

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



Private Plan Change Request

This private plan change request (**Request**) seeks to re-zone 3A and 119A Carrington Road from Business – Mixed Use zone to Special Purpose – Healthcare Facility and Hospital zone and amend provisions and plans in the Wairaka Precinct.

This private plan change request is **GRANTED**. The reasons are set out below.

Plan change number:	75
Site address:	3A, 81A and 119A Carrington Road, Mount Albert (Mason Clinic)
Applicant:	Te Whatu Ora – Health New Zealand (Waitematā)
Hearing commenced:	9.30 a.m. Friday 16 June 2023
Hearing panel:	Robert Scott (Chairperson) Kim Hardy (Commissioner) Philip Brown (Commissioner)
Appearances:	<p><u>For the Requestor:</u> Te Whatu Ora - Health New Zealand (Waitematā) represented by:</p> <ul style="list-style-type: none"> • Bill Loutit (Legal Counsel) • Haitham Alrubayee (Corporate) • Geraldine Bayly (Landscape Architecture) • Bronwyn Coomer-Smit (Transport) • Craig McGarr (Planning) <p><u>For the Submitters:</u></p> <ul style="list-style-type: none"> • Geoffrey Beresford and Joanna Beresford <p><u>For Council:</u></p> <ul style="list-style-type: none"> • Celia Davison, Manager Planning - Central/South • Elisabeth Laird, Planner • Mustafa Demiralp, Urban Designer • Bridget Gilbert, Landscape Architect (consultant) • Roja Tafaraji, Senior Parks Planner

	<ul style="list-style-type: none"> • Andrew Temperley, Transport Planner (consultant) • Kerry Swanepeel, Major Development Programme Lead, Watercare Services Limited • Gemma Chuah, Healthy Waters Specialist • Bevan Donovan, Kaitohutohu Whakawātanga/ Hearings Advisor
Hearing adjourned	Friday 16 June 2023
Commissioners' site visit	Monday 19 June 2023
Hearing Closed:	28 August 2023

Executive Summary

1. Proposed Private Plan Change 75 (**PC75**) to the Auckland Unitary Plan (Operative in Part) seeks to re-zone 3A and 119A Carrington Road from Business – Mixed Use Zone to Special Purpose – Healthcare Facility and Hospital Zone, and amend provisions and plans in the Wairaka Precinct Chapter I334 in the Auckland Unitary Plan (Operative in Part).
2. Four submissions were received, including one further submission and one submitter (Geoffrey Beresford and Joanna Beresford) was present and gave evidence at the hearing.
3. Our key findings are:
 - We have approved the Proposed Plan Change;
 - The key elements of the submission by Geoffrey Beresford and Joanna Beresford have been considered and we have accepted a number of changes that, in our finding, addresses the relief sought by them;
 - The existing shared path, which will be displaced by the Mason Clinic redevelopment, can be adequately provided within the MHUD private plan change application that has been submitted to Council;
 - The proposed removal of an area of private open space and its re-allocation elsewhere within the wider precinct has been adopted and is found to be within the scope of the plan change request; and
 - The PC75 application as amended by this decision satisfies the requirements of s.32, s.32AA and Part 2 of the Resource Management Act 1991 (the RMA).

INTRODUCTION AND HEARING

4. This decision is made on behalf of the Auckland Council (**Council**) by the panel of Independent Hearing Commissioners **Robert Scott, Kim Hardy and Philip Brown** (**Panel**), appointed and acting under delegated authority under sections 34A of the RMA to make the decision on Plan Change 75 application (**PC75**) to Auckland Council's Unitary Plan Operative in Part (**AUP: OP**).

