

# Decision following the hearing of a Plan Change to the Auckland Unitary Plan under the Resource Management Act 1991

## Proposal

to rezone 7.3 hectares of Business – Light Industry zoned land to Business – Mixed Use.

This plan change is APPROVED. The reasons are set out below.

<b>Private Plan Change:</b>	101 - 167-173 Pilkington Road, and railway land on the corner of Apirana Avenue and Merton Road (North Island Main Trunk 671.04-672.38 KM) Pt England
<b>Applicant:</b>	Wyborn Capital Investments Limited
<b>Hearing commenced:</b>	Monday 2 December 2024, 9.30 a.m.
<b>Hearing panel:</b>	David Wren (Chairperson) Nigel Mark-Brown Trevor Mackie
<b>Appearances:</b>	<p><u>For the Applicant:</u> Jeremy Brabant - Legal Counsel; Frank Pierard - Urban Design/Landscape; Claire Davies - Land Contamination; Tim Heath - Economics; Sean Dickinson - Civil; Jon Styles - Acoustic; John Parlane - Traffic and Transport; and Nick Roberts and Kasey Zhai - Planning.</p> <p><u>For the submitters:</u> KiwiRail represented by:</p> <ul style="list-style-type: none"><li>• Lauren Rapley / Nina Dally - Legal</li><li>• Matthew Paetz - KiwiRail Corporate</li><li>• Cath Heppelthwaite - Planning</li><li>• Stephen Chiles – Acoustics (via MS teams from Christchurch)</li></ul> <p>Robert Lee for Auckland Transport (via MS teams)</p> <p><u>For Auckland Council:</u> In Person: Marc Dendale, Team Leader Michele Perwick, Planner Andrew Gordon, Noise and vibration Mat Collins, Transport Rebecca Skidmore, Urban Designer</p>

	<p>Online via MS Teams: Planner, Hannah Milatovic David Wong, Senior Policy Planner</p> <p>On Call: Gabrielle Howdle, Landscape Architect Matthew Revill, Wastewater/ Potable Water Danny Curtis, Consultant Stormwater Engineer Amber Tsang, Consultant Stormwater Engineer Susan Fairgray, Consultant Economist Paul Crimmins, Consultant Odour/Air quality James Hendra, Consultant Open Space</p> <p><b>Chayla Walker</b>, Kaitohutohu Whakawātanga Hearings Advisor</p>
<b>Hearing adjourned</b>	02 December 2024
<b>Commissioners' site visit</b>	28 November 2024
<b>Hearing Closed:</b>	13 December 2024

## Introduction

1. This decision is made on behalf of the Auckland Council ("**the Council**") by Independent Hearing Commissioners David Wren (Chairperson), Nigel Mark-Brown and Trevor Mackie ("**the Panel**") appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("**the RMA**").
2. The Commissioners have been given delegated authority by the Council to make a decision on Plan Change 101 ("**PC 101**") to the Auckland Unitary Plan Operative in Part ("**the AUP**") after considering all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing and evidence presented during and after the hearing of submissions.
3. PC 101 is a private plan change that has been prepared following the standard RMA Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).
4. The plan change was publicly notified on 23 May 2024 following a feedback process involving Iwi, as required by Clause 4A of Schedule 1. Notification involved a public notice as well as letters to directly affected landowners and occupiers alerting them to the plan change. The latter step was aimed at ensuring that landowners and occupiers of properties affected by potentially significant changes were made aware of the changes.
5. The submission period closed 21 June 2024. A summary of submissions was notified for further submissions on 12 July 2024. A total of eight submissions (including three late submissions) and no further submissions were made on the plan change.

