

Memorandum

Date: 10 November 2021

To: Lauren Baddock

From: Catherine Somerville-Frost / Marika Williams
Direct: +64 9 358 9813 / +64 9 357 9294
Mobile: +64 274 863309 / +64 21 936 668
Email: catherine.somerville-frost@chapmantripp.com /
marika.williams@chapmantripp.com
Ref: 100479069/9020543.1

Private and Confidential

Plan Change 4 Tara-Ika – Regional Policy Statement application to O2NL

Instructions

- 1 You have asked for our written advice in response to the position understood to now be asserted by Waka Kotahi NZ Transport Agency (*Waka Kotahi*) for Proposed Plan Change 4: Tara-Ika Growth Area (*PC4*) to the Horowhenua District Plan. This follows earlier discussions we have had with you regarding the correct planning response to apply to Waka Kotahi's Otaki to North Levin proposal (*O2NL*) given relevant higher order plan provisions, its current status, Waka Kotahi's position and the agreement reached at the pre-hearing meeting, and the subsequent change in approach.
- 2 You have specifically asked for our advice regarding the application of the policies set out in chapters 3.3 (objectives) and 3.4 (policies) of the Horizon's One Regional Policy Statement (*One Plan / RPS*), which must of course be given effect to in *PC4*.
- 3 As a preliminary point we note that the objectives and policies of the RPS are very clear and direct about what infrastructure they apply to. While not perfectly drafted, they *specifically anticipate* that there are different statuses that might apply to infrastructure. For example, there is reference to just "infrastructure" (things already built and existing), "future infrastructure" and infrastructure to be "established", and infrastructure that is "allowed by unimplemented resource consents or other RMA authorisations".
- 4 It is necessary to very carefully apply what the RPS states, and not what it ought to provide (or we would like it to provide). Our key advice in terms of the RPS is:
 - 4.1 O2NL does not fall within the definitions of "infrastructure" or "road" under the RPS, because it does not fall within these definitions under the RMA. The RMA definitions are specific and clear, and are linked into the RPS by use of the " " symbol within the RPS provisions.



- 4.2 Hence O2NL is also not a “physical resource[s] of regional or national importance” (Objective 3-1 and Policy 3-1), nor is it an “infrastructure^ corridor” (Policy 3-2(a)).
- 4.3 As it is not a “road^”, O2NL also cannot be part of a “road^ ... network as mapped in the RLTS” (Policy 3-1 and Policy 3-2(h)).
- 4.4 The above definitions are relevant to all of the RPS objectives (chapter 3.3) and policies (3.4.1).
- 4.5 Policies which refer to the “establishment” of “infrastructure^” do apply to O2NL, but their relevance in the context of PC4 needs to be considered (for example, Policy 3-1(c)).
- 4.6 Similarly, policies which refer to “future infrastructure^” do apply to O2NL (for example Policy 3-1(d)). Again, their relevance needs to be considered in the context of PC4.
- 4.7 O2NL is not a resource “allowed by unimplemented resource consents^ or other RMA authorisations” (see Policy 3-2(b) and (c)). O2NL would need to be the subject of a designation (not just a notice of requirement (*NOR*)) or a resource consent to be covered by this phrase.

Assessment of RPS policies

- 5 We set out in the table below our assessment of the RPS policies (3.4.1 of the RPS) that appear relevant, or potentially relevant, in the case of O2NL and which will need to be given effect to:



Policy 3-1	Relevant definitions and analysis	Comments
<p>Policy 3-1: Benefits of infrastructure^ and other physical resources of regional or national importance</p> <p>(a) The Regional Council and <i>Territorial Authorities</i>^ must recognise the following infrastructure^ as being physical resources of regional or national importance:</p> <p>...</p> <p>iv. the road^ and rail networks as mapped in the Regional Land Transport Strategy</p> <p>...</p>	<p>Policy 3-1 (a)</p> <p>The One Plan notes that a term or expression that is to be defined in accordance with its definition under the RMA is marked with the symbol “^”.</p> <p>“Infrastructure” is defined in the RMA as meaning, relevantly “(g) structures for transport on land by cycleways, rail, roads, walkways, or any other means”. “Structure” means “any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft”.</p> <p>Infrastructure is therefore something which actually exists. The RPS has specifically recognised this by being very clear where future infrastructure is being addressed, and where establishment of infrastructure is relevant. It would not need to do so if “infrastructure^” already included proposed, future or new infrastructure.</p> <p>If, notwithstanding the above, O2NL was considered to be infrastructure, we have considered whether it would fall under (iv), a “road^ network as mapped in the RLTS”? For this there is a need to make three fairly substantial ‘jumps’:</p> <ul style="list-style-type: none"> • That it is acceptable and appropriate to replace the reference to the “Regional Land Transport Strategy” with the current Regional Land Transport Plan. We understand that Horizons One considers this to be 	<p>Policy 3-1 (a) does not apply to O2NL.</p>



