

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

Proposal

To change the provisions of the Smales 1 Precinct to enable greater development within the Precinct, including residential activities.

Proposed Plan Change 23 to the Auckland Unitary Plan (Operative in Part) is **approved**, subject to the modifications as set out in this decision and in the Plan Change 23 document attached. Submissions are **accepted** and **rejected** in accordance with the decision.

Plan modification number:	PC23
Site address:	Smales 1 Precinct, Smales Farm Takapuna.
Hearing commenced:	Tuesday 19 and Wednesday 20 November 2019, 9.30am
Hearing panel:	Mr. Ian Munro (Chairperson) Ms. Kim Hardy Mr. Matthew Riley
Appearances:	<p><u>For the Council:</u></p> <p>Mr. Christopher Turbott, as a replacement for Mr. Ewen Patience Mr. Pravin Dayaram Ms. Rebecca Skidmore Dr. Douglas Fairgray Ms. Larissa Rew</p> <p><u>For the applicant:</u></p> <p>Northcote RD1 Holdings Ltd, represented by: Mr. Douglas Allan Mr. Paul Gunn Mr. James Whitlock (on behalf of Mr. Siri Wilkening) Mr. John Goodwin Mr. Alistair Brimelow Mr. Brett Harries Mr. John Parlane Mr. Fraser Colegrave Mr. Stuart Houghton Mr. Vaughan Smith</p>

	<p><u>For the Submitters:</u></p> <p>NZTA and Auckland Transport, represented by: Ms. Marija Batistich Mr. Kevin Wong Toi Mr. Evan Keating Ms. Cath Hepplethwaite Mr. Trevor Mackie Mr. Joe Philips Mr. Graham Norman Mr. Stephen Chiles</p> <p>Waitemata District Health Board, represented by: Ms. Bianca Tree Mr. Nigel Ellis Mr. Andrew Mein Ms. Bronwyn Coomer-Smit Mr. Craig McGarr</p> <p>Westlake Girls High School, represented by Ms. Joy Bradfield</p> <p>Watercare Services Ltd, represented by Mr. Andre Stuart</p> <p>Tabled statement received from: Kainga Ora</p>
Hearing adjourned	11 December 2019
Commissioners' site visit	Not Applicable
Hearing Closed:	16 January 2020

INTRODUCTION

1. This decision is made on behalf of the Auckland Council ("the Council") by Independent Hearing Commissioners Mr. Ian Munro (Chair), Ms. Kim Hardy and Mr. Matthew Riley 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 23 ("**PC23**") to the Auckland Council Unitary Plan Operative in Part ("**AUP: OP**") 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 and the officers' response.
3. PC23 is a privately-initiated 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. We were given no reason not to believe that the correct and proper process had been followed in the preparation, notification and consideration of PC23. We accept that there are no jurisdictional or procedural matters for us to determine.
5. The plan change was publicly notified on 12 April 2019.
6. The submission period closed on 15 May 2019. A summary of submissions was notified for further submissions on 14 June 2019 with the period for receiving further submissions closing on 28 June 2019. A total of 18 submissions and 6 further submissions were made on the plan change. No late submissions or further submissions were received. The submissions were split with a majority seeking that PC23 be declined. We confirm that we have read all submissions and further submissions in full.

SUMMARY OF PLAN CHANGE

7. PC23 as notified was described in detail in the s.42A report prepared by Mr. Patience, and we adopt and refer specifically to his paragraphs 60 – 67.
8. In terms of an overall summary, the proposal is to modify the provisions of the existing Smales 1 Precinct so as to allow for substantially more building height and scale (as restricted discretionary activities), including residential land use activities, to occur. This is premised on the locational attributes of the Precinct, being directly adjacent to a major passenger transport hub (the Smales Farm Northern Busway Station), and well-separated from sensitive land uses on account of the large institutional and infrastructure uses nearby. These include Westlake Girls High School, North Shore Hospital, Takapuna Golf Course, North Shore Events Centre, Takapuna Normal Intermediate School, State Highway 1 and Northcote and Taharoto Roads.
9. A large part of the proposal was the planning concept of a Transit Orientated Development, or “**TOD**”. This is in summary a model of development that is well traversed in planning and urban design practice, and all of the Commissioners are very familiar with it. It is based on the principle of maximising the efficiency of passenger transport networks, and minimising automobile dependence, by enabling high densities of employment and residential activities on or very close to major passenger transport stations. We comment on the relevance of this TOD concept to the proposed plan change further below. In our decision we have used the term “TOD” do discuss the proposal and evidence given to us at the Hearing, but in so doing recognise that it is not a term currently used in the AUP: OP, and is overall simply a shorthand to describe a particular bundle of site and development characteristics.

HEARING PROCESS

10. As the majority of submitters to PC23 wishing to give evidence were represented by expert witnesses, the Commissioners required the pre-circulation of expert evidence and allowed a period of rebuttal evidence from the Applicant.
11. The Hearing proceeded in the conventional manner, with us hearing the Applicant's case, the submitters', the Council staff response to what they had heard, and a brief oral right of reply from the Applicant. We adjourned the Hearing to seek additional

information and commentary from the Applicant's and the Council's design experts, and the Applicant elected not to add anything to its previous oral reply.

12. We record and acknowledge that the completion and issuing of this decision after the Hearing closed was unfortunately delayed, including by the onset of the Coronavirus pandemic that has affected the globe. We wish to thank all participants for their patience and we trust that they have been and remain safe through this time.

RELEVANT STATUTORY PROVISIONS CONSIDERED

13. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements are set out in Sections 3 and 4 of the s.42A report, and for completeness we agree with and adopt that analysis, specifically paragraphs 70 – 80 of the s.42A report, and the section 32 assessment that forms part of the application material.
14. Clauses 29 and 10 of Schedule 1 require 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 submissions; with that evaluation to be undertaken in accordance with section 32AA of the RMA. With regard to Section 32AA, we note that the evidence presented by the Applicant, submitters and the Council's staff, and this decision, represents this additional assessment. That material should be read in conjunction with this decision where we have determined that changes to PC23 should be made.
15. There are a number of provisions of the AUP: OP that are relevant to PC23 and these were presented in the application documents and s.42A report. In summary, they primarily affect the Smales 1 Precinct (Chapter I538), and to a much lesser degree the Business Park zone (Chapter H15). We have considered the content and policy framework of these provisions in detail below.

PLANNING CONTEXT – STATUTORY AND POLICY

16. The RMA requires that Unitary Authorities consider a number of statutory and policy matters when developing proposed plan changes.

Resource Management Act 1991 (RMA)

17. The Section 32 Evaluation Report, the s.42A report, and also very relevantly the legal submissions of the Applicant's counsel Mr. Allan set out the provisions of the RMA that are relevant to PC23. We accept this, which has been read and taken into account by us and it is not necessary to repeat this material here.
18. We are satisfied that PC23 has been prepared and submissions considered in accordance with the relevant provisions of the RMA (and in particular Part 2 and sections 32 & 32AA), the Council's functions under the Act, and all other relevant statutory matters as set out within the Act.

National and regional planning context

19. The application documents, s.42A report, and evidence also outlined the relevant national and regional planning documents that are relevant to Plan Change 23 and

these are not repeated here. We adopt for this purpose paragraphs 81 – 86 of the s.42A report (relating to national and regional RMA documents), as well as paragraphs 88 – 91 (relating to the strategic “Auckland Plan”). We also record our acceptance of the equivalent analysis presented in the Applicant’s evidence of Mr. Smith.

20. We accept that PC23 is consistent with the relevant statutory requirements. We also accept Mr. Patience’s opinion, at paragraph 87 of the s.42A report, which confirms that there are no other Parliamentary Acts relevant to the proposal.

PC23 – SCOPE AND JURISDICTION

21. As a Commission, we must satisfy ourselves that the plan change has been prepared by the Applicant in the manner set out in Schedule 1 to the Act, including that any submission is properly ‘on’ the plan change. If a submitter seeks changes to the proposed plan, then the submission must set out the specific amendments sought. We must also be satisfied as to the jurisdictional dimension of proposed changes that could flow from the plan change. We are able to approve PC23, decline it, or approve it with changes based on the relief sought in submissions or further submissions. Two jurisdictional issues are particularly relevant:

- a. a submission must be ‘on’ the plan change; and
- b. whether there is the ability to make changes to the plan arising from submissions in terms of scope.

22. The scope of PC23 is, in our opinion, spatially very limited (the footprint of the existing Smales 1 Precinct) and having taken into account the statutory and legal tests in relation to submissions and the actual submissions received we have considered the following issues:

- whether each submission is on PC 23; and
- whether any changes are fairly or reasonably within the general scope of PC23 as notified, an original submission, or somewhere in between, bearing in mind whether affected persons may have been denied the right to be heard.

23. We are satisfied that the submissions and further submissions are of an acceptable scope, and that the relief sought is also within scope. The relief sought is relatively wide, ranging from full approval to full rejection. The Council submission also raises matters relating to the format of PC23 and its administrative setting within the AUP: OP.

SUMMARY OF EVIDENCE

24. The application material, submissions and further submissions, correspondence, the Council’s s.42A report, expert evidence, and the Applicant’s rebuttal evidence were pre-circulated in accordance with directions we issued. That material was read prior to the commencement of the Hearing.

25. The Hearing commenced on 10th December 2019. After introductions and preliminaries

were completed, the Applicant commenced its case. What follows is a summary only, and we refer to both the written statements that were received and the audio recording of the Hearing taken by the Council for more detail.

The Applicant

26. Counsel Mr. Douglas Allan introduced the Applicant's team and outlined the evidence that had been provided. He provided legal submissions explaining the process, substance, and reasons why in his view the plan change should be approved on the basis of the Applicant's proposed provisions (which had been modified since notification in response to the views of submitters and the Council).
27. Mr. Allan responded to a number of questions from the Commission relating to the concept of a TOD and how it related to the AUP: OP provisions and in particular the RPS direction for urban form outcomes. He also addressed the matter of the Precinct proposed to enable a substantial extent of residential activities sitting atop those of the Business Park zone, which has a directive policy framework seeking to largely avoid residential activities.
28. Mr. Paul Gunn, a representative of the Applicant, Northcote RD1 Holdings Ltd, spoke briefly to his pre-circulated statement and answered questions from the Commission. In his opinion, the Applicant had undertaken a thorough and best-practice approach to 'land on' its proposal, and disagreed with the further changes proposed by the Council staff.
29. Mr. James Whitlock (acoustician), spoke to the expert noise evidence of Ms. Siri Wilkening. He adopted Ms. Wilkening's conclusions, and was of the view that PC23 should be approved.
30. Mr. John Goodwin (landscape architect) summarised his pre-circulated statement of evidence and the reasons why he felt PC23 could be approved. He discussed with the Commission his views on how to manage buildings as tall as are sought to be enabled through PC23, particularly in terms of having multiple taller buildings within the Precinct, and also (in the wider landscape) with planned taller buildings in (particularly) Milford and Takapuna centres, and potentially additional tower forms on the North Shore Hospital site over time.
31. Mr. Alistair Brimelow (engineering) spoke to his pre-circulated statement of evidence and confirmed that in his opinion PC23 would not present any engineering or infrastructure issues or effects that could not be properly managed.
32. Mr. Brett Harries and Mr. Parlane (traffic engineers) summarised their individual pre-circulated statements of evidence and the reasons why in their opinion PC23 should be approved without the changes sought by the Council.
33. Mr. Parlane considered that there was no need to require a maximum residential car parking rate simply because car parking was expensive to provide and the developer would not over-provide when other and more profitable activities could occur.
34. Mr. Fraser Colegrave (economics) spoke to his pre-circulated statement of evidence and outlined why in his opinion PC23 should be approved. He did not consider there

was any need to further restrict or limit retail development within the Precinct and that it was improbable that it could measurably affect adjacent Town and Metropolitan centres.

35. Mr. Colegrave responded to a question from the Commission that if the proposed retail development was regarded as a centre in the AUP: OP hierarchy, it would correspond to a Local Centre.
36. Mr. Stuart Houghton (urban designer) spoke to his pre-circulated statement of evidence and confirmed his opinion that PC23 should be approved. In Mr. Houghton's opinion the Site was strategically well-located and compatible with a TOD, and as part of that a centre.
37. Mr. Houghton also referred us to, and we received, a summary document outlining TOD principles, entitled "*Transit Orientated Communities: A Primer on Key Concepts*", TransLink, British Columbia (Can), updated 2011. We have read this document but ultimately we have not found it to be a necessary authority in the making of our decision.
38. Mr. Vaughan Smith spoke to his pre-circulated statement of evidence and confirmed his opinion that PC23 should be approved. Mr. Smith explained the changes that had been made to the proposal over time, and why he did not agree with the Council staff recommendations for further changes.
39. The Commission took Mr. Smith through a number of questions testing the proposed provisions and the relationship between the proposed Precinct and the Business Park zone. We record this as it amounted to an important part of our duties under s.32AA of the RMA, in as much as we tested various alternatives including changing the underlying land use zone.

The submitters

40. NZTA and Auckland Transport made a joint presentation led by Ms. Marija Batistich (counsel). NZTA and AT were both in agreement that PC32 was appropriate and, of note, they were in agreement with the Applicant's proposed car parking provisions.
41. Ms. Batistich presented legal submissions on behalf of the agencies and introduced expert witnesses to be called.
42. Mr. Kevin Wong Toi (traffic planner) spoke briefly to his pre-circulated evidence on behalf of Auckland Transport. He supported PC23, and confirmed that Auckland Transport saw practical land use and transport integration benefits arising from the plan change.
43. Mr. Evan Keating (traffic planner) spoke briefly to his pre-circulated evidence on behalf of NZTA. In his view PC23 was appropriate and could be approved.
44. Ms. Catherine Heppelthwaite (planner) spoke to her pre-circulated statement of evidence on behalf of NZTA. In Ms. Heppelthwaite's opinion the PC23 provisions that were presented in the Applicant's opening submissions by Mr. Allan were the most appropriate and she supported them. Ms. Heppelthwaite agreed with the Applicant that

the term TOD was appropriate within the proposed provisions.

45. Ms. Heppelthwaite explained that historically, high-density development has not been supported by NZTA along its major motorways. The benefits of leveraging transport efficiencies from the Busway station as well as changes in attitudes towards acoustic controls and reverse sensitivity gave her (and NZTA) comfort that PC23 would be acceptable.
46. Mr. Trevor Mackie (urban designer), spoke briefly to his pre-circulated evidence on behalf of Auckland Transport. Mr. Mackie supported PC23. He considered that the proposed Precinct sitting atop the Business Park zone was the most appropriate way of reflecting and managing the transition between what has until now been a Business Park, to a future state where it was more of a mixed-use precinct.
47. On behalf of the Waitemata District Health Board (“**DHB**”), counsel Ms. Bianca Tree provided brief legal submissions and introduced expert witnesses. The DHB outlined that it had been consulting with the Applicant and was supportive of PC23.
48. Mr. Nigel Ellis (project director), spoke briefly to his pre-circulated statement of evidence on behalf of the DHB. Mr. Ellis explained the nature and role of the North Shore Hospital Campus and its plans to meet future needs. He explained the work undertaken between the DHB and the Applicant to plan for the future intersection environment of Taharoto Road between the two sites. This resulted in a Joint Traffic Model between these parties, and on the basis of that and other discussions, the DHB was in support of PC23 as presented by the Applicant in Mr. Allan’s legal submissions.
49. Mr. Andrew Mein and Ms. Coomer-Smit (traffic engineers) briefly spoke to their statements of pre-circulated evidence and both confirmed their opinion that they supported PC23 in its current or ‘Hearing’ version. They were both satisfied that PC23 as proposed most recently by Mr. Allan, and also their predictions of the future needs of the North Shore Hospital, could be accommodated.
50. Mr. Craig McGarr (planner) spoke briefly to his pre-circulated statement of evidence. He was in support of PC23 as per the Hearing version.
51. Mr. McGarr expressed the view that it was not necessary to refer to a TOD in the provisions, but rather explain the characteristics and the outcomes sought. We discussed with him the relationship between the underlying zone and the Precinct, and in his view it was important that the Plan provisions clearly explain how the two work together. We found this opinion to be particularly helpful when we came to later evaluate what provisions would be the most appropriate.
52. Ms. Joy Bradfield spoke to us on behalf of Westlake Girls High School. She was not opposed to PC23 but expressed a number of concerns relating to wind effects (from tall buildings) on the school, and the traffic environment generally. She advised us that approximately 50% of the school’s current (approximate) 2,300 student roll travel from outside the local walkable area, and that the maintenance of an efficient road system (especially for buses) was important.
53. On behalf of Watercare Services Ltd, Mr. Andre Stuart spoke briefly to his pre-circulated statement of evidence. He explained Watercare’s plans to upgrade the local

network and issues associated with servicing the scale of development on the Site that PC23 could enable. He confirmed that there was no reason from Watercare's perspective that would be fatal to PC23 being accepted.

The Council officers

54. Dr. Douglas Fairgray (economics) outlined his general support for the proposal subject to restrictions on retail development within the Precinct. His overriding concern was that the proposal not be permitted to establish as a centre of inappropriate scale relative to the (extensive, in our view) RPS guidance on urban form and centres. In his opinion, it was appropriate to regard the likely function of the development to be enabled by PC23 as a local centre in the AUP: OP centres hierarchy. This would make it subordinate to Milford and Northcote (town centres) and Takapuna (a Metropolitan Centre). In Dr. Fairgray's view, no more than 13,500m² of retail activities in total would be appropriate, over time and subject to staged triggers.
55. Dr. Fairgray discussed with us also his understanding of the concept of a TOD and how it related to the AUP: OP model of 'centres'. In Dr. Fairgray's opinion, a TOD was indistinguishable from a centre inasmuch as all centres had a TOD role (to a greater or lesser extent), based on their inherent role as 'centralisers' or 'concentrators' of people and activity. We found this to be a particularly persuasive point.
56. Dr. Fairgray considered that it was not appropriate to classify a TOD as something other than a form of centre.
57. Ms. Rebecca Skidmore (urban designer and landscape architect) reiterated her support of PC23 and referred to several answers given to Commissioner questions across the Hearing by Mr. Houghton and Mr. Mackie, with which she agreed. In her opinion the application and evidence had included an appropriate quality and standard of built form visualisations and she considered that no further specificity of building placement(s) was required.
58. Mr. Pravin Dayaram (traffic engineer) reiterated his general support of PC23, but confirmed that he felt changes were required in relation to maximum car parking limits on residential activities as well as for non-residential activities. Mr. Dayaram explained a concern that a surplus of residential car parking could be leased-on to non-residential workers within the Precinct, undermining part of the rationale for allowing intensification on the basis that visitors will come by bus.
59. Mr. Christopher Turbott (planner) represented the Council's s.42A report on behalf of its author, Mr. Ewen Patience (who was absent with illness). He offered his views on matters that we had raised across the Hearing and in so doing reiterated his general support for PC23. He expressed a preference that instead of technical terms including "TOD", that plain English language equivalents should be used to set out the AUP: OP's planned outcomes.
60. Overall, the Council staff supported PC23 subject to amendments that we would characterise as focused on 'fine tuning'.

