Proposed Plan Change 60:
Designations
Hearing Report

Appendix 4
Section 37 and 37A of the Resource Management Act 1991
Report on Waiver or Extension of Time Limits

REPORT TO: General Manager – Corporate and Regulatory
REPORT FROM: Principal Planning Adviser
DATE: 21 November 2016

Application Reference Number: Notices of Requirement
Applicant: Ministry of Education
Site address: Hato Paora College, Kimbolton Road, Cheltenham and St Joseph’s School, Derby Street, Feilding

Purpose of the report

The purpose of this report is to determine whether to approve an extension of time limits in relation to two new notices of requirement from the Ministry of Education pursuant to Section 37(1) of the RMA and to waive a failure to comply with a requirement under Section 170 of the RMA, in particular the timeframe to publicly notify Plan Change 60 within 40 working of receipt of the Ministry’s Notice of Requirement.

Section 170 of the RMA provides a discretion to a territorial authority to include a requirement under Section 168 within a proposed plan, being publicly notified under Clause 5 of Schedule 1, instead of complying with Section 169.

Description of Proposed Activity /Time frame for which a waiver or extension is sought.

Mr Paul Thomas from Environmental Management Services on behalf of Ministry of Education applied for two new notices of requirements to designate for the following schools:
- Hato Paora College near Cheltenham; and
- St Joseph’s School located off Derby Street, Feilding.

Both schools are existing and established activities.

The notice of requirements were received by Council on 18 March 2014. Confirmation was received on 5 February 2016 that the Ministry wanted the two schools included in the District Plan Review (Designations Schedule Appendix 7A called Proposed Plan Change 60). The first notification occurred on 2 May 2016. Plan Change 60 was not notified within the 40 working day time frame set out in Section 170 of the RMA 1991. The notice of requirements are attached in Appendix 1.

The Ministry of Education have applied for a Section 37 extension to the 40 working day timeframe under 37A(2)(b) to extend the time period by more than twice the maximum time period specified in the Act. The Requiring Authority has written to Council requesting that the time period is extended. This letter is included as Appendix 2.
Reasons why a waiver or extension of the time limits specified in the Act should be extended:

Section 37(1) of the RMA allows a local authority to extend the time limits. Section 37 (1)(a) of the RMA allows a local authority to extend the time limits and Section 31(1)(b) to waive a requirement under the Act:

Section 37(1)

A consent authority or local authority may, in any particular case, -

(a) Extend a time period specified in this Act or in regulations, whether or not the time period has expired;

In extending the timeframes, S37A(2)(b) states that a time can be exceeded twice the maximum time period specified in this Act if the applicant or requiring authority requests or agrees.

Section 37A(1) of the RMA requires a local authority to take into account a number of factors:

(a) the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and
(b) the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and
(c) its duty under section 21 to avoid unreasonable delay

Will the interests of any person who may be directly affected by the extension or waiver be affected?

Hato Paora and St Joseph’s Schools are existing and long established schools in their communities. The designations will clearly identify the long term location of both schools.

The interests of the Ministry of Education and the schools will be promoted if the extension and waiver is granted. The applicant has agreed for a time frame exceeding twice the maximum period.

Will the interests of any community in achieving adequate assessment of the effects of the proposal be affected by the extension or waiver?

It is important that the two schools are designated as the Ministry of Education wishes to ensure that the sites are protected. The primary reasoning for adopting this technique is the greater certainty provided in terms of future management options for the sites relative to other available methods. This assumes importance as the schools are not currently designated and do not have the same protections as other schools in the District. It is noted that longer term commitments are traditionally made by the Ministry to any particular site selected for the operation of a school. There has been no change in the Ministry’s requirements for the sites since lodgement of the notices of requirements for Hato Paora and St Joseph’s schools.

The interests of the community will not be affected by the proposed extension to the 40 working day notification period. No submissions were received on the notice of requirements as notified; and the extension of time addresses a procedural requirement in terms of the date PC60 was publicly notified.

Will unreasonable delay be avoided?

On 7 July 2016, MDC resolved to withdraw PPC60 along with Proposed Plan Changes 52 and 55 to the District Plan due to an administrative error in publication of the public notice. PPC60 was then notified on 14 July 2016, with submissions closing on 10 August 2016.

A total of five (5) submissions were received in relation to PPC60. No submissions were made on these new notices of requirement of the Ministry of Education.
A hearing has been set down for 5-7 December 2016 to hear Plan Change 60 – Designations. Waiving the time limit does not prejudice any parties, or cause unreasonable delay.

