

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

Proposal

To rezone approximately 9.9 hectares of land at 272, 274 & 278 Clevedon-Kawakawa Road, Clevedon from Rural Coastal to Countryside Living, and apply the Clevedon Precinct (Sub-precinct C) to the land. Also, to enable 11 countryside living lots¹ and shared access and amenity lot to be established on the land.

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

Plan modification No.:	PC45
Hearing Panel:	David Hill (Chair) Nigel Mark-Brown Helen Mellsop
Site address:	272, 274 and 278 Clevedon-Kawakawa Road, Clevedon
Legal description:	<ul style="list-style-type: none"> • 272 Clevedon-Kawakawa Road – Lot 1 DP 33480 and Lot 1 DP 118606 (0.7336ha) • 274 Clevedon-Kawakawa Road – Lot 3 DP 146882 (0.6970ha) and • 278 Clevedon-Kawakawa Road – Lot 1 DP 146882 (8.45ha)
Applicant:	Stratford Properties Limited
PC Request lodged:	4 November 2019
CI 23 Request:	20 January 2020
CI 23 Response:	24 April 2020
PC Request accepted:	6 July 2020
Hearing commenced:	Monday 19 July 2021, 9.30 a.m.
Appearances / Attending:	<u>Applicant:</u> Stratford Properties Limited represented by: Douglas Allan (Ellis Gould) Julie Goodyer (Ellis Gould) Douglas Sherning, (Company Witness) Vaughan Crang (Engineering) Peter Kelly (Traffic and Transportation) Greg Akehurst (Economics) Dr Hannah Mueller (Ecology) Stuart Ford (Land Use Capability) John Hudson, (Landscape and Visual) Tim Grace (Planning)

¹ Amended during the hearing to 10 countryside living lots with the deletion of that proposed for Lot 2.

	<p><u>Submitters:</u> Clevedon Cares Inc represented by:</p> <ul style="list-style-type: none"> • Mary Whitehouse and • Caroline Greig <p>JM Mechanical represented by:</p> <ul style="list-style-type: none"> • Johnathon Martin and • Cassandra Lindberg <p>Brendan Vallings Trevor Giles, Diane Giles and Anthony Giles Carol and Paul Gibbard (tabled statement) Clevedon Community and Business Association (tabled statement).</p> <p><u>Council:</u> Marc Dendale (Team Leader) Matthew Gouge (Planner and s42A reporting officer) John Newsome (Development Engineer) Rob Pryor (Landscape Architect) Clarke McKinney (Resource Management Team Manager, Healthy Waters) Zheng Qian (Senior Healthy Waters Specialist) Dr Natasha Carpenter (Coastal Hazard Specialist) Matt Rivers (Senior Coastal Specialist)</p> <p>Bevan Donovan, Hearings Advisor</p>
Commissioners' site visit	Thursday, 15 July 2021
Hearing adjourned	Tuesday, 20 July, 2021
Hearing Closed:	12 August 2021

Introduction

1. This decision is made on behalf of the Auckland Council ("**the Council**") by Independent Hearing Commissioners **David Hill (Chair)**, **Nigel Mark-Brown** and **Helen Mellsop**, 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 45 ("**PC45**") to the Auckland Council Unitary Plan Operative in Part ("**the AUP**") after considering all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing, and evidence presented and representations made during and after the hearing of submissions.
3. PC 45 is a private plan change that has been prepared following the standard RMA Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).
4. The private plan change request was accepted by Council on 6 July 2020 and limited notified on 30 July 2020, with the submission period closed on 27 August 2020.

5. Having reviewed the information provided in relation to potential landscape and visual, transport and stormwater/wastewater effects on the Wairoa River, Council reached the determination that not all of the persons potentially directly affected by PC45 could be identified. This resulted in the decision to publicly renotify PC45 on 19 November 2020, with submissions closing on 17 December 2020. A summary of submissions was notified for further submissions on 28 January 2021, closing on 12 February 2021.
6. A total of 25 submissions (5 of which were initially withdrawn and 4 subsequently reinstated) and 6 further submissions were made on the plan change. No late submissions were received.

SUMMARY OF PLAN CHANGE

7. The proposed plan change is described in the application and s42A hearing report. A summary of the plan change is set out in Mr Grace's evidence² as follows:

PPC45 is in respect to the properties at 272, 274 and 278 Clevedon-Kawakawa Road. However, only part of the land contained within the properties at 272 and 278 Clevedon-Kawakawa Road are requested to be rezoned to Countryside Living and included in Clevedon Sub-precinct C. The majority of the land, contained within the properties at 272 and 278 Clevedon-Kawakawa Road will be retained in the Rural – Rural Coastal Zone.

8. The notified application indicated that this would provide for 12 lots containing building platforms for 11 dwellings, subject to two amendments to the I408 Sub-precinct C AUP standards, being:
 - (a) to ensure that the Clevedon Sub-precinct C density standard of 1 dwelling per 4 hectares applies to the total area (52 hectares) of the land contained within the property at 278 Clevedon-Kawakawa Road, by amending rule I408.6.4(2)(d) to exempt the land contained within Lot 1 DP 146882; and
 - (b) by amending the minimum site size rule I408.6.5 to not exceed 10 dwellings (amended from 12 as explained below) on Lot 1 DP 146882.
9. During the hearing Mr Grace noted³ that having reached agreement with the submitter at 274 Clevedon-Kawakawa Road, proposed Lot 2 would be removed to ensure that no development occurs adjacent to the northern boundary of that property. That reduced the maximum development potential for countryside living to 10 lots. That submission was accordingly withdrawn.

HEARING PROCESS

10. Commissioners directed the pre-circulation of the s42A report and expert evidence and took those as read. Summary statements were tabled along with a supplementary statement from Mr Grace addressing recommendations made by Mr Pryor in relation to design guidelines as part of the s42A report.
11. Prior to the hearing, the Commissioners visited the site and the local surroundings, including the location of residents in the vicinity of 271/285 Clevedon-Kawakawa Road

² Grace, Statement of evidence, para 4.2.

³ Grace, Statement of evidence, para 5.4.

on the hill overlooking the site. We record our gratitude to Mr Sherning for his assistance with the site visit.

12. Further information was provided during the hearing in response to questions from the Panel and, by direction to Council, during the adjournment. That is discussed further below.
13. The hearing was closed on 12 August 2021 following receipt of the directed information from Council and the applicant's supplementary reply on that information.

PROCEDURAL MATTERS

14. No procedural matters were raised for determination.

RELEVANT STATUTORY PROVISIONS CONSIDERED

15. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them – and caselaw on the matter is well settled.
16. Those requirements along with the section 32 evaluation are set out in the 4/11/2019 Private Plan Change Request – Statutory Assessment Report prepared by Lands and Survey (Auckland) Limited for Stratford Properties Limited, and the statutory requirements are comprehensively addressed in section 6 of the s42A report.
17. We have nothing further to add to those identified provisions and accept them as being full and sufficient for the purpose.
18. Clauses 10 and 29 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions. The decision must include a further evaluation of any proposed changes to the plan change arising from submissions; with that evaluation to be undertaken in accordance with section 32AA. With regard to Section 32AA, we note that no further changes were sought so that step was unnecessary. The consent authority may either decline, approve, or approve the plan change with modifications.

