earthworks associated with the burying of material infected by unwanted organisms as declared by the Ministry of Primary Industries and carried out as directed by a person authorised under the Biosecurity Act 1993.
9. The recommended amendments are set out in **Appendix 2**.
10. The scale of changes does not require a s32AA evaluation because it is a minor change to provide clarity for plan users and does not alter the general intent.

## **4. Subdivision**

### **Telecommunication Companies**

11. The Telecommunication Companies, as detailed in their evidence, consider that all allotments created by subdivision in SUB-S7 should be provided with a connection to a telecommunication systems network and where available an open access fibre connection. The primary reasons for this are as follows:
  - a. Telecommunication connectivity is classified as critical infrastructure, especially in an emergency.
  - b. Prospective purchasers should be advised if telecommunication connectivity is available or not at the time of subdivision, e.g., consent notices registered on the record of title.
  - c. It is common for people purchasing properties to expect connectivity and to assume connectivity is available. In urban settings there is also an expectation for access to higher capacity networks.
  - d. Failing to provide adequate telecommunications infrastructure at the time of subdivision can lead to unnecessary disruptions and increased costs for end-users when installed later.

12. In considering the evidence of the Telecommunication Companies and the SUB Chapter as a whole, I agree that prospective purchasers should be made aware if connectivity is available, or not, to any allotment created by subdivision and that future landowners are likely to expect a certain level of telecommunication service. I therefore agree with the Telecommunication Companies that SUB-S7 should be amended to require all allotments, other than allotments for access, roads, utilities, or reserves, to be provided with a connection at the boundary of the allotment to a telecommunication system network, as notified.
13. While I previously considered it more efficient to remove the requirement for telecommunication connections in the RLZ and GRUZ given advancements in alternative satellite telecommunication solutions, the activity status when a connection to the boundary is not available remains RDIS. The matters of discretion, in my view, also provide a clear pathway for consent to be granted in the absence of a specific boundary connection by allowing the consideration of alternative methods (SUB-S7.b) and methods to be used to inform prospective purchasers of an allotment that these connections are not installed (SUB-S7.c).
14. The Telecommunication Companies, based on the s42A Report Recommendations Version of the SUB Chapter, have sought the following amendments to SUB-S7:

SUB-S7	Electricity Supply and Telecommunications	Activity status when compliance is not achieved:
<u>RLZ and GRUZ</u>	1. <u>All allotments, other than allotments for access, roads, utilities, or reserves, must be provided with connection at the boundary of the allotment to an electricity supply and telecommunication systems networks.</u>	<b>RDIS</b>  <b>Matters of discretion are restricted to:</b> a. <u>whether an electricity supply is needed for the intended use.</u> b. <u>the suitability of the alternative provision of electricity supply.</u> c. <u>what method(s) are to be used to inform prospective purchasers of an allotment that an electric supply or telecommunication connection has not been installed.</u>
<u>All Other Zones</u>	2. All allotments, other than allotments for access, roads, utilities, or reserves, must be provided with connection at the boundary of the allotment to an electricity supply and telecommunication system networks <u>including open access fibre where it is available.</u>	<b>RDIS</b>  <b>Matters of discretion are restricted to:</b> a. whether an electricity supply is needed for the intended use. b. the suitability of the alternative provision of electricity supply. c. <del>Whether telecommunication and electricity connections shall be made available to any allotment, and if not,</del>

		<p>the <u>What method(s) are to be used by which to inform prospective purchasers of an allotment are to be informed</u> that an electric supply <u>or telecommunication</u> connection has not been installed.</p>
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15. For simplicity however I recommend minor amendments to the notified version of SUB-S7, as in my view, it is no longer necessary to include a different rule requirement for the RLZ and GRUZ.
16. The recommendations are set out **Appendix 3**.
17. I have provided the recommended changes to the Telecommunication Companies who have confirmed in writing that that they have no concerns with the recommendation.

**Recommendation**

18. I recommend, for the reasons given above, that:
  - SUB-S7 is amended to require all allotments to be provided with a boundary connection to a telecommunication network and where available an open access fibre connection.
19. The recommended amendments are set out in **Appendix 3**.
20. In terms of Section 32AA, it is my view that the proposed amendments are more effective at achieving SUB-O.4 and SUB-P7 while remaining efficient by allowing for the consideration of alternative telecommunication methods and methods to be used to inform prospective purchasers that telecommunications connections are not available to the site at the time of subdivision.

