

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



## Proposal

Amendments to two development standards (side yard and site coverage) of the Flat Bush Precinct - sub precinct H and minor amendments to associated sub-precinct boundaries and underlying zone boundaries.

This plan modification is **GRANTED**, subject to modification. The reasons are set out below.

<b>Plan modification number:</b>	47
<b>Site address:</b>	Flat Bush Precinct, sub-precinct H
<b>Applicant:</b>	BR Land Company Limited
<b>Hearing commenced:</b>	Wednesday, 10 February 2021, 9.30 a.m.
<b>Hearing panel:</b>	David Mead (Chairperson) Lisa Mein
<b>Appearances:</b>	<p><b><u>For the Applicant:</u></b> BR Land Company Limited represented by: Bill Loutit, Legal Counsel Rachel Abraham, Legal Counsel Vaughan Bell, Corporate Rachel de Lambert, Landscape Ian Munro, Urban Design Jennifer Hansen, Architecture John Duthie, Planning</p> <p><b><u>For the Submitters:</u></b> Neil Construction represented by: Philip Brown (Campbell Brown Planning Limited)</p> <p><b><u>For Council:</u></b> Craig Cairncross, Team Leader Vanessa Leddra, Planner Nicole Bitossi, Urban Design Ainsley Verstraeten, Landscape Architect Bernie Warmington, Resource Consents Bevan Donovan, Hearings Advisor</p>
<b>Hearing adjourned</b>	Wednesday 10 February, 2021
<b>Commissioners' site visit</b>	4 February 2021
<b>Hearing Closed:</b>	16 February 2021

## Introduction

1. This decision is made on behalf of the Auckland Council (“**the Council**”) by Independent Hearing Commissioners David Mead (Chairperson) and Lisa Mein 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 Private Plan Change 47 (“**PPC 47**”) to the Auckland Council Unitary Plan Operative in Part (“**the Unitary Plan**”) after considering the plan change request, submissions, the section 32 evaluation, the reports prepared by the officers for the hearing and evidence presented during and after the hearing of submissions.
3. PPC 47 has been prepared following the standard Part 2 process of Schedule 1 of the RMA. The plan change request was accepted by the Council in July 2020 and was limited notified on 14 August 2020. One submission in support was received. A summary of submissions was notified for further submissions on 24 September 2020. No further submissions were received.

## SUMMARY OF PLAN CHANGE

4. The proposed plan change is described in detail in the plan change request documents and the Council’s hearing report. The change affects land in the Flat Bush area, as covered by the Flat Bush Precinct incorporated into the AUP (OP).
5. In summary, BR Land Company Ltd (the requestor) seeks to reduce the side yard standard in Flat Bush sub-precinct H from 3m to 1.2m and increase permitted building coverage from 35% to 40% for sites over 400 sqm. In addition, the request seeks to modify the boundaries of sub precincts H, J and K of the Flat Bush precinct and amend the associated underlying zoning from Residential: Single House zone [SHZ] to Residential: Mixed Housing Suburban zone [MHSZ].
6. BR land company control the majority of land within sub precincts H and K. The subject land is located on the eastern edge of the Flat Bush greenfields development area. BR Land company describe the purpose of the proposed private plan change as being to enable greater consistency in medium density development in the area and more appropriately provide for the spaciousness of that development, as set out in the description of the sub precincts. The modifications to the boundary changes to sub precincts H, J and K and amendments to the zoning from SHZ to MHSZ bring alignment with the landform set out in an approved subdivision design and layout for Bremner Ridge [as the area is known].

## HEARING PROCESS

7. A Hearing was held on 10 February 2021. Prior to the hearing, the Commissioners visited the area affected by the plan change request, as well as the wider Flat Bush area. They were escorted over the BR Land site by Vaughan Bell who pointed out various features of the subdivision that is underway.
8. The Council planning officer’s report was circulated prior to the hearing and taken as read. This report included comments from the Local Board. No expert evidence was pre-circulated as there were no opposing submitters. Evidence was presented on the day of the hearing.