5. PC75 is a private plan change by Te Whatu Ora – Health New Zealand (Waitematā) (**Requestor**) lodged on 7 October 2021 and accepted by the Council under clause 25(2)(b) of Schedule 1 to the Act 1 on 31 March 2022.
6. The plan change was publicly notified on 26 May 2022. Notification involved a public notice as well as letters being sent to directly affected landowners and occupiers alerting them to the plan change. The latter step was aimed at ensuring that landowners and occupiers of properties affected by potentially significant changes were made aware of the changes.
7. A total of 3 submissions were received. The summary of decisions requested was notified on 9 September 2022, with the period for further submissions closing on 23 September 2022. One further submission was received during this period. There were no late submissions.
8. We received a significant amount of expert and lay evidence before and during the hearing. The majority of expert evidence came from the Requestor and the Council's expert witnesses. This included a s.42 report and recommendation from Ms Elisabeth Laird (Council's planner and author of the s.42 report). This report was received before the hearing and recommended that we approve the plan change, as amended by the Council. Ms Laird was of the view that the Request as proposed was not acceptable in both effects and planning policy and would not be the most appropriate way of achieving the objectives of Auckland Unitary Plan – Operative in Part (**Unitary Plan**) but recommended some alternative provisions to resolve the concerns raised by the Council.
9. The hearing was held at the Auckland Town Hall and online via MS Teams on 16 June 2023, where we considered the following as part of application and our decision:
 - a. The Request, its Assessment of the Environmental Effects (**AEE**), section 32 evaluation and proposed planning and precinct provisions and all its supporting documents and plans, as amended through the plan change request process;
 - b. The applicant's opening, closing and right of reply legal submissions from Mr Bill Loutit (Counsel); the applicant's expert witnesses' evidence, including rebuttal evidence and evidence presented at the hearing from Haitham Alrubayee (Corporate), Geraldine Bayly (Landscape Architecture), Bronwyn Coomer-Smit (Transport) and Craig McGarr (Planning).
 - c. The Council's reporting team of experts from Ms Elisabeth Laird (Council's planner) hearing report, with all professional supporting reports, including those from Mustafa Demiralp - Urban Designer, Bridget Gilbert - Landscape Architect (consultant), Roja Tafaraji - Senior Parks Planner, Andrew Temperley - Transport Planner (consultant), Kerryn Swanepoel - Major Development Programme Lead (Watercare Services Limited), Gemma Chuah - Healthy Waters Specialist;
 - d. The evidence of Mr and Ms Beresford.

- e. The tabled submission by the Ministry of Housing & Urban Development (MHUD);
 - f. The tabled submission by Auckland Transport (AT);
 - g. The Albert-Eden Local Board presentation at the hearing represented by Margi Watson (Chair);
 - h. All the written submissions to the PC75 application;
 - i. The responses to our questions from all the parties during the hearing process;
 - j. The reply submissions from the Requestor;
 - k. The further evidence from Mr and Mrs Beresford;
 - l. The written and verbal responses from Ms Laird and other Council specialists;
 - m. The relevant sections of the Unitary Plan and other relevant planning documents, and
 - n. The matters we identified during our site visit.
10. In terms of the submitters, we appreciated that Mr and Ms Beresford provided their submissions in advance of the hearing (while not being a requirement for non-expert evidence) and we thank them for their time and engagement during the hearing process.
11. In reaching this decision we have considered the Albert-Eden Local Board's views on the Request, which are set out in paragraphs 197-199 of the Hearing Report and in their presentation to us at the hearing. In saying this, we believe that the Local Board's concerns have satisfactorily been addressed through the evidence presented to us during the hearing process.
12. Finally, we would like to thank all the parties for the professional and courteous way that the hearing was undertaken, and the quality of the evidence and submissions received from professional experts, submitters including the support we received from Mr Bevan Donovan (Hearings Advisor).

SUMMARY OF PLAN CHANGE

13. The proposed plan change is described in detail within Ms Laird's hearing report which is an analysis of the Request prepared by Bentley & Co. This description, which to a certain extent relies on the description provided in the Request, is adopted for our decision.
14. In essence, the Request seeks to:
- Re-zone 3A and 119A Carrington Road from Business – Mixed Use zone to Special Purpose – Healthcare Facility and Hospital zone;

- Extend sub-precinct A of the Wairaka Precinct to include 3A and 119A Carrington Road (and amend this on the precinct plans), amend some precinct provisions and introduce new precinct provisions, and remove the “key open space (private)” as shown on 119A Carrington Road and the “shared path” as shown on 3A Carrington Road from I334.10.1 Wairaka: Precinct Plan 1;
 - Make a number of changes to the precinct provisions including its description, objectives and policies, activity table (for sub-precinct A), notification provisions, development standards and matters of control/discretion.
15. The hearing report included helpful plans showing the existing and proposed changes to the Unitary Plan and we have reproduced these below:

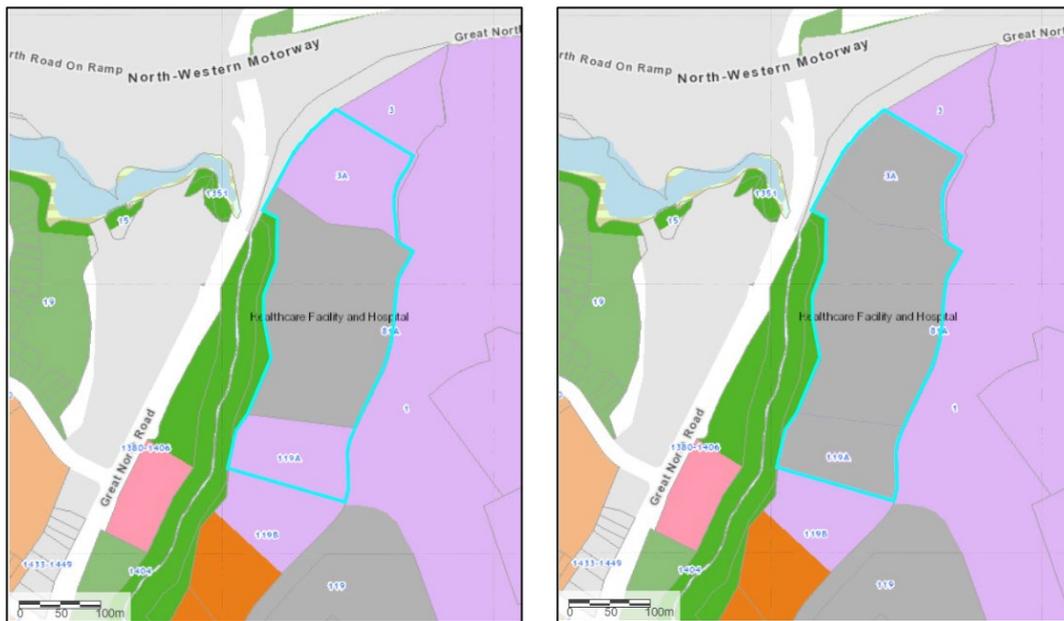


Figure 1 – Operative and Proposed zoning

16. We confirm that we visited the site following the adjournment on 19 June 2023. Our site visit started at the northern end of the Precinct and we walked south via the internal road to the newly established pathway linking to Oakley Creek and then back along the pathway adjoining the stream, through the Mason Clinic and back.

RELEVANT STATUTORY PROVISIONS CONSIDERED AND EVIDENCE CONSIDERED

17. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These are set out in detail within Ms Laird’s hearing report in paragraphs 76 -130 of the hearing report. There was no disagreement between any of the parties over these, except for how they should be applied on the merits of the Request. These are adopted for our decision and all form part of our decision making process for this plan change Request.
18. As noted above, we had the benefit of a significant amount of information on which to consider this Request. Given the information received and the point where the parties ended up before the hearing (that is, as we understood it, reduced areas of contention between the parties) and in order to reduce repetition and noting our obligations under the RMA to reduce delays, we do not propose to summarise the

volume of information or statements of evidence we received. All the information/evidence/submissions are available on the Council's internet site using the plan change references below.

<https://www.aucklandcouncil.govt.nz/have-your-say/hearings/find-hearing/Pages/Hearing-documents.aspx?HearingId=662>

19. The evidence presented at the hearing responded to the issues and concerns identified in the Council's planning officer's report, the application itself and the submissions made on the Request.

Requestor Legal Submissions and Expert Evidence

Legal Submissions

20. Legal submissions were prepared by Bill Loutit and Libby Neilson and presented by Bill Loutit. The submissions summarised the Request, the legal and planning framework and effects arising from the Request. Mr Loutit addressed the degree of agreement reached between the Requestor, AT and MHUD and then focussed on the areas of disagreement with the submitters and Auckland Council. He submitted that areas where there was "general alignment" with the Council were:

- a. Landscape, visual amenity and urban design matters relating to new development within the Mason Clinic;
- b. Water infrastructure;
- c. Stormwater and flooding; and
- d. Ecology.

Area of disagreement with the Council were summarised as relating to:

- a. Open space;
 - b. Active mode connections;
 - c. Transport effects; and
 - d. Recommendations in the Hearing Report.
21. Mr Loutit addressed the concerns raised by Mr and Mrs Beresford who were also the only submitters to present evidence and attend the hearing.