Further information

61. We intervened prior to inviting a right of reply to discuss matters of further information. We expressed a preference that a 'final' set of plan provisions and Council officer comments be received.
62. We also expressed discomfort with the information presented to date in support of the proposed height limit up to 100m. This included visualisations representing a 'possible' development outcome. We were concerned that to properly test the proposed restrictions of discretion that would apply including by demonstrating that they could address any relevant adverse effects that could arise, something representing more of a 'worst case' development would be more robust.
63. This was challenged at length by Mr. Allan, who referenced in his lengthy response the support of PC23 (on the information provided) by a number of independent design experts. He also reminded us that as restricted discretionary activities, it was entirely possible that any development proposal that complied with the height limit could be refused consent. This did not address our principal inquiry, being to understand whether the proposed restrictions accounted for all potential adverse effects that could arise from a 'maximum compliance' scenario.
64. We conferred briefly and confirmed that additional visualisations illustrating something of a maximum or 'worst-case' compliance situation would be highly desirable to help give the Commission proper confidence in the proposed provisions, and that it was for the Applicant to consider further.
65. The Applicant ultimately and helpfully agreed to provide this information, which had the effect of requiring an adjournment of the Hearing.

Right of Reply

66. Although a request for further information had been expressed by us, Mr. Allan confirmed that he wished to provide a brief verbal reply statement at the Hearing. In it, Mr. Allan recapped the key reasons why the plan change should be accepted, including in particular the locational attributes of the Site and the protections that a restricted discretionary activity assessment would provide for any applications for consent resulting from PC23.
67. Mr. Allan advised us that the Applicant had carefully developed its plan change based on the advice from its expert advisors. Where the Council staff differed in their detailed recommendations, Mr. Allan recommended that we prefer the Applicant's version of the Plan provisions.

Post-Adjournment

68. On receipt of additional photo-simulation information and associated commentary from the Applicant's and the Council's design experts, and a 'final' version of the Applicant's proposed plan provisions and a Council staff mark-up, we invited the Applicant to present any further or additional closing reply to us.
69. Mr. Allan confirmed that the Applicant had nothing more to add.
70. We determined that we had sufficient information to make a decision on the matter, and

the Hearing was duly closed on 16 January 2020.

PRINCIPAL ISSUES IN CONTENTION

71. Having considered PC23 and the information, submissions and evidence associated with it, the situation can be summarised as follows:
- a number of local submitters oppose PC23 outright;
 - the Applicant, Council and a number of other submitters support PC23 although the Council and the Applicant are not in agreement on a number of matters of fine detail; and
 - all expert evidence presented to us was in support of PC23, albeit subject to the differences of fine detail identified above.
72. We have identified the following points of contention:
- a. Is the Precinct fundamentally suitable?
 - b. Are the building heights and design requirements suitable?
 - c. Are transportation issues suitably addressed?
 - d. Are retail and commercial requirements suitable?
 - e. What is the most appropriate wording for specific Plan provisions?
73. We record that in all other respects we accept that PC23 would be acceptable and could be properly managed by way of the Plan provisions proposed by the Applicant as per its final reply version, dated 19 December 2019. We find in all of those respects that the proposal has been appropriately formed, assessed, and that the evidence provided in support of them is convincing.

FINDINGS ON THE PRINCIPAL ISSUES IN CONTENTION

Is the Precinct approach fundamentally suitable?

74. We find that the proposed Precinct overlay sitting 'on top of' the Business Park zone is the most appropriate approach to integrate PC23 into the AUP: OP.
75. We asked questions of all of the planning witnesses available to us, and all were in agreement that the proposed approach was sound in resource management terms generally, and in line with the structure of the AUP: OP specifically.
76. A key question in our minds was the logic of the Business Park zone, in which residential activity is discouraged by way of policy wording and a non complying activity status, being potentially undermined by a Precinct that simultaneously enabled a substantial density of residential activity. We considered whether or not a more appropriate way of addressing the issues raised by PC23 might be to simply re-zone the Site, such as to a Mixed Use or Town or Metropolitan Centre zone.
77. Our investigation with the planning experts satisfied us that the Site possessed a number of specific attributes which do not usually occur together. Specifically, the Site has:

- a. an existing and (foreseeably) future employment role anchored around high-density office-based employment of the sort enabled in the **Business Park** zone;
 - b. characteristics that lend it to a variety of compatible uses and activities that is similar to that normally enabled in the **Mixed Use** zone;
 - c. a capability to accommodate residential development at a scale and of a form that is similar to that normally enabled in the **Metropolitan Centre** zone; and
 - d. the likely future catchment size and relationship with Milford and Northcote Town Centres, and Takapuna Metropolitan Centre, that justifies the function of a **Local Centre** zone.
78. Because of this, we are satisfied that there is no single land use zone within the framework of the AUP: OP that would adequately cater to all of these attributes. Hence, simply changing the underlying zone would be unlikely to most appropriately address the issues raised by PC23, unless a new unique and site-specific zone was introduced to the AUP: OP (as we discuss below, we understand that this is the very purpose of a precinct – to respond to site-specific characteristics as de facto ‘spot zones’). We also find that it would be unnecessarily complicated and inherently inefficient to try to break up the Site into a series of smaller but separately zoned areas, a pursuit which no expert recommended to us, and which we have not taken further. We have therefore accepted the Council’s planning evidence which supported the precinct approach proposed and which considered that this was acceptable within the framework of the AUP: OP.
79. We lastly accept that based on the historic and substantial existing business park development occurring on the Site, retention of the Business Park zone is appropriate – including by signaling that it remains an important resource management outcome for this particular site and should not be disestablished.
80. Changing the zone outright to a Mixed Use, Town or Metropolitan Centre zone could unintentionally jeopardize the existing business park uses, such as by enabling substantially different internal uses to occur within buildings. This was a point raised by Mr. Allan and also in the submission of Sovereign Insurance Ltd. For completeness and as will be addressed later however, we have accepted that concern and added an appropriate recognition of the existing business park activities on the Site into the PC23 provisions.
81. The result of this is that having considered changing the underlying land use zone, we find that it would be necessary to add a bespoke recognition of the importance of the Site’s existing business park activities, and other characteristics, to the AUP: OP’s ‘standard’ zone provisions in all instances. In something of a full-circle, that would likely lead to a need for some form of additional Precinct method to accommodate such additional Plan content anyway.
82. We consider that the following ‘combinations’ are available:
- a. the proposal (or an outcome very close to that);

- b. a Metropolitan or Town Centre zone, with a Precinct that considerably restricted retail, commercial services and entertainment activity to a level akin to a Local Centre zone, and that additionally recognised the importance of the existing Business Park activities;
- c. a Local Centre zone, with a Precinct that considerably enabled residential and Business Park activities over and above what would normally be acceptable within the zone; or
- d. a Mixed Use zone, with a Precinct enabling considerably greater residential activity, enabling a Local Centre zone scale of retail, commercial and entertainment, and which additionally recognised the importance of the existing Business Park.

83. We find that of these four options, option (c) (Local Centre zone) to be the least appropriate, noting in particular that the existing Business Park itself would not be consistent with what is normally enabled within that zone. Option (d) would be superior but still undesirable given the need for the Precinct to provide residential, business park, retail, commercial services, and entertainment provisions in a way that would likely make the Precinct provisions notably lengthier than is proposed in PC23. Of the remaining two options, we find that the proposed approach is the most practical, efficient and effective. Although we consider that some form of augmented Metropolitan Centre zone would have been able to manage the issues raised by PC23 quite efficiently and effectively, fundamentally the Site is not proposed to be, nor would it be suitable as, a Metropolitan Centre given the planned role in the city and the large catchment areas this zone is purposed to serve; there is no evidence that Takapuna requires any supplementation at all in that function.

84. We therefore agree that option (a) is the superior and most appropriate.

85. Our investigation of land re-zoning was purposed to identify whether it was possible to eliminate the need for a zone and Precinct combination, or which otherwise presented the greatest possible extent of synchronicity between the two methods. We are satisfied that the Site presents characteristics that cannot be so simply managed, and related to that we cannot see an alternative zone to the Business Park zone that would be a better fit.

86. We find that the method of a Precinct sitting across the Business Park zone to recognise the Site's place-based characteristics is desirable and efficient. We refer here specifically to Chapter A of the AUP: OP, where Precincts as a method are described at A1.6.5:

“Precincts enable local differences to be recognised by providing detailed place-based provisions which can vary the outcomes sought by the zone or Auckland-wide provisions and can be more restrictive or more enabling.”

87. We find that the Precinct proposed is comfortably in line with the explanation provided above from Chapter A, in that it:

- a. provides place-based provisions;

- b. varies the outcomes sought by the Business Park zone; and
- c. achieves (a) and (b) in a way that is more enabling.

88. Overall, we therefore find that the Business Park zone and Smales 1 Precinct generally as proposed represent the most appropriate means of enabling the outcomes proposed in PC23 within the AUP: OP. We have found it necessary to include maintenance of Business Park activities into the Precinct provisions however. The function of the AUP: OP is to prioritise Precinct provisions ahead of zone provisions, and in that respect PC23 as put to us did allow for the Business Park activities to be overridden by the Precinct without such a connection being 'carried across'.
89. Submissions including further submissions related to the zoning of the land and use of a Precinct are either accepted, accepted in part, or rejected in accordance with this decision.

Are the proposed building heights and design requirements suitable?

90. When the Commission read the application material and pre-circulated evidence, its members were surprised at the scale of building height proposed. None of us had ever experienced building heights of up to approximately 100m other than in Auckland's Central City zone or largest Metropolitan (formerly known as Sub-Regional) Centre zones. This is not to indicate any inherent concern with or prejudice against PC23, rather it is a confirmation of the atypical nature of the request.
91. Before considering the likely effects of development proposed to be enabled it is necessary to be clear on how the AUP: OP RPS approaches the matter of building heights of the scale proposed other than in the Central City or Metropolitan Centres, if at all. We do not see that there would be a pathway to approve PC23 if there was relevant RPS direction that such heights were simply not appropriate other than in those highest-order centres of activity.
92. We received evidence from and questioned all of the planning and urban design witnesses on behalf of the Council, the Applicant, Auckland Transport, the New Zealand Transport Agency and the Waitemata District Health Board on the full suite of provisions including specifically the proposed height limits of PC23. We also questioned the economic witnesses on the potential impact of the plan change on the existing centres hierarchy as the combination of enabled building height and land use activity could potentially change the function of existing centres – specifically the nearby centres of Milford and Takapuna. In summary all expert evidence given to us was supportive of the proposed PC23 building height limits and design requirements, and this was ultimately a key factor in our acceptance of PC23.
93. Mr. Patience in his s.42A report addressed the submissions on height and considered that *'tall buildings at Smales Farm will provide this large development site with an appropriate legibility in the wider landscape without threatening any prominence that Takapuna might have or aspire to in the wider Auckland context'*. Mr. Turbott advised us that he adopted and supported Mr. Patience's recommendations when questioned by the Commission. In the s.42A report Mr. Patience drew our attention to policy H15.3(13) within the Business Park zone which states that:

“(13) In identified locations within the centres zones, Business – Mixed Use Zone, Business – General Business Zone and Business - Business Park Zone enable greater building height than the standard zone height, having regard to whether the greater height: (a) is an efficient use of land; (b) supports public transport, community infrastructure and contributes to centre vitality and vibrancy; (c) considering the size and depth of the area, can be accommodated without significant adverse effects on adjacent residential zones and (d) is supported by the status of the centre in the centres hierarchy, or is adjacent to such a centre.

94. In Mr. Patience’s opinion the proposal for Smales Farm is in line with (a), (b) and (c) and that (d) was not relevant (because the Precinct is not a Centre Zone).

95. Mr. Smith advised us that:

“The increased height of buildings provided for with Plan Change 23 will enable the efficient development of the site in an intensified form, while maintaining space at ground level that contributes to a ‘walkable urban environment and high level of on-site amenity. Enabling taller buildings would also identify Smales farm as a transit - oriented node and creates a positive presence on the skyline. Potential adverse effects of taller buildings will be avoided or mitigated by a combination of the application of a number of standards, and the testing of development proposals against a comprehensive set of assessment criteria to ensure that building design is of a high standard”(para10.27 EIC).

96. Ms. Heppelthwaite also advised us under questions from the Commission that she supported the plan change provisions.

97. Mr. Mackie assisted us with our questions on the previous zoning of Smales Farm and the legacy North Shore City Council planning policy framework given his *“involvement in developing the district plan policy for Smales Farm in both its inception as a Business park, and in review of the policy approach.”* Mr. Mackie advised us that he was also a Council planning witness for the Smales Farm 1 Precinct in the Auckland Unitary Plan process. Whilst his evidence was focused on the matters of particular interest to Auckland Transport, Mr. Mackie concluded with his support for PC23 as proposed to be amended by Auckland Transport and The New Zealand Transport Agency (including the proposed height limits).

98. Ms. Skidmore (urban designer for the Council) undertook a comprehensive peer review assessment of the application material and the Applicant’s urban design assessment undertaken by Mr. Stuart Houghton. Ms. Skidmore advised us of her familiarity with the area and that she has visited the Smales Farm site and surrounding environment on numerous occasions. Ms. Skidmore’s recommendation to us on the proposed height limits was that:

“The plan change will enable considerable change in the scale of buildings in this location, particularly within height Area 2. I agree with the analysis set out in Paragraphs 13.18 – 13.30 of the Urban Design report regarding the suitability of the site to accommodate taller buildings in relation to its surrounding context. I agree that enabling taller buildings (generally up to 75m tall) will mark Smales Farm as an identifiable transit – oriented node in a manner that is complimentary to the scale of buildings enabled in the immediate and wider environment. The provision for a limited

number of buildings to extend up to 100m will assist to provide additional height variation and visual interest to the skyline” (para 6.21, page 884 s42A report).

Ms. Skidmore also advised us on the visual effects of the taller buildings:

“I agree with the overall conclusion that the adverse visual effects resulting from the additional height enabled by the Plan Change will generally be neutral, with moderate adverse effects experienced from a limited number of local viewpoints including parts of the Onewa Domain and residential properties where taller buildings will be viewed directly in front of a visual change as moderately adverse” (para 6.29, page 885 s42A report).

99. We tested these recommendations at length with Ms. Skidmore and the other expert witnesses, all of whom supported the proposed PC23 provisions including the proposed height.
100. In his urban design assessment of the proposed plan change provisions Mr. Houghton described the height strategy as one that concentrated the taller building heights of 75-100m in the central and western parts of the Site beside the busway and busway station and motorway corridor, and transitioned down in height to the established scale of approximately 27m around the site perimeter to Northcote, Taharoto and Shakespeare Roads where the precinct adjoins lower height mixed use and residential areas.
101. As part of evaluating the above evidence and in recognition of the submissions in opposition to PC23, we have examined the relevant AUP provisions in detail to understand if there is any explicit direction on building height and the centres hierarchy in particular.
102. The relevant AUP: OP RPS chapter is B2, titled “Urban Growth and Form”. We have read this chapter carefully as part of evaluating the planning evidence we were given and determined that it is ultimately silent on how and where *very tall* buildings should locate as part of an identified “quality compact urban form”. This enables contextual based assessments to be undertaken on a site and/or area specific basis through resource consents and/or proposed plan changes as is the case with PC23.
103. Objective B2.2.1(1) states:

“(1) *A quality compact urban form that enables all of the following:*

 - (a) *a higher-quality urban environment;*
 - (b) *greater productivity and economic growth;*
 - (c) *better use of existing infrastructure and efficient provision of new infrastructure;*
 - (d) *improved and more effective public transport;*
 - (e) *greater social and cultural vitality;*

(f) *better maintenance of rural character and rural productivity; and*

(g) *reduced adverse environmental effects.”*

104. We accept the position of the Applicant’s and the Council’s experts that the proposed plan change and enabled building heights could reasonably meet this objective either directly or indirectly. Clauses (b), (c), (d) and (g) are achieved at a policy level as a result of more efficient land use planning. Clause (f) is indirectly supported inasmuch as additional development within the identified urban area reduces pressure for outward development within rural areas. Clause (e) is likely to occur through provisions that require high quality accessible public space within the Precinct. Clause (a) would not in our opinion be compromised, given the detailed provisions (and our proposed amendments to PC23) requiring design outcomes that achieve high-quality buildings.

105. We have also considered Policy B2.2.2 and find that the proposed plan change again could meet these policies either directly or indirectly. Policy B2.2.2(5) refers explicitly to residential intensification. It is relevant to us that residential activities are the principal use within existing tall buildings across Auckland that fall outside of the Central City zone. This includes residential towers in Remuera, Point Chevalier, Orewa, Manukau, Takapuna, and Henderson that in some cases are located outside the immediate boundaries of the centres zoning framework. We are also aware of approved but not yet implemented tall residential buildings in Milford and Hobsonville Point. We have therefore interpreted the term “intensification” as meaning greater land use densities and associated development scale horizontally and vertically. This reading also appears in line with the development standards across the AUP: OP zones – the ‘higher intensity’ zones consistently enable greater horizontal and vertical development potential than the zones ‘below’. The policy states:

“(5) Enable higher residential intensification:

(a) in and around centres;

(b) along identified corridors; and

(c) close to public transport, social facilities (including open space) and employment opportunities.”

106. We read these three clauses as describing acceptable alternative locations for intensification and not as characteristics that each location for proposed intensification must simultaneously achieve; it is not workable that residential intensification should be enabled only in those *parts* of centres that are *also* along an identified corridor, and also close to public transport, social facilities and employment opportunities. That would substantially diminish where intensification could occur – specifically to limited areas within the centre zones. That plainly is not how the zones enabling intensification have been applied across Auckland.

107. We accept the Applicant’s and the Council’s experts’ position that PC23 is consistent with this policy on the basis that the area is located close to public transport, social facilities (including open space) and employment opportunities.