<p>(c) The Regional Council and Territorial Authorities^ must, in relation to the establishment, operation*, maintenance*, or upgrading* of infrastructure^ and other physical resources of regional or national importance, listed in (a) and</p>	<p>appropriate, however we do express some concerns with this approach.</p> <ul style="list-style-type: none">• That the graphic representations of O2NL as contained in the 2021-2031 RLTP are sufficient to constitute a 'mapped road network'. We do not consider that the mapping provided in the RLTP is sufficient for this purpose. The mapping is extremely high level. Page 23 has Figure 11 which depicts the "<i>Regional Cycle network and Te Araroa Trail</i>" – O2NL is shown on this figure traversing to the east of Levin, but no specific alignment is depicted. Page 26 also contains a reference to O2NL within the Southern Connection box of a figure entitled "<i>Transport Initiatives in the Horizons Region</i>" and which includes the entire bottom half of the North Island.¹• Most importantly - that O2NL is a "road^". O2NL is not and cannot be a "road^". Road under the RMA has the "same meaning as in s315 of the Local Government Act 1974; and includes a motorway as defined in s2(1) of the Government Roding Powers Act 1989". O2NL does not fit within any of clauses (a) to (g) of s315 of the LGA. Nor does it fall within s2(1) of the GRPA. O2NL is therefore not a "road^". <p>Policy 3-1 (c) This policy refers to the "establishment" of infrastructure. O2NL will fall within this policy when its establishment is relevant.</p>	<p>In terms of (c), and in relation to O2NL's <i>establishment</i>, HDC must have regard to the benefits to be derived from O2NL. PC4 does not enable the</p>
--	--	---

¹ Also see Appendix 1 of this document for snips of the relevant maps.



<p>(b), have regard to the benefits derived from those activities.</p> <p>(d) The Regional Council and Territorial Authorities^ must achieve as much consistency across local authority^ boundaries as is reasonably possible with respect to policy and plan provisions and decision-making for existing and future infrastructure^.</p>	<p>Policy 3-1(d) O2NL would be included as "future infrastructure".</p>	<p>establishment of O2NL so this policy has limited, if any, relevance.</p> <p>In terms of (d), HDC needs to achieve as much consistency as is reasonably possible across local authority boundaries, with respect to policy and plan provisions and decision-making. We are not aware of any relevant inconsistencies, but this should be given consideration.</p>
<p>Policy 3-2</p>	<p>Relevant definitions and analysis</p>	<p>Comments</p>
<p>Policy 3-2: Adverse effects^ of other activities on infrastructure^ and other physical resources of regional or national importance</p> <p>The Regional Council and Territorial Authorities^ must ensure that adverse effects^ on infrastructure^ and other physical resources of regional or national importance from other activities are avoided as far as reasonably practicable, including by using the following mechanisms:</p> <p>a) ensuring that current infrastructure^, infrastructure^ corridors and other physical resources of regional or national importance, are identified and had regard to</p>	<p>As per the above analysis, O2NL is not "infrastructure^", and is not a "physical resource of regional or national importance".</p> <p>(a) O2NL is not current infrastructure^, nor an infrastructure^ corridor (because it is not "infrastructure"), and is not a physical resource of regional or national importance (outlined in</p>	



