

BEFORE THE INDEPENDENT HEARINGS PANEL
THE PROPOSED WAIKATO DISTRICT PLAN (STAGE 1)

UNDER the Resource Management Act 1991 (**RMA**)

IN THE MATTER OF A submission by the Ministry of Education on the
Proposed Waikato District Plan – Hearing 5
– **Definitions**

BY **THE MINISTRY OF EDUCATION**

Submitter

**STATEMENT OF PRIMARY EVIDENCE OF KEITH FRENTZ ON BEHALF OF
MINISTRY OF EDUCATION**

Planning

Dated: 18 November 2019

1. INTRODUCTION

- 1.1 My full name is Keith Frentz. I am a Technical Director (Planning) in the firm of Beca Ltd.
- 1.2 I have the following qualifications:
- (a) Bachelor of Science in Land Surveying from Otago University; and
 - (b) Masters of Social Science (Honours) in Resource and Environmental Planning from Waikato University.
- 1.3 I am a full member of the New Zealand Planning Institute.
- 1.4 I have over 40 years' experience. My experience has included extensive experience in preparing and processing consent applications for both Councils and private clients. I have been responsible for the preparation of District Plans, Plan Changes and Structure Plans for local authorities and preparing Notices of Requirement, Outline Plans and Resource Consent applications for the Ministry of Education (the Ministry).
- 1.5 My statement sets out planning evidence on behalf of the Ministry in relation to the Ministry's submission points 781.1 and 781.2 and further submissions [FS1113.1] and [FS1113.2] to the Proposed Waikato District Plan (PWDP).
- 1.6 In preparing this evidence I have reviewed the s42A Report and Appendices relating to the Definitions chapter of the PWDP.

2. CODE OF CONDUCT

- 2.1 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the 'Environment Court Practice Note' and that I agree to comply with it. I confirm that I have considered all material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

3. SCOPE OF EVIDENCE

- 3.1 My evidence will cover the following topics to assist the Hearings Panel in deliberations:
- (a) A short summary of the Ministry's submission; and

- (b) A planning assessment of the amendments sought by the Ministry to the definitions of 'Educational facility' and 'Childcare facility' and my response to the recommendations in the section 42A Report.

4. SUMMARY OF THE MINISTRY'S SUBMISSION

4.1 The intent of the Ministry's submission is to ensure that the provisions and planning tools of the PWDP facilitate the development of a range of educational facilities within the Waikato District that will enable the community to meet its educational needs.

4.2 I have summarised the changes sought as follows:

- (a) The Ministry supports the principle that educational facilities are defined but seeks to replace the term 'education facility' with 'educational facility' to align with the prescribed National Planning Standards and to delete the definition for 'childcare facility' to ensure that the full range of activities that may be provided at an educational facility are recognised in the definition.
- (b) The policy framework in the Plan does not refer to educational facilities in some zones. The Ministry seeks to include policy direction in all zones that will enable development of educational facilities that are compatible with the role, function and predominant character of the zones.
- (c) The Ministry opposes the activity status of non-complying (as a default activity status) and discretionary activities given to educational facilities across many of the PWDP zones, seeking instead restricted discretionary activity status. Of particular concern is that where educational facilities are not specifically provided for in a zone, they default to a non-complying activity status. For example, in the Industrial Zone (Chapter 20) Trade and Industry Training is a permitted activity but other educational facilities that may be needed in the area default to a non-complying activity status by virtue of Rule 20.1.3.
- (d) Similarly, in the Business Town Centre Zone, educational facilities are not provided for and default to a non-complying activity status. Examples of educational facilities that may be appropriate in the Business Town Centre Zone include early childhood education centres and vocational training centres.
- (e) The Ministry supports the activity status of permitted activity where identified and submits that it is appropriate that where educational facilities are not

provided for as a permitted activity they should be provided for as a restricted discretionary activity.

- (f) The Ministry supports in part where sub-categories of educational facilities, such as “trade and industry training” activity, are identified as a permitted activity but seeks for other educational facilities to be also identified as a restricted discretionary activity.

4.3 I also note that the Ministry submitted a further submission on two submission points relating to the definitions of ‘education facility’ and ‘noise-sensitive activity’.

5. AMENDMENTS SOUGHT TO ‘EDUCATION FACILITY’ DEFINITION

Submission Point 781.1

5.1 The Ministry’s original submission sought an amendment to the definition of ‘Education Facility’ as follows:

~~Education facility: Means premises where groups of people are given tuition and training on a formal basis and includes childcare facilities, schools, tertiary education institutions and specialised training facilities, and their ancillary administrative, cultural and health facilities.~~

Education Facilities: means land and/or buildings used to provide regular instruction or training and includes schools, community education, early childhood education, tertiary education institutions, work skills training centres, outdoor education centres and sports training establishments and includes their ancillary administrative and support facilities (including cultural, recreational, communal or accommodation).

5.2 The proposed amendment was intended to comprehensively recognise the range of activities that may be provided at an education facility to accurately reflect the activities that may be required to support the efficient and effective provision of education. However, this submission was made prior to the release of the National Planning Standards (NPS) Definitions in April 2018.

5.3 It is acknowledged that the Ministry is a Requiring Authority under section 166 of the RMA and that section 9(3) of the RMA does not apply if a designation is in place. Nevertheless, the Ministry has submitted on rules where they are considered to impact on its operations given that the rules are relevant if the Ministry does not use the designation process and given that the rules can be used as a guide in the preparation and assessment of Notices of Requirement and Outline Plans.

Section 42A Report Comment regarding Submission 781.1

5.4 The section 42A Reporting Officer has recommended that the Ministry's original submission is rejected and that it is appropriate to adopt the NPS definition of Educational Facility, as requested in the relief sought by the further submission from the Ministry [FS1113.1].