Corporate

22. Evidence on behalf of the Requestor was provided by Haitham Alrubayee who is the Senior Programme Direct, Healthcare Capital Projects at Te Whatu Ora – Health New Zealand (Waitematā). He summarised the operation of the Mason Clinic and its role of providing integrated forensic mental health services to the populations of the four Northern Regions of Northland, Waitematā, Auckland and Counties Manukau, which collectively have a population of some 1.9 million people.

23. He advised that the Request is required to allow the Mason Clinic to respond to the anticipated changes and growth and replace existing facilities, to remove the difficulties caused by the different underlying zonings of the three landholdings, and to address two elements in the Wairaka Precinct Plan 1 which were considered inconsistent with the requirements of the Mason Clinic.
24. The Requestor's expert evidence (pre-circulated) is briefly summarised as follows:

Transport

25. Transport evidence was presented by Ms Bronwyn Coomer-Smit. It was her assessment that the development enabled by PC75 can be appropriately supported by the transport network, to maintain appropriate levels of safety and efficiency on the surrounding transport network. She addressed outstanding issues raised in the hearing report relating to cumulative traffic effects and the provisions and location of an alternative shared path to replace the shared path being removed from the Mason Clinic site by PC75. She advised that the Requester has worked with AT and MHUD to confirm that:
- a. the development enabled by PC75 does not trigger the Carrington Road/ Gate 2 intersection upgrade (or any transport upgrades); and
 - b. a replacement shared path and active mode connection within the Precinct will be provided as part of the MHUD's proposed plan change.

Landscape

26. Landscape evidence was provided by Geraldine Bayly and she addressed the landscaping approach taken by the Requestor and in particular the various landscape treatments proposed for each boundary within the Precinct. She spoke to the proposed removal of the 'open space (private)' and 'shared path' elements from the Precinct Plan as an important part of the plan change, to provide for the efficient development and intensification of the Mason Clinic. In that regard it was her view that the relocation and strategic placement of the open space and the provision of a series of pedestrian and cycle connections is best determined by the MHUD design team who are able to strategically provide for these features taking an integrated approach to their placement.

Planning

27. Planning evidence was presented by Craig McGarr and he addressed the following matters:
- a. The context and background to PC75;
 - b. A description of the key features of PC75, including amendments that have been incorporated subsequent to the notification of PC75;
 - c. The statutory framework for the consideration of PC75; and
 - d. The key matters (effects) and comments on the Hearing Report;

e. Comments on Submissions.

28. Mr McGarr advised us the Request has resulted from the need to expand and intensify the Mason Clinic facility to accommodate the healthcare needs of the community and that the current zoning and precinct provisions were not fit for purpose. In particular, he stated that the existing planning provisions applied inconsistent zones to the landholdings, apply 'Sub-precinct A' to the existing landholding only, and do not appropriately or adequately recognise and provide for the nature of the activity, or effectively manage the potential adverse effects of new development within the Mason Clinic landholdings relative to adjacent land.
29. In response to the submission of Mr and Mrs Beresford, Mr McGarr introduced further proposed amendments to the precinct description to clarify the purpose of the Mason Clinic and that any "justice facilities" enabled would only be ancillary to "forensic psychiatric services". Consistent with this approach, Mr McGarr also introduced the following amended activity table:

Community Facilities		
(A57)	Justice Facilities	D
(A58)	Justice Facilities ancillary to forensic psychiatric services provided at the Mason Clinic	P

Submitters

Mr and Mrs Beresford

30. We received an extensive statement of evidence from Mr and Mrs Beresford which addressed the range of matters raised in their submissions as well as responding to the hearing report and expert evidence of the Requestor. Their evidence presented at the hearing centred on the definition of the "Mason Clinic", the Precinct description, the specific wording of several objectives and policies and development standards relating to height and parking.
31. Their evidence raised concerns regarding certainty of the activities to be undertaken within the facility (particularly as they relate to "justice facilities") as well as issues concerning the provision of open space and connectivity.
32. Following the hearing of evidence we also received a further memorandum from Mr and Mrs Beresford re-iterating their opposition to the Request but suggesting a number of further amendments to the Precinct provisions to address their concerns.
33. We are grateful to Mr and Mrs Beresford for the time and detail put into their evidence and suggested amendments.