RELEVANT STATUTORY PLAN PROVISIONS CONSIDERED

19. As noted above, section 6 of the s42A report also comprehensively identified and addressed the hierarchical suite of statute, policy, plan and regulation provisions. Those provisions were not contested and we adopt that narrative for our purpose.
20. The application request documentation contained, in a separate appendix (Appendix 7), an assessment of the natural hazard, climate change and flooding objectives and policies (chapters B10 and E36 of the AUP).
21. In essence, the key the provisions of the AUP that are relevant to PC45 are those contained in the following chapters / sections:
 - B - Regional Policy Statement, and particularly:
 - B9 – Rural environment;
 - B10 – Environmental risk.
 - E36 – Natural hazards and flooding;
 - E39 – Subdivision – Rural;

- H19 – Rural zones; and
 - I404 Clevedon Precinct.
22. We note that Mr Gouge had identified the AUP sections he considered relevant with greater particularity in section 6.6 and 6.7 of the s42A report. While we have no quarrel with that, we find that the above are determinative.

SUMMARY OF EVIDENCE

23. The Council planning officer's s42A RMA report was circulated prior to the hearing and taken as read. The s42A report was prepared by Mr Gouge with technical reviews from:
- Dr Natasha Carpenter, coastal hazards / management;
 - Rob Burden, land contamination;
 - John Newsome, development engineering;
 - Wes Edwards, traffic;
 - Carl Tutt, ecology;
 - Iresh Jayawardena & Zheng Qian, stormwater management and flooding;
 - James Beaumont, geotechnical engineering;
 - Rob Pryor, landscape and visual; and
 - Dr Reece Hill, productive soils.
24. Supplementary information was provided during the hearing by Mr Gouge, Dr Carpenter and Ms Qian in response to questions from the commissioners.
25. The applicant / requestor's expert evidence was pre-circulated.
26. The evidence presented at the hearing responded to the issues and concerns identified in the s42A report, the application itself and the submissions made on the application.
27. The evidence presented by the applicant at the hearing is summarised below.

Douglas Sherning, Company representative, addressed the reasons why the land is considered suitable for countryside living; the poor farming economics of the land; land and soil quality; flooding and coastal inundation; and previous attempts to have the land rezoned.

Dr Hannah Mueller, ecologist, gave evidence on the ecological values of the site (assessed as negligible) and the potential ecological effects of implementing PC45 – which she characterised as being very low. She noted the wetland enhancement opportunity presented, concluding that there would be a net ecological gain.

Stuart Ford, agricultural and resource economist, gave evidence on the land use capability of the land; potential land uses; and the significance of the land's productive capacity in terms of soil protection. He noted that as the land was subject to flooding with a high water table it was not suitable for large animals; that only 6 ha or 11.6% of the total property met the AUP definition of prime soils and those areas were not contiguous; that area was well below the sector minimum for a viable commercial vegetable block (of 50ha); that the area of prime soils potentially lost under PC45 represented only

0.00012% of the regional total; and concluded that conversion of this land to countryside living represented an insignificant loss.

Vaughan Crang, civil engineer and land development consultant, gave evidence in support of PC45 and addressed earthworks, water supply, stormwater and flooding, wastewater disposal, and utility services. Mr Crang was engaged to peer review the civil infrastructure and development aspects of the project and provide evidence to support the design and reporting previously undertaken by Lands and Survey Ltd. Mr Crang disagreed with aspects of Council's coastal hazards and stormwater and flooding reviews, and we discuss those matters further below in this decision. He concluded that matters within his area of expertise could be managed appropriately.

Peter Kelly, transportation engineer, gave evidence on his assessment of the adjacent road conditions; the available crash data; trip generation and road safety issues; and the requirements of the AUP's transport standards. Mr Kelly was in broad agreement with Council's reviewer except on the matter of the adequacy of the sightline distance from the proposed access location. Mr Kelly concluded that the traffic effects could be accommodated on the road network without compromising its function, capacity or safety.

Gregory Akehurst, urban economist, gave evidence about the qualitative cost-benefit analysis he had undertaken, concluding that compared to the "do nothing" option, PC45 would produce an overall positive economic impact. In summary, that the loss of the small area of prime soils (4.8 ha in his estimation) was balanced by the continued viability of the existing farm operation and the provision of the 11, now 10, future rural residential dwellings. Mr Akehurst also calculated that there was at most 4-5 years capacity left in the Clevedon Precinct's current Countryside Living zone.

John Hudson, landscape architect, gave detailed evidence, with photomontages, on the existing landscape and natural character and visual amenity, and the predicted effects on those arising from PC45. He disagreed that the site fell within the coastal environment. His overall assessment was that there would be no adverse effects on natural character; that visual amenity effects would vary between low-moderate depending on viewing location but would more properly be addressed at development resource consent stage; and that cumulative effects on landscape character would be low, and on visual amenity would vary from low-low moderate. He considered rural lifestyle an appropriate activity in the defined area.

Timothy Grace, planner, reviewed the above expert evidence and the s42A report, and concluded against a review of the relevant statutory and planning documents and provisions that PC45 was appropriate and should be approved. Mr Grace also documented earlier advice given by Council in pre-application meeting that the initially intended resource consent approach, being for a non-complying activity, was unlikely to be supported but, rather, declined. An alternative approach of mixed plan change and resource consent was also discouraged by Council. The present plan change approach was therefore encouraged.

Mr Grace provided a supplementary statement in support of Mr Pryor's proposal for detailed design guidelines to be included in PC45 as site-specific assessment criteria for discretionary or non-complying activities.

28. Representations were made and statements were tabled by the following submitters:

Clevedon Community and Business Association, concerned that defensible boundaries are integral to the Clevedon Precinct and without those PC45 should be declined.

Mary Whitehouse, Secretary, Clevedon Cares Inc, concerned about Clevedon planning, Precinct boundary and general subdivision and zoning; discussed the rationale for the Countryside Living zone and sub-Precinct C; and expressed concern about flooding and stormwater risks, visual and character effects, land productivity, and roading. Ms Whitehouse included a timeline from 1992 demonstrating the community involvement taken to arrive at the present bespoke Precinct plan provisions. Relief sought - Decline.

Johnathon Martin & Cassandra Lindberg, 294 Clevedon-Kawakawa Road, commented on privacy, reverse sensitivity, defensible boundaries, landscape, traffic, and stormwater and flooding. Relief sought - Decline.

Carol and Paul Gibberd, 262 Clevedon-Kawakawa Road, commented on access and localised road flooding. Relief sought - Decline if defensible boundaries cannot be confirmed.

Trevor, Dianne and Anthony Giles, 340 Clevedon-Kawakawa Road, commented on Rural-Rural Coastal Zone vs Rural-Countryside Living Zone; I408 Precinct; Ngai tai ki Tamaki; soil assessment and rural productivity; economic assessment; issues identified with the scheme plan; resource consent requirements for PC45; land use; restoration zones; inanga spawning sites; esplanade reserve maintenance; hazard risk; economic viability of lot 14; defensible boundaries and precedent setting; reverse sensitivity; stormwater; and wastewater. Relief sought - Decline.

Caroline Greig, veterinarian and long-term Clevedon resident, expressed concern about the potential precedent created by PC45 undermining the integrity of the Precinct; underestimating the significance of flooding and the technical flooding advice; and compromising the work and investment undertaken to reduce wastewater contamination of the Wairoa River. Relief sought - Decline.

Brendon Vallings expressed concern about defensible boundaries; underestimated effects of climate change risk and flooding; and suggested forestry (including carbon sequestration) as a more productive rural use of the land. Relief sought - Decline.

29. Mr Allan addressed a number of matters in reply, including:

- reference to examples of other precincts with bespoke site-specific provisions;
- a reminder that a full inquiry would be required through the consenting process for any actual development;

- maintaining a working farm around the subdivision would preserve the operational openness required by the Sub-precinct;
 - a plan change does not create a precedent;
 - submitters neither called nor produced any expert evidence – that is required to challenge *bona fide* expert evidence;
 - the scheme plan provided is a concept only;
 - a non-fanciful large residential dwelling could be sited on the knoll now as a permitted activity, interfering precisely with the views of existing residents and creating the same “adverse” effect; and
 - covenants could be attached to consent conditions for dwellings in due course, if that was thought appropriate at that time, to avoid visual or other effects.
30. In summary, Mr Allan submitted that no compelling resource management reasons were advanced that precluded the plan change as sought since any actual development could be addressed by raising it higher than whatever minimum is required at the time – including the access road (or, he suggested, not raising the access road at all and simply accepting that it would occasionally be flooded).