5.5 The section 42A Report recommends that 'Education facility' is amended to read:

Educational facility

Means land or buildings used for teaching or training by childcare services, schools, and tertiary education services, including any ancillary activities.

5.6 I accept the recommendation to adopt the NPS definition for 'Educational facility' which is reflected in the relief sought by the Ministry in our further submission [FS1113.1].

6. AMENDMENT SOUGHT TO 'CHILDCARE FACILITY' DEFINITION

6.1 The Ministry's original submission sought to delete the notified definition of 'Childcare facility' as the Ministry consider that the PWDP definition does not accurately reflect the broad range of activities associated with a childcare facility. The requested definition of 'educational facility' includes childcare services as addressed above.

Section 42A Report Comment regarding Submission 781.2

6.2 The section 42A Reporting Officer disagrees with the Ministry's submission that the definition should be deleted, primarily on the basis that childcare facilities are treated differently in the rules. In addition, playcentres, which fall within the definition of 'childcare facility', may not be 'education facilities', that is 'premises where groups of people are given tuition and training on a formal basis', as they are primarily run by parents.

6.3 The section 42A Report recommends that 'Childcare facility' is amended to read:

Childcare facility

Means any land or buildings used for the care or training of predominantly pre-school children and includes a Playcentre, kindergarten or daycare.

It excludes:

(a) children residing overnight on the property; and

(b) a school.

- 6.4 I agree with the section 42A Reporting Officer that it is appropriate to incorporate ‘Daycare facilities’ within this definition, as requested by Waikato District Council [697.373].
- 6.5 However, I disagree that the term ‘childcare facility’ should be retained as a sub-definition, to account for the distinction in other rules in the PWDP (for example, in relation to parking and traffic generation). This is exemplified in the Ministry’s submission on Table 14.12.5.7 – Required parking spaces and loading bays where the specific activities for parking are defined by ‘Early Childhood Education’, ‘School’ and ‘Tertiary Education’. It is noted that none of these terms are separately defined by the PWDP.
- 6.6 I also disagree with the distinction the S42A report makes between Playcentre facilities and other early childhood education services. The approach (ownership, management and administration) of Playcentres may be different but “education” for pre-school-age students covers a wide range of facets including social-skills and education through “play” is a recognised, and important, aspect of the services provided.
- 6.7 The Ministry through subsequent submissions is seeking that educational facilities are included as a restricted discretionary activity across a majority of the PWDP zones.
- 6.8 If the definition for ‘Childcare facility’ is retained as amended, provision for childcare facilities will default to a non-complying activity in many of the District’s key zones as shown in the table below. Similarly, the Table shows that educational facilities are also not well provided for in the PWDP. This will be the subject of further submissions to the PWDP.

Zone	Activity Status	
	Childcare Facility	Educational Facility
Residential	Non-Complying	Non-Complying
Business	Permitted	Permitted
Business Town Centre	Non-Complying	Non-Complying
Industrial	Non-Complying	Non-Complying
Rural	Non-Complying	Discretionary
Country Living Zone	Non-Complying	An education facility, excluding a child care facility for up to 10

		children is Discretionary
Village	Non-Complying	Non-Complying
Reserve	Non-Complying	Non-Complying

- 6.9 I consider that a non-complying activity status for childcare facilities is overly restricting and will have detrimental effects on the provision of childcare facilities across the district and as a consequence will not enable the community to meet its educational needs.
- 6.10 In addition to the above, I consider that the inclusion of both definitions ('Educational facility' and 'Childcare facility') has the potential for misinterpretation as a childcare service will essentially fall under both definitions. For example, from the Table above a question could arise whether an early childhood education facility is a Discretionary or a Non-complying activity in the Rural zone.
- 6.11 I believe that the definition of 'educational facility' appropriately provides for the variety of educational activities, including childcare services, as well as other schools, tertiary education or further education facilities that are able to meet this definition.
- 6.12 In my opinion therefore, the definition of Childcare facility should be deleted. This is supported by the NPS definitions which do not have a definition for 'childcare facility' – only a clear definition for 'educational facility'.
- 6.13 However, should the Panel prefer to retain the definition I would suggest that it should be amended to read (struck-through text deleted):

Childcare facility

Means any land or buildings used for the care or training of predominantly pre-school children and includes a ~~P~~playcentre, kindergarten ~~or daycare~~.

With no exclusions.

7. FURTHER SUBMISSION ON 'NOISE SENSITIVE ACTIVITY' DEFINITION

- 7.1 KiwiRail [986.48] have requested the inclusion of education facilities in the definition of 'noise sensitive activity'. The Ministry opposed this submission point to amend the definition of 'noise sensitive activity.' The Ministry requested that the existing definition of noise-sensitive activity (paragraph (d)) is retained, as notified, to ensure that noise

levels will be appropriately managed to protect the amenity values of noise sensitive environments, which include educational facilities.

Section 42A Report Comment regarding Further Submission FS1113.2

7.2 The section 42A Reporting Officer agrees with the Ministry's further submission [FS1113.2], that it is not necessary to widen clause (d) to refer to the entire 'education facility', as not all aspects of such a facility will be noise sensitive.

7.3 The section 42A Report recommends that 'Noise sensitive activity' is amended to read:

Means the following:

(a) buildings used for residential activities, including boarding establishments, ~~rest homes,~~ retirement villages, papakainga housing development, ~~in-house aged care facilities,~~ visitor travellers' accommodation, and other buildings used for residential accommodation but excluding camping grounds;

(b) marae and marae complex;

(c) hospitals;

(d) teaching areas and sleeping rooms in an educational facility;

(e) places of assembly.

7.4 I accept and support the recommendation made by the section 42A Reporting Officer in relation to this definition.

Keith Frentz

18 November 2019