Tabled Evidence

MHUD

34. We received a letter from John Duthie from Tattico who stated that he was acting for the Land for Housing Programme within MHUD and he confirmed that MHUD is a submitter to Plan Change 75. The letter stated that MHUD would not be attending the hearing and set out MHUD's position relating to the proposed Mason Clinic expansion, the shared path proposed to the northern end of the Precinct and the provision of open space.
35. The MHUD letter stated that it supported the proposed Mason Clinic expansion and the proposed deletion of the shared path running in an east/west direction along the former northern boundary of the Mason Clinic site. With regard to the potential relocation of the Open Space (private) area to another location within the wider Precinct, the MHUD letter states that the open space area within Sub-precinct A can be provided for without specifying a specific location and could otherwise be resolved through the recently lodged private plan change by MHUD to develop the wider precinct area.

Council Officers

36. After hearing the evidence of the Requestor and Mrs and Mrs Beresford, the Council officers responded to the evidence presented. This was presented to us in initial comments from officers at the hearing and in a written response from Ms Laird. Ms Laird stated that Council supported the proposed amendments regarding the description and activity status of justice facilities and the provision of a shared path (as recommended by AT) provided it was accurately shown on the precinct plan.
37. With regard to the quantum and location of open space to be provided for in the Wairaka Precinct, Council officers remained of the view that any "key" open space to be removed from the precinct plan should be provided elsewhere in the precinct. However, the Council position was modified from showing the specific location of the relocated open space elsewhere in the precinct to amending the Wairaka Precinct provisions (via PC75) to specifying that a minimum quantum of open space, consistent with the quantum of open space in the operative Precinct Plan, shall be provided for in the Wairaka Precinct. Ms Laird provided amended provisions to reflect this.

PRINCIPAL ISSUES IN CONTENTION

38. Having considered the submissions and further submissions received, the hearing report, the evidence presented at the hearing and the Council officer's response to questions, the following principal issues in contention have been identified at the time of the end of the hearing:
 - Open space;
 - Active mode connections; and

- Transport effects
39. As indicated above, there appeared to be broad agreement between the Requestor and the Council that the following matters were not in contention:
- Wastewater infrastructure effects;
 - Stormwater and Flooding effects;
 - Ecological effects;
 - Landscape and visual amenity effects;

FINDINGS ON THE PRINCIPAL ISSUES IN CONTENTION

40. Having considered the application material, the submissions, s42A report, expert evidence, and other relevant matters, we consider that there are three key issues that remain in contention and need to be determined by us in reaching a decision on PC75. These issues relate to the following matters:
- a. References to '*justice facilities*' in the proposed Precinct provisions;
 - b. The proposed provision for a replacement shared path; and
 - c. Open space provision within the Precinct.
41. Our findings in relation to each of these key issues are set out below.

Justice facilities

42. The proposed provision for justice facilities in the Precinct is an issue of concern to Mr Beresford. In particular, he is concerned that justice facilities should not be a permitted activity in the precinct. Mr Beresford considers that a controlled activity status should be applied to justice facilities that are ancillary to the Mason Clinic and that other justice facilities should be a discretionary activity.
43. This matter was addressed in the evidence of Mr McGarr. He noted that the operative Precinct and Special Purpose Healthcare Facility and Hospital Zone currently provide for community facilities as a permitted activity, and that justice facilities and community correction facilities are consequently permitted because they fall within the AUP: OP definition of community facilities. In this context, we note that any amended provisions relating to justice facilities could not be more liberal than the status quo.
44. Mr McGarr proposed several amendments to the precinct provisions to respond to the concerns of Mr Beresford, and explained to us that the intention with regard to justice facilities is that they would be ancillary to forensic psychiatric services rather than a standalone activity. Mr McGarr proposes that *justice facilities ancillary to inpatient forensic psychiatric services provided at the Mason Clinic* would be a permitted activity in Sub-precinct A and all other justice facilities would be discretionary activities.