PRINCIPAL ISSUES IN CONTENTION

31. Having considered the submissions and further submissions received, the hearing report, the evidence presented at the hearing and subsequently, and the Council officers’ response to questions, the following principal issues in contention have been identified:
- the flood risk and merits of developing within or adjacent to a floodplain location and a location of coastal inundation hazard;
 - whether the plan change would maintain the rural character and amenity of the rural environs of Clevedon village – including the visual amenity effects of an additional cluster of dwellings adjacent to those recently developed at 252 Clevedon- Kawakawa Road;
 - the logic for extending Sub-precinct C of the Clevedon Precinct; and
 - the merit of the exclusion provisions sought.

FINDINGS ON THE PRINCIPAL ISSUES IN CONTENTION

Flooding

32. A description of the flood risk for the site of the proposed plan change was prepared by Lands and Survey (Auckland) Ltd in its Engineering and Infrastructure Report prepared by Jiang Li dated 19 July 2019.
33. That report noted the proposed site is located downstream of the Wairoa River, close to the outlet to the Hauraki Gulf. The site is known to be subject to frequent flood events in

the winter due to its location and the flooding of the Wairoa River. The majority of the site is identified within the Auckland Council coastal inundation 1 percent plus 1 m control - 1 m sea level rise.

34. The report explained that the flood modelling and flood assessment completed by Tonkin + Taylor Limited (T+T) in 2014 for the Wairoa River catchment does not cover the subject site. It further explained that after discussion with Council's Healthy Waters (HW) department regarding what flood level should be adopted for the development. HW advised the Auckland Council GIS flood plain flood level of RL 4.4 m can be adopted as an acceptable and conservative flood level. This has consequently been adopted by the applicant as the 100 year ARI flood level, with the proposed building platforms and wastewater disposal areas required to be above this level.
35. Evidence for the applicant on flooding was prepared by Mr Vaughan Crang, an experienced consulting engineer. He was engaged by the applicant in May 2021 to undertake a peer review of the civil infrastructure and development aspects and provide evidence to support the design and reporting previously undertaken by Lands and Survey Ltd. Mr Crang stated that the previous T+T flood modelling established the flood maps presented on the Council's Geomaps GIS system, and it was agreed with HW that a 100 year flood level of RL4.4m be adopted for the site. Mr Crang considered this level is conservative as it relates to the Wairoa River upstream of the property and included climate change provisions. He also noted the RL 4.4m flood level was also adopted for the 10 lot countryside living subdivision on the adjacent property at 252 Clevedon-Kawakawa Road that Council consented in July 2017.
36. Mr Crang noted that a minimum floor level of RL 4.9 m will be set for future dwellings, which provides 500 mm freeboard.
37. With respect to coastal inundation Mr Crang advised the level for 1% AEP coastal inundation level plus 1 m for potential sea level rise is RL 3.27m and the subject site's development and effluent disposal areas are well above this level.
38. We have read the civil engineering assessment for the proposed subdivision at 252 Clevedon-Kawakawa Road prepared by Riley Consultants dated 7 March 2017. This recommended using a 1% AEP flood level of RL 4.4m, which was adopted for the consented subdivision at 252 Clevedon-Kawakawa Road as noted in the evidence of Mr Crang. We note that this flood level was derived from the T+T 2014 flood modelling and mapping, where the 1% AEP level closest to the proposed subdivision was rounded up from RL 4.31m to RL 4.4m. Riley did not consider that a site-specific hydrology review and hydraulic model would provide improved flood level information, given its view that the T+T 2014 mapping was a comprehensive assessment undertaken using then current best practice. Our comment on the recommendation of the Riley report is that it was prepared in 2017 and relies on the T+T 2014 modelling, the limitations of which were noted in the evidence of Ms Qian. We thus conclude that it is of limited relevance to assessing the current and likely future flood risk associated with the proposed plan change.

39. Mr Crang noted that construction of a proposed access road will require filling in the floodplain which can be sourced from suitable excavation within or adjacent to the floodplain so the total flood plain volume is not altered.
40. An overall assessment of the runoff from the site has been undertaken to check the site will achieve hydraulic neutrality in a large flood event and thus have no effect on flood levels. This assessment shows that for 9,200 m² of additional impervious surface, approximately 2.75 ha of planting is required to achieve hydraulic neutrality. The restoration planting shown on the concept landscape planting plan indicates that over 6 hectares of restoration planting is proposed to occur on the property.
41. The evidence of Mr Grace, the applicant's planner, stated that as future vulnerable activities (i.e. dwellings) can be located outside of the 1% AEP floodplain and coastal inundation areas the risk of adverse effects to people, property, infrastructure and the environment from flood hazards will be avoided, taking into account the likely long term effects of climate change.
42. He also stated that the assessment of the risk from natural hazards has been based on the best available information and that the recommended 100 year flood level of RL 4.4m is very conservative.
43. He gave his opinion that the area to be rezoned should not be considered part of the coastal environment in terms of the NZCPS even though, in his view, PC45 does give effect to the NZCPS policy direction.
44. Mr Grace concluded that PC45 can give effect to the wider direction of the objectives and policies of AUP B10 because of the approach required for the management of natural hazard risks in the region, and dwellings can be located outside the 1% AEP floodplain and coastal inundation areas.
45. A number of submissions expressed concern about flooding effects associated with the proposed plan change. These included:
- reduced area that farm animals have to safely shelter from flood events above flood zones; if all high ground is built on what happens to livestock grazing on low lying land when floods occur; and
 - flooding affects many of the roads in the catchment making them impassable in extreme events.
46. In a memo to C. Saville, Council planner, dated 12 March 2021 John Newsome, Council Senior Development Engineer, states that the flood assessment aligns with Council's GIS assessment of predicted flooding and adequately takes account of projected 100 year sea level rise. He adds that a generous 500 mm freeboard is also proposed for buildings which is easily achieved with the existing site levels. Proposed earthworks to create the main driveway will also ensure that there is always flood-free access to and from the Clevedon-Kawakawa Road for all sites.
47. Mr Newsome also considered that the runoff from the development would have no measureable effect on flood levels in the greater catchment area.