## THE SITE AND EXISTING PLAN PROVISIONS

6. The site at 167–173 Pilkington Road and the railway corner at Pt England has a narrow triangular shape with an area of 7.3 hectares, with a length of approximately 580m. The site is currently zoned Business – Light Industrial Zone (“**LIZ**”) in the AUP.
7. The plan change area borders the North Island Main Trunk Railway along the site’s western boundary. To the east the site adjoins a long linear park (Pilkington Apirana Road Reserve) which is zoned Open Space- Informal Recreation Zone (“**IRZ**”). To the immediate east of the reserve are Apirana Avenue (the northern section) and Pilkington Road (the southern section). The plan change site itself has frontage to Pilkington Road in the south and a short frontage to Apirana Avenue. There are other vehicular accesses to the site over the reserve, not all of which appear to be legalised. Apirana Avenue and Pilkington Road are classified as arterial roads in the AUP.
8. The land to the south is zoned Business –Mixed Use Zone (“**MUZ**”). The northern tip of the plan change area is where the reserve and the railway line meet. To the north of that is Merton Road. The Glen Innes railway station and town centre are located just to the north of the site.
9. The site is also subject to the following;
  - a. Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay - W12, Mount Wellington, Viewshafts
  - b. Locally Significant Volcanic Viewshafts Overlay - W13, Mount Wellington
  - c. Macroinvertebrate Community Index – Urban
  - d. Stormwater Management Area Control - OMARU STREAM, Flow 2
  - e. Airspace Restriction Designations - ID 1102, Protection of aeronautical functions - obstacle limitation surfaces, Auckland International Airport Ltd.

## **SUMMARY OF PLAN CHANGE**

10. The proposed plan change is described in detail in the hearing report. A summary of key components of the plan change is set out below.
11. The proposed plan change seeks to rezone the land at 167-173 Pilkington Road and railway land on the corner of Apirana Avenue and Merton Road (North Island Main Trunk 671.04-672.38 KM), Point England from LIZ to MUZ . Amendments to the planning maps are sought to enable greater building heights of 21m and 27m. A new precinct is proposed to manage site-specific matters, including the management of the location and design of buildings and the effects of rail and road noise and vibration on sensitive activities located within the site. The railway land at the northern tip of the site is not part of the proposed precinct provisions.
12. A number of changes were proposed through the submission and hearing process. The final set of provisions that we considered were attached to the reply submissions from the applicant’s legal counsel dated 10 December 2024 together with an updated s32 analysis.

## **HEARING PROCESS**

13. As the majority of submitters to PC 101 wishing to give evidence had engaged experts and identified expert representation, the Panel required the pre-circulation of expert evidence. Many witnesses also provided summaries and updates of their evidence at the hearing.

14. Prior to the hearing, all the Commissioners visited 167-173 Pilkington Road and the local surroundings including the adjacent reserve area and the Glen Innes Town Centre and railway station.

## **PROCEDURAL MATTERS AND LATE SUBMISSIONS**

### **Late Submissions**

15. Three late submissions were received by the Council. Pursuant to section 37 of the RMA, the time for receiving submissions was extended under delegated authority by the Council staff to accept late submissions from the following:

Submission Number	Submitter's Name	Date Received
5	Kiwi Rail	24 June 2024
8	Foodstuffs North Island Limited	25 June 2024
4	Auckland Transport	02 July 2024

16. Accordingly, we do not need to make a finding on whether the time period for receiving these submissions should be extended.

## **RELEVANT STATUTORY PROVISIONS CONSIDERED**

17. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements are set out in the section 32 assessment that forms part of the hearing report, and we do not need to repeat these again in detail.
18. In particular, s.32(1)(a) requires an assessment of whether the objectives of a plan change are the most appropriate way to achieve the purpose of Part 2 of the RMA. Section 72 also states that the purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA. In addition, s.74(1) provides that a territorial authority must prepare and change its district plan in accordance with the provisions of Part 2. While this is a private plan change, these provisions apply as it is the Council that is approving the private plan change, which will in turn change the AUP.
19. The Panel also notes that s.32 clarifies that analysis of efficiency and effectiveness of the plan change is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposed re-zoning. Having considered the evidence and relevant background documents, the Panel is satisfied that PC 101 has been developed in accordance with the relevant statutory requirements.
20. Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions. The decision must include a further evaluation of any proposed changes to the plan change arising from submission; with that evaluation to be undertaken in accordance with section 32AA. With regard to Section 32AA, we note that the evidence presented by submitters and Council effectively represents this assessment, and that that material should be read in conjunction with this decision, where we have determined that a change to PC 101 should be made.