45. Mr Beresford provided a memorandum dated 19 June 2023, following circulation of Ms Laird's post-hearing written summary of her position and recommendation. Mr Beresford attached a helpful table of contested amendments to the precinct provisions, which set out (for comparison) the amended provisions proposed by the applicant and his own proposed provisions.
46. The alternative precinct provisions proposed by Mr Beresford are detailed and, in many cases, constitute a significant redrafting of the amended provisions proposed by the applicant. Some of the requested amendments would make only subtle changes to the meaning or intent of the provisions and appear to us to simply be drafting preferences. While we appreciate the effort in drafting these changes we are not inclined to accept changes of this nature, on the basis that amendments to a cohesively prepared set of precinct provisions should be made sparingly and only where some material benefit is apparent. Substantial amendments to the provisions, without good reason, risk unintended consequences that have not been properly considered.
47. We agree with Mr McGarr that justice facilities that are ancillary to inpatient forensic psychiatric services provided at the Mason Clinic should be a permitted activity, while a more cautious approach should be taken with regard to other justice facilities. Accordingly, we find that Mr McGarr's amendments to the Precinct provisions with regard to justice facilities are more appropriate, and provide sufficient clarity around the status of such facilities and their relationship with the other Mason Clinic activities that are intended to occur within Sub-precinct A.

Shared path

48. The operative Precinct provisions include a 'shared path' passing through the area that is now proposed to be included within Sub-precinct A. We understand that this is intended to provide for pedestrians and cyclists to move between the central spine road within the Precinct and the existing cycleway and footpath that is formed beside the Northwestern Motorway and Great North Road.
49. It was explained to us (and we accept) that it would be inappropriate for the shared path to pass through the Mason Clinic site due to security and operational reasons. In any event, a shared path can no longer be achieved in the location indicated on the operative Precinct plan because a recent resource consent has been granted for development in that location. That resource consent did not include a condition requiring a replacement shared path.
50. The deletion of the future shared path was initially an issue of concern for Auckland Transport and was raised in its submission. Subsequent discussions between AT and MHUD resulted in an agreement to accommodate a replacement shared path within the MHUD private plan change application that we understand has been submitted to Council. AT is satisfied with this proposed provision for a replacement shared path.
51. Ms Laird retains some concerns about the absence of a specific alignment for the replacement shared path, and recommends that it be indicated on the Precinct plan. This view was also shared by Ms Gilbert – Council's landscape specialist. While we

accept that some more certainty about the proposed location would be preferable, it is clear that AT is satisfied that a replacement shared path can be provided and will be established as part of the development proposals for the wider Precinct. We are also of the same view, and have reached the conclusion that there does not need to be anything further added to the Precinct provisions to achieve that outcome.

Open space

52. The issue of open space provision is, from our perspective, the most contentious of the key matters for us to resolve. It arises because the existing Precinct plan includes an area notated as “*Key open space (private)*” within the Mason Clinic land that is intended to be included within Sub-precinct A. PC75 proposes to remove that open space, which we accept is the appropriate outcome to enable the necessary further development of the Mason Clinic. However, it does raise questions as to whether its loss should be mitigated and, if so, how.
53. The precise nature and purpose of the open space in question remains unclear. We are unsure whether the use of the word “*private*” in the description refers to the land being privately owned (but available for public use) or whether it had a more literal meaning and was not available to the public. We appreciated the assistance provided to us from the Requestor and Council officers to clarify this. Ultimately, we are drawn to the former because the operative Precinct plan identifies a relatively large area of land in that way, but in the end have reached a view that we need not determine that matter.
54. Our first consideration is whether the loss of the open space on the Precinct plan results in an adverse effect that needs to be mitigated. In her evidence¹ and in response to our questions on this matter, we understood Ms Bayly to say that mitigation of the loss of open space is required elsewhere in the Precinct. That view was shared by Ms Gilbert for the Council. As the evidence from the two landscape specialists is consistent on this point, and there is no dissenting expert evidence, we adopt the starting point that mitigation of the loss of open space (as an adverse effect) is required, and that replacement open space should occur elsewhere in the wider Precinct.
55. Having determined that mitigation is required, the questions that then arise include ‘*how*’, ‘*where*’, and ‘*to what extent*’. There is also a related question as to whether scope exists in the process to impose a requirement that impacts on land beyond the Mason Clinic property comprised within proposed Sub-precinct A.
56. The Requestor took the view that provision of open space elsewhere within the Precinct, while being appropriate, would be better addressed through the MHUD private plan change, which has been submitted to Council. Mr Loutit pointed to the tabled statement on behalf of MHUD, which confirmed that MHUD does not support changes to the Precinct provisions that would affect its land beyond the boundary of PC75. The letter also explained MHUD’s position that it proposes to provide

¹ Geraldine Bayly, Summary of Evidence, 16 June 2023, paragraph 4.15

appropriate open space through its proposed private plan change, and strongly opposes any resolution of open space provision through PC75.