108. Objective B2.3.1(1) becomes more directive. It states:
- “(1) A quality built environment where subdivision, use and development do all of the following:*
- (a) respond to the intrinsic qualities and physical characteristics of the site and area, including its setting;*
 - (b) reinforce the hierarchy of centres and corridors;*
 - (c) contribute to a diverse mix of choice and opportunity for people and communities;*
 - (d) maximise resource and infrastructure efficiency;*
 - (e) are capable of adapting to changing needs; and*
 - (f) respond and adapt to the effects of climate change.”*
109. We accept the Applicant’s and the Council’s experts’ position that the proposed plan change can meet this objective either directly or indirectly. We are satisfied that the detailed precinct provisions (including our proposed amendments) will require a high-quality built environment and that this outcome will be evaluated through the resource consent process.
110. A potential limitation on building height and scale does appear to exist in clause (b), however we consider that the policy direction to “reinforce the hierarchy of centres and corridors” likely relates at least as much to the management of land use activities including the combination of commercial and retail activities as it does to the management of building scale. We also note that PC23 includes limits on commercial and retail development specifically so as to remain subordinate to Northcote, Milford and Takapuna centres. In that respect, even with the height limits enabled, PC23 appears to at the least ‘square up’ to clause (b). But out of an abundance of caution, we have identified clause (b) as being one possible reason to limit to development scale in the Smales 1 Precinct, and we will return to this later with further analysis.
111. In terms of related policies, we consider that B2.3.2(1), (2), and (3) are also relevant. These state:
- “(1) Manage the form and design of subdivision, use and development so that it does all of the following:*
- (a) supports the planned future environment, including its shape, landform, outlook, location and relationship to its surroundings, including landscape and heritage;*
 - (b) contributes to the safety of the site, street and neighbourhood;*
 - (c) develops street networks and block patterns that provide good access and enable a range of travel options;*

- (d) achieves a high level of amenity and safety for pedestrians and cyclists;
 - (e) meets the functional, and operational needs of the intended use; and
 - (f) allows for change and enables innovative design and adaptive re-use.
- (2) Encourage subdivision, use and development to be designed to promote the health, safety and well-being of people and communities by all of the following:
- (a) providing access for people of all ages and abilities;
 - (b) enabling walking, cycling and public transport and minimising vehicle movements; and
 - (c) minimising the adverse effects of discharges of contaminants from land use activities (including transport effects) and subdivision.
- (3) Enable a range of built forms to support choice and meet the needs of Auckland's diverse population."
112. We find policy (1)(a) somewhat confusing and circular for a plan change; inherently PC23 will enable its own planned built form outcomes as a "planned future environment" for itself. But if looked at in terms of how additional height could affect the settled and operative (in part) planned future environment of the land around the Site, including those where views of PC23's very tall buildings would be possible, then we do consider this to be a very useful filter to assess requests for additional building height limits such as PC23.
113. We have considered the detailed evidence, questioned the experts and reviewed the AUP: OP provisions for land around the Precinct for several kilometres. We find that there are no identified landform, environmental, viewshaft / landscape, historic heritage or other issues that include the Precinct or that would be undermined by development of the sort to be enabled by PC23, and we agree with the conclusions of Mr. Houghton, Mr. Goodwin, and Ms. Skidmore in those respects. On that basis we cannot see how we can conclude other than that the PC23 would not adversely impede the planned future "... *shape, landform, outlook, location and relationship to its surroundings, including landscape and heritage*" factors specified above in policy B2.3.2(1)(a).
114. Of greatest sensitivity to large-scale development are the residential zones. Around the Site, and in particular to the south (adjacency) and west (views across the Hauraki Gulf) rising up the Glenfield Road ridge, the predominant urban zones are the Mixed Housing Urban and Mixed Housing Suburban zones. These zones have similarly constructed policy frameworks. Where individual zone provisions (such as within the Mixed Housing Urban zone) describe additional building height, it is couched consistently in the language of managing effects on adjacent sites and nearby neighbours, not in terms of a more generalised protection of views or the avoidance of tall buildings when viewed from often several hundred metres (or more) away.
115. We find nothing within those zone frameworks that would suggest that development of the sort to be enabled within PC23 would preclude achievement of their specified

planned future environment outcomes. This is on the basis of the combination of separation distances, intervening land uses (excluding the Mixed Housing Urban-zoned land immediately south of the Site), and design controls proposed as part of PC23 – although there are relevant issues raised by the RPS policies at B2.4.2 (discussed later). We therefore again accept the Applicant’s and the Council’s experts’ conclusions.

116. In terms of policy (2), we find that clauses (b) and (c) would in particular be better served by enabling more rather than less development and building height within the Precinct compared to the status quo. We also find that clause (a), being more general in purpose, to be well served by PC23.
117. In terms of policy (3), we accept that PC23 could contribute to a varied built form that will help meet the needs of Auckland’s diverse population, noting that almost all residential accommodation in the vicinity of the Site is in the form of detached or semi-detached, 1-to-2 storey multi-bedroom houses.
118. The suitability of locations such as the Smales 1 Precinct to accommodate residential intensification is further reinforced by objective B2.4.1(3) and its supporting policy B2.4.2(2). The policies also helpfully identify those locations that are less suited (and in places not at all suited) to residential intensification, and this also in our view helps crystallise the AUP: OP’s strategy for managing density and, inevitably, the development intensity (bulk and height) that could reasonably follow.
119. Policies B2.4.2(8) to (10) address residential neighbourhood and character. We find policy (8) to be particularly relevant to PC23 and its effects on its wider environment:

“Recognise and provide for existing and planned neighbourhood character through the use of place-based planning tools.”
120. Recognition of the need to provide for both existing “neighbourhood character” as well as planned character, does raise questions of PC23 for residential-zoned land around the Precinct, particularly the immediate south, and west rising up to the Glenfield Road ridge. We will return to this later. But ‘place-based planning tools” would appear to be a relatively direct reference to methods such as Precincts.
121. Objective B2.5.1(2) stood out to us as we worked through what might be meant by earlier objective B2.3.1(1)(b) and how we might “reinforce” the “hierarchy” of centres and corridors specified. This follows through into its supporting policies B2.5.2(1) and (2). This is because similar language is repeated:

“Commercial growth and activities are primarily focussed within a hierarchy of centres and identified growth corridors that supports a compact urban form.”
122. This language does in our opinion tend to reinforce an interpretation that the hierarchy is at least as much (if not more) focused on the land use activities that are occurring as it is on built form height and scale. There is no corresponding RPS policy addressing residential intensification that refers so directly to reinforcing the hierarchy of centres and corridors through building height or controlling the magnitude of intensification enabled on any particular site. We note here that policy B2.5.2(2)(e) refers to the “...*character and form* [of development] *that supports the role of centres*

as focal points for communities and compact mixed-use environment". But this direction is specified as only applying to development within centres, not in locations other than centres such as Smales 1 Precinct. We therefore do not see it as being relevant for PC23. For completeness though, we record that policy B2.5.2(2)(e) in this instance refers to "the role of centres" generally, not the specific "hierarchy" of centres described in other policies. This means that even if PC23 was for a centre, we would be reluctant to read this policy as directing the use of building height limits as a means of visually distinguishing different categories of centres within the hierarchy. In other words, we do not consider that this policy would justify a reduction in the maximum height limit within the Precinct simply so that it was lower than the height limit provided in other 'higher order' centres (distinct from a consideration of the practical environmental capacity to accommodate intensification). We are satisfied that PC23 will not detract from the role of any relevant identified centre zone to function as its intended focal point, and because of this we therefore accept the evidence of the Applicant's and the Council's experts.

123. By way of overall summary of the "quality compact urban form" sought for Auckland, B2.9 of the RPS sets out the explanation and principal reasons for the provisions. Of note are the following excerpts:

"A broad strategy is needed to address the resource management issues arising from the scale of urban growth in Auckland. The objective of a quality compact urban form is supported by a primary policy approach of focusing residential intensification in and around commercial centres and transport nodes and along major transport corridors."

- ... *"A quality built environment is one which enhances opportunities for people's well-being by ensuring that new buildings respond to the existing built and natural environment in ways that promote the plan's objectives and maintain and enhance the amenity values of an area. In most areas this is regulated by permitted standards and by assessment where those standards are exceeded. In centres and where higher intensity development is enabled, the design and appearance of buildings is generally assessed on a restricted discretionary basis."*

124. Accepting that an explanation has a lesser statutory role than a stated objective or policy, this description is in line with the picture we had arrived at by reading the provisions directly and what was described to us by the planning witnesses. In terms of PC23, it is in line with where the AUP: OP signals higher intensity development is appropriate and it includes provisions to manage commercial and retail development in line with specific requirements that this type of development relate to the identified hierarchy of commercial centres in the locality. It proposes higher intensity development and as part of that relies on assessment of the design and appearance of buildings on a restricted discretionary activity basis.

125. We see nothing within the RPS that would discourage or prevent the enabling of development to the maximum heights of PC23 as restricted discretionary activities subject to the resource consent process.

126. Based on the above, and also in recognition of the expert planning analysis provided to us by Mr. Smith, Mr. Patience and (at the Hearing) Mr. Turbott, we accept that the AUP: OP does not seek to discourage or avoid propositions such as PC23, or the enablement of substantial building heights provided that they meet the various

qualifications identified in the RPS policy framework. With the exception of two specific matters that warrant further consideration, we find that the balance of the RPS outcomes can be met by rezoning the land for development generally along the lines promoted by PC23 (including subject to the refinements we have identified are necessary to that).

127. The two possible governors of development scale relevant to PC23 within the RPS are:
- a. objective B2.3.1(1)(b) and its direction that development reinforce the hierarchy of centres and corridors; and
 - b. policy B2.4.2(8) and its direction that existing “neighbourhood character” be recognised and provided for.
128. In terms of objective B2.3.1(1)(b) and as summarised earlier, it could be interpreted that development height and scale should be managed so that visually and across the city, viewers could identify each zone, and the category or each type of centre, by the relative heights and scales of buildings therein. We accept that in large part this is a characteristic that generally exists today – the Central City, key Metropolitan Centres and major Town Centres often do ‘stand out’, largely because historically so little of Auckland’s urban area has exceeded 2-to-3 storeys in building height or included stretches of continuous (joined together) building forms. In the absence of any guidance within the AUP: OP to the contrary, we accept that this is one relevant function of the objective, although as noted earlier we have come to the view that reinforcing the hierarchy of centres and corridors is primarily focused on managing the distribution of commercial and retail activities.
129. We have determined that it would be artificial to apply the AUP: OP in so prescriptive a manner that development potential in centres or other locations identified as suitable for intensification would be artificially capped or limited purely so that aesthetically the centre or area would look smaller than other alternatives ‘higher up the ladder’. That flies in the face of the enabling intent that we see as imbued across the RPS policy framework, and would elevate the AUP: OP’s built form development standards to an architecturally prescriptive master plan for Auckland. It would also preclude natural or market forces naturally evolving centres, such that in time a Local Centre might grow into a Town and then Metropolitan Centre, or vice versa. We see the community focal point role that centres are based on as being something that emerges from the context and functioning of those communities, not the applicable height limit.
130. On this basis, we are satisfied that the evidence of Mr. Smith, Mr. Patience and Mr. Turbott has properly and comprehensively evaluated PC23 and we accept their conclusions.
131. We therefore find that the comparative height and scale of development in different centres and locations to be one relevant characteristic of how the AUP: OP hierarchy of centres and corridors should be “reinforced”, but alone it cannot be the determinative one; there will be instances of where a ‘lower’ centre or location can and will accommodate larger-scale development than a ‘higher’ one, and still contribute appropriately to the AUP: OP’s quality compact urban form.

132. We find that plan provisions enabling development at or near the limits of the development standards identified in PC23 in combination with the anticipated land use mix would give the Precinct a built form character (but not necessarily function) of a large centre, something between a Town or a Metropolitan centre. We are satisfied that this would complement rather than detract from or adversely affect, the opportunity for Northcote, Milford and Takapuna centres (and for completeness Glenfield and Sunnynook Town centres) to also intensify and function as planned within the AUP: OP. On that basis, PC23 would not reinforce the hierarchy of Town and Metropolitan centres adjacent to it from the point of view of being aesthetically subordinate to or 'smaller' than them, but we find that this is neither necessary nor disqualifying. PC23 will not seek to replicate or duplicate the community focal point roles of those centres, the services and functions they provide their communities, or prevent them from still attracting the development planned for them. We are satisfied based on the economic evidence of Mr. Fairgary and Mr. Cosgrove that PC23 will not be a competitor to existing centres in any relevant respect, and it is the proposed limits on retail, commercial services and entertainment activities that is primarily relevant here.
133. In terms of policy B2.4.2(8), there is no definition of "neighbourhood character" within the AUP: OP, but we find it materially important that the AUP: OP uses that phrase rather than "residential character" or "residential amenity" – either of which alternatives could be applied at the scale of an individual property. When looked at from the point of view of the key characteristics of overall neighbourhood character around the Precinct, we accept that PC23 would result in visually substantial changes visible from within, but an overall maintenance of that collective character except for the residential land west of the Precinct rising up and to the ridge of Glenfield Road ridge. For that land, the neighbourhood character is indelibly linked to a visual connection east across the valley floor to the Hauraki Gulf, and Rangitoto. This is not in our judgement such a critical character element as to require protection from any development height or bulk within the Precinct, but we consider that PC23 would play a role in conjunction with planned large-scale development in Milford Town and Takapuna Metropolitan centres, and possibly also the North Shore Hospital Site, that if not managed could lead to an unacceptable detractor from that character value – such as if cumulatively a more-or-less cluttered or continuous line of tower forms screened much of Rangitoto, especially its summit, across a wide area. We find that additional assessment provisions need to be added to PC23 to adequately address this risk, and we will discuss this in more detail later.
134. But overall, we have come to the conclusion that at the level of the RPS:
- a. Smales 1 Precinct is very well suited to large-scale residential intensification and it qualifies for such enablement following the AUP: OP's direction for where residential intensification should occur;
 - b. propositions for building height limits of the scale proposed in PC23 are not inherently discouraged or contrary to the AUP: OP; and
 - c. PC23 is generally in alignment with the relevant provisions of the RPS governing built form outcomes and the management of higher intensity development.
135. We discussed with Mr. Allan why the height limits proposed were necessary, and in

particular what benefit a 'complying' building would have compared with one that exceeded the proposed standards; both would after all be restricted discretionary activities.

136. Mr. Allan was very clear in his responses to us that a building complying with the proposed height limits would not be akin to a permitted baseline and could not be said to be 'generally anticipated'. Based on an overall assessment, proposals that complied with the height limit could be refused, we were told. Granting PC23 would therefore not have the effect of signaling that buildings to the limits of the development standards enabled in the plan change were a fait accompli, in his view. We tested this with Mr. Allan extensively from the point of view of the legal requirements of restricted discretionary activities and the practical every-day administration of the AUP: OP. We note that the expert planning and design witnesses each expressed similar opinions to Mr. Allan.
137. We largely accept Mr. Allan's legal opinion on the function of restricted discretionary activities. Simply because discretion has been restricted to certain matters within a Plan, there is no proper basis to presume that the granting of consent will readily follow, if at all. But it would in our view be equally artificial to presume that a restricted discretionary status by itself meant that the planning outcomes broadly envisaged for the land were uncertain and could only be determined by single case-by-case questions of merit.
138. What is ultimately determinative of predicting the probability of an application being granted consent is the extent and scope of the restrictions of discretion that apply in each case. Hypothetically, if discretion was restricted in a Plan only to the matter of ground floor design and layout, then in that instance a building that complied with the applicable bulk, scale and form controls could in all likelihood not be refused consent because of the effects of that bulk, scale and form. In such a scenario, we would take the view that the relevant bulk and location controls, being beyond any restriction of discretion, did form a de facto planning baseline that could be fairly described as at least 'generally anticipated' if not outright permitted. In that scenario, we would expect the promotion of sustainable management generally, and section 31(1)(a) of the RMA specifically, to require decision makers to be satisfied at the plan-making stage that the effects to be enabled within those standards, and which would not be subject to any subsequent restriction of discretion, would be in every reasonably foreseeable instance acceptable.
139. Conversely and hypothetically, where every plausible potential adverse effect associated with building bulk, location and height was accounted for in the restrictions of discretion, then we would agree with Mr. Allan's view of PC23 that no such anticipation or certainty could exist. The decision making test at plan-making would pivot away from the specific outcomes likely, to the sufficiency of the restrictions of discretion themselves at addressing all relevant potential effects at the time of consent.
140. We find, based on the descriptions, assessments and recommendations made on behalf of the Applicant that PC23 has been promoted on the basis that all relevant effects associated with the height, form, scale and appearance of tall buildings complying with the proposed standards would be managed by way of restrictions of

discretion. On that basis, we find that our focus should be on ensuring that the restrictions of discretion that would apply are sufficient to manage all relevant adverse effects that buildings of the heights and scales proposed could give rise to.

141. We consider it critically important that we are clear what target we should aim for, and for that reason the proposed restrictions of discretion for buildings taller than RL50.4, but which comply with PC23's development standards, have been of great significance to us.
142. We have been mindful of the expert evidence we received from Mr. Houghton, Mr. Goodwin and Ms. Skidmore, and to a lesser extent Mr. Mackie. We regard each of these witnesses as very experienced and credible. They were in agreement that the effects of tall buildings enabled by PC23 could be appropriately managed by the combination of development standards proposed and the restrictions of discretion and assessment criteria that would apply to subsequent proposals.
143. We largely accept the evidence of the expert witnesses for the Applicant and the Council, and are of the view that the proposed PC23 policy framework, development standards, restrictions of discretion and assessment matters are largely well-suited and appropriate.
144. However, we have identified two areas that PC23 does not appropriately respond to. They are:
 - a. compliance with the maximum building height standard but non-compliance with the standards specifying the maximum width of towers above RL98.4; and
 - b. potential visual clutter effects from the west (the rise and crest of Glenfield Road ridge) arising from the potential cumulative effects of PC23 buildings visually connecting potential (and planned) taller buildings in Milford Town Centre and Takapuna Metropolitan Centre – and possibly also future buildings on the North Shore Hospital site into one long row of towers screening and possibly blocking iconic views of Rangitoto. As noted earlier, we have identified this concern in part based on our reading of RPS policy B2.4.2(8).
145. In terms of proposed rules I538.6.4(3) (building height) and I538.6.5 (maximum tower dimension and building separation), we agree with PC23's explicit provision of development standards to manage the upper sections of very tall buildings. An identified purpose of the height rule in the Precinct, as per the 19 December 2019 version of the provisions, is:

“Ensure the terminations of tall buildings are designed to provide a varied skyline.”
146. Achieving a varied skyline lacks clear reference within the PC23 policies, and no assessment matters or guidance was proposed for the case of non-compliance. The tower dimension standard's purpose itself complicates matters in that the rule does not require each building to reduce its footprint above RL98.4, only in a cumulative way across the Precinct as a whole. We find this situation unacceptable and that achieving a visually smaller footprint for the upper sections of very tall buildings essential within the Precinct. As proposed, an applicant for consent under PC23 could elect to simply not comply with standard I538.6.5, and instead seek to demonstrate an

alternative means of delivering a cumulatively “varied skyline”. Several towers in the Central City with no appreciable reduction in footprint serve as examples of how a cumulatively ‘varied skyline’ could be created. Some, rather than softening the upper termination of buildings into the skyline, draw the eye and exacerbate the building’s height and mass. Because the purpose of the standard is the only part of the Plan that would give any context or expectation for this design requirement, it is plausible that this could be alternatively argued simply as happening naturally as a result of the different building heights within the Precinct.