48. Evidence from Council technical expert Dr Natasha Carpenter, Coastal Management Practice Lead, Engineering Technical Services, was provided via a technical memo to Mr Gouge dated 28 May 2021. That memo described a review of the proposal on behalf of Auckland Council in relation to coastal hazards and climate change (including sea level rise) at the site, their potential effects and proposed management.
49. The May memo noted the 8 northern lots are fully enclosed by the coastal inundation 1% AEP plus 1 m sea level rise and 1% AEP flood plain areas. In effect, during extreme weather events, there is potential for the site to appear as an 'island' feature with limited access via the raised elevation shared driveway.
50. The May memo also explained that the area proposed for rezoning is located on a complex, low lying floodplain exposed to both the coastal inundation hazard from its source at the mouth of the Wairoa River, as well as catchment flooding from the significant upstream catchment. The site is subsequently also at risk of exposure to cumulative hazard events, and both hazards will be further exacerbated by future climate change effects including sea level rise. No detailed modelling of the potential flood hazards, climate change effects or the potential impacts of a joint probability event has been undertaken, which leaves uncertainty over the full extent of the future flood zone.
51. Dr Carpenter's concluding opinion was that while PC45 is technically feasible the potential future adverse effects of natural hazards (including coastal inundation and climate change) at the site make rezoning and residential development inappropriate.
52. In a further information memo provided by Dr Carpenter dated 16 July 2021 she noted that PC45 does not contain detailed modelling of extreme coastal inundation levels caused by storm tide processes, rising sea levels or the cumulative impact with catchment flooding.
53. She also advised that current MfE guidance is to incorporate a sea level rise of 1.52m to the year 2130. The IPCC sixth assessment report, due next year, holds potential to further increase sea level rise projections dependant on the latest modelling of global emissions.
54. Evidence from Senior Healthy Waters Specialists Iresh Jayawardena (resource management) and Zheng Qian (catchment planning) was provided via a Memo to Mr Gouge dated 16 June 2021.
55. The key aspects of that June memo with respect to flooding of the site are:
 - the present day 1% AEP (100 year ARI) Wairoa River flood level is predicted to be RL 4.4m according to Wairoa River catchment modelling (the modelling) undertaken in 2014;
 - the modelling included predicted rainfall intensity increase due to climate change using a temperature increase of 2.1 degrees by 2090; it should be noted that rainfall to be used in stormwater flood assessment in the Auckland region is currently under review using the latest MfE guidance on climate change, thus there are uncertainties associated with rainfall intensity increasing and change of rainfall

pattern resulting from climate change, leaving uncertainty over the extent and level of flood plain in extreme storm events;

- the modelling assumed a constant downstream tidal level of RL 1.89 m based on mean high water spring (MHWS) of RL 1.39m RL plus sea level rise (SLR) allowance of 0.5 m;
- the present day MHWS is approximately RL 1.63m and projection for SLR to 2130 is 1.52m (as a Category A development scenario and applying MfE's RCP8.5 H+ guidance);
- there is potential that the 1% AEP Wairoa River flood level could increase due to climate change as a result of tail water increase and that the current 1% AEP flood level could occur more frequently than 1% chance in any given year;
- no site specific assessment of the potential impacts of multiple hazards has been undertaken leaving uncertainty over the extent of the flood plain and extreme water levels under extreme storm events and sea levels;
- the proposed intensification is not appropriate as it increases the risk to people and property from flooding and this direction is inconsistent with the policy direction of the RPS;
- given that the climate is changing, PC45 should consider the potential hazards and the unpredictability of uncertain climate change effects and not encourage subdivision, use and development within land subject to such adverse impacts;
- PC45 has under-estimated the risk from flood events to its future communities by proposing to introduce an intensive residential development on land that, in a flood event, could become an island of land within 1% AEP floodplain and thus does not give effect to higher order policies;
- flood modelling shows significant flooding for the road near the polo ground; flooding in 2017 showed severe damage around Clevedon-Kawakawa Road ; it was reported from submitters that helicopter assistance was required to evacuate people trapped in flooded houses; and
- PC45 does not give effect to the RPS B9.4.1(3) and B10.2.

56. At the hearing, Ms Qian advised us that the behaviour of the Wairoa River catchment is not well understood and there are errors in the T+T 2014 flood model.

57. Detailed evidence on road flooding and flooding on the site was provided by Ms Qian by way of a further information memo to Mr Gouge dated 16 July 2021 and in a written response to our direction no. 2 dated 29 July 2021. For road flooding this information provided durations of modelled flooding where water depths on the road were greater than 200 mm, which is a relevant tolerable depth of flooding for vehicle stability and traction. The results of the flood modelling were:

Clevedon –Kawakawa Road by the polo ground:

1 % AEP (100 year ARI) duration of flows with depth > 200mm approximately 12 hours;

20 % AEP (5 year ARI) duration of flows with depth > 200mm approximately 30 to 50 minutes.

By #278 Clevedon–Kawakawa Road:

1 % AEP (100 year ARI) duration of flows with depth > 200mm approximately 8 hours;

10 % AEP (10 year ARI) duration of flows with depth > 200mm approximately 20 minutes.

For the site at 278 Clevedon-Kawakawa Road:

This showed that for the 1% AEP event, the duration of flooding at a depth of 500 mm is approximately 5 hours, where a water depth of 500 mm is the upper limit of low hazard to children within still and slow moving water.

58. In response to our Direction no. 2 Ms Qian also provided on 29 July 2021 the following written information on flooding:
- she was not involved in the further discussions between the applicant's consultant and Healthy Waters on the flood level of RL4.4m. She believes the 100 year flood level of RL 4.4 m used by the applicant is sourced from the T+T flood modelling study based on the flood level of RL 4.306 m at XS2 (upstream of the site). It is unlikely that the flood level of RL 4.4 m is from the flood plain layer in Council's Geomaps as stated in the report prepared by Lands and Survey
 - the 100 year flood level of RL4.4m at the site does not include any allowance for the effect of sea level rise except for the noted 500 mm on top of MHWS of RL 1.39m as boundary condition.
 - the 100 year flood level of RL4.4m at the site is probably no longer conservative as the T+T modelling was based on current design standard of rainfall depth and only allowed 500 mm on top of MHWS of RL 1.39m as boundary condition, compared with the new MfE guidelines on climate change which will affect changes in design rainfall precipitation and sea level rise.
59. In his s42A report Mr Gouge addressed flood risk with respect to statutory instruments as follows:
- the uncertainty arising from the confluence of both a flooding and coastal inundation event is unknown in terms of the high water levels and the gradual nature of climate change and the intention of PC45 to locate dwellings in close proximity to such hazards represents a higher level of risk than currently exists. PC45 thus does not give effect to the coastal hazard risk avoidance policies 25(a) and (b) of the NZCPS.

- the policies of AUP B10.2 set out a framework of first assessing the natural hazard under Policy B10.2.2(4), then assessing the vulnerability of the activity to adverse effects under Policy B10.2.2(5)(b).
- Mr Gouge’s view was that the applicant had followed this methodology and used the best available information that Council has publicly available and has put forward a design approach which minimises the vulnerability of the activity to adverse effects within the context of this site.
- He then stated that while some residual increase in risk remains, due to the uncertainty of such events and the greater density of countryside living in the proximity of identified natural hazards, Objective B10.2.1(3) “New subdivision, use and development avoid the creation of new risks to people, property and infrastructure” is given context in subsequent chapters of the AUP, most notably Chapter E36 Natural hazards and flooding.
- He goes on to state that as the Council’s experts agree that design solutions exist to avoid the identified 1% AEP coastal inundation plus 1 m sea level rise and the 1% AEP catchment flood plain, and the land to be developed is outside these areas, the natural hazard risk as conceived by the AUP in policies E36.3(3), E 36.3(5), E 36.3 (9) and E36.3(16) is therefore able to be avoided.
- Mr Gouge concluded by stating that the Council experts agree that design solutions exist to avoid or mitigate the inundation extent as it is currently known over a 100-year time frame. Therefore, the potential natural hazard effects associated with PC45 and its subsequent design are assessed as being no more than minor.