<p>in all resource management decision-making, and any development that would adversely affect the operation*, maintenance* or upgrading* of those activities is avoided as far as reasonably practicable,</p> <p>b) ensuring that any new activities that would adversely affect the operation*, maintenance* or upgrading* of infrastructure^ and other physical resources of regional or national importance are not located near existing such resources or such resources allowed by unimplemented resource consents^ or other RMA authorisations,</p> <p>c) ensuring that there is no change to existing activities that increases their incompatibility with existing infrastructure^ and other physical resources of regional or national importance, or such resources allowed by unimplemented resource consents^ or other RMA authorisations,</p> <p>....</p>	<p>Policy 3-1). We note here too the absence of a reference to establishment.</p> <p>(b) O2NL is not brought into this policy as it is not "allowed by" an unimplemented resource consent or other RMA authorisation. O2NL would need to have an operative designation in place (not just an NOR) to be considered to be "allowed". While an NOR provides interim protection from things that would prevent or hinder the work, it does not <i>enable, allow or permit</i> the work to occur. Importantly, this policy specifically recognises that where there are RMA authorisations in place for future infrastructure they should be protected from new activities that might adversely affect their operation and maintenance (etc). Again, we note the absence of a reference to establishment.</p> <p>(c) Again, O2NL is not brought into this policy for the same reasons as outlined above.</p>	<p>In relation to (b) and (c) these clearly look at the issue for proposed or planned infrastructure that is not caught by the RMA definition of "infrastructure".</p> <p>The RPS here requires that they have at least resource consent or some other RMA authorisation. So, new activities that would adversely affect the operation, maintenance, upgrading etc of O2NL (but note the absence of the word <i>establishment</i>), can only be prevented from being located near it where O2NL holds some form of RMA authorisation. The same is true for ensuring there is no change to existing activities that increases incompatibility.</p>
--	--	---



<p>h) ensuring effective integration of transport and land use planning and protecting the function of the strategic road and rail network as mapped in the Regional Land Transport Strategy.</p>	<p>(h) O2NL is not part of the “strategic road network”, see above.</p>	<p>In relation to (h), even if it did apply, consideration would need to be given to what was appropriate to “give effect to” this policy in the context of O2NL which is not the subject of an NOR and is otherwise unconsented – i.e. consideration of what integration issues arise will depend on what is proposed, and the nature and scope of effects flowing from it.</p>
<p>Policy 3-3</p>	<p>Relevant definitions and analysis</p>	<p>Comments</p>
<p>Policy 3-3: Adverse effects of infrastructure and other physical resources of regional or national importance on the environment</p> <p>In managing any adverse environmental effects arising from the establishment, operation, maintenance and upgrading of infrastructure or other physical resources of regional or national importance, the Regional Council and Territorial Authorities must:</p> <ul style="list-style-type: none"> a) recognise and provide for the operation, maintenance and upgrading of all such activities once they have been established, b) allow minor adverse effects arising from the establishment of new infrastructure 	<p>Same definitions as above. Therefore, (a) and (b) do not apply to O2NL.</p>	



<p>and physical resources of regional or national importance, and</p> <p>c) avoid, remedy or mitigate more than minor adverse effects^ arising from the establishment of new infrastructure^ and other physical resources of regional or national importance, taking into account:</p> <ul style="list-style-type: none">i. the need for the infrastructure^ or other physical resources of regional or national importance,ii. any functional, operational or technical constraints that require infrastructure^ or other physical resources of regional or national importance to be located or designed in the manner proposed,iii. whether there are any reasonably practicable alternative locations or designs, andiv. whether any more than minor adverse effects^ that cannot be adequately avoided, remedied or mitigated by services or works can be appropriately offset, including through the use of financial contributions.	<p>(c) Refers to the “<i>establishment</i>” of “<i>new</i>” infrastructure where the other two policies only refer to “<i>infrastructure</i>” or “<i>current infrastructure</i>”. This again shows that the RPS explicitly recognises that future infrastructure is not caught by the RMA definition of infrastructure.</p>	<p>As PC4 does not relate to the <i>establishment</i> of O2NL as new infrastructure, it is difficult to see the relevance of this policy. It is more directed at the proposed design of the infrastructure, alternative locations or designs, and offsets etc. It would be directly relevant to an assessment of the NOR.</p>
---	---	---

Catherine Somerville-Frost / Marika Williams

Partner / Solicitor