147. Neither scenario would be appropriate. We have added provisions purposed to ensure relevant adverse effects will be managed and so as to make clear that a varied skyline is to be achieved in part by requiring buildings above RL98.4 that do not comply with standard I538.6.5 to present a visually obvious reduction in footprint compared to the building mass below. This would make it clearer, in our view, that any non compliance with the standards would not result in a loss of this important design attribute.
148. In terms of visual clutter, the material presented at the hearing of an indicative built form outcome, well within the limits of the proposed development standards, tended towards the buildings within the Precinct forming a singular focal point, whereby the taller buildings clustered together into a pinnacle. When we discussed the issue of a focal point or clustering with the experts, each agreed that it was appropriate.
149. The additional information we requested for viewpoints 15, 16, 20 and 21 showed the indicative building footprints extended vertically to the limits of the development standards. We find that this presented a different characteristic of visual effects, being the potential creation of a line of tall buildings across the front of Rangitoto, especially from viewpoint 16 (Glenfield Shopping Centre). We have serious concerns that a line of buildings in front of Rangitoto, including the combination of development enabled in PC23, and the existing planned built form outcomes for Milford and Takapuna centres, and reasonably foreseeable development on the North Shore Hospital site, could create an unacceptable line of stand-alone towers between a large part of central North Shore and the iconic visual connection it has with Rangitoto across the Hauraki Gulf. We do not agree that this matter should be left to the resource consent process without additional guidance within the Plan provisions as to what outcomes are sought. When we questioned the design witnesses on the matter of how tall buildings could or should occur within the Precinct, all agreed that some form of clustering was desirable. This was an important distinction to us.
150. We find that such adverse effects would not be appropriately managed through the PC23 provisions as proposed and as a result we have added provisions so as to require taller buildings (above RL50.4) to be managed to achieve a clustering of buildings and creation of a singular focal point within the Precinct. By doing so we consider that the adverse effects of a potential building wall along the front of Rangitoto can be avoided, with each of the identified centres, North Shore Hospital, and the Smales 1 Precinct each presenting as its own separate and contained node of development. We regard this visual separation of the different development areas also a relevant tool to help visually “reinforce” those centres. It would also achieve the legibility of the Precinct as a singular transit-oriented node that was recorded by Mr. Patience as an important planning outcome.

151. In summary, we have identified additional and otherwise refined policies, restrictions of discretion, and assessment matters to address these issues and we are satisfied we have the scope to add these to PC23 on the basis of those submissions expressing concern with the scale and effects of tall buildings enabled by PC23.
152. For buildings that did not comply with the PC23 height limits (and related built form controls), a restricted discretionary activity would be required. Discretion would be restricted to all of the matters stated in PC23 for the 'complying' part of the building, and for the non-complying part AUP: OP chapter C1.9 would apply. That allows, in addition to the matters set out in PC23, a number of additional requirements. As it relates to the effects of building height and scale, we are satisfied that the effect of C1.9 would be practicably indistinguishable from if consent were simply required for a fully discretionary activity. On that basis, we are satisfied that no further analysis is required and we can record that we see the building height and related development standards having a clear purpose to differentiate between the alternative restrictions of discretion and assessment matters that would apply to applications.
153. Overall, we therefore find that the building height, form and design provisions, as we have modified them, represent the most appropriate means of enabling the outcomes proposed in PC23 within the AUP: OP.
154. Submissions including further submissions related to the height, scale and design of buildings within the Precinct are either accepted, accepted in part, or rejected in accordance with this decision.

Are transportation issues suitably addressed?

155. Issues were raised on a broad range of transportation matters by submitters and further submitters in regard to the notified version of the Plan Change. However, by the time of the Hearing, the main transportation matters remaining in contention had narrowed considerably. In fact, agreement had been reached by the Applicant and NZTA, Auckland Transport and the DHB as to how to address the transportation concerns of those parties.
156. We understand that this narrowing of issues is due to a number of meetings being held between the Applicant and the above parties. The Commission acknowledges the benefit this has brought to our deliberations in being able to focus our attention on a more discrete area of contention.
157. The main remaining key area of contention on transportation issues is therefore the question of a parking maximum for residential activity. The Council's traffic engineer, Mr. Dayaram, expressed the view in his report on the Plan Change, which he confirmed at the Hearing, that he considers residential use within the Precinct should be subject to a maximum parking rate. This differs from the view of the Applicant's traffic engineer, Mr. Parlane, supported by Mr. Harries, that a parking maximum for residential use is neither necessary nor appropriate. We note that Auckland Transport and NZTA, which in their submissions had requested a maximum parking rate for residential use, had in their evidence changed their views on this matter to one of no longer considering a maximum necessary.
158. Another outstanding matter is the concern raised by Westlake Girls High School,

spoken to by Board of Trustees Chair Ms. Bradfield, regarding traffic impacts on Shakespeare Road and how these might negatively affect the ability of parents to complete school pick-ups and drop-offs.

159. Below we consider these two areas of contention. However before doing so, given the importance of transportation matters in this Plan Change, we briefly summarise traffic concerns on which agreement between those submitters who attended the hearing has been largely reached.
160. A common theme across submissions and further submissions was a high-level concern about increased congestion from development enabled under the Plan Change adversely affecting the safe and efficient operation of the road network. Other matters, which have now largely fallen away as areas of contention, covered the range from generally thematic to very detailed. These included:
- how to encourage a mode shift away from private car to public transport use over time;
 - the importance of discouraging high vehicle trip generating land uses;
 - effects on strategic transport infrastructure, such as access to Smales Farm station;
 - provision for active modes of transport through the Precinct, such as cycling;
 - the appropriate development threshold or trigger for an integrated transport assessment; and
 - the appropriate maximum level of parking for non-residential developments.
161. On the broad theme of congestion, there was general agreement with the Applicant in the Council's s.42A report and in submissions and evidence of NZTA, Auckland Transport and the DHB that, at a principled level, the site is well positioned for intensification at the scale proposed. Furthermore, while there would be increased levels of congestion on the surrounding road network, this is an inevitable consequence of the compact city model of growth the region has decided to pursue. The concern of NZTA, Auckland Transport and the DHB, in particular, was two-fold:
- whether the traffic assessment that had been undertaken to demonstrate that this congestion was of a level that could be appropriately managed was sufficiently robust; and
 - whether the Plan Change provisions encapsulated the appropriate mechanisms to undertake this management.
162. All these parties confirmed at the Hearing that these matters, namely the modelling that had been undertaken to assess traffic effects and the particular provisions within the Plan Change to manage these effects, had been developed and modified to their satisfaction.
163. Mr. McGarr, on behalf of the DHB, noted how it had worked together with the Applicant, NZTA and AT to develop and assess a traffic model to determine the combined traffic effects generated by development enabled by the Precinct and planned by North Shore Hospital. He confirmed that the DHB's assessment of the traffic model shows, to the satisfaction of its traffic experts, that the combined level of

traffic which would be generated by both development planned by the Hospital and that proposed by the Plan Change could be accommodated on the road network in a manner which would enable the Hospital to continue to perform its critical social infrastructure role. Additionally, that vehicle access to the Hospital could continue to operate in a safe and efficient manner.

164. As it relates to the concerns of Westlake Girls High School, we are satisfied that Auckland Transport will be able to properly manage the road network so that it operates safely and efficiently. We have not been convinced that the School will be subject to inappropriate or unreasonable effects, and we must note in all fairness that the Smales 1 Precinct has no less freedom to allow visitors to drive to its Site than the school does; we cannot as we see it allocate road capacity.
165. The remaining transportation issue we therefore find ourselves needing to determine is the matter of a parking maximum for residential use, as this remains in contention between the Applicant and (in part) Auckland Council.
166. Mr. Dayaram's view, expressed in his report on the Plan Change application, is that while he agrees with the Applicant's experts that the trip generation of residential activity is not significant:
- the lack of a parking restriction for this use does not seem appropriate to a TOD environment; and
 - as noted earlier, a concern that potential surplus residential parking could be leased-on to non-residential workers in the Precinct, undermining use of public transport.
167. Extensive commentary was provided in the EIC of Mr. Parlane, which focused exclusively on this matter, as to why a residential parking maximum is not appropriate in the Precinct. This was supported by the EIC of Mr. Harries and expanded upon by both at the Hearing. Their reasons include, in summary:
- Managing private vehicle trips during the morning and evening commuter peak periods is a resource management issue. Office activities generate most of these trips and the most effective means to manage this has been shown to be placing restrictions on parking near office commuter destinations.
 - There are no measurements or evidence that restricting parking associated with housing means people will make fewer trips by car.
 - Providing a parking space at home simply enables a car to be left there when it is not in use. It does not equate to a higher level of car use than if a car parking space were not provided.
 - While a residential parking maximum applies in the City Centre zone, the development enabled by the Plan Change is more like that found in a Metropolitan Centre zone or Town Centre zone. Neither of these zones have standards limiting residential car parking.
 - Mr. Harries also opined that, based on his experience, it was economically infeasible for developers to provide more car parking than they needed to because of its high costs (including spatial opportunity costs).
168. On this matter, we also found the views of Auckland Transport traffic engineer Mr.

Phillips helpful. He stated at the Hearing that enabling people who may own cars to live in the Precinct provides a stronger opportunity for residential development in the short to medium term and that this is of overall benefit for the desired long-term outcome of a high-density mixed use node adjacent to a significant public transport facility.

169. Having considered the views of the various experts and the respective strength of their arguments, we find that no residential parking maximum rate is needed. While we acknowledge Mr. Dayaram's concern regarding potential surplus residential parking be leased-on to non-residential workers within the precinct, we consider the possibility of this is insufficiently proven, and of low likely severity.
170. Overall, we therefore find that the transportation-related provisions, as we have modified them, represent the most appropriate means of enabling the outcomes proposed in PC23 within the AUP: OP.
171. Submissions including further submissions related to transportation associated with the Precinct are either accepted, accepted in part, or rejected in accordance with this decision.

Are retail and commercial requirements suitable?

172. A central matter in contention between the Applicant's economic expert Mr. Colegrave and the Council's economic expert Dr. Fairgray in the lead-up to the hearing was on retail distribution effects. Specifically, the question of what level of retail and supporting uses could be appropriately established within the Precinct to serve the needs of residents, workers and visitors while managing potential adverse effects on centres, consistent with the AUP: OP's centres hierarchy? Given the emphasis placed within the RPS on reinforcing that hierarchy (discussed earlier in this decision), it was a matter of central importance to the planning witnesses too.
173. The Plan Change provisions propose to manage this matter through standard I538.6.1 Gross Floor Area which, as notified, set up a maximum threshold of 2,000m² plus an additional 500m² GFA for retail, commercial services and entertainment activities per 10,000m² GFA of other activities, increasing on that basis.
174. Mr. Colegrave considered that there would be no problematic adverse retail distributional effects resulting from retail and supporting activities occurring at the rate and threshold prescribed in the standard. Dr. Fairgray, however, was of the view that Mr. Colegrave's analysis was optimistic and that there could be implications for existing centres at the proposed thresholds. He therefore recommended that the thresholds be halved.
175. At the Hearing, as outlined in Mr. Allan's legal submissions and in response to discussions with NZTA and Auckland Transport, a new version of the Precinct provisions presented a modified form of standard I538.6.1. This retained the ratio of 2,000m² plus up to 500m² GFA of retail, commercial services and entertainment activities per 10,000m² GFA of other activities, but introduced a reduced ratio above 162,000m² total GFA, of 250m² GFA retail, commercial services and entertainment activities per 10,000m² GFA of other activities. In summary this would enable 18,000m² of retail, commercial and entertainment GFA when the Precinct had

162,000m² of other GFA.

176. These revised provisions met with greater agreement from Dr. Fairgray, but he still considered there was a need for a cap within the Precinct less than sought by the Applicant.
177. Our questions of the two experts identified that both agreed the proposed Precinct would and should have a role as a centre (as used within the AUP: OP hierarchy). They both agreed that in terms of that hierarchy, the Precinct's function would be as a "Local Centre", being subordinate to Town and Metropolitan Centres, but greater in magnitude than a Neighbourhood Centre.
178. While looking at all centre zones together it is obvious that there is a general trend of size and scale from, at one end, a corner-shop Neighbourhood Centre, to the Central City at the other end. But when looking at the specific merits of an individual proposal, we find the lack of an objective or quantifiable means of classifying centres within the AUP: OP most unhelpful. Specifically, how large should a Local Centre zone (and/or its activities) be before it is properly and more appropriately regarded as a Town Centre zone (and vice versa), and why? We imagine that provision for large retail shopping centres and retail more generally can only be one aspect of this difference.
179. We determined to evaluate Mr. Colegrave's and Dr. Fairgray's evidence with the benefit of a real-world glimpse at centres across Auckland to help us grapple with the differences between the different types of centres - notably between Local Centres and Town Centres. What we identified is that 'on the ground' the various centre zone categories are in all manner of sizes, locations, shapes and scales. Some Town Centre zones (such as Parnell or Browns Bay), through the application of a special height overlay, have reduced maximum building height limits at or lower than many Local Centre zones (such as Mission Bay). Some Local Centre zones (such as at Hobsonville Village) are of a much larger area than some Town Centre zones (such as Sunnynook). Some Town Centre zones (such as Onehunga, Mt Albert, and Three Kings) are closely spaced, whereas in some areas (Hillsborough Road Local Centre zone), there are no Town Centre zones within any meaningful proximity.
180. We accept that there are many local differences that all together inform how a centre zone relates to its area, including historic and built form character considerations. But the lack of any obvious logic or consistent and stated principles underpinning how the Council has classified and distributed the different types of centres within the identified hierarchy, or specifically what it is trying to achieve by classifying a centre zone 'one way or the other,' is problematic given how important they are in the scheme of the RPS' urban growth strategy.
181. We ultimately find that we can do no more than satisfy ourselves that the centre function within Smales 1 Precinct will be subordinate in scale (including in terms of horizontal extent) and function to relevant Town Centre and Metropolitan Centre zones, and in that respect the evidence focused on Milford and Takapuna centres. On the evidence we have received, we are satisfied that this will be the case and we accept the Applicant's proposed GFA limits. Although Dr. Fairgray remained concerned that this was excessive, his evidence did not provide us with clear reasons or an explanation of what harm might come to other centres, or that the scale and size proposed by the Applicant was unreasonable or inappropriate for a Local Centre zone

generally. We were left unclear as to how the effects likely at the scale of activity sought by the Applicant, would be avoided (or perhaps mitigated) at the reduced scale preferred by Dr. Fairgray.

182. Related to and as a part of this, however, is the location and character of retail, commercial services and entertainment activities within the Precinct. The economics experts were asked several questions on this matter by the Commissioners.
183. The question was posed as to whether retail, for example a supermarket, might best be placed towards the internal 'centre' of the Precinct, as opposed to on the Precinct's external street frontages, in order to achieve a primary purpose of serving the needs of the Precinct's residents, workers and visitors, rather than a wider catchment. We also asked whether more than one supermarket might occur, such as one relating to Northcote Road, and another relating to Taharoto Road. We record that while we were given assurances from the Applicant that it could not imagine developing its Precinct in this manner, we were given few helpful answers explaining either how this could not occur, or what effects might result if it did. Given that we are obliged to evaluate the proposed Plan provisions put to us, and that they did allow more than one supermarket and no guidance as to how or where it (or they) might be located, we find the Applicant's case was less convincing on this matter.
184. These questions, expanding to a wider discussion about the location within the Precinct of retail generally, and its potential benefits in activation of the central pedestrian plaza and primary pedestrian links, was also put to the urban design experts.
185. Dr. Fairgray expressed the view that a retail mass could be expected to develop around the pedestrian plaza to serve a future residential population and that such a central grouping of retail was desirable in order for it to be accessible to the greatest number of people in the Precinct. Ms. Skidmore agreed that centrally located retail would help activate the primary linkages and plaza. However, she considered that requiring the length of those spaces to be edged by 'active' frontages was not realistic, in the context of the level of retail and supporting uses the Precinct could sustain.
186. The economics and urban design experts were also asked if it would be relevant or appropriate to allow a quantum of retail and supporting activities in line with the Applicant's proposed total thresholds to be delivered earlier than the threshold requirements in I538.6.1(2) being met (i.e. allowing retail and associated entertainment GFA to be delivered 'ahead' of the triggering other activity GFA). Both Dr. Fairgray and Ms. Skidmore agreed that there would be merit in allowing some flexibility in this ratio to enable retail to establish around the central pedestrian plaza at the time it was developed and at an earlier stage than would otherwise be permitted by the thresholds in the standard. This would result, as we see it, in a range of benefits, from supporting increased residential and office activities to securing retail in a highly accessible, central location in the precinct.
187. On the basis of this discussion, we find that the location and coordination of retail, commercial and entertainment activity within the Precinct to be inextricably linked to the achievement of the built form outcomes promoted by the Applicant, including in the TOD guidance we were given by Mr. Houghton and that we were told strongly guided PC23. The expert opinion received in response to our questions consistently

confirmed that a spatial relationship with the central plaza would be most appropriate and we accept that. We also find that management of how and where retail, commercial and entertainment activities locate within the Precinct relevant to our conclusion as to the overall scale and form of development that is most appropriate, and how it will assuredly reinforce the centres hierarchy as required by the RPS.

188. We have made amendments to the Precinct provisions in order to focus the location of retail and supporting activities generally around the centrally accessible pedestrian plaza, without requiring them to establish directly on the plaza, and to enable the establishment of these activities, where they are centrally located, to a maximum threshold in advance of the ratio in I538.6.1. We have also clarified the activity provisions to confirm that one supermarket would be appropriate within the Precinct given that this zone and precinct combination applies to a single area rather than generically across Auckland in multiple locations. These amendments are discussed further in the next section.
189. Overall, we therefore find that the retail, commercial service and entertainment activity provisions, as we have modified them, represent the most appropriate means of enabling the outcomes proposed in PC23 within the AUP: OP.
190. Submissions including further submissions related to the provision of retail, commercial services and entertainment activities within the Precinct are either accepted, accepted in part, or rejected in accordance with this decision.

What is the most appropriate wording for specific Plan provisions?

191. We find that some amendments are necessary to the PC23 provisions. These amendments fall into three camps – amendments necessary:
- a. where there remains disagreement between Mr. Turbott and Mr. Smith;
 - b. based on our findings on the issues in contention set out previously; and
 - c. to improve the overall workability and readability of the provisions and enable the consistent administration of the AUP: OP.
192. **Appendix 1** to this decision attaches a full copy of the Smales 1 Precinct provisions incorporating our findings on all necessary changes to the provisions. The version of the provisions we have used for this purpose is that received from the Applicant dated 19 December 2019.
193. Below, we discuss details of all amendments made to the 19 December provisions, as contained in Appendix 1. Where reference is made to specific numbering of a provision, the numbering is that which is used in the appendix, reflecting some necessary reformatting we have undertaken.

Amendments necessary where there remains disagreement between Mr. Turbott and Mr. Smith

194. At the adjournment of the Hearing, Mr. Turbott undertook to provide suggested track changes on the version of the PC23 provisions as contained in Mr. Allan's legal submissions. This was at our request, in order that the Council might have the

opportunity to provide further comment on this latest set of provisions. Mr. Turbott subsequently provided to the Commission a marked-up version dated 18 December 2019, with some suggested changes to the wording of the provisions, also with annotated comments giving his reasoning for the changes.