21. There are a number of provisions of National Policy Statements, National Environmental Standards and the Unitary Plan that are relevant to PC 101 and these are listed as:
- a. National Policy Statement – Urban Development 2020 (Updated May 2022)
  - b. National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.
  - c. Auckland Unitary Plan - Regional Policy Statement.
    - i. B2.2 Urban growth and form.
    - ii. B2.3 A quality built environment.
    - iii. B2.4 Residential growth.
    - iv. B2.5 Commercial and industrial growth.
    - v. B3.2 Infrastructure.
    - vi. B3.3 Transport.
    - vii. B4.3 Viewshafts.
  - d. Auckland Unitary Plan – district.
    - i. D14 Volcanic Viewshafts and Height Sensitive Areas Overlay.
    - ii. H7.7 Open Space – Informal Recreation Zone.
    - iii. H13 Business – Mixed Use Zone.
    - iv. H17 Business – Light Industrial Zone.
    - v. H22 Strategic Transport Corridor Zone.

## **NOTIFICATION PROCESS AND SUBMISSIONS**

22. PC 101 was accepted by the Council pursuant to cl.25(2)(b) of Schedule 1 of the RMA on 17 April 2024. PC 101 was then publicly notified on 23 May 2024, with the submission period closing on 21 June 2024. The further submission period opened on 12 July 2024 and closed on 26 July 2024.
23. Eight submissions were received from the following persons/organisations. Three of the eight submissions were received late as noted above.
- a. Charis Charan
  - b. Georgina Stewart
  - c. Sibylle Van Hove
  - d. Auckland Transport
  - e. KiwiRail
  - f. Watercare Services Limited
  - g. Van Den Brink Poultry Limited
  - h. Foodstuffs North Island Limited.

24. The main topics raised by submissions are summarised in the s.42A report. It is noted that no further submissions on the plan change were received.
25. Comments were also received from the Maungakiekie Tāmaki Local Board from its business meeting in September 2024. The Local Board outlined some concerns with respect to the plan change but did not speak at the hearing.
26. Direction 1 from this Panel issued on 17 September 2024 directed the Applicant to file a memorandum outlining what, if any, changes they recommend to the proposal and outline which changes were in response to which submissions. The Applicant filed a memorandum on 24 September 2024 which outlined three areas of recommended changes in respect of submissions from Auckland Transport and KiwiRail.
27. Direction 2 (issued on 26 September 2024) set out an evidence exchange timetable.

## **SUMMARY OF EVIDENCE**

### **Section 42A Report**

28. Ms Perwick's s.42A report was based on the plan change as notified together with an addendum report that considered the changes introduced through the Applicant's memorandum of 24 September 2024 and addressed the relevant statutory requirements, the relevant environmental effects and the issues raised by submissions. It was Ms Perwick's overall recommendation that the plan change could be approved, subject to certain recommended amendments as set out in Appendix 1 to her addendum report.
29. At the conclusion of the hearing Ms Perwick advised that she had changed her position on the request from KiwiRail in respect of the 5m setback of buildings from the railway boundary and that she now supports the setback request.

### **Applicant Evidence**

30. The evidence presented on behalf of the Applicant followed the requirements set out in Direction 2. A number of witnesses were excused from attending as we had no questions for them and Mr Heath was unexpectedly unable to attend. We received a written response from Mr Heath to a question that arose in the hearing.
31. The evidence presented by the Applicant can be referred to as part of the online hearing record, including by reference to an 'Evidence Index' that had been prepared as part of that record (and which lists the evidence generally in the order that it was heard). That index includes reference to the witnesses' statements of evidence and the various legal submissions, communications, photographs, and other documentation that were presented to us, or tabled, during the hearing process. This evidence can be found here:  
  
<https://onedrive.live.com/?authkey=%21AKNApbLTyuCvfo0&id=943FC6A80B823296%2138514&cid=943FC6A80B823296>
32. In that light, we have not provided an exhaustive summary of the evidence presented but we set out a brief summary of the evidence in the sections that follow.

### Legal Submissions

33. Legal submissions were presented by Jeremy Brabant. Mr Brabant submitted that the PC 101 gives effect to the relevant statutory documents and that the proposed rezoning and proposed provisions are the most appropriate method to achieve the purpose of the RMA.
34. Mr Brabant identified a number of matters of disagreement between the Applicant and the submitters as being the:
- a. requirement to provide a pedestrian crossing at Merton Road;
  - b. management of reverse sensitivity effects being vibration and noise from the railway corridor and;
  - c. inclusion of a 5 m building setback from the rail designation.