9. No procedural matters were raised by any party.

## RELEVANT STATUTORY FRAMEWORK

10. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. We do not need to repeat these again in detail, as they were not in dispute. We note that the critical test in this instance is whether the amended standards and precinct and zone boundaries more appropriately implement the objectives of the AUP (OP) than the standards and zone and precinct boundaries as presently contained in the AUP (OP).
11. Planning witnesses referred in various ways to the objectives of the National Policy Statement on Urban Development. This Policy Statement was issued after the AUP(OP) had been largely settled and the AUP (OP) – and any changes to it - must give effect to this Statement. None of the planners identified any major inconsistency between the policy statement, the plan change request and relevant provisions of the AUP(OP).
12. In terms of AUP (OP) provisions, there are several objectives of the Unitary Plan that are directly relevant to PPC 47. These include:

### *Objective I412.2.1. Objectives for Flat Bush Precinct*

- (1) A well-connected, adaptable, safe, attractive and healthy environment for living, working and movement with an emphasis on the importance of the public realm, is achieved.
- (6) High quality residential amenity is promoted for all types of housing that reflects and responds to community needs and the physical environment both now and in the future.

### *Objective I412.2.2 for Sub-precincts H and K (Flat Bush Precinct).*

- (3) In Sub-precincts H and K, the landscape quality, water and soil resources, native forest, wetlands and open space amenity values of this highly visible landscape in the mid to upper reaches of the Flat Bush basin along with a degree of spaciousness in this medium to low density residential sub-precinct is maintained and enhanced.

Relevant Mixed Housing Suburban zone objectives are:

### *H4.2. Objectives*

- (1) Housing capacity, intensity and choice in the zone is increased.
- (2) Development is in keeping with the neighbourhood's planned suburban built character of predominantly two storey buildings, in a variety of forms (attached and detached).
- (3) Development provides quality on-site residential amenity for residents and adjoining sites and the street.

13. Finally, Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions. The decision must also 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.

## **PLANNING CONTEXT HISTORY**

14. The land subject to this request has been identified for urban development since the mid-1990s. It forms part of an area which was subject to structure planning by the former Manukau City Council. The area was zoned Flat Bush Residential 4 zone under the Manukau District Plan with objectives for the area relating to a need for creating and maintaining a degree of spaciousness within the zone, given its position on the edge of the main urban area, and on an elevated ridgeline.
15. The land in the Residential 4 zone was divided into a number of sub-precincts. Precinct H covered land located on a visible plateau, characterised by a grade that is suitable for medium density development. Precinct K covered the rest of the zone with undulating topography containing areas of developable land located on the flanks and spurs of the deep gullies. Sub precinct K anticipates lower density residential development with development controls to ensure a degree of spaciousness.
16. The AUP (OP)'s Flat Bush Precinct effectively rolled over the Residential 4 provisions. The AUP (OP) saw sub-precinct H zoned MHSZ with a minimum site size of 520 sqm. Sub Precinct K was zoned SHZ.
17. Recent subdivision activity has seen much of sub-precinct H divided into house lots of a variety of sizes. More specifically, 247 of the consented lots do not meet the minimum 520 sqm site size requirement of sub precinct H and not all sites meet the minimum 20m width and/or 26m minimum depth requirements. There are a number of narrow lots (12-14m wide) consented, utilising rear lanes.
18. The requestor noted that the subdivision application has seen much of the sub-precinct K land subject to protective covenants that limit building in the sub-precinct. Within sub-precinct H, open spaces have been provided that help form a linear green corridor along with a key road having a wide berm and associated planting in front yards. In the view of the requestor, together, these features help to contribute to the degree of spaciousness sought by Objective I412.2.2. In other words, spaciousness was not just delivered by the yard and coverage controls of the sub-precinct.

## **SUMMARY OF EVIDENCE**

19. The evidence presented at the hearing responded to the issues and concerns identified in the Council planning officer's report, the application itself and the submission made on the application.
20. By the time of the hearing, the Council had indicated support for the adjustment of sub-precinct and zone boundaries, as well as the increase in site coverage from 30 to 40%. Council recommended that the side yard amendment not be approved (that is, the side yard remain at 3m, rather than 1.2m). The Hearing therefore concentrated on this one matter.
21. The evidence presented at the hearing is summarised below.