195. Mr. Turbott's mark-up of the provisions was then provided to the Applicant for its response. On 19 December 2019, the Applicant provided to the Council a version of these provisions with track changes and annotated comments from Mr. Smith indicating whether he agreed or disagreed with Mr. Turbott's changes.
196. There remained some areas of disagreement between Mr. Turbott and Mr. Smith in that 19 December 2019 version of the provisions. It therefore falls to the Commission to come to a finding as to the appropriate wording in those areas where there is still disagreement, as we discuss below.

Precinct description: Transit Oriented Development

197. A topic of in-depth discussion at the Hearing was the appropriateness of the use of the term 'Transit Oriented Development (TOD)' in PC23 provisions as a short-hand means to describe both the existing attributes of the Site and the outcomes that development within it should aim to achieve. The term is used in the Hearing version of the provisions in the Precinct description, objective 2, and assessment criterion I538.7.2(3)(c).
198. Mr. Turbott favours deletion of the term throughout the PC23 provisions on the basis that 'TOD' is a technical term not used in the AUP: OP. In the Precinct description he suggests its replacement with a plain English alternative, such as 'high-density mixed-use'. Mr. Smith disagrees and considers there is no need to change the terminology, as Transit Orientated Development is an internationally recognised form of development.
199. As we identified earlier in this decision, the Commission's Members are each very familiar with the theory and principles of TOD-based planning. We also had the benefit of hearing the views of a range of expert witnesses on the TOD attributes of the Site and the use of the term in the PC23 provisions. A unanimous area of agreement amongst all witnesses was that the Site has the attributes that support the future development of a TOD. There was also general agreement amongst all planning witnesses that it is appropriate and desirable for the Precinct provisions to be framed such that they enable high-density development in line with TOD principles.
200. The question in contention may therefore be refined simply as, if the Precinct provisions are robustly drafted to encapsulate the attributes of a site that may contribute to a future TOD and the mechanisms to achieve TOD outcomes, is it then necessary to use the term TOD, or is the phrase somewhat redundant?
201. When this question was put to the various planning witnesses, Ms. Heppelthwaite confirmed her view that the Site displays the attributes of a TOD and that it would therefore be appropriate to use the term within the provisions. Mr. McGarr considered that while the Site has the attributes of a TOD, the use of the term is not necessary, provided the provisions express within them the characteristics and outcomes sought.

202. Several questions were also asked of the expert witnesses in regard to whether the attributes of a TOD are the same as the attributes of a centre and whether there are any definable differences. Our questions on this matter were focused on the 'fit' of a TOD as a discrete category of land use outcomes within the AUP: OP with the existing structure and framework of the AUP: OP, particularly the centres-based approach of the RPS.
203. We found the advice of Dr. Fairgray on this matter to be helpfully succinct. He conveyed his view that the Site has the attributes of a TOD. To that, he added that those attributes are also those of a centre. Furthermore, he considered that a TOD cannot be clearly distinguished from a centre, as all centres have a TOD function as a 'concentrator' of people and activity.
204. Noting this expert opinion that a centre cannot clearly be distinguished from a TOD, we are mindful of the risk of introducing this term into the AUP: OP, where it does not currently exist, via the PC23 provisions. Our focus, however, has been on the framework that the AUP: OP currently uses to frame up areas with TOD-like attributes – namely, centres, where adjacent to public transport corridors, and where there are community facilities and employment opportunities. With this in mind, we find no need or utility to describe the Precinct as a TOD when there is already appropriate terminology within the AUP: OP available. Respectfully to some of the expert witnesses we heard from, the concept of TOD is not only compatible with the approach taken in the AUP: OP, it fundamentally underpins its urban growth strategy. We also consider that whilst the site has the attributes that would support a future TOD it is not currently functioning as a TOD.
205. We consider that ensuring the provisions focus on appropriately describing the characteristics and desired outcomes of a TOD (on which point, there appeared to be general agreement amongst the expert witnesses) is more efficient and effective, in the context of the overall structure of the AUP: OP, than the use of term within the provisions themselves.
206. We therefore find that a term along the lines proposed by Mr. Turbott is most appropriate, being 'high-density, public-transport focused, mixed-used node.' While somewhat lengthy, we find that this term more efficiently imbues the characteristics of the Site that make it suitable for high-density development of the scale proposed than the generic term 'TOD'.

Objective 2: Transit Oriented Development

207. Objective 2 uses the term 'TOD' to describe the Precinct. Mr. Turbott questions its use and suggests it is repetitive, in the context of the objective also describing the Precinct as being a 'dynamic transit-oriented employment node. Mr. Smith provides no response to this comment. We agree with Mr. Turbott that the use of the phrase is repetitive. Furthermore, in the context of our discussion on the use of 'TOD' in the Precinct description, above, that its use, and the similar term 'transit oriented employment node' within the Precinct provisions overall is unnecessary. We therefore find that these terms should be deleted from this objective and replaced with the term 'mixed use and passenger-transport based node'.

Objective 4: 'manages significant adverse effects'

208. Mr. Turbott is of the view that the use of the phrase 'manages significant adverse effects' should be deleted from objective 4, as it is vague when used in the context of this provision. He considers it should be replaced with 'reduces its adverse effects', in regard to the Precinct's effects on: (a) the safe and efficient operation of the transport network; (b) the amenity of neighbouring zones and sites; and (c) the function and amenity of Metropolitan or Town Centre zones. Mr. Smith does not agree with the replacement of 'manages significant' as he considers this is a commonly used RMA term which means 'avoids, remedies or mitigates.' Mr. Smith is of the view that 'reduces' is a vague term as it begs the question 'reduces from what?' We find that Mr. Smith's preferred wording is equally susceptible to that particular criticism.
209. We agree with both Mr. Turbott and Mr. Smith to the extent that we consider both phrases they favour, for the reasons they specify of each other, to be vague within the context that they are used in this objective. We received substantial amounts of evidence on the gravity of potential effects of development of the Precinct on the safety and efficiency of the transport network surrounding the Precinct, the amenity of the wider area, and the role of nearby centres. It is evident to us that the Precinct's relationship with these elements and features is of a high level of importance. This leaves us with the task of finding an alternative wording that is not vague in its meaning and fits the importance of the outcome the objectives seek to encapsulate.
210. We find that the term 'limits' most appropriately fulfils this function and is consistent with the evidence that was put before us by the Applicant and submitters.

Exception to policies H15.3(18), clauses (b) and (c)

211. In the plan change application, the Applicant proposed changes to clause (b) and (c) of policy 18 of the Business Park zone. Policy 18 sets out requirements for plan changes for any new business park or amendment to the provisions of an existing business park. Clause (b) of the policy requires that the plan change limit retail to those services such as food and beverage and convenience goods which meet the day to day needs of workers and visitors to the zone. Clause (c) requires that the plan change limit residential activity except for visitor accommodation.
212. The application requested an amendment to clause (b) so that retail would be limited to meet the needs of residents, in addition to workers and visitors. The requested amendment to clause (c) was to specifically exclude Smales 1 Precinct from the restriction on residential activity.
213. Mr. Patience, in his s.42A report, did not consider amendments to the zone policy necessary or appropriate for reasons including the requested changes having an effect beyond Smales 1 Precinct. He considered a more appropriate alternative was to make the exemptions from the policy specific in the Precinct. This was reflected in his version of the PC23 provisions attached to the Hearing report.
214. Mr. Smith maintained his preference for amending the underlying zone policy in his EIC (paragraph 10.8) so that, in his view, there would be a clear policy basis for the plan change – a view he maintained at the Hearing. We understand this to be a preference, rather than a fundamental concern on Mr. Smith's part, however, noting that the PC23

provisions as amended by him and attached to his EIC do not delete the s.42A report version of the provision's exception to zone policy 18 clauses (b) and (c) within the Precinct itself.

215. In response to questions at the hearing, Mr. Turbott confirmed his support for Mr. Patience's approach, namely that the exclusions to zone policy 18 clauses (b) and (c) are more appropriately contained in the Precinct provisions than in the zone.
216. While this appears to no longer be a significant point of contention between the Applicant and the Council, we consider it appropriate to record our finding on this matter, given its relevance to ensuring a suitable policy basis for the plan change. We prefer the view of Mr. Patience and Mr. Turbott and find that there is no need to change the Business Park zone.

Policy 1: significant adverse effects 'managed'

217. In policy 1, Mr. Turbott prefers the use of 'reduced' in the context of demonstrating that 'significant adverse effects on the amenity of neighbouring zones will be reduced', while Mr. Smith prefers the Hearing version of this phrase: 'significant adverse effects on the amenity of neighbouring zones will be managed.' Policy 1 follows on from objective 4, where the same wording preferences were expressed by Mr. Turbott and Mr. Smith in relation to adverse effects on the amenity of neighbouring zones. Neither Mr. Turbott nor Mr. Smith give reasons for their wording preferences in policy 1, however, it can reasonably be assumed that their rationale is the same as for objective 4.
218. As with that objective, we consider that the terms preferred by both gentlemen in the context of this policy to be vague. We note that no evidence was presented to us that the level of development that would be enabled by PC23 would result in significant effects on the amenity of neighbouring zones. Nor, more particularly, was any evidence presented to us where that level of development is exceeded (in terms of the gross floor area or dwelling numbers referred to in policy 1) that a policy framework that contemplates 'significant adverse effects' above and beyond the enabled limit which can only be 'managed' is appropriate. To the contrary, the evidence presented to us by experts was that adverse effects on neighbouring areas resulting from development enabled by the Plan Change would not be significant.
219. With that in mind, we find no reason why policy 1 should refer to 'managing' significant effects on neighbouring zones. We find that the policy and the effects that it contemplates should match the level of effects expressed by the experts to be likely – being less than significant. In that context, we find that the use of the phrase 'significant adverse effects on the amenity of neighbouring zones will be avoided' to be appropriate.

Policy 2A: 'managing significant adverse effects'

220. Policy 2A sets a foundation for the establishment of tall buildings. In the Hearing version of the policy, this foundation was subject to 'managing significant adverse effects' on adjoining land and on properties outside the precinct.' Mr. Turbott prefers the use of the phrase 'reduces its adverse effects', with which Mr. Smith disagrees, preferring the original.

221. Again, neither Mr. Turbott nor Mr. Smith provided a reason for their preference. However, again, as with their disagreement on the use of similar phrases in objective 4 and policy 1, it maybe that they find the terms to be vague in meaning. While we can only speculate on this point, we are assisted by the specific evidence of Mr. Goodwin, Mr. Houghton and Ms. Skidmore on tall buildings. None of these experts expressed in their assessments the view that buildings of the heights proposed in the Precinct would result in significant adverse effects (or close to that). With that in mind, as with objective 4 and policy 1, we find no reason why policy 2A should refer to ‘managing’ significant effects and that the policy and the effects that it contemplates should match the level of effects expressed by the experts to be likely – being less than significant. In that context, we find that the use of the words ‘avoids significant adverse effects’ is appropriate.

Policy 2C: ‘safety’ or ‘CPTED principles’

222. The Hearing version of this policy uses the term ‘CPTED principles.’ Mr. Turbott prefers ‘safety’ as the term ‘CPTED’ is not used in the AUP: OP. Mr. Smith prefers ‘CPTED principles’, as he considers the principles are well known, and ‘safety’ has a wide meaning.

223. We note that Business Park zone policy 3(c), which like policy 2C also references pedestrians, uses ‘safety.’ Wishing to avoid the introduction of new terms into the AUP: OP where there is already an existing term of comparable meaning, we find that the use of ‘safe’, which we incorporate within a reworked version of policy 2C (discussed later in this decision) to be appropriate.

Policy 2F: ‘Require’ or ‘Encourage’

224. Policy 2F describes the importance of buildings and uses on or near primary pedestrian linkages in the Precinct positively contributing to the vitality and amenity of those linkages. Mr. Turbott prefers the use of the phrase ‘Require buildings’ to contribute to these outcomes as, in his view, Mr. Smiths’ preferred term ‘Encourage buildings’ is too passive for something which is important to achieve. Mr. Smith considers that ‘Encourage buildings’ is appropriate because the policy is implemented by an assessment criterion rather than a standard.

225. We find that ‘Require buildings’ is a more appropriate fit to the evidence presented to us by the experts, in particular that of Mr. Houghton and Ms. Skidmore. Their evidence emphasised the importance of the primary pedestrian linkages as a focus of activity and pedestrian movement within the Precinct and between it and Smales Farm Station.

Policy 6: ‘commerce and community’ or ‘non-residential’

226. The Hearing version of policy 6, which relates to limiting on-site parking serving non-residential activities over time, while supporting the planned growth of the Precinct, uses the term planned growth of ‘non-residential activities.’ Rather than this phrase, Mr. Turbott prefers the use of planned growth of ‘commerce and community activities.’

We note that the term ‘non-residential activities’ is used extensively elsewhere in the hearing version of the PC23 provisions, including in the activity table, standards, matters of control and discretion, and assessment criteria.

227. Mr. Turbott expresses the view that 'non-residential' is not a term used or defined in the AUP: OP and that its use in policy 6, and elsewhere in the PC23 provisions, could cause consent interpretation issues. Mr. Smith considers that 'non-residential' is not an uncertain term – it simply means activities other than residential. He furthermore states that use of the phrase 'commerce and community activities' would not include industrial activities permitted in the underlying zone, such as laboratories, which the Applicant does not wish to preclude from being enabled.
228. We agree with Mr. Smith's analysis and find that the particular manner in which 'non-residential' is used in policy 6, and also in each other provision, is sufficiently certain within the context of that provision. We therefore prefer the term 'non-residential activities' in this policy and elsewhere as used within the Hearing version of the PC23 provisions.

Standard I538.6.3 Trip generation

229. Mr. Turbott's track changes of the Hearing version of the PC23 provisions deletes Standard I538.6.3 Trip generation in its entirety, shifting various parts of the standard to places where he considers it to be more appropriately placed, in terms of the overall AUP: OP approach to the structure and drafting of precincts. This includes repositioning content to within the activity table, and also up-front in the policy and standards section, where needed to outline respective policy and standard exemptions. He considers there is no need for this content to be repeated within a stand-alone standard.
230. Mr. Smith requests that the standard be reinstated as the content, in the form written and presented, has been expressly sought by NZTA and Auckland Transport as part of an agreement with the Applicant regarding all-transport related provisions.
231. We agree with Mr. Turbott that, in terms of our understanding of the overall AUP: OP approach to the drafting of precincts, the content of Standard I538.6.3 is generally best-placed elsewhere in the provisions. We also agree that its placement within a stand-alone standard has instances of repetition, and is therefore somewhat inelegant in terms of technical drafting. However, there is no internal inconsistency in those areas where there is repetition. Most relevantly, it was brought to our attention the substantial investment of time and energy that was put into reaching agreement with the Applicant by NZTA and Auckland Transport, and also the DHB, on outstanding issues between the parties.
232. We are therefore reluctant to tinker with a provision that has been at the core of an agreement between those parties in respect of resolving those issues, simply for the sake of editorial preference. In this instance we find that the most appropriate solution is to retain the standard as preferred by Mr. Smith.

Standard I538.6.6 Outlook space

233. The Hearing version of the PC23 provisions referred to, within the purpose statement for Standard I538.6.6 Outlook space, encouraging the passive surveillance of any 'open space' through the placement of habitable room windows. Mr. Turbott, in his 18 December 2019 comments, raised a question of interpretation of the term 'open space', as it is not defined in the AUP: OP. He stated his assumption that, as used in the

standard, the term is intended to include open space in the Precinct, whether or not that space is publicly owned. Mr. Smith confirmed that this is the Applicant's intent, however, suggested no clarifying amendments to the standard to secure this intent.

234. Our understanding of outlook space standards, as they are generally represented across various AUP: OP zones and precincts, is that they seek to avoid overlooking of privately owned open space (as in outdoor living areas associated with individual residential units). We therefore find that, in order to address the broader issue of unclear interpretation of 'open space' raised by Mr. Turbott, it is necessary to include a modification to the wording of the purpose statement of Standard I538.6.6 Outlook space to refer to any open space 'designed to accommodate public use.' While this is a minor departure from the intent expressed by Mr. Smith, in that it excludes privately owned space not designed to accommodate public use (i.e.: residential outdoor living areas), we consider it a refinement of that intent, rather than inherently at odds with it.
235. Mr. Turbott also stated that consideration should be given to the applicability of Metropolitan Centre Zone Standard H9.6.10 Outlook space, which PC23 provision I538.6.6 cross references to, in regard to H9.6.10(5), as the Precinct will not have internal publicly owned streets or parks, being spaces over which H9.6.10 allows the extension of outlook spaces. Furthermore, he stated that there may be potential difficulties in applying the Metropolitan Centre Zone standard to the Precinct because of the AUP: OP definition of 'site.'
236. Mr. Smith stated that there are no interpretation problems regarding the ownership of roads. However, he provided no comment in regard how the AUP: OP definition of 'site' might affect the application of the standard within the Precinct. We acknowledge this is likely to be because Mr. Turbott's comments on this matter, while directly referring to both the Precinct's and Metropolitan Centre Zones' outlook space standard, were attached to the following Precinct standard I538.6.7 Minimum dwelling size.
237. We agree with Mr. Turbott's concerns regarding the AUP: OP definition of 'site' as used within H9.6.10 and how this might undermine the outcomes the standard seeks to manage when applied to the Precinct. In our reading of it, H9.6.10 is best suited to managing development in urban areas with a multitude of sites. It is framed up to focus required outlook spaces within a site, as opposed to extending over adjoining sites. We agree with Mr. Turbott that may lead to uncertain application of the standard given that, effectively, the Precinct is a single large 'site'.
238. To address this matter, with a focus on achieving part of the I538.6.6's stated purpose in regard to visual and acoustic privacy, we find that an effective solution is to simply carry across from the Outlook space standard in the underlying Business Park zone the requirement that the outlook space 'must be clear and unobstructed by buildings.'

Assessment criterion I538.7.2(2)(d): weather protection at building entrances

239. Assessment criterion I538.7.2(2)(d) focuses on high-quality interfaces adjoining primary pedestrian linkages, including through weather protection 'at building entrances.' Mr. Turbott comments that consideration might be given to extending this protection along any wall of a building that adjoins a primary pedestrian linkage. Mr. Smith states that the wording 'at building entrances' should be retained, as all urban design expert witnesses were in agreement that this is appropriate. We agree that this was the

expressed view of both Mr. Houghton and Ms. Skidmore. Relying on their expert opinions, we therefore find the use of the phrase 'at building entrances' in this criterion to be the most appropriate.