### Traffic (John Parlane)

35. Mr Parlane, an experienced traffic engineer, provided evidence in support of PC 101.
36. Mr Parlane considers that the transport effects of the development can be accommodated within the existing road network and supports the wider transport goals and is likely to provide homes in a location where people will have travel options that allow them to travel not just by private car.
37. The main difference of opinion identified by Mr Parlane and the other transport engineers was whether the Applicant should be responsible for forming the cycle crossing on Merton Road to the north of the site. Mr Parlane considers that the Applicant should provide the pedestrian crossing only, but as the cycle crossing is part of a wider planned network, it should be the responsibility of AT to provide that crossing.

### Urban Design (Frank Pierard)

38. Mr Pierard, an experienced urban designer, provided urban design evidence in support of PC 101.
39. Mr Pierard considers that proposal aligns with the various national and regional policy statements and that effects of the development will be acceptable. He also considers that the precinct provisions will enable a mix of residential, commercial and community uses.
40. Mr Pierard stated, in response to questioning from the Panel, that he considers that the assessment criteria provided are sufficient to ensure good urban design outcomes.

### Acoustics (John Styles)

41. Mr Styles, an experienced acoustic consultant, provided evidence in support of PC 101. Mr Styles provided a verbal summary of his evidence and his response to the acoustic evidence for KiwiRail.
42. Mr Styles considers that the PC 101 provisions are adequate to ensure that noise from trains on the railway line will not have an adverse impact on noise sensitive spaces within the PC 101 land. He also considers that no vibration design standards are required to be incorporated in the Precinct standards.
43. In respect of road noise Mr Styles stated that the Precinct provisions will ensure road-traffic noise levels will be no greater than 40dB LAeq(24hr) inside any noise sensitive space in

any modern building and that rail noise does not exceed internal levels of 35dB LAeq(1 hour) for sleeping areas and 40 dB LAeq(1 hour) for all other habitable spaces.

#### Planning (Nicholas Roberts and Kasey Zhai)

44. Mr Roberts and Ms Zhai provided joint evidence in support of PC 101. They also provided rebuttal evidence in respect of evidence provided by KiwiRail and by Auckland Transport. They also provided a response to questions from the Panel as part of the Applicant's reply.
45. The planning evidence
  - a. provided an overview of the PC 101 provisions and the amendments proposed in response to the Section 42A Report;
  - b. assessed PC 101 against the relevant statutory and policy framework;
  - c. assessed the environmental effects of PC 101;
  - d. responded to the Section 42A Report and issues raised by submitters.
  - e. set out recommended amendments to PC 101 as notified.
  - f. provided a section 32AA analysis of the recommended amendments to the Pilkington Park Precinct.

#### Land Contamination (Claire Davies) and Civil Engineering (Sean Dickenson)

46. The evidence from Ms Davies and Mr Dickenson in support of PC 101 was taken as read.

#### Economics (Tim Heath)

47. Mr Heath, an experienced property consultant, market analyst and urban demographer, provided evidence in support of PC 101. Mr Heath's evidence covered industrial land issues and the economic costs and benefits of PC 101.
48. Mr Heath was unable to attend the hearing. However Mr Heath provided a written response to a query from the panel regarding the appropriateness and economic efficiency of applying the Business – Town Centre Zone (TCZ) to the PC101 site.

### **Submitters Evidence**

#### KiwiRail Legal Submissions

49. Legal submissions were presented by L J E Rapley on behalf of KiwiRail.
50. While KiwiRail generally supports urban development in and around the rail network, Ms Rapley submitted that additional controls are required, including: acoustic insulation on buildings containing sensitive activities within 100m of the rail corridor boundary, the application of a vibration alert layer within 100m of the rail corridor boundary and a 5 building setback standard from the rail corridor.

#### KiwiRail Corporate (Matthew Paetz)



51. Mr Paetz, an experienced planner, gave corporate evidence on behalf of KiwiRail.
52. Mr Paetz described the use of the rail line in the vicinity of the PC 101 site and outlined KiwiRail's concerns with the plan change and the amendments that it seeks to PC 101.