Findings

60. We find that the applicant did not clearly explain how the 100 year flood level of RL 4.4m adopted for the site was derived. The Lands and Survey report accompanying the application stated it was derived from the GIS flood plain, which Ms Qian of Healthy Waters stated is unlikely. We received no evidence from the authors of the Lands and Survey report. Mr Crang for the applicant in his written evidence stated that the T+T modelling established the flood maps presented on the Council’s GIS system. This is inconsistent with the information provided by Ms Qian, who stated that the GIS flood plain information is from Council’s rapid flood modelling.
61. The applicant’s argument that the 100 year flood level of RL4.4m is conservative appears based solely on the fact that the site is downstream of the cross section XS2 which, from the T+T modelling, had a 100 year flood level of RL4.306m, and that other developments upstream have been approved based on this level.
62. The technical evidence from Ms Qian of Healthy Waters suggests that a 100 year flood level of RL4.4m for the site is probably no longer conservative.
63. We accept the evidence from Ms Qian that a 100 year flood level of RL4.4m for the site is probably no longer conservative and note that this is supported by the following:

- the coastal boundary condition for modelling to assess the effect of sea level rise, if up to date modelling is to be carried out, would be RL 2.99 m compared to the RL 1.89 m used in the 2014 modelling; and
 - there are uncertainties associated with rainfall intensity increasing and change of rainfall pattern resulting from climate change, as advised in the technical evidence from Healthy Waters staff.
64. We note that we prefer the evidence of Ms Qian to that of Messrs Crang and Newsome on this matter as Ms Qian is employed as an experienced catchment planning specialist within Council whereas Messrs Crang and Newsome have more general civil engineering land development experience.
65. Our assessment of the flooding aspects of the proposed plan change with respect to relevant AUP requirements follows.
66. *RPS B9.4.1(3)* The relevant part of this objective is “*Subdivision of rural land ... provides resilience to effects of natural hazards*”. There is no definition of resilience in the AUP. Resilience as used by the IPCC⁴ is “the capacity of social, economic and environmental systems to cope with a hazardous event, trend or disturbance by responding or reorganising in ways that maintain their essential function, identity and structure, while also maintaining the capacity for adaptation, learning and transformation.” We think that a helpful reference.
67. We consider this applies to two aspects of the proposed plan change as follows. Firstly, with respect to the possible or likely ongoing use of low lying pasture land adjacent to the area of the proposed plan change. As noted by some submitters, the proposed plan change utilises all the available higher land in the farming block and, in the event of a large flood, stock will not have a refuge on higher ground as they do currently.
68. The second aspect relates to the ability of the dwellings and occupants in a subdivision enabled by the proposed plan change to cope with a hazardous event, trend or disturbance. We think it more likely than not that this ability will be low due to the uncertainty of the extent and level of future flooding, which will be exacerbated by ongoing sea level rise and likely rainfall increases associated with climate change. We think it is likely that people living in a possible future subdivision, which may include older people of limited mobility, will assume that it is safe from flooding as it has been approved by Council. The discussion of flood risks presented in the evidence from Ms Qian and Ms Carpenter, however, is that future flood risks are not addressed to an appropriate degree for the area of the proposed plan change. We thus find the proposed plan change does not give effect to this objective.
69. *B10.2 Natural hazards and climate change*. The relevant parts of the objectives and policies are addressed as follows.

⁴ Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. Pachauri RK, Meyer LA (eds). Geneva: Intergovernmental Panel on Climate Change.

70. *B10.2.1 (3) New subdivision, use and development avoid the creation of new risks to people, property and infrastructure.* Evidence from HW and Council coastal technical specialists note the uncertainty over the extent of the flood plain and extreme water levels under extreme storm events and sea levels and increases the risk to people and property from flooding associated with the proposed plan change. We accept this evidence and consider that a subdivision allowed by the proposed plan change would create a new risk to people, including risks to subdivision occupants or emergency services trying to reach or leave the subdivision during an extreme event when the subdivision will be surrounded by flood water and access along parts of the Clevedon-Kawakawa Road will be significantly interrupted. We thus find the proposed plan change would not give effect to this objective.
71. *B10.2.1(4) The effect of climate change on natural hazards, including effects on sea level rise and on the frequency and severity of storm events, is recognised and provided for.* We consider the evidence provided by HW and Council coastal technical specialists shows that the effects of sea level rise and severity of storm events has not been adequately recognised and provided for. We thus find the proposed plan change would not give effect to this objective.
72. *B10.2.2 (4) Assess natural hazard risks:*
- (a) *using the best available and up to date hazard information; and*
 - (b) *across a range of probabilities of occurrence appropriate to the hazard including , at least, a 100 year timeframe for evaluating flooding and coastal hazards.*
73. We find, based on the evidence provided by HW and Council coastal technical specialists, that the natural hazard risks assessment by the applicant has not used the best available and up to date hazard information for at least a 100 year time frame, in particular with respect to the impact of sea level rise on river flooding and the combined probability of high sea level and flooding due to rainfall. We thus find the proposed plan change would not give effect to this policy.
74. *B10.2.2 (5) Manage subdivision, use and development of land subject to natural hazards based on all of the following:*
- (a) *the type and severity of potential events, including the occurrence [of] natural hazards events in combination;*
 - (b) *the vulnerability of the activity to adverse effects, including the health and safety of people and communities, the resilience of property to damage and the effects on the environment ...*
75. We find that the proposed plan change would not give effect to the above policy as per previous discussion on B10.2.1(3) and B10.2.2 (4) above.
76. *B10.2.2 (6) Adopt a precautionary approach to natural hazard risk assessment and management in circumstances where:*

- (a) *the effects of natural hazards and the extent to which climate change will exacerbate such effects are uncertain but may be significant, including the possibility of low-probability but high potential impact events; or*
 - (b) *the level of information on the probability and/or impacts of the hazard is limited*
77. Based on the evidence provided by HW and Council coastal technical specialists there is uncertainty over the extent of flooding that will be exacerbated by climate change and, as the plan change will facilitate subdivision including habitable dwellings, such effects may be significant as previously discussed. The level of information provided by the applicant is limited and no site-specific flood assessment was carried out by a flood specialist. We accordingly find that this policy would not be given effect by the proposed plan change.
78. *B10.2.2 (8) Manage the location and scale of activities that are vulnerable to the adverse effects of natural hazards so that the risks of natural hazards to people and property are not increased.*
79. As discussed under B10.2.1 (3) above, we find that the risk of natural hazards to people would be increased by the proposed plan change. We thus find that the proposed plan change would not give effect to this policy.
80. *B10.2.1 (13) Require areas potentially affected by coastal hazards over the next 100 years to ... (b) ...not increase the intensity of activities that are vulnerable to the effects of coastal hazards beyond that enabled by the Plan.*
81. We have accepted the evidence of Dr Carpenter and find that there is uncertainty over the full extent of the future flood zone and that habitable development that would be enabled by the plan change is vulnerable to the effects of coastal hazards. As this would increase activities beyond that currently enabled by the AUP, the proposed plan change would not give effect to this policy.
82. *E36.3 Natural hazards and flooding*
83. Mr Gouge's opinion was that design solutions exist to avoid the identified 1% AEP coastal inundation plus 1 m sea level rise and the 1% AEP catchment flood plain, and the land to be developed is outside these areas. The natural hazard risk conceived by AUP policies E36.3(3), E 36.3(5), E 36.3 (9) and E36.3(16) is therefore able to be avoided.
84. We note that E36.3(3) requires consideration of the following relevant matters:
- Consider all of the following, as part of a risk assessment of proposals to subdivide, use or develop land that is subject to natural hazards:*
- (a) *the type, frequency and scale of the natural hazard and whether adverse effects on the development will be temporary or permanent;*
 - (b) *the type of activity being undertaken and its vulnerability to natural hazard events;*
 - (c) *the consequences of a natural hazard event in relation to the proposed activity;*

- (d) *the potential effects on public safety and other property;*
 - (e) *any exacerbation of an existing natural hazard risk or the emergence of natural hazard risks that previously were not present at the location;*
 - (i) *site layout and management to avoid or mitigate the adverse effects of natural hazards, including access and exit during a natural hazard event; and*
 - (j) *the duration of consent and how this may limit the exposure for more or less vulnerable activities to the effects of natural hazards including the likely effects of climate change.*
85. We have discussed these various matters above and find that, due to the uncertainties and potential effects of future flooding, they are not given effect by the proposed plan change.
86. *E 36.3 (9) Require habitable areas of new buildings ... located in coastal storm inundation areas to be above the 1 per cent annual exceedance probability (AEP) coastal storm inundation event including an additional sea level rise of 1m.*
87. We accept that this policy is likely to be complied with for some building sites within the area of proposed PC45. However, we find that it is tempered by other objectives and policies with which PC45 does not give effect.
88. *E36.3(16) In rural areas, avoid where practicable locating buildings accommodating more vulnerable activities in the 1 per cent annual exceedance probability (AEP) floodplain and manage other buildings and structures so that flood hazards are not exacerbated.*
89. Both the existing Rural Coastal Zone (RCZ) and the proposed new zone (Sub-precinct C / R-CLZ) are rural zones. The policy therefore applies and as there is uncertainty as to the extent of the 1 per cent AEP floodplain in the vicinity of the proposed plan change this policy is not given effect. Avoidance is practicable.