Assessment criterion 1538.7.2(3)(c): Transit Oriented Development

240. The hearing version of the PC23 provisions uses the acronym for Transit Oriented Development 'TOD' in reference to the extent to which travel demand management initiatives are consistent with 'TOD objectives and policies of the precinct'. Mr. Turbott considers that the use of the term creates ambiguity and that either reference to specific objectives and policies should be inserted or, if reference is intended to all objectives and policies, then its use is not necessary. Mr. Smith comments that the term should be retained, as it was expressly sought by NZTA and Auckland Transport. He does not respond directly to the particular points raised by Mr. Turbott.
241. In the absence of a view expressed by Mr. Smith, we find that use of the term is unnecessary. We note that no policy in the Hearing version of the provisions expressly uses the term 'TOD.' This leads us to believe that the reference to TOD principles in 1538.7.2(3)(c) is a generalised reference. We therefore find that there would be no detriment to understanding or interpretation of the criterion by the term's removal. As a corollary point, we note that its removal is consistent with our overall finding that the use of the term 'TOD' is not necessary within the provisions.

Assessment criterion 1538.8.2(5)(d): Landscaped open space

242. Mr. Turbott comments that the use of the term 'open space' in the context of 'landscaped open space' being provided with each stage of development is unclear, as it is not defined in the AUP: OP and it is not clear whether it is intended to mean private open space or not. Mr. Smith does not respond to Mr. Turbott's comments in his 19 December 2019 track change version of the provisions.
243. It appears to us the likely intent of the criterion is related to contributing to visual amenity outcomes. Whether private outdoor space, should a developer choose to provide it, be something that contributes to this outcome, would be something able to reasonably form part an assessment under this criterion. We therefore find there is no need to qualify the use of the term 'open space' within the criterion.

Amendments necessary based on our findings on the remaining issues in contention

244. We consider that some amendments are necessary to the PC23 provisions to address the matters discussed in our findings above, and on the basis of the evidence before us. This includes lodgement documentation, submissions and further submissions, the Council's s.42A report and supporting assessments from its experts, EIC and rebuttal evidence, and also the discussions with the Applicant, Council, submitters and associated experts at the Hearing. We find that we have scope to make these changes based on the issues and relief sought by submitters opposed to or seeking changes to the notified version of PC23.
245. Issues on which we find that amendments to the provisions are necessary are:
- Is the Precinct fundamentally suitable?;

- Are the building heights and design requirements suitable?; and
- Are retail and commercial requirements suitable?

246. In regard to transportation issues, the sole area of contention was the need, or otherwise, for a maximum rate for residential car parking. Neither the notified nor the Hearing versions of the PC23 provisions proposed such a maximum and our finding on that matter was that it was not necessary to introduce one. We therefore find that, overall, no changes to the provisions are necessary in regard to transportation matters. Below, we turn to necessary changes flowing from our findings on the other areas of contention.

Is the Precinct fundamentally suitable?

247. We discussed extensively the matter of ensuring a ‘fit’ between the Site’s underlying Business Park zoning and the Precinct, which ‘sits’ on top of it. Our findings included that a precinct may modify elements of an underlying zone, and indeed, it is expected to, as the AUP: OP sets up precincts as a tool to respond to area specific characteristics. However, the extent of modification should not be such that the zone and the precinct stand in direct and irreconcilable opposition to each other.

248. With this at the front of our minds, we find that it is necessary to modify elements of the PC23 provisions in order to ensure that the business park function of the underlying zone continues to be appropriately catered for within the Precinct.

249. With reference to the provisions in Appendix 1 to this decision, we have therefore:

- made some modifications to the Precinct description;
- made a minor change to objective 2, through the addition of the words ‘with business park activities’;
- introduced a new policy 1C; and
- introduced additional clauses to matter of discretion I538.8.1(4) and assessment criterion I538.8.2(4).

250. Changes to the Precinct description introduce additional wording referring to the existing and (foreseeably) future employment role, anchored around high-density office-based employment, of the Precinct. Wording is also introduced referring to the Business Park zone and its retention as the zone underlying the Precinct, in recognition of the substantial existing Business Park activities occurring on the site, and that these should continue to be provided for.

251. The new policy 1C is introduced to build off objective 2.

252. An additional matter of discretion (d) is introduced to I538.8.1(4), covering effects on the business park function of the Precinct where a building or part of a building is converted to dwellings, integrated residential development, visitor accommodation or boarding houses. This is followed through to assessment criterion I538.8.2(4) and the addition of a new matter of assessment on this matter. This will ensure that the Precinct cannot be used to dismantle the Business Park aspect of the Precinct’s activities.

Are the building heights and design requirements suitable?

253. Earlier in this decision we noted that we largely agree with the evidence of expert witnesses for the Applicant and the Council in regard to building height, however, that we identified two areas where PC23 did not appropriately respond. These two matters (which we summarise) are:
- a lack of assessment matters or guidance in the case of non-compliance with Standard I538.6.5 where it requires buildings above 75m height to have a maximum plan view dimension that must not exceed 35m;
 - potential visual clutter effects, as seen from the west, when seeing development enabled in the Precinct together with potential (and planned) taller buildings in Milford Town Centre, Takapuna Metropolitan Centre and the North Shore Hospital site – possibly blocking views to parts of Rangitoto.
254. With these concerns in mind, and mindful of the RPS basis for height and ‘tall buildings’ as we discussed earlier, we find that modifications are needed to the PC23 provisions to manage the above.
255. With reference to the provisions in Appendix 1 to this decision, we have:
- made some modifications to objective 1;
 - made changes to policy 2A;
 - introduced a new matter of discretion I538.8.1(3) for infringement of clause (2) of Standard I538.6.5 Maximum tower dimension and building separation, with associated new assessment criteria at I538.8.2(3) (noting that rule C1.9(2) already confers a restricted discretionary activity status to any infringement of a relevant development standard);
 - introduced a minor change to matter of discretion: I538.8.1(5)(b);
 - introduced new clauses to assessment criteria I538.8.2(5)(f); and
 - introduced a new clause to I538.9 Special information requirements.
256. Clause (c) of objective 1 is modified to refer to the Precinct responding ‘positively’ to its immediate environment and ‘its wider built and landscape setting.’ There were significant concerns from some submitters regarding the height enabled by the Precinct provisions, partly in regard to how buildings of that height would sit within their wider setting. These modifications aim to address those concerns.
257. Policy 2A, which relates specifically to tall buildings, is modified by, again, introducing a reference to the Precinct’s wider built and landscape setting, and also by a new clause (c), which responds to the advice from the visual and urban design experts at the Hearing that tall buildings forming a focal point or clustering together would be appropriate.
258. Matter of discretion I538.8.1(5)(b) is modified to building design ‘and appearance’ (with the same change made to assessment criterion I538.8.2(5)(b)). This provides certainty that it is the combination of not only a building’s design but that building’s appearance over which the Council has discretion. We find this to be consistent with the visual

analysis put before us as evidence. We also note this terminology is consistent with matters of discretion in other AUP: OP zones, such as the Mixed Use zone.

259. A new matter of discretion I538.8.1(3) for infringement of clause (2) of Standard I538.6.5 Maximum tower dimension and building separation is introduced, with associated new assessment criteria at I538.8.2(3). In their evidence and in responses to questions to Mr. Houghton, Mr. Goodwin and Ms. Skidmore, we were advised of their opinions regarding the appropriateness of a range of PC23 provisions, amongst which is Standard I538.6.5 Maximum tower dimension and building separation, in managing height related issues. As we note earlier in this decision, we largely accept this evidence. However, given that the extent of height which PC23 seeks to enable, we consider it is necessary to ensure that the techniques proposed to manage that height are especially robust. For that reason, we find that this additional matter of discretion and associated assessment criteria to be necessary and appropriate.
260. In the PC23 provisions put before us there are no Precinct specific matters of discretion or assessment criteria for an infringement of I538.6.5. This means, that as a restricted discretionary activity, the parameters for assessing such an infringement would default to AUP: OP General rule C1.9. In regard to clause (2) of I538.6.5, which manages height and bulk related effects of the tallest parts of potential buildings by controlling their horizontal dimension, we find that additional guidance is necessary to explain what outcome is actually sought other than general visual interest. New matter of discretion I538.8.1(3) therefore introduces discretion, for an infringement of this part of the Standard, restricted to effects on the amenity of neighbouring sites and effects on the wider landscape. The associated new assessment criteria at I538.8.2(3) includes a criterion giving specific guidance on the latter – with reference to effects on the skyline of the precinct through management of building footprint, mass and visual scale.
261. New clauses are introduced to assessment criterion I538.8.2(5)(f). This criterion is in regard to all buildings above RL50.4. The new clauses focus on the extent to which buildings form a visual cluster and the extent to which significant visual effects, including cumulative effects, on the wider landscape environment, including views to the summit of Rangitoto are avoided. This addresses the matters we raise at paragraphs 143 to 145.
262. A new clause (4) is introduced to I538.9 Special Information Requirements. For buildings extending above RL50.4, this requires provision with such applications of all the information required for the Council to be able to gain a comprehensive understanding of the matters listed for assessment for these buildings and an ‘integration’ plan showing the position of all existing and proposed buildings. We find that such information would be useful in the context of the matters for assessment set out for buildings above RL50.4 in I538.8.2(5)(f).

Are retail and commercial requirements suitable?

263. We summarised our discussion with expert witnesses at the Hearing earlier as it relates to providing for sufficient retail and commercial activities within the Precinct to meet the needs of residents, workers and visitors, balanced against the potential for the location of retail and related commercial and entertainment activities within the Precinct to adversely affect nearby Centre zones. We also summarised the discussion with the economic and urban design experts on the potential benefits of placing retail towards

the internal 'centre' of the Precinct.

264. Based on that discussion, we introduce three new policies 7A, 7B and 7C. These policies are tied to a modification of Activity A19 (deleted) and A23 (modified to relate to all clauses of standard I538.6.1 in the Activity Table, through the discretionary activity status of that Activity).
265. Earlier in this decision, we summarised our discussion with the experts around the potential benefit of allowing retail, commercial services and entertainment GFA to be delivered earlier than the threshold requirements in Standard I538.6.1(2), if certain locational criteria are met. Additions of two new clauses to that standard give effect to our finding on that matter.
266. Modifications have been made to Activities A16 and A17 in the Activity Table, making reference to a 'single' supermarket. This is in response to our discussions on this matter.

Improving the overall workability and readability of the provisions

267. Changes have been lastly made throughout the provisions to improve their overall workability and readability and to achieve greater consistency with the structure and framework of the AUP: OP, consistent with the submission of Auckland Council. We discuss those changes below, but note initially that scope for these changes comes from the Auckland Council submission.
268. The Precinct description has been modified, with the majority of changes being consequential to removal of reference to 'TOD' within the description.
269. Policy 2C has been modified, with associated minor changes to assessment criterion I538.7.2(b), to avoid unnecessary repetition between the policy and assessment criteria sections of the provisions.
270. The purpose statement to Standard I538.6.4 Building height has been modified by introducing two additional bullet points and an amendment to the last bullet point. The two additional bullet points – 'manage the effects of building height' and 'allow reasonable sunlight and daylight access to publicly accessible open space excluding streets and nearby sites' – are in the purpose statement to H15.6.1 Building height in the underlying Business – Business Park zone.
271. Noting that the first clause under I538.6 Standards in the PC23 provisions states that Standard H15.6.1 Building height does not apply in the Precinct, we find the addition of both bullet points to be consistent with and underpin the themes around height related issues raised in submissions and in the evidence put before us by expert witnesses. The addition of the first bullet point is consistent with phrasing in building height standards in zones across the AUP: OP. The second bullet point also sets up a basis for reference to sunlight access in the central pedestrian plaza in assessment criterion I538.7.2(1)(d) and shadowing effects of tall buildings in assessment criterion I538.8.2(5)(f)(v).
272. We furthermore note that elsewhere in the PC23 provisions, where an underlying zone standard or a standard in another zone has been carried across to the Precinct – for

example I538.6.5 Maximum tower dimension and building separation and I538.6.6 Outlook space - so have, in large part, the purpose statements of those standards. The introduction of the two additional bullet points to I538.6.4 addresses this inconsistency.

273. The last bullet point in the Building height standard has been modified to more accurately describe the purpose of clause (2) of the rule: contributing to a visually interesting and varied skyline appearance by limiting the number of buildings with heights above RL98.4.
274. Standard I538.6.5 Maximum tower dimension and building separation has been modified by replacing height in metres to height as a Reduced Level (RL) measure. While the former is measured above existing ground level and the latter is measured from a datum point, we understand the difference in terms of effects which this Standard seeks to manage to be minimal. Noting that elsewhere within the provisions, all references to height use an RL and the 27m and 75m heights referred to in I538.6.5 directly correlate to RL50.4 and RL98.4 used in all other provisions, we find for consistency purposes and certainty of application a use of RL measures in this standard to be most appropriate.
275. Assessment criteria I538.8.2(5)(f) has been modified to remove a reference to buildings in Height Area 1 extending above RL50.4. This is Height Area 1's maximum permitted height. Any building above RL50.4 is therefore infringing the height maximum, with a more logical tie-in to such an infringement being via assessment criteria I538.8.2(2) Activities exceeding the limits in Standard I538.6.4 Height. A new clause (d) is introduced to this criterion to cross-reference infringements of height in Height Area 1 to I538.8.2(5)(f).
276. We find activity rule A32 anomalous to the extent that the default activity status of activities that exceed a stated standard are restricted discretionary activities except where specified in a zone or Precinct activity table. Of the various standards within the Precinct (which are not otherwise addressed in the activity table), all rely on C1.9 to establish that restricted discretionary activity status except for the height standard. This could be confusing to users (as it was to us) wondering why the height limit had been singled out in the activity table as restricted discretionary but the other standards have not. Taking a belts-and-braces approach, we have squared this up by amending A32 to refer to all precinct standards other than those expressly varied in the activity table.

DECISION

277. That pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, that Proposed Private Plan Change 23 to the Auckland Unitary Plan (Operative in Part) be approved in part and rejected in part, subject to the modifications as set out in this decision and in the Plan Change 23 document attached (Appendix 1).
278. Pursuant to section 32AA of the RMA, we have undertaken a further evaluation of the proposal and all changes we have resolved to make to it since the original s.32 report was prepared by the Applicant. The substance of that further evaluation is intertwined with and is presented in our findings above. We are satisfied that the provisions set out in Appendix 1 are the most appropriate and also give effect to Part 2 of the Act, the NPS on Urban Development Capacity, and the AUP: OP RPS.

279. Submissions on the plan change are accepted and rejected in accordance with this decision.
280. The reasons for the decision are that Plan Change 23 as amended in Appendix 1:
- a. will assist the Council in achieving the purpose of the RMA;
 - b. is in accordance with s31 RMA functions of the Auckland Council;
 - c. is consistent with the provisions of Part 2 of the RMA;
 - d. is supported by necessary evaluations in accordance with sections 32 and 32AA, and meets the various tests and requirements of s32 RMA;
 - e. will help with the effective implementation of the Auckland Unitary Plan: Operative in Part; and
 - f. is consistent with the Auckland Regional Policy Statement.
281. For completeness, it was impractical for us to prepare a 'mark-up' version of the provisions given how many rounds of edits had been undertaken to the close of the hearing. We anticipate that in integrating our finalised provisions into the AUP: OP, the Council may need to undertake inconsequential formatting and re-numbering of our provisions that we have not been able to foresee or accommodate. Provided that any changes are strictly for that purpose, we are satisfied that no further consideration or findings will be required on our part. We however request that the Council keep a record of any such 'operational' corrections necessary.



Chair – Ian Munro on behalf of Kim Hardy and Matthew Riley – Independent Hearings Commissioners.

Date: 29 April 2020

APPENDIX 1 – FINAL PLAN CHANGE 23 PROVISIONS

29 April 2020

Plan Change 23 Smales Farm – Revised provisions

I538. Smales 1 Precinct

I538.1. Precinct description

The zoning of land within the Smales 1 Precinct is the Business - Business Park Zone.

The precinct is located on a 10.8 hectare site at the corner of Taharoto and Northcote roads, and is adjacent to State Highway 1, the Northern Busway, and Smales Farm Station.

Initial development within the precinct was in the nature of a business park, as provided for in the North Shore District Plan and the Auckland Unitary Plan. Most forms of residential development were not explicitly provided for and were non-complying activities. However, the characteristics of the site and its context make it a very suitable location for a high-density, public transport focused, mixed-used node, with an emphasis on both office and residential uses. These characteristics include:

- the large size and remaining development capacity of the precinct;
- the precinct's position beside a high capacity, high frequency public transport corridor in the form of the Northern Busway, and high capacity bus services that link to it by way of Smales Farm Station; and
- that adjacent uses are primarily institutional and otherwise less-sensitive to the adverse effects of the form and scale of development enabled by the precinct provisions.

Accordingly, the precinct provisions provide for a diversity of uses, including residential and employment activities, in addition to supporting non-residential activities, including retail, at a level to address demand from workers, residents, and visitors to the precinct. The provisions also encourage intensive development and the efficient use of land by providing for tall buildings to be developed. A high standard of building design and pedestrian amenity is ensured by the application of appropriate policies, standards and assessment criteria.

An overarching goal of the precinct is to support a reduction in dependence on vehicles in favour of public transport, walking, cycling and other active modes. The use of public transport is specifically encouraged by ensuring high quality primary pedestrian linkages are provided through the precinct to access the bus station, and by imposing limits on the number of car parking spaces for non-residential activities.

Integrated traffic modelling has been carried out to determine the ability of the surrounding road network to accommodate the levels of traffic expected to be generated by both development enabled by the precinct and that which is forecast to be generated by the North Shore Hospital site. This is because extensive development of the North Shore Hospital site (including new access arrangements) is planned to be implemented during the same timeframe as development at the precinct. The modelling has taken account of anticipated traffic generated from the combined future development. This modelling confirms that the

road network can accommodate the levels of traffic expected to be generated, without necessitating an assessment of the transportation effects on the surrounding road network for new development that is otherwise permitted.

The site offers a unique opportunity to promote a quality compact urban form based on characteristics that do not usually occur together in one location. The use of a Business - Business Park zone and the Smales 1 Precinct overlay together recognize that the site has:

- an existing and (foreseeably) future employment role anchored around high-density, office-based employment of the sort enabled in the Business - Business Park zone;
- characteristics that lend it to a variety of compatible uses and activities that are similar to that normally enabled in the Business - Mixed Use zone;
- a capability to accommodate residential development at a scale and of a form that is similar to that normally enabled in the Business - Metropolitan Centre zone; and
- the likely future catchment size and relationship with Milford and Northcote Town Centres, and Takapuna Metropolitan Centre, that justifies the function of a Business - Local Centre zone.

The underlying Business - Business Park zone remains in recognition of the substantial existing Business Park activities occurring on the site, and that these should continue to be maintained. The precinct sits on top of the zone in recognition that the two methods together seek to manage a transition over time away from a Business Park mono-culture to a mixed use environment that provides for both high-density residential and employment activities.