KiwiRail Acoustics (Stephen Chiles)

53. Dr Chiles, an experienced acoustics engineer presented evidence on behalf of KiwiRail.
54. Dr Chiles evidence concerned the adverse health and amenity effects from rail corridors and the measures he recommended to protect people in any development on the plan change land from those effects. He recommended that the rail noise provisions should apply over 100 metres (rather than 60 metres), and a rail vibration alert layer should also be applied over 100 metres from the boundary of the NIMT

KiwiRail Planning (Cath Heppelthwaite)

55. Ms Heppelthwaite, an experienced planner, presented planning evidence on behalf of Kiwi Rail.
56. Ms Heppelthwaite supports changes to PC 101 as follows;
- a) addition of a vibration alert layer applied 100m from the rail designation boundary;
  - b) a building setback control of 5m from the rail designation boundary to enable maintenance of buildings that otherwise could be constructed on the boundary and require access to the rail corridor for maintenance (or risk inadvertent interference with rail operations);
  - c) application of the acoustic control provisions (IX.6.2) 100m from the rail designation boundary (rather than 60m); and
  - d) minor technical amendments to the acoustic provisions (IX.6.2).
57. The evidence considered that the amendments sought are necessary to appropriately manage health and safety effects associated with the operation of the rail network, and to implement the RPS and Auckland-wide policy framework on the Site. She also attached Section 32 analyses prepared by KiwiRail that supports her views.

Auckland Transport Planning (Robert Lee)

58. Mr Lee, a planner at Auckland Transport, presented planning evidence on behalf of Auckland Transport.
59. Mr Lee's evidence was largely supportive of PC101. It appears that the only area of disagreement is with the Applicant's position of providing only a pedestrian crossing at the Merton Road crossing, whereas Mr Lee considers that a cycle crossing should also be provided by the Applicant at that location.

**Council Response**

60. We allowed the Council the opportunity to respond to the evidence presented and advise us of any changes to conclusions and recommendations. We received the following verbal responses.

Transportation (Mat Collins)

61. The Council transportation assessment was provided by Mat Collins.

62. Mr Collins identified a number of remaining issues including the need for a cycle crossing on Merton Road. Mr Collins remained of the view that a cycle crossing should be constructed by the Applicant and is required to support the development based on Mr Parlane's trip generation figures.

Planning (Michele Perwick)

63. Ms Perwick prepared the s42A report for the hearing.
64. Ms Perwick advised that she continues to support a vehicle access restriction of the southern part of the site. (This view was supported by Mr Hendra and Ms Howdle).
65. Ms Perwick also advised that she has changed her position on the 5m setback requested by KiwiRail and accordingly now supports the 5m setback.
66. Ms Perwick advised that she was recommending a number of small editorial changes to PC101 and expressed confidence that these changes were within the scope of the plan change as notified. These included a change to the Precinct description.

Landscape (Gabrielle Howdle)

67. Ms Howdle outlined how the Volcanic Viewshafts and Height Sensitive Areas Overlay standards worked and considered that the existing plan rules were sufficient to ensure that the buildings would not protrude through the volcanic viewshaft.

Urban Design (Rebecca Skidmore)

68. Ms Skidmore discussed the criteria for buildings and expressed confidence that the existing assessment criteria are sufficient to ensure that buildings facing the IRZ will address that open space and that blank walls will be avoided.

Town Centre Zoning (Susan Fairgray)

69. Ms Fairgray advised that she had considered the alternative of zoning the land as TCZ. Ms Fairgray considers that if wide ranging commercial development were allowed on the site, it would result in a dilution of demand for activity in the existing town centre.

Acoustics (Andrew Gordon)

70. Mr Gordon expressed the view that the vibration alert layer is not required, and the 60m rail noise standard is appropriate.

**Applicant's Reply**

71. Following the response from the Council, Mr Brabant gave a brief verbal reply statement and sought an adjournment to allow time to prepare a written reply.
72. We agreed and we received the Applicant's right of reply on 10 December 2024 together with supporting documents being a planning memo, and updated s32 evaluation, and economic response and proposed amended provisions.
73. The reply submissions reinforced that the Applicant did not consider that a cycle crossing should be required as a result of PC 101 and that it was not necessary to provide additional

rules in respect of vehicle access over the reserve at Pilkington Road as various consents are already required by the AUP.