**Recommendation:**

That for the above reasons stated above the extension of time limits in relation to the Ministry of Education Notices of Requirement for Hato Paora College and St Joseph’s School be approved pursuant to Section 37(1) and to waive the failure to comply with the requirement under Section 170 of the RMA, in particular the timeframe to publicly notify Plan Change 60 within 40 working of receipt of the Ministry’s Notice of Requirement.

[Signature]

Wendy Thompson  
**Principal Planning Adviser**

Consent granted under authority granted to me:

[Signature]

Shayne Harris  21/11/2016  
**General Manager – Corporate and Regulatory**
Appendix 1
18 March 2014

Deborah Kissick
Senior Policy Planner
Manawatu District Council
Private Bag 1001
Feilding 4743

Dear Deborah

ADDITIONAL DESIGNATIONS IN DISTRICT PLAN REVIEW

Further to our email exchange on 12 December find enclosed Notices of Requirement for Hato Paora College near Cheltenham and St Joseph's School in Feilding.

As agreed these are being submitted for inclusion in your District Plan Review of designations to be undertaken in the middle of this year.

Section 170 of the Act enables these to be included in your review if received within 40 days of notification of the proposed plan. I can confirm that the requiring authority agrees to inclusion in the proposed plan in this manner.

Let me know if you need any further information.

Yours sincerely
Environmental Management Services Ltd

Paul Thomas
NOTICE OF REQUIREMENT TO THE MANAWATU DISTRICT COUNCIL FOR A DESIGNATION UNDER SECTION 168 OF THE RESOURCE MANAGEMENT ACT 1991

The site to which the requirement applies is as follows:

The parcels of land described in Titles Referenced WNA2/733 WN742/7 and WN742/8 in the Wellington Registry being part of the land at 60 Derby Street, Feilding as shown on the designation plan attached.

The land is occupied by St Joseph’s School which is a state integrated Catholic primary school. It is the parish school for St Brigid’s Parish in Feilding. The Parish Church is located opposite the school on Derby Road.

St Joseph’s is a co-educational integrated Catholic full primary school (years 1 to 8). The school is capable of accommodating 229 students. The current roll is approximately 124. Current projections to 2016 indicate that the roll will remain relatively stable at this level.

The school has 11 teaching spaces, paved hardcourt and play areas, an adventure playground, school hall and sports field. The site has frontage to Derby Street, has residential properties to the north and south and a bowling club to the rear. The on site carpark accommodates 13 vehicles.

The nature of the proposed public work is:

Designation for education purposes under the Resource Management Act 1991 to enable the ongoing operation, maintenance and development of public education on the site.

The nature of the work conducted and operated on the site and to which the designation notice is given is:

- the construction, undertaking, establishment, management, operation and maintenance of an integrated school; and
- use of the land for educational public purposes where the relevant education authority constructs, undertakes, establishes, manages, operates or maintains land for such work or use.

The nature of the proposed restrictions that would apply are:

There are no proposed restrictions given the long established educational purposes and operation presently conducted upon the land.
The effects that the public work will have on the environment, and the ways in which any adverse effects will be mitigated, are:

The educational activities on the land have no deleterious or adverse environmental effect. The school is located north east of the centre of Feilding and is centrally located to the residential areas north of Feilding. It is the only Catholic primary school serving Feilding. The people in this community benefit from having access to a state education with a special Catholic character.

**General**

Four principal environmental effects of the continued operation of the school can be identified as:

- The positive contribution made to the local communities
- The modification made to the visual amenity
- The effects on local traffic flows; and
- The effect on the local noise environment.

**Contribution to Communities**

Schools are a long established and integral component of the Feilding environment, and the availability of adequate educational facilities of this nature is a reasonable expectation of both urban and rural dwellers. The school facilities include a school hall which is utilised by the wider community.

This effect is considered to be entirely consistent with the Resource Management Act's purpose of allowing people and communities to provide for their "social economic and cultural wellbeing."

**Visual Effects**

Schools are typical of structures in the urban environment and school facilities are well accepted as an integral component and no special mitigation measures are considered necessary. The St Joseph’s School buildings and associated structures have existed on site for many years while additions and/or modernisation have taken place during the life of the school and will continue to do so. All the school buildings are single level with the school hall forming the highest structure because of the high gable roof.

All the buildings are set well back from Derby Street with a grassed area and mature planting along the frontage and within the grassed frontage area. The school presents a high level of amenity to the street and general area.