I538.2. Objectives

- (1) The Smales 1 Precinct is a vibrant, intensively and efficiently developed mixed-use precinct which:
 - (a) is an attractive place to live, work and visit;
 - (b) takes advantage of its close proximity to the adjoining frequent and reliable transit bus station;
 - (c) responds positively to its immediate surrounds and its wider built and landscape setting; and
 - (d) has a strong sense of place.
- (2) The Smales 1 Precinct is a mixed use and passenger-transport based node successfully integrating intensive, high amenity residential developments with business park activities and an appropriate range and scale of accessory uses and developments to support its workers, residents and visitors.
- (3) The Smales 1 Precinct develops and functions in a way which promotes:
 - (a) travel mode shifts to rapid and frequent public transport services, and connecting stations and services, and active modes;
 - (b) reduced car trip generation rates and car parking ratios over time particularly compared to the surrounding area;

- (c) a high quality public realm containing a central plaza gathering place; and
 - (d) a well-connected and legible network of primary and secondary pedestrian linkages connecting the precinct with its immediate surrounds and providing a good standard of amenity and accessibility throughout the precinct.
- (4) The Smales 1 Precinct limits adverse effects on the:
- (a) safe and efficient operation of the transport network of the locality;
 - (b) amenity of neighbouring zones and sites;
 - (c) function and amenity of Business – Metropolitan or Town Centre zones.

The overlay, Auckland-wide and zone objectives apply in this precinct in addition to those specified above.

I538.3. Policies

The overlay, Auckland-wide and underlying zone policies apply in this precinct in addition to those specified below, except that:

- (a) clauses (b) and (c) of policy H15.3(18) do not apply; and
- (b) Policy E27.3(2) Integrated transport assessment does not apply to non-residential development up to 162,000 m² gross floor area, and residential development up to 1,380 dwellings.
 - (1) Require any development in the precinct which causes the cumulative total gross floor area of business activity to exceed 162,000m² or the cumulative total number of dwellings to exceed 1,380 to demonstrate that significant adverse effects on the amenity of neighbouring zones will be avoided and that the function and amenity of the Business – Metropolitan Centre Zone and Business – Town Centre Zone will not be significantly adversely affected.
 - (1A) Enable the development of intensive residential activities within the precinct and require these to be designed to provide privacy and outlook, with good access to daylight and sunlight.
 - (1B) Require the development of intensive residential activities within the precinct to be designed, constructed and maintained to provide the occupants of noise sensitive spaces with a reasonable level of internal acoustic amenity, thereby managing any potential reverse sensitivity effects.
 - (1C) Recognise that the precinct has an on-going role as a location for business park activities, the need to integrate the range of uses enabled by the precinct with this function, and to manage the potential for conversion of buildings used for business park activities to other uses to affect the viability of the precinct as a business park.
 - (2) Provide for accessory activities to meet the immediate needs of office workers, residents and visitors to the precinct while limiting the extent of those uses and activities to manage potential adverse effects on the function and amenity of the Business – Metropolitan Centre Zone and Business – Town Centre Zone.

- (2A) Enable the establishment of tall buildings within the precinct to maximise the opportunity for intensification and the efficient use of the land that:
- (a) takes maximum advantage of the frequent, high capacity and reliable public transport services available within close proximity to the precinct; and
 - (b) avoids significant adverse effects on adjoining land and on properties outside the precinct, and on the wider built and landscape setting of the city; and
 - (c) contributes positively to a visually interesting skyline including through the management of building locations and heights so as to achieve a clustered, singular visual focal point in the wider built and landscape setting of the city.
- (2B) Require the establishment of a central pedestrian plaza at the heart of the precinct that provides a vibrant people-focused space which supports the evolving mixed-use community.
- (2C) Require high-amenity, safe and convenient primary pedestrian linkages to be provided that connect the central pedestrian plaza with the bus station and the precinct's Northcote Road, Taharoto Road, and Shakespeare Road frontages.
- (2D) Recognise the role of secondary linkages to provide quality walkable connections to integrate all buildings and spaces within the precinct with the primary pedestrian linkages.
- (2E) At each stage of development, require consideration of how primary pedestrian linkages and landscaped open spaces, provided or maintained with each new building, are integrated with adjacent linkages, open space and the bus station to ensure an appropriate level of amenity for residents, workers and visitors to the precinct, whilst preserving flexibility of options for future stages.
- (2F) Require buildings and uses on or near primary pedestrian linkages to contribute positively to the vitality and amenity afforded to users of those linkages, particularly in the vicinity of the rapid transit bus station and the central plaza.
- (2H) Discourage high car trip generating uses - such as service stations, large supermarkets or drive through restaurants – and only allow the activity where it:
- a) is necessary to support a near capacity level of office and residential development that already exists in the precinct;
 - b) can be well integrated with other retail and commercial uses;
 - c) will not detract from a high quality transit-oriented urban environment;

- d) will not generate significant adverse traffic effects within or adjacent to the precinct.
- (3) Require development over 162,000m² gross floor area of business activity or 1380 dwellings in the precinct to demonstrate that the activity will not significantly adversely affect the safe and efficient operation of the transport network, or that such effects will be mitigated.
- (4) Require any development over 125,000m² gross floor area of business activity or 855 dwellings in the precinct to assess the effectiveness of the travel demand management measures and the specific transport management changes required to achieve the precinct mode share targets.
- (5) For any development over 105,000m² gross floor area of business activity or 285 dwellings in the precinct, require progress towards the achievement of reduced private car trips and a shift to other travel modes to be monitored and reported at key stages in the development of the precinct.
- (6) Limit the supply of on-site parking serving non-residential activities over time to recognise the accessibility of the precinct to frequent and reliable public transport services and active modes, while supporting the planned growth of non-residential activities with an appropriate supply of parking on the site in the short term to encourage that growth.
- (7A) Enable sufficient retail, commercial service and entertainment activities within the precinct to meet the needs of residents, workers and visitors.
- (7B) Require the provision of retail, commercial service and entertainment activities to locate at or very close to the central pedestrian plaza so as to contribute to it being a vibrant, well-activated and lively heart within the precinct.
- (7C) Require any retail, commercial service or entertainment activities that do not meet policy (7B) to demonstrate that not locating at or very close to the central pedestrian plaza:
 - (a) is not physically or spatially possible; and
 - (b) will not compromise the ability of a sufficient quantity of other or future retail, commercial service or entertainment activities provided for in the precinct rules to achieve policy (7B).

I538.4. Activity table

The provisions in any relevant overlays, zone and the Auckland-wide provisions apply in this precinct unless otherwise specified below.

Table I538.4.1 specifies the activity status of land use activities in the Smales 1 Precinct pursuant to section 9(3) of the Resource Management Act 1991.

Table I538.4.1 Activity table Smales 1 Precinct

Activity		Activity status
Accommodation		
(A4)	Dwellings	P
(A5)	Conversion of a building or part of a building to dwellings, integrated residential development, visitor accommodation or boarding houses	RD
(A6)	Integrated residential development	P
(A7)	Supported residential care	P
(A8)	Visitor accommodation and boarding houses	P
(A9)	Each residential development where the cumulative number of dwellings in the precinct will be greater than 285.	C
(A10)	Each residential development where the cumulative number of dwellings in the precinct will be greater than 855.	RD
Commerce		
(A11)	Conference facilities	P
(A12)	Entertainment facilities	D
(A13)	Retail	P
(A14)	Department store, trade supplier, motor vehicle sales	D
(A15)	Service stations	NC
(A16)	A single supermarket up to 2,000m ² gross floor area	P
(A17)	A single supermarket greater than 2,000m ² gross floor area	D
(A18)	Drive-through restaurants	D
Community		
(A20)	Community facilities	P
(A21)	Education facilities	P
(A22)	Tertiary education facilities	P
Non-residential activities		
(A23)	Infringing any of clauses (1) to (4) of Standard I538.6.1	D
(A24)	Exceeding the limits in Standard I538.6.2(1)	RD
(A25)	Each non-residential development where the cumulative floor area in the precinct will be greater than 105,000 m ² gross floor area.	C
(A26)	Each non-residential development where the cumulative floor area in the precinct will be greater than 125,000 m ² gross floor area.	RD
Development		

(A27)	New buildings	RD
(A28)	Temporary structures that are in place for less than 21 days.	P
(A29)	Central pedestrian plaza	C
(A30)	New and redeveloped primary pedestrian linkages (as depicted in Precinct Plan 2 Structuring Elements).	C
(A31)	Any new vehicle access or change in the direction of vehicle movements at an existing vehicle access off Shakespeare Road relative to the accesses shown on Precinct Plan 2 Structuring Elements.	D
(A32)	Activities exceeding the standards at I538.6 except where otherwise specified in this table.	RD

I538.5. Notification

(A1) An application for resource consent for a controlled activity listed in Table I538.4.1 above will be considered without public or limited notification or the need to obtain written approval from affected parties unless the Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991.

- (1) Any application for resource consent for a restricted discretionary, discretionary or non-complying activity listed in Table I538.4.1 Activity table above will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (2) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

I538.6. Standards

The standards applicable to the underlying zone and Auckland-wide apply in this precinct, except the following:

- Standard E27.6.1 Trip generation does not apply to non-residential development up to 162,000m² gross floor area and does not apply to residential development up to 1,380 dwellings;
- Standard E27.6.2(5) (Parking);
- Standard H15.6.1 Building height;
- Standard H15.6.3 Yards; and
- Standard H15.6.7 Outlook space.

All activities in the Smales 1 Precinct must comply with the following standards.

I538.6.1. Gross floor area (GFA)

Purpose: to create thresholds beyond which new evaluations of the scale, uses and effects of development must occur addressing potential negative impacts on the transport network and or on the function and amenity of centres.

- (1) The maximum gross floor area in the precinct for non-residential activities regardless of activity status is 162,000m² subject to (2) below:
- (2) The total gross floor area within the precinct that is occupied by the activities listed below, regardless of activity status, must not exceed 2,000m² plus a cumulative gross floor area of 500m² for every 10,000m² of gross floor area of development up to 162,000m² and 250m² for every 10,000m² over 162,000m² gross floor area:
 - (a) Retail
 - (b) Commercial services
 - (c) Entertainment.
- (3) The activities identified in (2) above, shall be located to have their primary pedestrian entrances at or within 50m of the central pedestrian plaza.
- (4) The activities identified in (2) may occur ahead of the identified thresholds up to a maximum of 10,000m² retail, commercial services or entertainment GFA, if they are located in accordance with (3) above.

I538.6.2. Parking

Purpose: to

- manage the effects of parking for non-residential development on trip generation as the precinct develops
 - encourage a reduction in the ratio of parking spaces to floor area as the precinct develops
 - ensure that land and resources are used efficiently within the precinct.
- (1) The number of parking spaces accessory to non-residential activities must not exceed:
 - (a) 1936 car parking spaces for the first 44,770m² gross floor area;
 - (b) for any development up to 105,000m² gross floor area up to a maximum of 3,639 spaces; and
 - (c) for any development in excess of 105,000m² gross floor area up to a maximum of 4,585 spaces.
 - (2) No minimum or maximum parking requirements apply to residential activity.

I538.6.3. Trip generation

Purpose: the trip generation effects of development within the precinct are subject to the following thresholds:

- up to 105,000m² gross floor area of non-residential activities or 285 dwellings the effects are considered acceptable.
- up to 125,000m² gross floor area of non-residential activities or 855 dwellings the effects are considered manageable.
- up to 162,000m² gross floor area of non-residential activities or 1,380 dwellings an assessment of the effects is required against the matters of discretion in I538.8.1(5) and the assessment criteria in I538.8.2(5).
 - (1) For development over 162,000m² gross floor area of non-residential activities or 1,380 dwellings, an integrated transportation assessment (ITA) will be required as set out in Chapter E27.
 - (2) Non-residential development up to 162,000 m² gross floor area, and residential development up to 1,380 dwellings, will not be subject to the following:
 - (a) Policy E27.3(2) Integrated transport assessment; and
 - (b) Standard E27.6.1 Trip generation.

I538.6.4. Building height

Purpose: to

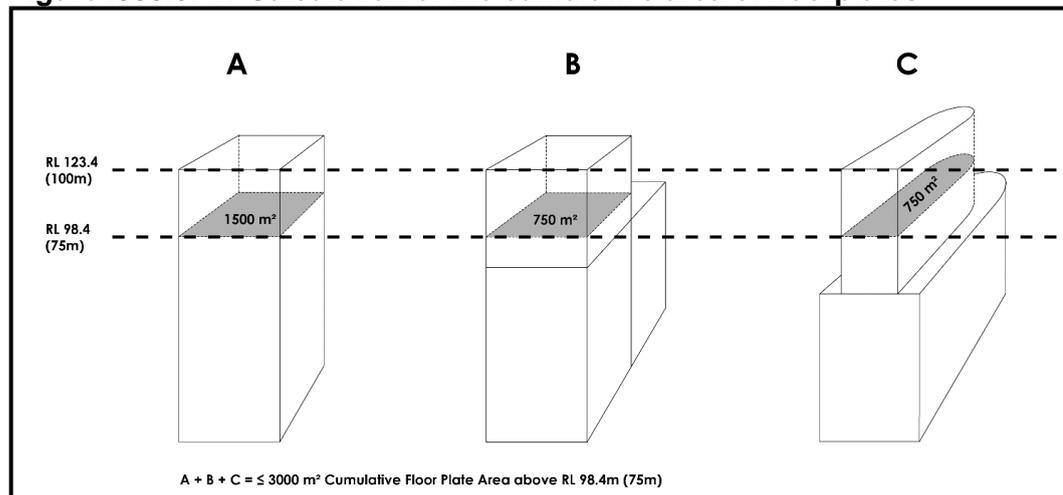
- manage the effects of building height;
- allow reasonable sunlight and daylight access to publicly accessible open space excluding streets and nearby sites;
- enable efficient use of land by enabling tall buildings in appropriate locations within the precinct; and
- contribute to a visually interesting and varied skyline appearance when viewed from distant viewpoints, including by limiting the number of buildings with heights above RL98.4.
 - (1) Buildings must not exceed the heights in the following table (expressed as an RL - Reduced Level above Mean Sea Level):

Table I538.6.4.1 Building height

Height Area as identified on Precinct Plan 1	RL	Equivalent height above average ground level at Taharoto Road frontage
1	50.4	27m
2	123.4	100m

- (2) Notwithstanding I538.6.4(1) the cumulative floor area of the largest floor plate in each building in Height Area 2 above a height of RL98.4 (75m above average ground level at the Taharoto Road frontage) must not exceed 3,000m². For clarity, this standard does not constrain the total gross floor area of buildings above RL98.4. Refer to Figure I538.6.4.1 Calculation of the cumulative area of floorplates for an example of the calculation of the cumulative area of floorplates.

Figure I538.6.4.1 Calculation of the cumulative area of floorplates



I538.6.5. Maximum tower dimension and building separation

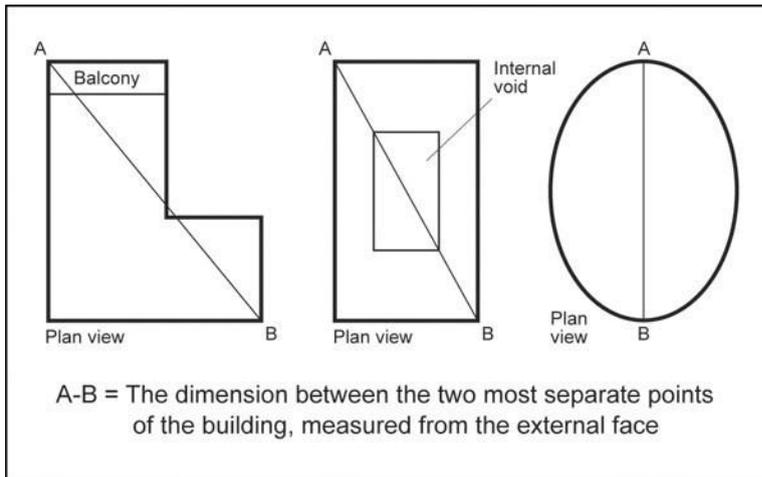
Purpose: to ensure that tall buildings

- are not overly bulky in appearance and manage significant visual dominance effects;
- allow adequate sunlight and daylight access to adjoining buildings and land;
- provide adequate sunlight and outlook around and between buildings; and
- mitigate adverse wind effects; and
- contribute to a visually interesting and varied skyline appearance when viewed from distant viewpoints, including by limiting the dimension and cumulative floor area of buildings above RL98.4.

- (1) The maximum plan view dimension of that part of a building above RL50.4 must not exceed 55m.

- (2) The maximum plan view dimension of that part of a building above RL98.4 must not exceed 35m.
- (3) The maximum plan view dimension is the horizontal dimension between the exterior faces of the two most separate points of the building, depicted as A to B in Figure I538.6.5.1 Maximum tower dimension plan view below.
- (4) Above a height of RL50.4, a minimum distance of 20m must be provided between buildings.

Figure I538.6.5.1 Maximum tower dimension plan view



I538.6.6. Outlook space

Purpose: to

- ensure a reasonable standard of visual and acoustic privacy between different dwellings, including their outdoor living space, on the same or adjacent building sites;
 - encourage the placement of habitable room windows to maximise both passive surveillance of any open space designed to accommodate public use, and privacy, and to manage overlooking of neighbouring building sites.
- (1) Refer to H9 Business – Metropolitan Centre Zone, Standard H9.6.10.
 - (2) The outlook space must be clear and unobstructed by buildings.

I538.6.7. Minimum dwelling size

Purpose: to ensure dwellings are functional and of a sufficient size to provide for the day to day needs of residents, based on the number of occupants the dwelling is designed to accommodate.

- (1) Refer to H9 Business – Metropolitan Centre Zone, Standard H9.6.11.

I538.6.7A Residential at ground floor

Purpose: to discourage the location of activities that require privacy and which do not contribute to activation on the ground floor of buildings on primary

pedestrian linkages.

- (1) Dwellings, including units within an integrated residential development, must not locate on the ground floor of a building where the dwelling or unit has frontage to the edge of a primary pedestrian linkage.

I538.6.9. Central Pedestrian Plaza

Purpose: to ensure that a high amenity central gathering place is developed at a timely stage to function as the heart of the precinct.

- (1) No later than the completion of 125,000m² GFA of development in the precinct, a pedestrian plaza shall be provided approximately at the intersection of the primary pedestrian linkages shown on Precinct Plan 2.
- (2) The central pedestrian plaza shall have a minimum area of 1,000m².
- (3) Notwithstanding the definition of landscaped area in Chapter J Definitions, any part of the central pedestrian plaza that is not part of the internal vehicular network shall be included in the calculation of landscaped area for the precinct.

I538.6.10 Primary pedestrian linkages

Purpose: to ensure that legible, high quality linkages are in place at a timely stage in development of the precinct.

- (1) No later than the completion of 125,000m² GFA of development in the precinct, the primary pedestrian linkages shown on Precinct Plan 2 shall be provided.

I538.6.11 Noise levels between residential units and for noise sensitive spaces

Purpose: to ensure within the precinct an acceptable level of acoustic amenity for activities sensitive to noise.