**Transpower Limited**

21. Ms Ainsley McLeod, in her evidence, does not support the precise wording of SUB-O1.5 on the basis that the term ‘minimise’ implies that some level of conflict between incompatible activities is acceptable. In her view, insofar as the objective relates to the National Grid the term ‘minimise’ is not appropriate as:
  - a. it does not give effect to Policy 10 of the NPSET that directs decision makers to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading and development of the electricity transmission network is not compromised;
  - b. it does not give effect to Policy 16.3.4(2) of the CRPS and is inconsistent with the CRPS Method associated with the Policy; and

- c. it is inconsistent with the firmer direction included in policies SUB-P3 and SUB-P10 that implement the objective.
22. Ms McLeod does appreciate that the objective is broader in application and is not specific to the National Grid. Ms McLeod's therefore seeks that if SUB-O1.5 is not amended to include differing approaches to incompatible activities that the term 'minimise' is replaced with the term 'manage', to ensure an avoid approach is available in respect of the National Grid.
23. In considering the evidence of Ms McLeod and revisiting the wording of ATC-O4 and ATC-O6, I agree that SUB-O1.5 should be amended to include differing approaches in order to achieve the strategic directions and to give effect to higher order documents. I therefore recommend that SUB-O1.5 is amended to avoid reverse sensitivity effects on renewable electricity generation activities and electricity transmission activities (in line with ATC-O4) and an additional clause is added to minimise conflicts between other incompatible activities (ACT-O6). Alternatively, I agree with Ms McLeod that the term 'manage' would be more appropriate.
24. The recommended amendments are set out **Appendix 3**.

### ***Recommendation***

25. I recommend, for the reasons given above, that:
- SUB-O1.5 is amended to avoid reverse sensitivity effects on renewable electricity generation activities and electricity transmission activities and an additional clause is added to minimise conflict between incompatible activities;
26. The recommended amendments are set out in **Appendix 3**.
27. In terms of Section 32AA, I consider the recommended amendments to be more effective at achieving Strategic Directions ACT-O4 and ACT-O6.

### **Director General of Conservation**

28. DOC presented evidence seeking additional provisions to protect nearby significant biodiversity values which could be adversely affected by development in the Ōhau River Precinct (Precinct). The evidence of Mr Brass suggested wording for the additional provisions, which he considered could be included in either the subdivision provisions that relate directly to subdivision within the Ōhau River Precinct or the land use controls in PC25. Mr Nelson provided evidence that described the significant indigenous fauna that DOC is involved with protecting just outside of the boundary of the Precinct, namely the black-fronted tern and the Lakes skink. Mr Brass stated at the hearing that these are the known species, and that he considered provisions to protect nearby significant indigenous biodiversity values should not be limited to these two species in the event that other, currently unknown, species were present.
29. Based on the evidence of Mr Nelson and Mr Brass I agree that additional provisions are required to protect identified nearby significant indigenous fauna (black-fronted tern and Lakes skinks) which could be adversely affected by development in the Ōhau River Precinct. I agree that the rules to manage indigenous vegetation clearance (in Chapter 19 of the District Plan which is the subject of PC18), which will apply when development occurs within the Precinct, may not allow

control or discretion over the actual and potential effects of development and associated land uses on indigenous biodiversity values outside the footprint of the Precinct.

30. Therefore, I recommend an additional matter of direction in SUB-R6, that applies exclusively to the Ōhau River Precinct. This will enable conditions of consent (and as appropriate, consent notices) to be imposed on any subdivision consent, to manage potential effects arising from subdivisions and future land use on these identified species. This recommended amendment is set out in **Appendix 3**. I consider it appropriate for the provision to respond directly to the evidence that describes the significant indigenous fauna that DOC are concerned with protecting, as described in the evidence of Mr Nelson. Therefore, I recommend that the provision is specifically limited to methods to protect Black-fronted tern at Tern Island and Lakes skinks within the Ōhau River margin.
31. I also support Ms Justice's recommendation that an additional matter of control be included in PREC4-R1 (which provides for Residential Units within the Precinct as a controlled activity).
32. Ms Justice and I have provided the recommended wording to Mr Brass for comment. Mr Brass advised that he had no concerns with the recommended provisions as they align with what he is seeking.