57. Mr Loutit's submission, reflected in the evidence of Mr McGarr,² is that we can rely on this undertaking from MHUD (being a government ministry) and that the provision of open space for the Precinct should be determined through the MHUD private plan change process. He also submitted that the imposition of requirements on land outside of Sub-precinct A would be beyond the scope of PC75.
58. Mr Loutit's assurances do resonate. We acknowledge that MHUD is a Government Ministry and deserves a level of confidence in any public statement of intention. Its private plan change will also be subject to scrutiny from the Council and the public, and we would expect some focus on open space provision and their offer to be part of that assessment process. Even if the plan change process was not able to secure appropriate open space within the Precinct, the Council does have powers to designate for reserves purposes albeit that would obviously be a last resort. For all these reasons, we see a low risk of the loss of open space proposed by PC75 being unmitigated through provision of open space within the wider Precinct (the MHUD land).
59. That said, we have also considered the counterfactual proposition, being *why wouldn't we make specific provision for open space elsewhere in the precinct if everyone agrees it is required for mitigation and it has been confirmed that it will be provided in any event?*
60. The obvious benefit of providing for replacement open space elsewhere in the Precinct is that it provides certainty that the adverse effects of removing the open space from the Mason Clinic land are mitigated. While MHUD's private plan change appears to be in train, there is always potential for plans to change, perhaps due to funding constraints or changes in government policy. The only reason that we can see that might suggest we should not provide for replacement open space are because the method of mitigation is not sufficiently related to the effects to be mitigated or because the proposed mitigation is beyond the scope of PC75.
61. We have considered this matter carefully and while PC75 purports to relate specifically to the Mason Clinic land that will be encompassed by the proposed extent of Sub-precinct A, we note that it also requests amendments to provisions that apply to the entire Wairaka Precinct. In our view, the proposed boundary of Sub-precinct A is an artificial demarcation line in circumstances where the Precinct has been promulgated to manage effects and outcomes cohesively by master planning and through an integrated framework of objectives, policies, rules, and standards. The operative Precinct provisions consider the location and extent of open space across the entire Precinct, and we see no compelling reason to depart from that approach because PC75 *primarily* addresses a sub-precinct of the Wairaka Precinct.

² Craig McGarr, Evidence, 18 May 2023, paragraph 9.15

62. We have also considered whether there is scope to impose an open space obligation to the wider precinct on land outside of proposed Sub-precinct A. Intuitively, it appeared to us that scope would exist as PC75 sought to amend the open space provision that applies within the Wairaka Precinct as a whole, as shown on the Precinct plan. However, we sought legal advice on this question from Council, notwithstanding Mr Loutit's submission that scope did not exist.
63. That advice supported our view that PC75 goes beyond simply seeking amendments to the Precinct provisions that only affect Sub-precinct A. Amendments are proposed to the Precinct Description in terms of open space matters, and a new Precinct plan is proposed for the whole of the Precinct.
64. For scope to exist, we also need to be satisfied that any Precinct provision we might establish would fairly and reasonably respond to matters raised in submissions, and fall within the range of outcomes between what was originally notified and what was sought in relief requested in submissions. Having reviewed the submissions received in relation to PC75, we consider that the submission from Mr and Mrs Beresford provides scope to make a change to the Precinct provisions to replace open space that would be lost through development of the Mason Clinic land.
65. In this regard, the Beresford submission states:

The Change proposes delete the open space and shared path components from the Wairaka Precinct Plan 1 that apply to the sites, which are intended to provide important connections when the Wairaka Precinct is comprehensive developed for residential purposes. There is no plan in place for replacing these connections and open space and they ought to remain in place until replacements are secured.³

66. Having satisfied ourselves on the question of scope, we turned our minds to the most appropriate mechanism for achieving replacement open space. Our options in terms of mechanism were twofold – identification of a specific area or areas of open space on the Precinct plan, or establishment of a written provision in the objectives, policies, rules, or standards of the Precinct.
67. Although MHUD is proposing significant areas of open space through its private plan change application, and the proposed location of that open space is generally known, we are reluctant to specifically identify that open space on the Precinct plan. There is a chance that the boundaries or location of the proposed open space are modified as the MHUD private plan change navigates its way through the process, and we would prefer not to create a situation where there was some conflict in terms of location between the PC75 outcome and the subsequent MHUD private plan change. In our view, a written provision provides more flexibility while ensuring the same overall outcome.