**Traffic Flows**

Schools interact with local traffic in two main ways:

- By general additional traffic (largely vehicular) and;
• By having the potential to disrupt traffic flows (through both vehicular and pedestrian actions).

The first factor does not warrant consideration in this evaluation since the school has been in place for many years.

Adverse effects may be created by traffic either crossing some major roads or merging with other traffic using those roads. In order to mitigate potential effects created either by crossing a major road or merging with traffic on that road, the school has appropriate roadside signage in the vicinity; and has systems in place for ensuring that school traffic arrives and leaves the school without creating a hazard to traffic. There is kerb side parking available on both sides of Derby Street and a pedestrian crossing specifically for the school’s needs. In addition there is a dedicated bus stop for school buses. There are two vehicle access points onto the site both have good visibility in both directions.

Noise
Schools modify the local noise environment in three ways:

• Through the introduction of an additional concentrated local noise source at regular times of the day when pupils are outside the classroom environment;
• Through the introduction of an additional concentrated local noise source at regular times of the day as pupils arrive at and depart from the school; and
• Through the introduction of an irregular local noise source with other school based activities.

The activity which is subject to this notice is existing, and is an accepted part of the noise environment of the area. Accordingly, there are no significant adverse effects on the environment from noise generated on the school site as a result of this Notice of Requirement. The school has some residential neighbours but also adjoins a bowling club and a stream to the north. No proposed mitigation measures are therefore called for.

Alternative sites, routes, and methods have been considered to the following extent:

The site which is the subject of this Notice of Requirement is currently an established activity. It represents a considerable taxpayer investment and is a facility that provides for the educational needs of individuals and communities.

The preference for the designation technique and alternative methods available are discussed below.

The public work and designation are reasonably necessary for achieving the objectives of the requiring authority because:
Designation of existing schools is a technique used nationally by the Minister of Education and is seen by the Minister as being the most effective way of ensuring that the Minister's interest in a site is protected. The primary reasoning for adopting this technique is the greater certainty provided in terms of future management options for the site relative to other available methods. This certainty is considered to be very important by the Minister since a longer term commitment is traditionally made to any particular site selected for the operation of a school.

Designation also clearly identifies the likely long term location of this particular activity and this is seen as beneficial to both other resource uses and to the Manawatu District Council.

The principal alternative means of protecting the Minister's long term interest in a particular site would be to seek to have an appropriate rule included in the District Plan which classifies the operation of school and other related activities as "permitted activities" within the given area.

This alternative approach would leave the Minister exposed to future proposed plan changes, which may not be directly related to the carrying out of these specific activities but which nevertheless would cause the Minister to incur unnecessary cost and to reduce uncertainty as to future operations. Consequently designation is regarded by the Minister as the most appropriate method for protecting his interests.

**The following consultation has been undertaken with parties that are likely to be affected:**

No consultation has been undertaken in respect of this Notice of Requirement as the site is existing with established primary school and associated activities thereon. Notwithstanding this, there is a commitment to consulting affected parties as appropriate with respect to any relevant new works on this site.

The following information is attached to this notice as required to be included by the district plan, regional plan, or any regulations made under the Resource Management Act 1991.

a) Copies of Titles

Kim Shannon  
Head of Education Infrastructure Service  
Ministry of Education  
(Pursuant to an Instrument of Delegation dated 21 October 1996)

Date: 11 MAR 2004
NOTICE OF REQUIREMENT TO MANAWATU DISTRICT COUNCIL
FOR A DESIGNATION UNDER SECTION 168 OF THE RESOURCE
MANAGEMENT ACT 1991

1.3197 hectares being Lots 1-3 Deposited Plan 23572 described in title WNA2/733 and Lot 567 Deposited Plan 19 described in title WN 742/7 and Lot 568 Deposited Plan 19 described in title WN 742/8 located at 60 Derby Street Feilding.

Area to be designated "Education Purposes".
COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952

Search Copy

Identifier WNA2/733
Land Registration District Wellington
Date Issued 06 June 1962

Prior References
WN272/253 WN277/192 WN277/206

State Fee Simple
Area 3803 square metres more or less
Legal Description Lot 1-3 Deposited Plan 23572
Proprietors
The Roman Catholic Bishop of the Diocese of Palmerston North

Interests
Subject to a stormwater right over part coloured blue on DP 23572 created by Transfer 528824 (affects Lots 1 DP 23572)
Subject to a stormwater right over part coloured yellow on DP 23572 created by Transfer 528824 (affects Lot 2 DP 23572)
The easements created by Transfer 528824 are subject to Section 351E (1) (a) Municipal Corporations Act 1954
COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952