Visual Amenity and Landscape

Rural character and amenity

90. PC45 (as modified in pre-circulated evidence from Mr Grace) would enable up to 11 countryside living dwellings within the 9.88ha of land rezoned to Clevedon Sub-precinct C. One of these is the existing house at 274 Clevedon-Kawakawa Road. The additional 10 dwellings would be located on the relatively small proportion of No. 278 that is outside the floodplain and coastal inundation overlay – a strip adjacent to the road, and the small knoll.
91. At the hearing Mr Allan told us that the applicant was open to a lower specified (upper) number of dwellings on Lot 1 DP146882, but did not advance an alternative version of the proposed I408.6.5.1 Minimum site size rule. Mr Gouge for the Council told us that the proposed rule was likely to create an expectation that the additional 10 dwellings could be appropriately absorbed within the landscape.

Relevant context

92. Mr Hudson described the landscape character of the broader Wairoa River valley context and localised area in his pre-circulated evidence. He identified a transition in character along Clevedon-Kawakawa Road from residential in the village to rural lifestyle to rural⁵, and noted that pockets of residential and lifestyle development are located based on topography and proximity to the township⁶. He said the local area was characterised as clusters of rural lifestyle dwellings and farm buildings on slight rises, balanced by open rural production on lower lying areas⁷.
93. We agree that there is a transition in landscape character along the road but noted on our site visit that the countryside living subdivision approved at 252 Clevedon-Kawakawa Road has created a larger loose cluster of rural lifestyle activity immediately west of the plan change site. Together with existing residential uses at 262, 272 and 274, there are now 13 existing or anticipated dwellings in this loose cluster.

Rural character effects

94. The policies of the Clevedon Precinct include establishing a “development pattern that has the village core at its centre dispersing through to the rural environs” (I408.3(2)) and maintaining or enhancing the existing character and its rural environs.
95. Mr Hudson’s evidence was that a clustered subdivision on elevated terrain within the rezoning area would increase the rural lifestyle attributes of the area⁸ and would be read coherently with neighbouring land use to the west⁹. He considered that adverse effects on landscape character would be low¹⁰. Council’s reviewer Mr Pryor agreed that development enabled by the plan change would be consistent with already existing countryside living activities in the surrounding area¹¹, and that the reduction in landscape character values would be acceptable¹². We note that he relied on indigenous restoration planting outside the proposed precinct extension in coming to this conclusion¹³.
96. Some submitters raised concerns that the anticipated number of dwellings on the plan change site, and their concentration in a tight cluster necessitated by the flooding constraints, would result in an ‘urban’ or ‘suburban’ – style subdivision with associated adverse effects on rural character and visual amenity¹⁴. They were also concerned that the plan change would result in a ‘sudden abrupt change’ rather than a gradual intensification of rural lifestyle activity travelling towards the village¹⁵, and that the addition of 10 dwellings to the existing contiguous rural living activity would be

⁵ Hudson, EIC, paragraph 5.3.

⁶ Ibid.

⁷ Hudson, EIC, paragraph 5.4.

⁸ Hudson, EIC, paragraph 8.3

⁹ Hudson, EIC, paragraph 8.4.

¹⁰ Hudson, EIC, paragraph 8.7.

¹¹ Pryor, Hearing Report, page 316, paragraph 5.1.

¹² Pryor, Hearing Report, page 317, paragraph 5.5.

¹³ Ibid.

¹⁴ Including submissions 16, 17, 18, 19, 21

¹⁵ Statement in support of Submission 19, paragraph 8.2.

inconsistent with the objectives and policies for the Countryside Living Zone and Clevedon Precinct¹⁶.

97. We agree with the submitters that tight clusters of a total of 10 additional dwellings would result in unacceptable adverse effects on the existing rural character of the landscape, particularly when considered in combination with existing and anticipated development to the west. We consider the outcome would not be consistent with Policy I408.3 (2) of the Clevedon Precinct, which seeks a dispersing development pattern from the village core to the rural environs. The Precinct enables more intensive countryside living closer to the village, with rural residential development on lots of 800-2000m² in Sub-Precinct B, and countryside living at 1 dwelling per 2ha in the area of Sub-precinct C between the Wairoa River and Taitaia Stream. Further from the village centre, a density of one dwelling per 4ha is envisaged in the remainder of Sub-precinct C, with a more spacious countryside living and lifestyle farming character. This then transitions to the surrounding Rural Production and Rural Coastal zones.
98. While the proposed plan change might be appropriate for countryside living considered more broadly, we do not consider it fits with the intentions of the Clevedon Precinct in regard to landscape character and amenity. Locating more intensive development on the outer edge of the Precinct, where there is already a substantial cluster of rural lifestyle dwellings, would not achieve the intended development pattern.

Visual amenity effects

99. Adverse effects on visual amenity from nearby properties were assessed by Mr Hudson¹⁷ as low, in the case of elevated properties to the south of Clevedon-Kawakawa Road, or moderate, in the case of the property at No. 294, owned by Jonathon Martin and Cassandra Lindberg. Mr Hudson considered there was potential for adverse visual effects on this property to be mitigated at resource consent stage by planting and specifications for building appearance. We noted on our site visit that the knoll was visible from some parts of Clevedon-Kawakawa Road. However, Mr Hudson did not discuss effects on views from the road itself.
100. Mr Martin and Ms Lindberg disagreed with Mr Hudson's assessment of effects on their visual amenity. They told us that the spacious rural nature of their outlook was highly valued and that adverse effects on them would be major in extent.

Finding

101. With respect to effects on landscape character, we find that the rezoning sought would be inconsistent with the objectives and policies of the Clevedon Precinct Zone. We do, however, consider that applying the Clevedon Precinct provisions without amendment (which would allow for a maximum of 2 additional dwellings) – if that is found to be appropriate - would be more likely to maintain the existing character and amenity of the rural landscape.

¹⁶ Further submissions, Giles.

¹⁷ Hudson, Statement of evidence, Section 10.

102. Having considered the evidence, and the visual simulations helpfully provided by Mr Hudson, we find that proposed rezoning has the potential to adversely affect the views and visual amenity of adjoining neighbours to a significant extent. It is unlikely that the measures suggested by Mr Hudson would adequately mitigate these effects. We consider that other potential adverse visual amenity effects, for example those experienced from the public road, could be appropriately mitigated by planting.
103. Our assessment of the landscape character and visual amenity aspects of the proposed plan change with respect to relevant AUP RPS requirements follows:
104. *B9.2 Rural activities*
- B9.2.1 Objective (3) Rural production and other activities that support rural communities are enabled while the character, amenity, landscape and biodiversity values of rural areas, including the coastal environment, are maintained.*
- B9.2.2 Policies*
- (1) *Enable a diverse range of activities while avoiding significant adverse effects on and urbanisation of rural areas, including within the coastal environment, and avoiding, remedying, or mitigating other adverse effects on rural character, amenity, landscape and biodiversity values.*
105. We have concluded above that the proposed plan change, if fully developed with 11 countryside living dwellings in the relatively small area of buildable land, would not maintain the landscape character of Clevedon's rural environs. We accordingly find that this objective and related policy of the RPS would not be given effect to by the plan change.

