

## 1. UNDERLYING ZONING OF AIRPORT DESIGNATION EXTENSION

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Corporate Plan Output: City Plan	

The purpose of this report is to recommend that the Council seek directions from the Environment Court to amend the underlying zoning of the area covered by the Airport designation extension, to properly reflect the Council decision on submissions to the Proposed Plan.

Prior to the notification of the proposed plan, the Airport Company requested an extension to the airport designation of approximately 100 hectares in the area south of Avonhead Road and east of Grays Road (see attached map). The Proposed Plan, as notified, showed the extended designation requirement and showed the Special Purpose Airport zone as the underlying zone for the 100 ha extension. The designation request and related underlying zoning submissions were heard by a Commissioner, David Collins. In his recommendation, Mr Collins recommended that the designation be extended by 45 hectares only. In its decision the Airport Company rejected this and extended the designation by the full 100 hectares. The Council did not appeal the decision. The Proposed Plan, as amended by decisions, shows the extended designation and shows the land to have an underlying zoning of Special Purpose Airport. However, this does not properly reflect the Commissioner's recommendation (Council Decision No 40) on the underlying zoning. NB: The Council's decision on the zoning of the land is separate from and not affected by the Airport Company decision on the designation.

In the Commissioner's recommendation and the subsequent Council decision, the submissions seeking a Rural 5 zoning in the Proposed Plan were accepted. The decision states:

*"The CIAL evidence [was directed primarily to the question of the designation and] focused on the need for freight handling facilities in this area rather than any need for more land for other airport purposes. Special Purpose (Airport) zoning would allow a wide range of activities ... and the evidence clearly established that such development would have adverse effects in terms of landscape and the rural amenities of the area generally, and loss of a significant amount of Class II soils. In the absence of any evidence showing likely benefits from development of this land for general airport purposes, and the absence of any evidence about alternatives such as the use of poorer quality land further removed from the urban edge, I am drawn to the conclusion that the arguments in the Proposed Plan for controlling commercial and industrial activities in the rural area apply. From the evidence available to me, it appears that sustainable management of the resources involved will be best achieved by **not** making provision for the use of this land for general airport purposes.*

*In coming to this recommendation, I have taken into account the possibility that landowners in the area may want to undertake development and activities permitted under Rural 5 zoning but not permitted under the Special Purpose (Airport) zoning, and I see no reason for them to be prevented from doing so, although this will be constrained by the effect of the designation ... "*

By Clause 10 of the First Schedule to the Act, the proposed plan was deemed to be amended to reflect this underlying zoning as soon as the decision was publicly notified in May 1999. However, the plan amended in accordance with decisions continues to show this land to be zoned as Special Purpose (Airport) Zone on map 30A of the planning maps.

Legal advice indicates that this matter could not be dealt with as an erratum under Clause 16 of the First Schedule, as it is not of minor effect and the underlying zoning is likely to affect the rights of members of the public. The matter can only be tidied up either by a Variation or by a Declaration and Enforcement Order.

A Variation would clarify the underlying zoning in a very "transparent" manner. The obvious disadvantages of a variation are the further delays it will cause to the plan process and the fact that it will allow all land owners and interested parties to effectively relitigate the appropriateness of the zoning of that area, when a decision has already been made. Airport issues are already the fore with Variation 52 having been recently notified, and there would be a high likelihood of an extended debate on the issue.

It appears on the face of it that the matter can be dealt with by an Environment Court Declaration under Section 310, to the effect that the plan has not been amended in accordance with Clause 10. This could then lead to an Enforcement Order under section 314(1)(f) directing the Council to comply with the requirements of the First Schedule. This course of action would produce a significantly faster outcome than promoting a Variation.

**Recommendation:** That the Council make application to the Environment Court for a declaration and enforcement order requiring the Council to show the underlying zoning of the airport designation extension as Rural 5, in accordance with Council Decision No. 40 on the Proposed Plan submissions.