74. Mr Brabant submitted that the urban design matters regarding building frontages have been suitably agreed between Mr Pierard and Ms Skidmore and that the plan change will not impact on the volcanic viewshafts that traverse the plan change area.
75. Mr Brabant reinforced that much of the acoustic issues would be determined by the weight of evidence but submitted that there is not a sufficient basis by reference to proper resource management considerations to impose the vibration alert layer.
76. Mr Brabant also submitted that the expert evidence clearly shows that the site should not be zoned TCZ. The reply submission also maintained that the 5m separation to the railway boundary is unnecessary.
77. After an initial assessment of this information we closed the hearing on 16 December 2024.

## **FINDINGS AND REASONS ON THE PLAN CHANGE REQUEST**

78. The following section addresses our overall findings on PC 101 and why we have approved it; having heard and considered all of the material and evidence before us.
79. We had extensive evidence before us, with parties requesting a number of specific changes to the precinct provisions. Many of these were addressed by the Applicant's legal submissions and planners and we appreciated the input into these provisions from submitters and Council officers. At the time of writing this decision, the provisions of the proposed precinct are mostly settled between the Council and Applicant's but where there are differences, we have taken these provisions into account as part of our overall assessment and reasoning for our decision.
80. We address the submissions received to PC 101 and the relief sought in those submissions. In this respect, in accordance with Clause 10(2) of the RMA, we have grouped together those submissions under the headings that were used in the hearing report for consistency.
81. We also note that we must include a further evaluation of any proposed changes to the plan change arising from submissions; with that evaluation to be undertaken in accordance with section 32AA of the RMA. With regard to that section, the evidence presented by the Applicant, Submitters and Council officers including specific updates to the S32A report, effectively represents that assessment.

## **The Reason for the Plan Change**

82. We accept the Applicant's rationale for seeking to change the Unitary Plan and rezoning of the site from LIZ to MUZ and the need for a Precinct to manage specific aspects of potential development on the land. This was detailed in the request, evidence and the legal submissions.
83. There were no submissions that opposed PC 101 in its entirety. Most submissions identified specific issues and changes requested to the plan change or Precinct provisions in relation to identified effects and / or related provisions.

## **PRINCIPAL ISSUES IN CONTENTION**

84. Having considered the submissions and further submissions received, the hearing report, the submissions and evidence presented at the hearing and the Council officers' response to questions, we identified the following principal issues in contention:
- A section 32 evaluation of TCZ option.
  - Whether a cycle crossing of Merton Road should be required as part of PC 101.
  - Whether standard IX.6.2 "Activities sensitive to noise within 60m of the rail corridor" should be extended to within 100m of the noise corridor as requested by KiwiRail.
  - Whether the Precinct should include a vibration alert layer in respect of potential vibration caused by trans on the rail corridor
  - Whether the Precinct should include an additional standard that requires buildings to be set back 5m from the rail corridor boundary.
  - Whether additional vehicle access controls are required in respect of vehicle access over the road from reserve.
  - Whether the minor change to PC 101 provisions proposed by the Applicant and in the Council s42A report are within scope.

### **Section 32 evaluation of TCZ zoning option**

85. The Panel questioned whether a TCZ had been considered as an option, considering the site is immediately adjacent to the Glen Innes Town Centre. The Panel is required to adopt a Section 32 Evaluation in its decision on the Plan Change. The Applicant's planners, Mr Roberts and Ms Zhai, confirmed that a TCZ option had been considered, but had been rejected relatively early in the process, due to the urban form that would have been created and the potential adverse economic effects on the existing Glen Innes Town Centre. Ms Skidmore (Council – Urban Design) confirmed expanding the Glen Innes Town Centre across the site could have an adverse stalling effect on the intensification of the existing centre. Ms Fairgray (Council – Economics) agreed that there could be a dilution of Glen Innes activation if expansive retail occurred on the plan change site, shifting the centre of gravity. The panel's findings are that adequate Section 32 Evaluation has been undertaken, including consideration of a TCZ option.