Extending Sub-precinct C

106. During the hearing and adjournment, we sought clarification on a number of matters relating to the Clevedon Precinct. What is clear is that the precinct and its sub-precincts arose after considerable community debate and was only settled by the Court (by way of consent order on the original Manukau City Council's PC32 Clevedon Village in September 2014, being made operative on 13 April 2015) after the proposed AUP was notified but before hearings commenced. In any event, in line with the IHP's in principle approach of not interfering with decisions recently confirmed by the Court, the bones of PC32 were taken into the AUP with mainly editorial revisions of the provisions but with some expansion of sub-precinct C to accommodate some limited additional countryside living.
107. The present applicant was unsuccessful through the AUP process in having its land rezoned to RCL, but that is not a basis for deciding the present PC45 request. As the applicant noted, more than 5 years have elapsed since then and a number of other imperatives are in play – including housing supply and choice shortages.
108. The purpose of Sub-precinct C is stated in I408.1 of the AUP as:

Sub-precinct C is situated at the outer edges of the precinct. The purpose of the sub-precinct is to provide for a range of part time farming activities from which produce can

support local activities, such as the Clevedon Farmers' Market. The sub-precinct provides for small rural holdings as a transition between the new residential area and the wider rural area beyond. It is envisaged that these land holdings can enable lifestyle farming and other rural activities.

The provisions within the sub-precinct promote cluster housing to deter the fragmentation of land and at the same time enable small scale equestrian or farming activities. Cluster housing will also assist in reducing the visual impact of development and in preserving key views by grouping buildings, maintaining wildlife corridors and enabling parcels of land only partially impacted by the floodplain to be developed where there is a suitable building platform and wastewater disposal field (where relevant) outside the floodplain....

Particular rules applying to the development restriction area reinforce the rural village character and landscape qualities of Clevedon, while minimising adverse effects of rural activities on adjoining residential land.

Low lying land subject to flooding is subject to building restrictions to ensure the effects of flooding are not exacerbated and can continue to be managed. Careful siting of dwellings and accessory buildings on higher ground is required to manage flood risk and to maintain the open rural character of the remaining areas of property within flood plains.

109. Relevant at this point is the question as to whether the part of the land proposed to be rezoned fits that purpose better than it does the existing RCZ, whose purpose is described in H19.5.1 of the AUP as:

The purpose of the Rural – Rural Coastal Zone is to retain and enhance the rural character and amenity values, local coastal character and biodiversity values of rural areas along Auckland's harbours, estuaries and coastline. It is also to enable rural production activities, local non-residential activities, maintain recreational opportunities and manage the effects of existing scattered rural lifestyle development. The zone also provides opportunities to access the coastal marine area and support marine-related activities.

The zone is more extensive than the coastal environment line identified by using the New Zealand Coastal Policy Statement criteria. It recognises the significance of the coast to the character and identity of Auckland and its role as a favoured place to live and work and for recreational and leisure activities. The coastal environment, and in particular the coastal edge and margins of lakes and rivers, is important to Mana Whenua.

110. Mr Hudson¹⁸ contended that, from a landscape perspective, the subject land was not coastal environment based upon Policy 1(2) of the NZCPS which requires the coastal processes and influences to be significant - a key characteristic that he contended equates to being major under the NZILA 2021 Guidelines. Mr Hudson noted, in that regard, that the subject land also is not within the AUP's defined Coastal Inundation overlay and is setback over 400m from the active channel and 250m from any wetland areas. Mr Hudson therefore concluded that, from a landscape perspective, rezoning the land was appropriate.
111. While we do not disagree with Mr Hudson's particular consideration with respect to the NZCPS, the point is that the AUP's RC zoning is deliberately and explicitly wider than

¹⁸ Hudson, Statement of evidence, section 6.

the NZCPS as noted in the quotation above. There is no question in our minds that the present zoning is appropriate for the land as to purpose.

112. That is not say, however, that a different zoning may not also be appropriate. We accept, in principle, that the subject land could be “removed” from the RCZ without compromising that rather extensive zone.
113. Turning to the purpose of the Sub-precinct C and its underlying Countryside Living Zone (CLZ), the latter’s purpose is stated in H19.7.1 of the AUP as:

This zone provides for rural lifestyle living in identified areas of rural land which are generally closer to urban Auckland or rural and coastal towns. There is a diversity of topography, land quality and landscape character within the zone which results in a diversity of site sizes. The zone is the receiver area for transferable rural site subdivision from other zones.

This zone incorporates a range of rural lifestyle developments, characterised as low density residential development on rural land. These rural lifestyle sites include scattered rural residential sites, farmlets and horticultural sites, residential bush sites and papakāinga.

Some parts of the zone reflect historical subdivision patterns, while other areas were established on rural land that did not have significant rural production values, and was often associated with steep topography and poor soils. Bush lots enabled the protection of indigenous vegetation cover as part of the subdivision process.

114. Taken by itself, the proposed land does not obviously fit the combined stated purposes of the Sub-precinct and the underlying RCL zone. The rezoning would not provide any part time farming activity, does not represent small rural holdings with lifestyle farming or other associated rural activities unless the exclusion provisions are provided (which are discussed next), and in conjunction with the neighbouring subdivision is not low density (i.e. not 1 lot (net site area) per 2 ha, which is the E39.6.5.2 RCLZ subdivision standard).
115. We also note that the Clevedon Precinct is not a self-contained “code” – I408.2, .3, .4 and .6 clearly state that the zone, Auckland-wide and overlay objectives, policies and standards apply in addition (unless otherwise specified).

Exclusion Provisions

116. As noted, two exclusions to the AUP sub-precinct provisions are sought relating to the way in which the minimum lot and minimum net site area are calculated. Those standards direct that land outside the Clevedon Precinct must not be used in the calculation of the average lot size for subdivision (I408.6.4(2)(d)), and a density not exceeding 1 dwelling per 4ha net site area (I408.6.5.1) is required. The 10 dwellings on the 9.88 ha lot proposed for inclusion in Sub-precinct C would clearly breach the density standard without the ability to use the 52 ha RCZ parent lots in the calculation.
117. While the applicant was able to point to some exceptions to the density standard (i.e. those formally noted in AUP Table I408.6.5.1), no evidence was given that supported an exemption from the calculus standard – and none of the density exceptions further reduced the underlying RCLZ minimum of 1 per 2 ha (Table E39.6.5.2.1).

118. In essence, the applicant's justification for the exception was that the land that would remain outside the Sub-precinct will remain available for farming and is unlikely to be differently developed (being in the RCZ). As such it effectively meets the broad purpose of the Sub-precinct on-the-ground. In other words, no-one standing on the ground would discern a material difference in appearance compared with the internal Sub-precinct C arrangement – zone boundaries being largely figurative.
119. In seeking to understand the policy behind the lot size calculus we sought further information from Council (Mr Gouge) and were advised that through PC32 the then Manukau City Council sought to provide but contain countryside living, in “defensible boundary” terms, between the Taitaia Stream and the Wairoa River. At the same time, it sought to control the resulting density by preventing the use of large rural landholdings that extended beyond those boundaries determining the permitted quantum. Clearly this was not a casual policy but very deliberate and integral to the Clevedon village concept (as it was then).
120. We are not aware that any comparable exceptions have been granted to a standard that appears to be fundamental to the architecture of the Sub-precinct (and the Precinct more generally). Furthermore, we are somewhat concerned as to what precedent might be inadvertently engaged should this exception be confirmed – in that regard we do not entirely agree with Mr Allan that a plan change cannot herald a precedent. We think it highly likely that if the external RCZ activity can be read as satisfying the purpose of Sub-precinct C (in terms of the overall lot calculus) then so could the wider and more adjacent Rural Production and Mixed Rural zones – potentially opening up the Precinct beyond its current confines. Whether that is a fanciful precedent or not we are unable to say as evidence around that matter was not before us. It is, however, a matter of concern and a matter that we should weigh carefully.