Search Copy

Identifier  WN742/7
Land Registration District  Wellington
Date Issued  07 May 1957

Prior References
WN5/268

State  Fee Simple
Area  4047 square metres more or less
Legal Description  Lot 567 Deposited Plan 19

Proprietors
The Roman Catholic Bishop of the Diocese of Palmerston North

Interests
COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952

Search Copy

Identifier  WN742/8
Land Registration District  Wellington
Date Issued  07 May 1957

Part-Cancelled

Prior References
WN5/268

State  Fee Simple
Area  4047 square metres more or less
Legal Description  Lot 568 Deposited Plan 19
Proprietors  The Roman Catholic Bishop of the Diocese of Palmerston North

Interests
454156.1 Gazette Notice declaring part of within land (3m²) (hatched black hereon) taken for road and vests in the Feilding Borough Council from and after the 15th day of October 1981 - 29.10.1981 at 2.23 pm
NOTICE OF REQUIREMENT TO THE MANAWATU DISTRICT COUNCIL FOR A DESIGNATION UNDER SECTION 168 OF THE RESOURCE MANAGEMENT ACT 1991

The site to which the requirement applies is as follows:

The parcels of land described in Titles Referenced 239534 in the Wellington Registry being land located between Kimbolton Road and the O rua River in Manawatu District as shown on the designation plan attached.

The land is occupied by Hato Paora College which is a state integrated Catholic secondary school.

Hato Paora College is a state integrated Catholic boarding school for boys for years 9 -13. The school is capable of accommodating 165 students. The school has a full range of facilities including specialist teaching spaces for arts and crafts, gymnasium and swimming pool. The school has extensive sports fields and hard courts. The school is almost entirely a boarding school for Maori boys and aims to develop great young Maori men.

The site is located amongst rural land south of Cheltenham and east of State Highway 54. The school is set well back from the highway with a tree lined access road providing a single point of access.

The school has a number of facilities that have not been integrated and these have been excluded from the area to be designated. This includes the land on which the chapel and hostel are located.

The nature of the proposed public work is:

Designation for education purposes under the Resource Management Act 1991 to enable the ongoing operation, maintenance and development of public education on the site.

The nature of the work conducted and operated on the site and to which the designation notice is given is:

- the construction, undertaking, establishment, management, operation and maintenance of an integrated school; and
- use of the land for educational public purposes where the relevant education authority constructs, undertakes, establishes, manages, operates or maintains land for such work or use.

The nature of the proposed restrictions that would apply are:

There are no proposed restrictions given the long established educational purposes and operation presently conducted upon the land.
The effects that the public work will have on the environment, and the ways in which any adverse effects will be mitigated, are:

The educational activities on the land have no deleterious or adverse environmental effect. The school is located in a rural area with no neighbouring dwellings in the vicinity. It is the only Catholic college serving the Manawatu District and is complimented by one state integrated Catholic primary school in Feilding.

As a largely boarding school for Maori boys, it serves a wider regional catchment of the lower and central north island and benefits Maori communities across this wide area by providing access to a state education with a special Catholic character.

The school has its own waste water treatment plant which is subject to regional consents.

General

Four principal environmental effects of the continued operation of the school can be identified as:

- The positive contribution made to the wider region and local communities
- The modification made to the visual amenity
- The effects on local traffic flows; and
- The effect on the local noise environment.

Contribution to Communities

Hato Paora College was established in 1948 and was converted from a large country homestead. The College is a long established and integral component of the local environment and supports a large catchment of rural communities. It makes a particular contribution to the improvement of Maori education.

This effect is considered to be entirely consistent with the Resource Management Act’s purpose of allowing people and communities to provide for their “social economic and cultural wellbeing.”

Visual Effects

The College is located amongst productive farming land and has extensive mature tree planting along the main access road into the school and around the southern playing fields. As a result the buildings are screened from the south and west. Where the school is visible it provides a degree of visual interest amongst this largely agricultural landscape.

There are no adverse visual effects.

Traffic Flows

Schools interact with local traffic in two main ways:
• By general additional traffic (largely vehicular) and;
• By having the potential to disrupt traffic flows (through both vehicular and pedestrian actions).

The College has direct access onto State Highway 54 at a point where there is unlimited visibility both north and south. State Highway 54 carries only low levels of traffic. The traffic associated with the College therefore does not create any adverse effects on the efficiency of the network in this vicinity.