- (1) Noise levels between units in the precinct shall comply with E25.6.9 (adopting the limits prescribed for the Business Mixed Use Zone).
- (2) Noise sensitive spaces within the precinct shall be designed and / or insulated to comply with E25.6.10, adopting the internal noise levels for the Business Mixed Use Zone. For the purpose of applying E25.6.10(2), the external noise level shall be the maximum noise levels permitted in the Business Park Zone.
 - (2A) New buildings or alterations to existing buildings containing noise sensitive activities within 100 metres of the nearest carriageway edge line of State Highway 1 ("State Highway Buffer Area") must be designed, constructed and maintained to achieve an indoor design noise level from road-traffic of 40 dB LAeq(24h).
- (3) The relevant assessment criteria in E25.8 shall apply to any activity that does not comply with I538.6.11. The assessment criteria shall be applied as if the precinct was located in the Business - Mixed Use Zone.

Note: The relevant provisions of E25 for the Business - Business Park zone apply in the precinct unless otherwise specified above.

I538.7. Assessment – controlled activities

I538.7.1. Matters of control

For activities and development that are controlled activities in the precinct, the council will reserve its control to the following matters in addition to the matters specified for the relevant controlled activities in the Business – Business Park zone and the Auckland-wide provisions:

- (1) The central pedestrian plaza:
 - (a) design.
- (2) New and redeveloped primary pedestrian linkages:
 - (a) design.
- (3) Each development where either the cumulative floor area of non-residential development will be greater than 105,000 m² gross floor area (A25) or the cumulative number of dwellings will be greater than 285 (A9):
 - (a) the management of parking;
 - (b) active modes facilities - the nature and location of facilities throughout the precinct that support active modes of travel;
 - (c) precinct-wide travel demand management initiatives and
 - (d) in granting resource consent for any development which results in the cumulative development exceeding 105,000m² GFA of non-residential development or 285 dwellings, if the mode share for single occupancy cars is greater than the values set out in I538.8.2(6), the council may impose a condition requiring a travel demand management plan that encourages the use of travel modes other than single occupancy vehicles for accessing the precinct to be prepared in consultation with Auckland Transport and major tenants within the precinct and includes Auckland Transport responses.

I538.7.2. Assessment criteria

For activities and development that are controlled activities in the precinct, the council will consider the relevant assessment criteria below in addition to the criteria specified for the relevant controlled activities in the Business – Business Park zone and the Auckland-wide rules:

- (1) The central pedestrian plaza:

The extent to which the central pedestrian plaza:

 - (a) provides a central gathering place and public space heart to the precinct;
 - (b) achieves a strong sense of edge definition to the public space through building and other elements (e.g. walls, screens, changes in level, vegetation)

where adjacent development has not occurred;

- (c) creates a positive interface and closely integrates with the adjoining primary pedestrian linkages;
- (d) receives adequate sun during the winter between the hours of 11am and 2pm;
- (e) is appropriately sheltered from the prevailing south-westerly wind;
- (f) provides comfortable places to sit and spend time in;
- (g) is primarily hard-surfaced to provide for pedestrian movement, people gathering and events; and
- (h) provides lighting to support a safe night-time environment.

(2) New and redeveloped primary pedestrian linkages:

The extent to which primary pedestrian linkages:

- (a) are consistent with Precinct Plan 2;
- (b) achieve legible, accessible, safe and high quality walking routes between the street entrances, bus station and central pedestrian plaza that are also supportive of people using other active travel modes - bicycles, scooters and other micro-mobility choices;
- (c) achieve edge definition through building and other elements (e.g. walls, screens, changes in level, vegetation) acknowledging that temporary design solutions may be used as interim measures where adjacent development has not occurred;
- (d) achieve a high-quality interface with adjoining activity, including through weather protection at building entrances, recognising the importance of this interface to the overall quality of the pedestrian environment;
- (e) provide lighting to support a safe night-time environment; and
- (f) create a positive interface and closely integrated with the central pedestrian plaza.

(3) Each development where either the cumulative floor area of non-residential development in the precinct will be greater than 105,000 m² gross floor area (A26) or the cumulative number of dwellings will be greater 285 (A10):

- (a) the management of parking – the extent to which all parking within the precinct is being effectively managed to reduce the demand for single occupancy car trips;
- (b) active modes facilities - the nature and location of facilities throughout the precinct that support active modes of travel – the extent of provision in all existing and proposed buildings for active modes of travel and end of trip facilities; and
- (c) precinct-wide travel demand management initiatives – including biennial travel

mode questionnaire surveys of all precinct workers and residents for comparison with the values set out in I538.8.2(6), as well as travel demand management initiatives that have been established and administered to determine if they are consistent with the objectives and policies of the precinct, connectivity with any new or upgraded public transport and pedestrian/active mode facilities on the adjacent transport networks, and new facilities for active mode travelers that are being established.

I538.8. Assessment – restricted discretionary activities

I538.8.1. Matters of discretion

For activities and development that are restricted discretionary activities in the precinct, the council will restrict its discretion to the following matters in addition to the matters specified for the relevant restricted discretionary activities in the Business – Business Park zone and the Auckland-wide provisions:

- (1) Activities exceeding the limits in Standard I538.6.2 (Parking):
 - (a) refer to E27 Transport, Rule E27.8.1(5) (a), (b) and (c).
- (2) Activities exceeding the limits in Standard I538.6.4 (Height):
 - (a) the effects of the infringement on the amenity of neighbouring sites;
 - (b) the effects of the infringement on amenity within the precinct;
 - (c) the location of the building site in relation to its suitability for high buildings; and
 - (d) the contextual relationship of the building with adjacent buildings and the wider landscape.
- (3) Activities exceeding the limit in clause (2) of Standard I538.6.5 (Maximum tower dimension and building separation):
 - (a) The effects of the infringement on the amenity of neighbouring sites; and
 - (b) The effects of the infringement on the wider landscape.
- (4) Conversion of a building or part of a building to dwellings, integrated residential development, visitor accommodation or boarding houses:
 - (a) refer to H9 Business – Metropolitan Centre zone, Rule H9.8.1(5); and
 - (b) effects on the business park function of the precinct.
- (5) New buildings, and additions and alterations not otherwise provided for:

- (a) consistency with Precinct Plan 2;
 - (b) building design and appearance;
 - (c) the design of ground floor residential activity;
 - (d) the provision and design of landscaped open space;
 - (e) pedestrian amenity, safety and access; and
 - (f) the design and appearance of tall buildings.
- (6) Each development where either the cumulative floor area of non-residential development in the precinct will be greater than 125,000m² gross floor area (A26) or the cumulative number of dwellings will be greater than 855 (A10):
- (a) mode share;
 - (b) travel management;
 - (c) transport infrastructure and parking provisions; and
 - (d) in granting resource consent for the first development which results in the cumulative development in the precinct exceeding 125,000m² GFA of non-residential development or 855 dwellings, if either the peak hour traffic generation rates or the mode share for single occupancy car travel is greater than the values set out in I538.8.2(6)(a), the council may impose a condition requiring a travel demand management plan that encourages the use of travel modes other than single occupancy vehicles for accessing the precinct to be prepared in consultation with Auckland Transport and major tenants within the precinct.

I538.8.2. Assessment criteria

For activities and development that are restricted discretionary activities in the precinct, the council will consider the relevant assessment criteria below in addition to the criteria specified for the relevant restricted discretionary activities in the Business – Business Park zone and the Auckland-wide rules:

- (1) Activities exceeding the limits in Standard I538.6.2 (Parking):
 - (a) refer to E27 Transport, Rule E27.8.2(4)(b) to (h).
- (2) Activities exceeding the limits in Standard I538.6.4 (Height):
 - (a) the extent to which the amenity of neighbouring sites including those outside the precinct is adversely affected;
 - (b) the extent to which the precinct can accommodate higher buildings without generating significant adverse effects on the wider environment;
 - (c) the extent to which the height of a new building is appropriate in the context of the height of buildings on adjacent land and within the wider landscape;

- (d) for buildings in Height Area 1, in addition to (a), (b) and (c) above, those criteria listed in I538.8.2(5)(f).
- (3) Activities exceeding the limit in clause (2) of Standard I538.6.5 (Maximum tower dimension and building separation):
- (a) the extent to which the amenity of neighbouring sites including those outside the precinct is adversely affected; and
 - (b) the extent to which building footprint, mass and visual scale is managed above RL98.4, including through appearing obviously smaller than below RL98.4, in order to avoid significant adverse effects on the wider environment, in particular, the skyline of the precinct, as seen within the broader urban area.
- (4) Conversion of a building or part of a building to dwellings, integrated residential development, visitor accommodation or boarding houses:
- (a) refer to H9 Business – Metropolitan Centre zone, Rule H9.8.2(5); and
 - (b) effects on the business park function of the precinct:
the extent to which:
 - (i) the conversion avoids adverse effects on the business park function of the precinct; and
- (5) New buildings, and additions and alterations not otherwise provided for:
- (a) consistency with Precinct Plan 2:
the extent to which development is generally consistent with the structuring elements identified on Precinct Plan 2. Note: Primary pedestrian linkages need not be linear.
 - (b) building design and appearance:
the extent to which:
 - (i) building design is of high quality, expressing a clear and coherent design concept that responds to its surrounding context and utilises a palette of durable materials to express the building form;
 - (ii) features such as façade modulation and articulation, and/or the use of materials and finishes, are used to manage visual amenity effects of building bulk and scale, and to create visual interest;
 - (iii) the roof profile is part of the overall building form and rooftop plant and equipment is integrated into the building design; and
 - (iv) the ground floor areas of buildings on primary pedestrian linkages are adaptable to a range of uses.

(c) ground floor residential activity:

where ground floor residential activity adjoins a publicly accessible area, the extent to which the design of the public/private interface:

- (i) addresses the privacy of occupiers of dwellings;
- (ii) provides appropriate levels of passive surveillance of the adjoining area of public access; and
- (iii) maintains the visual and pedestrian amenity of the adjoining area of public access.

(d) landscaped open space:

the extent to which:

- (i) landscaped open space is provided or maintained with each stage of development; and
- (ii) the design of hard and soft landscaping integrates with and appropriately enhances the design and configuration of buildings and the amenity of publicly accessible areas for the various users of the precinct.

(e) pedestrian amenity, safety and access:

the extent to which:

- (i) the design of a building contributes to pedestrian vitality and interest where it fronts an area of significant pedestrian activity, in particular adjoining primary pedestrian linkages and the central pedestrian plaza;
- (ii) building entrances are easily identifiable and accessible, and provide pedestrian shelter;
- (iii) separate pedestrian entrances are provided for residential activity that are clearly located and legible for public access and provide a sense of address for residents and visitors;
- (iv) the design of development has regard to pedestrian amenity and personal safety; and
- (v) parking, loading and service areas are located and screened (as necessary) to maintain pedestrian amenity.

(f) buildings within Height Area 2 extending above RL50.4:

the extent to which:

- (i) the building maintains the visual amenity of the overall development

on the site as viewed from residential zones and public places outside the precinct;

- (ii) the building makes a positive contribution to the collective skyline of the precinct, including architectural expression to the rooftops and upper levels of tall buildings;
- (iii) the building responds and relates appropriately to the scale and form of neighbouring buildings within the precinct;
- (iv) the building, particularly where above RL98.4, positively contributes to achieving a clustered concentration of built form with a singular visual focal point in the precinct, as seen within the broader urban area around the precinct, through building location and height; and
- (v) adverse off-site and off-precinct effects of tall buildings, in particular:
 - wind, shadowing, dominance and privacy effects; and
 - significant visual effects, including cumulative effects, on the wider landscape environment, including views to the summit of Rangitoto

are avoided or suitably mitigated;

- (6) Each development where either the cumulative floor area of non-residential development in the precinct will be greater than 125,000m² gross floor area (A26) or the cumulative number of dwellings will be greater than 855 (A10):
- (a) mode share – assessment of the actual mode share of travel associated with non-residential and residential activities at the precinct in the morning and afternoon peak hour, against the following mode shares:
 - (i) non-residential: single occupancy car travel 60%; all other travel 40%;and
 - (ii) residential: single occupancy car travel 45%; all other travel 55%.
 - (b) demonstrate the success or otherwise of Travel Demand Management measures implemented within the precinct, including demonstrating these are consistent with the objectives and policies of the precinct, including:
 - (i) site travel demand management plans corresponding to the scale and significance of the activity;
 - (ii) physical infrastructure to be established or currently established on the site to support alternatives to single occupancy car use, such as covered facilities for cyclists, scooters, showering, lockers and changing facilities, plus carpool, shared vehicles and shared parking areas; and
 - (iii) operational and management measures to be established or currently implemented on the site to encourage reduced vehicle trips including car

share schemes, management to incentivise lower vehicle use, public transport incentives, flexi-time, remote working, and staggered working hours;

- (c) reporting on any new or upgraded public transport and pedestrian / active modes connections on the transport network adjacent to the precinct; and
- (d) where criterion I538.8.2.(6)(a) is not met, the council shall have regard to whether the overall non-residential activity could meet that criterion where, either:
 - (i) the parking proposed in the application for non-residential activity gross floor area results in a reduction in the overall parking ratio for non-residential activity consistent with achieving the requirements in standard I538.6.2(1); or
 - (ii) information is provided in the application to demonstrate how the parking provision for later intended buildings will be delivered to achieve the requirements in standard I538.6.2(1).

I538.9. Special information requirements

Special information is required in respect of the following applications, as set out below:

- (1) Each development where either the cumulative floor area of non-residential development in the precinct will be greater than 105,000 m² gross floor area (A25) or the cumulative number of dwellings will be greater than 285 (A9):
 - (a) All the information necessary for council to be able to gain a comprehensive understanding of the matters which are listed for assessment.
 - (b) An 'integration' plan indicating the positioning of all existing and intended buildings relative to 'structuring elements' and how the balance of the precinct is to be developed to achieve or promote the objectives and policies of the precinct and thereby how the proposal fits with the developed and consented urban structure and form. To avoid doubt, this plan is not to be the subject of any approval from the council but is to inform any other travel-related conditions that might be appropriate and to understand such things as the developing movement pattern throughout the precinct and the location of noise-emitting and noise-sensitive activities.
 - (c) An assessment including a biennial travel mode questionnaire survey of travel patterns of workers and residents prepared by a suitably qualified and experienced person addressing the following:
 - i. Mode share

Details of the actual mode share of travel associated with non-residential and residential activity in the precinct in the morning and afternoon peak hour.

- (2) The application for resource consent under rules I538.4.1 (A25), (A9), (A26) and (A10) shall provide evidence of consultation on the mode share assessment with Auckland Transport and

the New Zealand Transport Agency and their responses to that consultation.

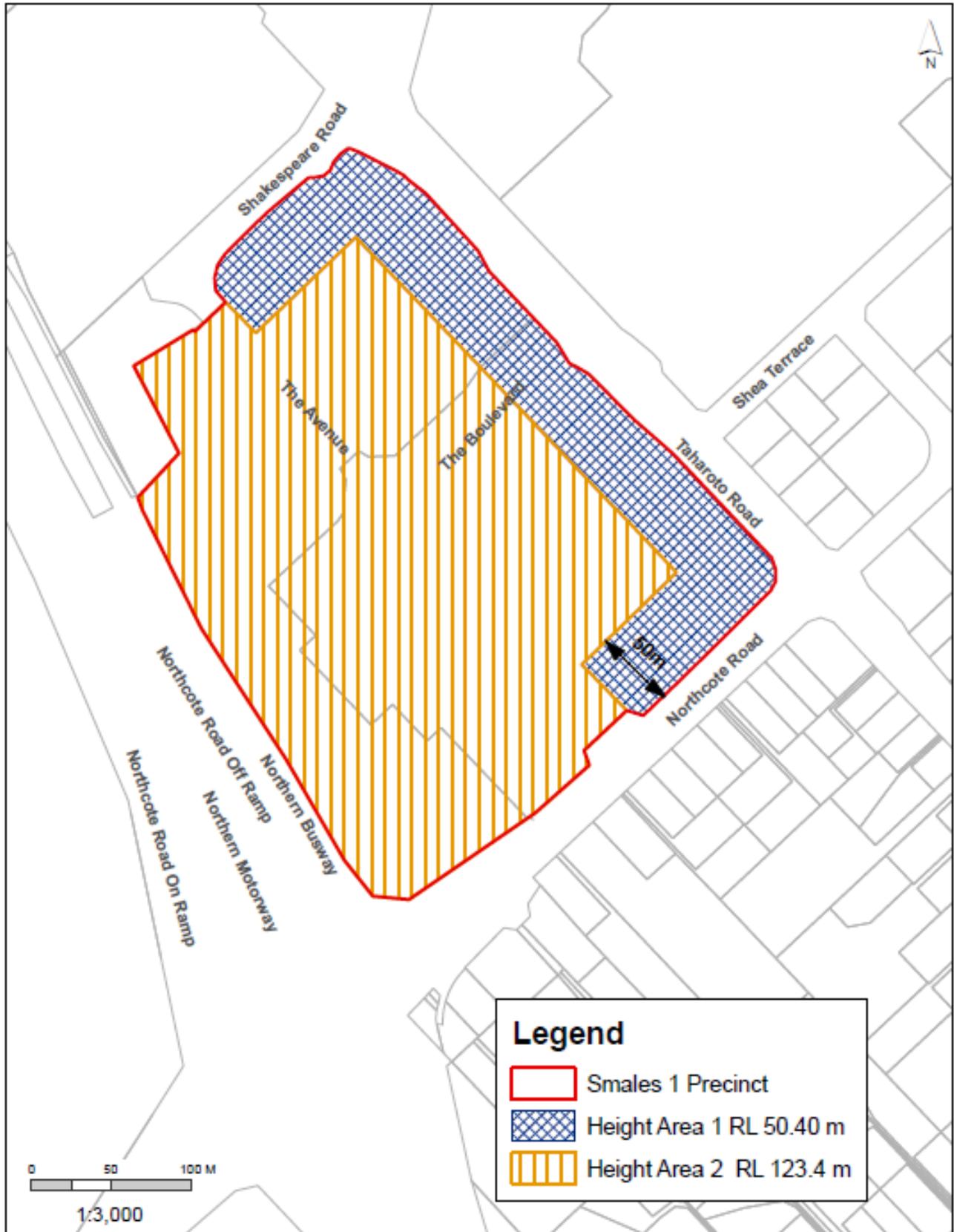
- (3) The formation of a new primary pedestrian linkage and or the central pedestrian plaza at any time or stage in the development of the precinct.
 - a. As for I538.9(1)(a) and (b).
- (4) A building extending above RL50.4.
 - a. As for I538.9(1)(a) and (b).
- (5) Where Standard I538.6.11(2A) applies, a design report prepared by a suitably qualified and experienced acoustics specialist must be submitted to the council demonstrating noise compliance prior to the construction or alteration of any building containing a noise sensitive activity in or partly in the State Highway Buffer Area.

I538.10. Precinct plans

I538.10.1 Smales 1 Precinct: Precinct Plan 1 – Maximum Height

I538.10.2 Smales 1 Precinct: Precinct Plan 2 – Structuring Elements.

I538.10.1 Smales 1 Precinct: Precinct Plan 1 – Maximum Height



I538.10.2 Smales 1 Precinct: Precinct Plan 2 – Structuring Elements.