Cluster housing

121. An allied matter is the I408.6.4(2)(g) standard regarding cluster housing, which provision states:

Housing clusters:

- (i) must consist of no more than 5 dwellings (where applicable);*
- (ii) must be separated by a planting buffer from the adjoining sub-precinct; and*
- (iii) a minimum of 50m separation must be provided between building frontages within clusters to allow sufficient space for the creation of a central communal area.*

122. It was not clear to us whether this provision applied or not – because of the curiously parenthetical addition of: *where applicable*. The AUP does not provide an explanation for that qualifier.

123. Mr Gouge in his further analysis requested by us told us that clustering:

- was not proposed in the notified PC32;

- was proposed by the Council planner for the Clevedon rural zone in response to submissions during the hearing and accepted by the Commissioners (with design guidance) and by subsequent Consent Order; and
 - was carried through into the AUP process but with the injunctive modification of “must” and the addition of the parenthetical *where appropriate*.
124. Subsequent advice conveyed to us by Mr Gouge via the original PC32 planner, Ms Vrinda Moghe, was that the rural clustering provision was originally intended only to apply to sites affected by Stormwater Management Areas (SMAs) to avoid perverse lot configurations (i.e. long thin lots) and in response to Watercare’s request to make formal stormwater treatment viable around the village as part of a wider wastewater strategy.
125. It would appear, therefore, that the cluster housing qualifier is intended to be restricted to areas under a formal SMA. It is our understanding that is not the case with respect to the subject land/lots in question and therefore the provision should not apply.

Findings

126. Because we were concerned about the policy significance of the exceptions sought, and in response to Mr Allan’s submissions in part reply that comparable examples where site specific over-ride provisions were to be found in various other parts of the AUP (he referred to New Lynn, Sylvia Park, and Cornwall Park Precincts and the Waitakere Heritage overlay as examples), we asked Mr Gouge for further advice.
127. That further advice, conveyed to us by email of 27 July 2021, based on his review of 118 precincts and the Waitakere Ranges Heritage overlay, was as follows:
- *Clustering as it is used in the Clevedon Precinct is not a widespread planning mechanism used in the precincts. Precinct I441 - Whitford Precinct contains a more complicated set of subdivision provisions including a rule similar to the one in the Clevedon Precinct preventing land outside the precinct being used in the average site size for subdivision calculation.*
 - *In all cases, the clustering or ‘subdivision opportunity’ are driven by the precinct plans, either by sub-precincts or in an overlay subdivision plan. This makes the number of lots explicit for each area. In some cases the sub-precinct can cover a single lot (refer to I437 Runciman Precinct sub-precinct A – Lot 2 DP 487 557).*
 - *In some, but not all cases the clustering opportunities follow cadastral boundaries. In the cases where they don’t follow cadastral boundaries, the boundaries appear to follow natural features or locations of lower sensitivity to built development from a landscape values perspective (refer to I511 Hatfields Precinct). In the case of the Waitākere Ranges Heritage Area Overlay, the clustering provisions are set at an individual land parcel level in recognition of Environment Court decisions on these sites.*

In conclusion, the exemption to the rule proposed through PC45 would be the first of its kind identified in the AUP(OP) which has traditionally dealt with site specific departures by way of sub-precincts or subdivision opportunity maps.

128. While we have concluded that the cluster housing provision probably should not be applied in this instance, Mr Gouge’s general conclusion regarding the significance of what is sought is important and accords with our concern.
129. Taking those combined matters into consideration, therefore, we find that the plan change as sought with the exemptions does not accord with the Precinct provisions and that to adopt PC45 could, at the plan policy level, introduce a level of uncertainty that opens up the Precinct in a way neither intended nor explored in detail before us.
130. We also turned our mind to whether the option of approving the extension of Sub-precinct C without the exemptions was practicable (as indicated in our rural character evaluation earlier). That, in turn, would enable either two dwellings or an application to made subsequently for more than 2 dwellings on the site – albeit as a non-complying activity. However, as that option was not put to us by the applicant, and offers no material advantage, we have pursued that no further.
131. We note that in our considerations we have not paid particular attention to edge-defining matters such as defensible boundaries as sought by submitters (although we note this term is not used in the AUP, rather the term *legible boundaries* is used (e.g. policy I408.3(3)(g)) which, of course, is quite different). While the existing Sub-precinct C boundary on its north-eastern edge is well defined (in part) by the trees and fences along the common boundary, cadastral boundaries are also commonly followed and used as zone / precinct boundaries and any plan change enabling subdivisions would, in time, likely resolve that matter.

STATUTORY PROVISIONS

132. Sections 74 and 75 RMA set out the range of matters that must be addressed when considering a district plan change, complemented by those evaluative matters specifically required by section 32 RMA.
133. The applicant’s s32 evaluation was included in¹⁹ the AEE request that accompanied the notified plan change, and was acknowledged as sufficient by Mr Gouge.
134. Importantly, the plan change must give effect to the Regional Policy Statement (Chapter B of the AUP) and must not be inconsistent with the relevant regional plan provisions of the AUP. For present purposes the higher order regulatory instruments, such as the NZCPS, are assumed to be sufficiently incorporated in the AUP.
135. A final checkpoint, established through the courts, is the question as to whether a proposed plan change is a better fit with the overall architecture of the Plan than the provisions it seeks to supplant or amend.

CONCLUDING FINDING

136. Having considered the evidence and relevant background documents, we are not satisfied, overall, that PC 45 accords with the relevant statutory and policy matters with regard to permitting additional dwellings in or adjacent to a recognised natural hazard floodplain or area of coastal inundation, or the clear Precinct direction in favour of small


¹⁹ AEE (paras 259 – 273) and s42A report (section 7, paras 260 – 267).

clusters (at most) of dwellings on the periphery of the precinct. In combination with the two clusters approved on the adjoining land, 10 further dwellings at this location would create a distinct aggregation of dwellings.

137. Furthermore, while we understand the pragmatic reasons for the exemptions sought, we are not persuaded that they are justified in terms of the fundamentals of the Precinct and the sub-precinct standards.
138. If not for our floodplain finding we might have been prepared to approve an extension of Sub-precinct C over the land sought but without the standard modifications sought. That would have enabled a couple of dwellings but not the 10 sought. However, we find overall that such is not appropriate in light of the clear policy and current science regarding future natural hazard risk.
139. We find that the plan change is not a better resource management “fit” with the Precinct provisions or overall cast of the AUP and would not assist the Council in its effective administration of the Auckland Unitary Plan.

DECISION

140. Pursuant to Schedule 1, Clauses 10 and 29 of the Resource Management Act 1991, Proposed Plan Change 45 to the Auckland Unitary Plan (Operative in Part) 2016 is declined for the reasons set out in this decision.
141. Submissions on the plan change are accepted and rejected in accordance with this decision.
142. The summary reasons for the decision are that Private Plan Change 45:
 - (a) will not assist the Council in fulfilling its functions under s30 and s31 of the RMA;
 - (b) would not give effect to the Auckland Regional Policy Statement and is inconsistent with material regional plan provisions of the AUP;
 - (c) would not represent or promote sustainable management; and
 - (d) would not, therefore, assist with the effective implementation of the Auckland Unitary Plan.



David Hill
Chairperson
and for Commissioners Nigel Mark-Brown and Helen Mellsop

Date: 15 September 2021