### **Delivery of cycle crossing facility north of the site**

86. Mr Collins (Council – Transport) considered that the Applicant should provide a cycle crossing facility across Merton Road to the north of the site. There are cycle lane extensions and pedestrian crossings proposed and funded by Auckland Transport. Mr Collins and Ms Perwick (Council – Planning) did not provide any evidence that development and use of the proposed Pilkington Park Precinct would have the effect of creating a demand for a cycle crossing facility that was not already required. The Panel's findings are that: development of the Precinct may not occur for some years and it is important that pedestrian and cycle facility improvements are not postponed to transfer their costs to the Precinct; only a minor part of the demand for pedestrian and cycle facility improvements can be attributed to future use of the Precinct; the Precinct's contribution of new eastern and northern pedestrian crossings is a fair mitigation of the proposed active mode transport demand.

### **Noise control layer extending 60m or 100m onto site**

87. KiwiRail, as a submitter, contended that there needed to be a Noise Control Layer extending 100m onto the site from the boundary with the rail corridor. Dr Chiles (KiwiRail – Acoustics and Vibration) presented evidence that a Noise Control Layer needed to extend

100m onto the site. Mr Styles (Applicant – Acoustics and Vibration) and Mr Gordon (Council – Acoustics) agreed that there was a need for a Noise Control Layer, but both considered it need only extend 60m onto the site. Mr Styles and Mr Gordon have extensive experience managing the noise environment around rail corridors through Auckland.

88. Pilkington Road and Apirana Avenue are arterial roads and at times carry heavy commercial vehicle traffic, lying to the east of the site. The Panel's findings are that the proposed zoning will enable intensive development of the site, of a scale and bulk that will create noise screening along the western edge of the site, so that the Noise Control Layer need only extend 60m onto the site. If the proposed zoning were Residential - Mixed Housing – Urban or less intensive, then rail corridor noise would be expected to carry further across the site. In that case the noise environment of such development types would need to be investigated further to ascertain an appropriate extent of noise control layer.

#### **Whether the Precinct should include a vibration alert layer**

89. The submission from KiwiRail is that the Precinct should include a vibration alert layer to warn potential occupiers of the land within the precinct that they may experience vibration from passing trains. We note the significant difference in expert opinion on the matter with Mr Styles and Mr Gordon stating that the rail vibration at the site was very low and did not require need for specific vibration mitigation design measures or a vibration alert overlay. This was also the view of the s42A reporting officer.
90. Dr Chiles, for KiwiRail was concerned that the vibration measurements made by Mr Styles were at a single location and that vibration can be highly variable over short distances and between different foundation types with different coupling to the ground and vibration propagation paths. He was also concerned that Mr Styles' measurements were made using a parameter different to the  $v_{w95}$  parameter of the KiwiRail guideline limit, with an assumed conversion for comparison with a 0.3 mm/s  $v_{w95}$  criterion, which has reduced reported levels by more than he expected.
91. We find KiwiRail's approach to rail vibration through their submission and supporting evidence to be inconsistent. This is because although Dr Chiles' evidence stated that vibration controls are warranted, KiwiRail's submission did not request vibration controls due to "practicalities and costs associated with implementing vibration attenuation". It sought the inclusion of a vibration alert layer for information purposes to alert future landowners and occupants within the Precinct of the potential vibration from rail operations.
92. Based on the evidence and responses to our questioning of the expert witnesses we prefer the evidence of Mr Styles and Mr Gordon that the rail vibration at the site was low and did not require need for specific vibration mitigation design measures or a vibration alert overlay. We consider that if KiwiRail has significant concerns about rail vibration they should have sought implementation of vibration controls.
93. We also have some sympathy for the Applicant's legal reply submission view that while the proposed overlay does not include a vibration control, it nonetheless may have a chilling effect on development of the precinct by giving the impression there are vibration issues of significance (when the reality is that the vibration levels are very low).