Noise

Schools modify the local noise environment in three ways:

• Through the introduction of an additional concentrated local noise source at regular times of the day when pupils are outside the classroom environment;
• Through the introduction of an additional concentrated local noise source at regular times of the day as pupils arrive at and depart from the school; and
• Through the introduction of an irregular local noise source with other school based activities.

The activity which is subject to this notice is existing, and is located in a rural area amongst agricultural land. There are no other residences within 700 metres of the school and consequently there is no risk of adverse effects from noise associated with school activities.

No proposed mitigation measures are therefore called for.

Alternative sites, routes, and methods have been considered to the following extent:

The site which is the subject of this Notice of Requirement is currently an established activity. It represents a considerable taxpayer investment and is a facility that provides for the educational needs of individuals and communities.

The preference for the designation technique and alternative methods available are discussed below.

The public work and designation are reasonably necessary for achieving the objectives of the requiring authority because:

Designation of existing schools is a technique used nationally by the Minister of Education and is seen by the Minister as being the most effective way of ensuring that the Minister’s interest in a site is protected. The primary reasoning for adopting this technique is the greater certainty provided in terms of future management options for the site relative to other available methods. This certainty is considered to be very important by the Minister since a longer term commitment is traditionally made to any particular site selected for the operation of a school.
Designation also clearly identifies the likely long term location of this particular activity and this is seen as beneficial to both other resource uses and to the Manawatu District Council.

The principal alternative means of protecting the Minister’s long term interest in a particular site would be to seek to have an appropriate rule included in the District Plan which classifies the operation of school and other related activities as “permitted activities” within the given area.

This alternative approach would leave the Minister exposed to future proposed plan changes, which may not be directly related to the carrying out of these specific activities but which nevertheless would cause the Minister to incur unnecessary cost and to reduce uncertainty as to future operations.

Consequently designation is regarded by the Minister as the most appropriate method for protecting his interests.

The following consultation has been undertaken with parties that are likely to be affected:

No consultation has been undertaken in respect of this Notice of Requirement as the site is existing with established secondary school and associated activities thereon. Notwithstanding this, there is a commitment to consulting affected parties as appropriate with respect to any relevant new works on this site.

The following information is attached to this notice as required to be included by the district plan, regional plan, or any regulations made under the Resource Management Act 1991.

a) Copies of Titles

Kim Shannon
Head of Education Infrastructure Service
Ministry of Education
(Pursuant to an Instrument of Delegation dated 21 October 1996)

Date: 11 March 2014
NOTICE OF REQUIREMENT TO MANAWATU DISTRICT COUNCIL
FOR A DESIGNATION UNDER SECTION 168 OF THE RESOURCE
MANAGEMENT ACT 1991

Part Lot 1 Deposited Plan 358857 described in title 239543 located between Kimbolton Road and the Oroua River, south of Cheltenham.

Area to be designated "Education Purposes".
COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952

Search Copy

Identifier 239543
Land Registration District Wellington
Date Issued 28 July 2006

Prior References
WN31B/790

State Fee Simple
Area 17.8521 hectares more or less
Legal Description Lot 1 Deposited Plan 358857

Proprietors
Hato Paora Trust Board

Interests
Subject to a right of way and right to convey gas over part marked A, right of way over part marked O, and right to convey water over parts marked O & F on DP 358857 created by Easement Instrument 6965586.3 - 28.7.2006 at 9:00 am
Appurtenant hereto is a right to convey water, telecommunications and computer media and electricity and right to drain sewage and water created by Easement Instrument 6965586.3 - 28.7.2006 at 9:00 am
The easements created by Easement Instrument 6965586.3 are subject to Section 243 (a) Resource Management Act 1991
21 November 2016

Wendy Thompson
Principal Planning Adviser
Manawatu District Council
Private Bag 1001
Feilding 4743

Dear Wendy

MINISTRY OF EDUCATION DESIGNATIONS: HATO PAORA COLLEGE AND ST JOSEPHS SCHOOL.

I am authorised to confirm that the Ministry of Education agrees to the extension of the time period of 40 days specified in section 170 of the Resource Management Act 1991. This time period relates to the ability of the territorial authority to include two requirements in Plan Change 60 instead of complying with Section 169.

The Notices of Requirement were received by the Council on 18 March 2014. Section 37A(2)(b) provides jurisdiction to extend a time period by more than twice the maximum time period specified in the Act if the requiring authority requests or agrees.

This letter therefore constitutes agreement to the time period extension to enable these requirements to be included in Plan Change 60.

Yours sincerely,

Paul Thomas
Mitchell Daysh Ltd

Email address: paul.thomas@mitchelldaysh.co.nz