## Requestor

22. Mr Loutit, legal counsel, outlined the plan change request. He submitted that the requestor's expert assessments were that the amended standards would retain a similar level of spaciousness to that of the current standards, while providing more flexibility over house design and layout. There were no reasons to reject the plan change request.
23. Mr Bell is a project manager. He outlined the background to the BRL development, including the earthworks which have resulted in the need to realign zone and precinct boundaries in a number of (relatively) small areas. He also outlined the demand for larger houses to accommodate multi-generational households.
24. Mr Munro covered urban design matters. He considered that the amended side yard would lead to a better outcome overall, than retention of the current 3m wide yard. In particular, on small lots, the narrower side yard was more likely to see house designs that had street frontages that were not dominated by garages. His opinion was that the side yards made only a small contribution to the sense of spaciousness, and that any reduction of this contribution would be easily off-set by improved streetscapes. He also considered that retention of the wider side yards would see more built form being 'pushed' into rear yards, to the detriment of the quality of rear yards and their role in contributing to a spacious character. The sloping topography of sub-precinct H also assists with absorbing the visual effects of smaller side yards.
25. Ms Hanson (Architect) provided diagrams and analysis which set out possible building footprints on a variety of different lot sizes and orientations. These layout studies demonstrated that most lots in the BRL component of sub-precinct H were less than 520m<sup>2</sup> in area. On most of the lots that have been consented, compliance with the 3m side yards would see building frontages dominated by double garages, with no habitable space on the ground floor. She noted that the height in relation to boundary control, the sloping topography and retaining wall structures in side yards were likely to result in side yards that were wider than a minimum of 1.2m, on some sites.
26. Mr Duthie addressed planning issues. He outlined his understanding of the history of sub-precincts H and K, as well as the recent subdivision application. He stressed that the subdivision application had seen moves to provide a degree of spaciousness, including covenants on much of the steeper land contained in sub-precinct K. His view was that the 3m side yard had been rolled over from the Manukau Plan and not re-examined as to its appropriateness as part of the AUP preparation process. He noted that the amended side yard of 1.2m would be wider than the 1m wide yard required in the underlying Mixed Housing Suburban zone. His assessment was that the amended side yard control would better meet the objectives of the AUP and NPS-UD by enabling development, while still retaining the objective of a degree of spaciousness.
27. Ms de Lambert (landscape architect) spoke to her evidence relating to landscape and visual effects. She saw no landscape or visual effects reason to retain the 3m wide side yard. While the subject area was elevated above the majority of Flat Bush, the land had no specific landscape value and was not highly visible. At the level of the

street environment, over time, it was unlikely that the narrower side yard would lead to a reduction in public amenity.

### **Submitters**

28. Mr Brown provided a summary of his planning evidence for Neil Construction Limited. He supports the plan change request. In his opinion the changes to the development standards will lead to better built form outcomes, given the subdivision pattern that has been approved.
29. Mr Brown also outlined two amendments to zone and sub-precinct boundaries that are relevant to Neil Construction Limited land holdings. The adjustments are similar to those sought by the requestor, with boundaries of sub precincts and zones needing to be adjusted to reflect recent subdivision. These adjustments were not part of the notified plan change, but he saw no issues with their inclusion in the plan change, as the adjusted zone and sub-precinct boundaries only affected Neil Construction land and there were no environmental effects arising.

### **Council Staff**

30. Ms Verstraeten (landscape architect) opposes the reduction in the side yard standard. She maintained her opposition to the amended side yard on the basis of landscape and visual effects. In her opinion, side yards contribute to the sense of spaciousness. The reduced side yard would be noticeable as people traversed along a street and would reduce the degree of spaciousness of the environment.
31. Ms Bitossi covered urban design matters. She supports all aspects of the plan change request.
32. Ms Leddra maintained her section 42A report recommendation that the building coverage and zone and sub-precinct boundary changes be approved, but the request to modify the side yard be rejected on the basis of the likely diminishment of a sense of spaciousness (and therefore incompatibility between the method (side yard standard) and the objective (an urban environment with a degree of spaciousness)).

### **Reply**

33. Mr Loutit gave a brief verbal reply. He noted a number of points that supported approval of the request.
34. At the macro scale the consented subdivision provided a degree of spaciousness through the covenanted areas, and the open spaces and wide road reserves incorporated into the development.
35. At the level of the street environment, the reduced side yard would not reduce the sense of spaciousness, while it had the potential to improve the street environment by reducing the dominance of garage doors on front facades, especially on the narrower lots that had been consented.
36. He contended that consideration of the amended side yard standard needed to occur within the context of the evolution of the Flat Bush area towards greater density, while the amended standard would provide more flexibility over house design, and this flexibility outweighed any risks of reduced urban design outcomes.

## PRINCIPAL ISSUES IN CONTENTION AND FINDINGS

37. As noted, the hearing concentrated on the matter of the appropriate side yard standard. The coverage control modification and zone and sub-precinct boundary adjustments were not in contention.
38. For information purposes, Figure 1 below shows the proposed Precinct and Zone boundaries as put forward by the requestor and submitter.