#### **Whether the Precinct should include an additional standard that requires buildings to be set back 5m from the rail corridor boundary**

94. In their submission KiwiRail sought a building setback control of 5m from the rail designation boundary to enable maintenance of buildings that otherwise could be constructed on the boundary and require access to the rail corridor for maintenance (or risk inadvertent interference with rail operations); This included a proposed new standard to require all buildings and structures to be set back by at least 5m from any boundary that adjoins the rail corridor with provisions to include a corresponding objective and assessment criteria.
95. We note that Ms Heppelthwaite in her evidence acknowledged the feasibility of alternative building access systems e.g. mobile building maintenance unit, building tie-in points or roof attachment systems which would enable abseiling for maintenance.
96. Given that the proposed plan change will allow buildings of heights of 21 and 27 metres adjacent to the rail designation, it can be expected that the design of future development is likely at some locations to incorporate tilt slab walls or similar which for site utilisation purposes will be desirable to be located at the boundary. We accordingly find that requiring a 5 m set back of buildings from the designation boundary would be likely to create inefficient outcomes for development given the very long extent of the site boundary adjoining the KiwiRail boundary in comparison with the overall site area.
97. With respect to KiwiRail's concern about health and safety aspects of potential mishaps associated with incursion into the designation for maintenance of adjoining buildings we find that KiwiRail is able to adequately control this risk through their permit to enter approval processes.
98. With respect to KiwiRail's desire to avoid the need for incursion into the designation for maintenance of adjoining buildings because it takes time and resource, we consider this does not outweigh the possible reduction of useable site development area that can be expected to occur if a 5 metre setback was required.
99. We accordingly find that the setback sought in KiwiRail's submission is unnecessary.

#### **Vehicle access restrictions (at park edge)**

100. The Council planner and their expert parks planner considered that specific Vehicle Access Restrictions "**VAR**") should apply along Pilkington Road and Apirana Avenue. Their motives appeared to be to make it more difficult for the Applicant to create an additional vehicle access to the site through the public open space frontages, or at least to lower expectations that such an access could be created easily.
101. Mr Roberts and Ms Zhai (Applicant – planner) in their Planning Reply Memo considered the AUP E27.6.4.1(3) Transport would apply VAR provisions to the MUZ, even though the road frontages are to IRZ land. Although this information was not refuted by the Council's planning or transport experts, the Panel is not persuaded that is the case. The Panel's findings are that while at least the wider central part of the IRZ - Pilkington Apirana Road Reserve has park-like attributes that should be protected against severance caused by a vehicle access, Council ownership of the open space land provides the best protection of those park values, and that a specific VAR is not required.

#### **Scope of submissions to support changes to Plan Change and Precinct Provisions**

102. The Panel inquired as to whether there was sufficient scope in the submissions to enable changes proposed to the plan change and precinct provisions. This was not intended to challenge the changes proposed, but to ensure the decision could record that scope was

provided within the submissions. The Reply Submissions, provided by Mr Brabant, were accompanied by a Planning Matters Memorandum from Mr Roberts and Ms Zhai which included an Attachment 1: "Recommended Precinct Provisions (track changes) identifying scope through submissions". That document enabled the Panel to check the submissions and confirm that submissions enabled the scope of the changes proposed.

103. We also note that section 32 clarifies that analysis of efficiency and effectiveness is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
104. Having considered the evidence and relevant background documents, we are satisfied, overall, that PC 101 has been developed in accordance with the relevant statutory and policy matters with regard to the need for the zone change and for the specific provisions. The plan change will clearly assist the Council in its effective administration of the AUP.

## **DECISION**

105. That pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, that Proposed Plan Change 101 to the Auckland Unitary Plan (Operative in Part) be approved, subject to the modifications as set out in this decision.
106. Submissions on the plan change are accepted and rejected in accordance with this decision. In general, these decisions follow the recommendations set out in the Council's section 42A report, response to the Panel's memo and closing statement, except as identified above in relation to matters in contention.
107. The reasons for the decision are that Plan Change 101:
- a. will assist the Council in achieving the purpose of the Resource Management Act ;
  - b. is consistent with the Auckland Regional Policy Statement and the National Policy Statement- Urban Development 2020 (updated 2022);
  - c. is consistent with the provisions of Part 2 of the Resource Management Act;
  - d. is supported by necessary evaluation in accordance with section 32 of the Resource Management Act and
  - e. will help with the effective implementation of the Auckland Unitary Plan.



**David Wren**

**Chairperson**

**Date: 14 March 2025**



**Attachment 1 – Amended PC101**