³ Submission of Geoffrey John Beresford and Joanna Louise Beresford, section 6(i), page 3

68. A written provision will need to identify a quantum of open space that must be provided in the Precinct. The extent of that open space should relate to the mitigation that it is intended to provide. We considered whether it would be appropriate to require a lesser area of open space than is being removed, given that the current open space within the Mason Clinic land is privately owned and not accessible to the public whereas we understand that the proposed open space on the MHUD land will be available for public use. However, we find that there would be a more coherent nexus if mitigation was based on replicating the status quo under the operative Precinct plan.
69. Ms Laird identified in her summary that the operative Precinct plan shows 7.1ha of open space, 0.9ha of which is currently contained within the Mason Clinic land. We consider that this level of open space provision should remain in place within the Precinct, meaning that the MHUD land (or other land) will need to accommodate the 0.9ha that is being displaced from Sub-precinct A by PC75. We agree with the insertion of a new policy explicitly addressing this matter, as recommended by Ms Laird, and with the consequential amendments to the activity tables, matters of discretion, and assessment criteria.

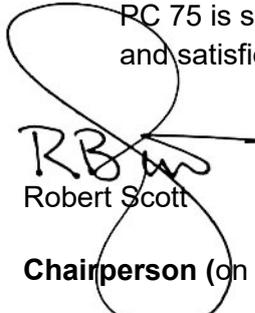
STATUTORY PROVISIONS

70. The RMA sets out a range of matters that must be addressed when considering a plan change. These are identified in the section 32 report accompanying the notified plan change. We note that the plan change application has addressed these matters as set out above.
71. Section 32 requires that analysis of efficiency and effectiveness of a proposal to meet its objectives is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal. In our view this decision report, which among other things, addresses the modifications we have made to the provisions of PC75, satisfies our s.32 obligations.
72. Section 32AA of the RMA requires a further evaluation for any changes that are proposed to the notified plan change after the section 32 evaluation was carried out. This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes. In our view this decision report, which among other things, addresses the modifications we have made to the provisions of PC 75, satisfies our section 32AA obligations.
73. Section 32(1)(a) of the RMA requires assessment of whether the objectives of a plan change are the most appropriate way for achieving the purpose of the RMA in Part 2. Section 72 of the Act also states that the purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA. In addition, section 74(1) provides that a territorial authority must prepare and change its district plan in accordance with the provisions of Part 2. While this is a private plan change, these provisions apply as it is the Council that is approving the private plan change, which will in turn change the AUP: OP.

74. For all of the reasons set out in this decision, we are satisfied the matters set out in sections 6, 7 and 8 of the RMA have been addressed. PC75 and its provisions, as amended, have respectively recognised and provided for, have had particular regard to and taken into account those relevant section 6, 7 and 8 matters.
75. In terms of section 5 of the RMA, it is our finding that the provisions of PC75 are consistent with, and are the most appropriate way, to achieve the purpose of the Act. PC75 will enable the efficient redevelopment of the Mason Clinic to provide for the healthcare requirements of the Auckland region while also protecting the identified values (urban design, open space, traffic, shared pedestrian/cycle access and riparian/ecological), as well as avoiding, remedying, or mitigating any adverse effects on the environment.
76. Having considered all the evidence and relevant background documents, we are satisfied, overall, that PC75 has been developed in accordance with the relevant statutory and policy matters with regard to s.32, s.32AA and Part 2 of the RMA. The plan change will clearly assist the Council in its effective administration of the Unitary Plan.

DECISION

77. That pursuant to Schedule 1, Clauses 10 and 29 of the Resource Management Act 1991, that Proposed Plan Change 75 to the Auckland Unitary Plan (Operative in Part) be **approved**, subject to the modifications as set out in this decision.
78. Submissions on the plan change are accepted, accepted in part or refused in accordance with this decision as Attachment One
79. In addition to the reasons set out above, the overall reasons for the decision are that PC 75 is supported by necessary evaluation in accordance with section 32, s.32AA and satisfies Part 2 of the RMA.


Robert Scott

Chairperson (on behalf of Commissioners Kim Hardy and Philip Brown)

Date: 19 September 2023