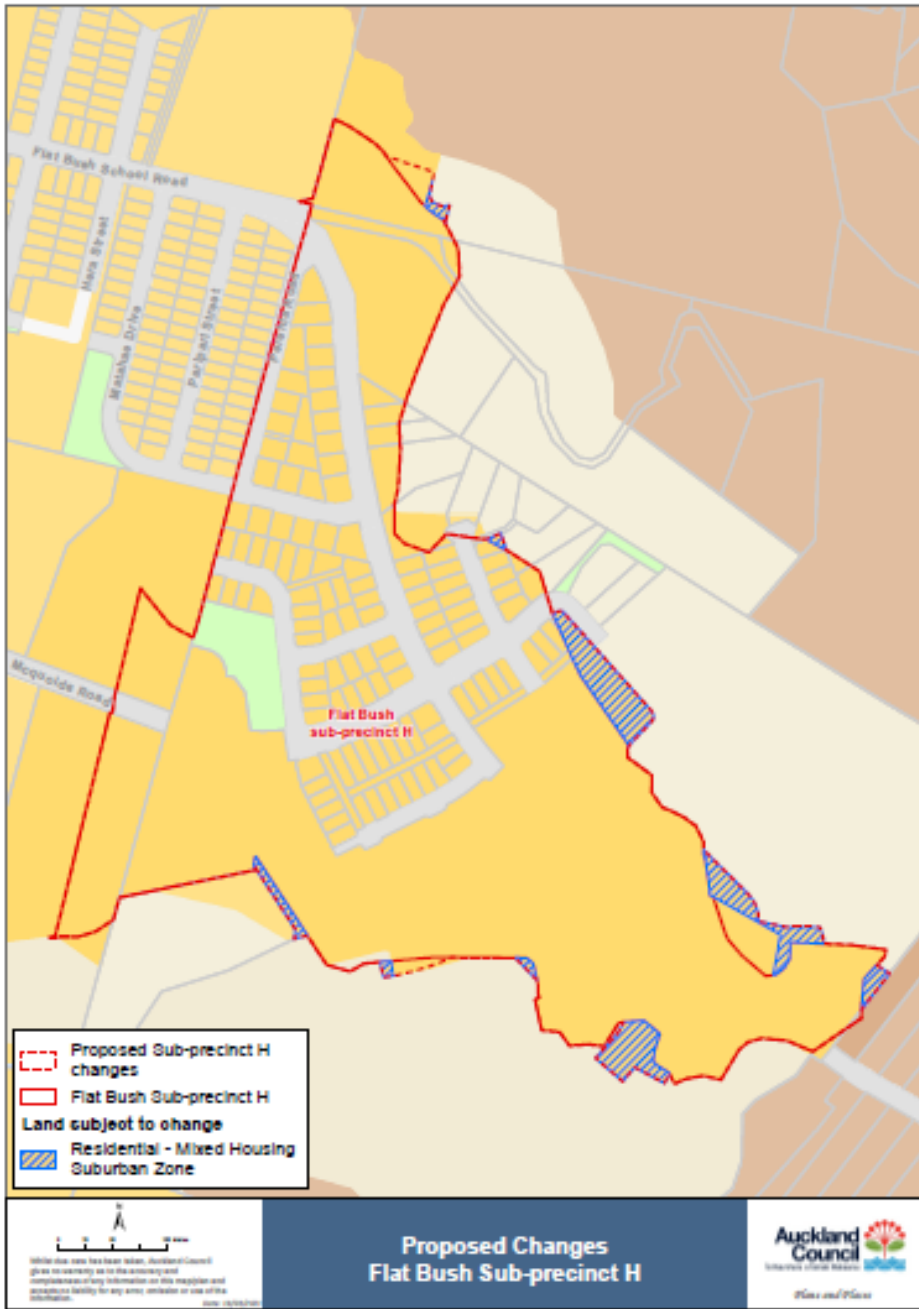


Figure 1: Proposed Precinct and Zone changes.

39. The parties agreed that side yards have a role in the overall sense of ‘spaciousness’ of an urban environment but differed on the extent of this contribution. We also note that the debate centred on the public amenity aspects of side yards. There was not a focus on inter-neighbour effects.