#### **Recommendation**

33. I recommend, for the reasons given above, that:
  - SUB-R6 is amended to include an additional matter of discretion to enable the consideration of methods to protect Black-fronted tern at Tern Island and Lakes skinks within the Ōhau River margin.
34. The recommended amendments are set out in **Appendix 3**.
35. In terms of section 32AA, the recommended changes in my view better protect the significant indigenous fauna in this area as identified in the evidence of Mr Nelson. In my opinion the recommended changes are more appropriate for achieving the purpose of the RMA, and in particular the matters of national importance in section 6(c) of the RMA which requires protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

## **5. Public Access**

### **Transpower Limited**

36. Transpower opposes PA-O1 as the objective, in their view, does not recognise that there are situations where it is necessary to restrict public access in order to protect public health and safety. Transpower therefore request that PA-O1 is amended as follows:

*“Access to and along surface waterbodies with recreational, scenic, ecological, indigenous biodiversity, conservation, mana whenua or amenity values is maintained or improved except in circumstances where it is necessary to restrict access to protect public health and safety.”*

37. Transpower also seek a new policy in the PA chapter to recognise and provide for permanent and temporary restrictions on public access where restrictions are necessary to protect public health and safety.
38. While I agree with Transpower that there may be circumstances where public access needs to be restricted within an esplanade reserve or strip to protect public health and safety, I do not agree that amendments are necessary to the PA Chapter. In my view, it is not the role of the District Plan to manage public health and safety when undertaking works within an esplanade strip or reserve (which to my understanding is the primary concern of Transpower). The PA Chapter is also narrow in application only applying to future subdivision adjoining a waterbody listed in PA PA-SCHED1 and PA-SCHED2, with the provisions essentially setting out the procedure to be followed at the time of subdivision as opposed to on-going management. More specifically, none of the provisions in the PA Chapter relate to how esplanade strip or reserves are managed. I therefore recommended no amendments to the PA Chapter based on the evidence of Transpower.

## **6. Transport**

### **The Fuel Companies**

39. The Fuel Companies, in their hearing statement, while not opposed to the recommended amendments to TRAN-Table 1 seek clarity regarding TRAN-R7 and TRAN-Table 1 and how TRAN-R7 would apply in the context of other provisions in the Transport Chapter (most notably TRAN-R8). The Fuel Companies also seek clarification of what constitutes an expansion in the context of TRAN-R7.
40. The oxford dictionary defines an expansion as *“the action or process of causing something to occupy or contain a larger space, or of acquiring a greater volume or capacity.”* I therefore consider TRAN-R7 would not apply to activities permitted under TRAN-R8 as TRAN-R8 is specific to existing, permitted or consented vehicle parking spaces and therefore does not constitute an expansion (occupying the same space as an existing activity i.e., not creating additional parking spaces). The installation of additional parking spaces (not otherwise provided for) specific for electric vehicle charging stations, however in my view would constitute an expansion and would therefore need to be assessed against TRAN-R7, which is provided for in the rules as notified. No amendments to TRAN-R7 and TRAN-R8 are therefore recommended in response to the hearing statement of the Fuel Companies.

### **Ministry of Education**

41. The Ministry of Education did not attend the hearing but have asked that should their submission to TRAN-S1 and TRAN-Table 3 be rejected that TRAN-Table 3 is amended to remove the requirement for educational facilities to provide 1 parking space per 10 students over 15 years of age.
42. Mr Ashley McLachlan has reviewed the statement of evidence from the Ministry of Education and does not support the suggested changes to TRAN-Table 3. Based on current school rolls,



the number of carparks required under this standard is not overly onerous<sup>3</sup>. Carparks for students who are old enough to drive, in his view, are also necessary to ensure an efficient transport network (TRAN-O1). To align with the correct driving age in New Zealand, however the age of students is recommended to be increased to 16 years of age.

43. Based on the above, I recommend that TRAN-Table 3 is amended to increase the age of students from 15 years to 16 years of age.

***Recommendation***

44. I recommend, for the reasons given above, that:

- TRAN-Table 3 is amended to increase the age of students from 15 years of age to 16 years of age.

45. The recommended amendments are set out in **Appendix 5**.

46. In terms of section 32AA, the recommended changes in my view are more efficient as students less than 16 years of age are unable to drive in New Zealand and therefore do not require car parking spaces.

**Fire and Emergency New Zealand**

47. I do not recommend any amendments to the TRAN Chapter based on the hearing statement prepared by FENZ for the reasons set out the Section 42A Report.

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<sup>3</sup> Six for Mackenzie College and four for Twizel Area School.