40. As identified, the Flat Bush precinct's objective for sub precinct H is to provide a 'degree of spaciousness' within a medium density environment. The objective and associated policies do not state the extent of such spaciousness. It was pointed out to us that the policies list density and site coverage when referring to spaciousness, not side yards. However, the relevant planning and urban design experts did not confine consideration of spaciousness to these two parameters.
41. We accept that the relevant development standards (including density, coverage, yards) help to describe the expected extent of spaciousness, as well as the visual and physical relationship between sub-precincts H and K. However, consideration of the most appropriate way to implement the objective cannot be limited to what standards are currently included in the AUP (OP), with any reduction to those standards taken to be contrary to the objective.
42. In considering these matters it is apparent to us that the context for considering what is an appropriate degree of spaciousness has changed over time as Auckland has grown more intensively and the planning framework has been amended accordingly. In particular, we consider that the BR Land subdivision consent has materially changed the context for what might be considered an appropriate sense of spaciousness. Consent for smaller lots and increased site coverage mean that the environment is likely to be more intensively developed than when the Flat Bush provisions were first formulated. A reduced side yard requirement is consistent with this trend.
43. We also consider it relevant and appropriate to take into account the physical and visual relationship sub-precinct H has with sub-precinct K. We note that the Objectives for Flat Bush refer to the interrelationship between sub-precincts H and K. In this regard we agree that the move to covenant parts of sub-precinct K does contribute to a degree of spaciousness.
44. Having considered the evidence and viewed recent developments in the area we consider that the amended side yard control will not reduce the degree of spaciousness experienced by members of the public to the extent that the objective is undermined. We accept that the reduced side yard may assist in providing some design flexibility that could have streetscape benefits.
45. We accept the evidence of the requestor and council that the amended coverage control is appropriate.
46. On the changes to sub-precinct and zone boundaries, we note that these changes affect only small areas and do not alter the fundamental 'zoning' strategy for the area.
47. We agree with Mr Brown that it is appropriate to make small changes to the boundaries as they affect Neil Construction land, even if those changes were not notified. The changes only affect land controlled by Neil Construction, who are a submitter.



## STATUTORY PROVISIONS

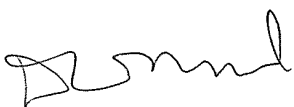
48. Relevant statutory matters have been set out above.
49. We see no issue with the NPS-UD in terms of support for, or opposition to the plan change. The plan change clearly supports important aspects of the Regional Policy Statement relating to accommodating growth in a compact form, while maintaining and better implementing relevant objectives of the AUP(OP) Flat Bush sub-precinct.
50. Having considered the evidence and relevant background documents, we are satisfied, overall, that PPC 47 has been developed in accordance with the relevant statutory and policy matters.
51. The small modification to the plan change to incorporate adjustments to zone and sub-precinct boundaries affecting the Neil Construction land are of a minor nature and do not need a separate sec 32AA further evaluation.

## DECISION

52. That pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, Private Plan Change 47 to the Auckland Unitary Plan (Operative in Part) be approved, subject to the modifications set out in this decision relating to sub-precinct and zone boundaries as they relate to land owned by Neil Construction.
53. The submission on the plan change by Neil Construction Limited is accepted.
54. The reasons for the decision are that Private Plan Change 47:
  - a. will assist the Council in achieving the purpose of the RMA;
  - b. gives effect to the Auckland Regional Policy Statement;
  - c. is consistent with the provisions of Part 2 of the RMA;
  - d. is supported by necessary evaluation in accordance with section 32; and
  - e. will help with the effective implementation of the plan.

Attached to this decision are:

- Amendments to Flat Bush Precinct provisions
- Amendments to the planning maps.



**Chairperson**

**Date:** 20 April 2021

**Attachment One: Amended Text I412 Flat Bush Precinct H**

Amend Table I412.6.1.4.1 – Yards, as follows:

	A	B	D	E	F	G	H	I	J	K
Front Yard in meters	3	NA	0	0	3	0	4	6	6	4
Side Yard in meters	1.2	1.2	1.2	1.2	1.2	0	<del>3</del> 1.2	6	0	3
Rear Yard <sup>1</sup> in meters	8	8	8	8	8	0	8	6	0	8

Amend Table I412.6.1.5.1 – Maximum Building Coverage (as a percent of the site), as follows:

	Maximum Building Coverage (as a percent of the site)									
	Sub-Precinct									
	A	B	D	E	F	G	H	I	J	K
Sites over 400sqm net site area	40	40	50	50	40	NA	<del>35</del> <u>40</u>	15	NA	30

## Attachment Two: Planning Maps

Amend the AUP Planning Maps as follows:

