

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



Proposal - in summary.

To increase the Height Variation Control that applies to 911-953 New North Road from 18m to 24m and apply a Height Variation Control to 955-975 New North Road to enable buildings up to 24m.

This private plan change is **APPROVED** as notified. The reasons are set out below.

Private Plan Change number:	63
Site address:	911-975 New North Road
Applicant:	Tram Lease Limited
Hearing:	23 and 24 May 2022
Hearing panel:	Dr Lee Beattie (Chairperson) Ms Lisa Mein Mr Mark Farnsworth
Parties and People involved:	<p><u>Applicant</u> Tram Lease Limited represented by: Mr Douglas Allan & Ms Alex Devine, Legal Counsel Ms Angela Bull, Corporate Mr Andy Anderson, Architecture Ms Rachel de Lambert, Landscape Mr Cam Wallace, Urban Design Mr Todd Langwell Transport Mr Tim Heath, Economics; and Mr Karl Cook, Planning.</p> <p><u>Albert-Eden Local Board</u> Mr Graeme Easte, Local Board Member</p> <p><u>Submitters:</u> Auckland Transport represented by: Mr Kevin Wong-Toi, Corporate Mr Joe Phillips, Transport and Engineering; and Mr Trevor Mackie, Planning.</p>

	<p><u>Tabled Statement</u></p> <p>KiwiRail NZ Limited</p> <p>Auckland Council (as regulator) represented by: Ms Clare Wall Shaw, Planner (section 42A report author) Ms Fiona Sprott, (Team Leader) Mr Mat Collins, Transport Engineer Ms Tracy Ogden-Cork, Urban Design (consultant) Mr Peter Kensington, Landscape Architect (consultant); and Mr Greg Akehurst, Economist (consultant). Mr Bevan Donovan, Hearings Advisor</p>
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EXECUTIVE SUMMARY

We have set out at a 'high level' our key findings in the Executive Summary to provide 'context' when reading the substantive part of the decision. Other matters are also addressed that are not included in the Executive Summary.

- We have approved the Plan Change as proposed.
- The Plan Change will result in an increase of residential development capacity when compared with the existing heights enabled by the AUP: OP.
- We do not see the need for a Precinct Plan to achieve the purpose of the plan change.
- The Plan Change will give effect to the National Policy Statement on Urban Development (**NPS-UD**). It also gives effect to the Regional Policy Statement (**RPS**).
- Plan 63 Change to increase the Height Variation Control that applies to 911-953 New North Road from 18m to 24m and apply a Height Variation Control to 955-975 New North Road to enable buildings up to 24m will also better meet the social and economic needs of the community.

INTRODUCTION

1. The private plan change request was made under Clause 21 of Schedule 1 to the RMA and was accepted by the Council, under clause 25(2)(b) of Schedule 1 to the RMA on 27 August 2020.
2. A report in accordance with section 32 and 32AA (in relation to the changes sought) of the RMA was prepared¹ in support of the proposed plan change for the purpose of considering the appropriateness of the proposed provisions.

¹ Private Plan Change Request New North Road Mt Albert – S32A Assessment Report – Shannon Fallon B&A Urban Environment, February 2021 2020 (**Plan Change Request**)

3. This decision is made on behalf of the Auckland Council (“**the Council**”) by Independent Hearing Commissioners Dr Lee Beattie (Chair), Lisa Mein and Mark Farnsworth appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (**RMA**).
4. The Commissioners have been delegated the authority by the Council to make a decision on Private Plan Change 63 (**PPC 63**) to the Auckland Council Unitary Plan Operative in Part (**AUP (OP)**). In making our decision we have considered:
 - The application and supporting information;
 - All of the submissions;
 - The section 32 and 32AA evaluations;
 - The Section 42A report prepared by Ms Clare Wall Shaw
 - Requestor’s legal submissions;
 - The evidence presented during the hearing of submissions; and
 - Responses to our questions and closing submissions.
5. The hearing of this plan change (PPC 63) was heard in conjunction with Private Plan Change 64. Separate decisions will be issued for each plan change.

SUMMARY OF PLAN CHANGE AS NOTIFIED

6. The proposed Plan Change is described in detail in the Requestor’s Plan Change Request² and an overview is provided in the Council’s section 42A hearing report³. In summary – PC63 seeks to:
 - *“Increase the Height Variation Control that applies to 911- 953 New North Road from 18m to 24m (22m occupiable and additional 2m for roof form)*
 - *Apply a Height Variation Control to 955-975 New North Road to enable buildings up to 24m (22m occupiable and additional 2m for roof form); and*
 - *Consequential amendments are required to Table H10.6.1.1 and Table H13.6.1.2.”*
7. The Plan Change area is subject to the ‘Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay – A13, Mount Albert’. This overlay acts to protect views of Ōwairaka from an identified origin point in Te Atatu. The overlay restricts the height of buildings across the plan change area to be between approximately 20.5m and 27.5m.

² Plan Change Request at Section 5

³ Section 42A at Section 1

8. The Plan Change Request notes⁴:

“Any future development will need to comply with the Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay – A13, Mount Albert height limits, meaning that in specific areas the proposed additional height will not be able to be realised across the entire Plan Change area without non-complying activity resource consent.”

9. The Requestor’s Plan Change Request⁵ sets out the purpose of the plan change, being:

“... apply a 24m height limit to the properties at 911-975 New North Road, to increase the efficient and effective use of this highly accessible land within the Mount Albert town centre area whilst achieving a quality-built environment, maintaining the amenity values of the locality and avoiding intrusion into the identified viewshafts to Owairaka/Mt Albert. “

10. The Requestor is the majority landowner of the Plan Change area and wishes to enable development on the site in a manner consistent with the 24m height limit, which this Plan Change request will permit.

THE SITE

11. The Plan Change Request provided⁶ a detailed description of the site⁷:

*“The Plan Change area is approximately 23,000m² and covers the south western blocks of the Mount Albert town centre located on the western edge of the Auckland Isthmus. The Plan Change area includes the properties at 911 -975 New North Road and is bounded by the railway line to the north-west and New North Road to the south-east. Tram Lease Ltd has large landholdings within the Plan Change area. A locality plan of the Plan Change area is included as **Figure 1** below:*

⁴ Plan Change Request at [5.1.1]

⁵ Plan Change Request at [5.3]

⁶ Plan Change Request at [4.1]

⁷ The Section 42A Report adopted the requestor’s site description



The Plan Change area is located within the Business – Town Centre and Business- Mixed Use zones see **Figure 2**. The land within the Business – Town Centre zone is subject to the Height Variation Control allowing the development of buildings up to 18m in height. The height limit of buildings within the Business- Mixed Use zone is 18m.

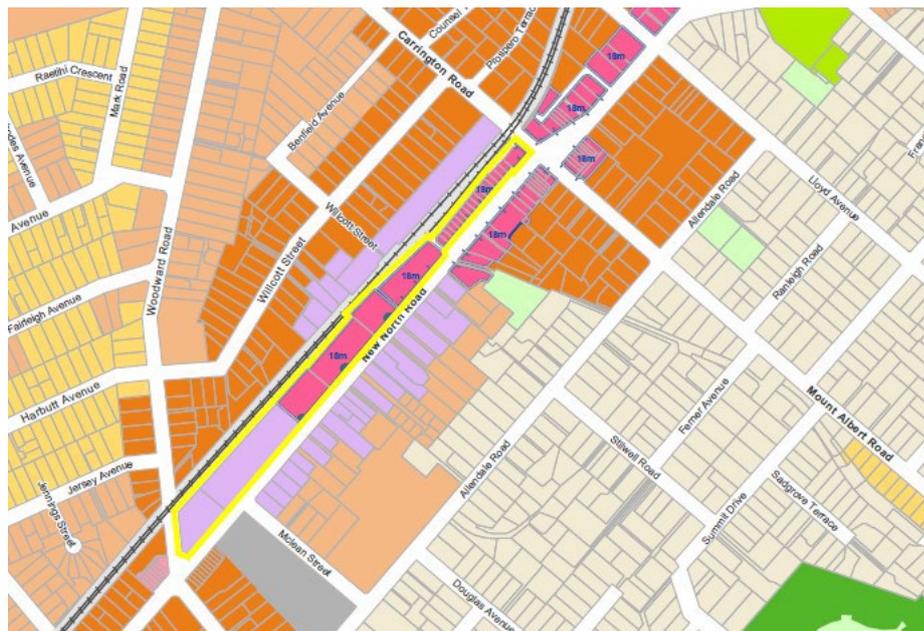


Figure 2: Zoning

A Regionally Significant Volcanic Viewshaft and Height Sensitive Area Overlay – A13 Mount Albert Viewshaft – passes over the majority of the Site, except for the northern-most part of the Plan Change area by Mount Albert Road. The Viewshaft has a height above the Site of generally 24.5m-27.5m, decreasing to 21.5m at the Site’s southern end and 20.5m at its northern end.”

“Overall, the topography of the Plan Change area is relatively flat, dipping midway along its length by approximately 5m, and there are no known

heritage items/places, significant indigenous habitat or vegetation within the Plan Change area.”

SURROUNDING AREA & LOCAL CONTEXT (ZONING)

12. The Plan Change Request provides⁸: a detailed description of the surrounding areas and surrounding and local context.

“The Mount Albert town centre is centred around the New North Road and Carrington Road intersection. The Plan Change area covers the south western portion of the Mount Albert town centre. The Mount Albert town Centre extends north of the Plan Change area across Mount Albert Road. It also extends to the east between Mount Albert Road and Ballast Lane. The built form within the Mount Albert town centre largely consists of finer grain strip retail.

*The zoning pattern of the wider area spanning out from Mount Albert town centre is, very loosely, concentric. At its core is Town Centre zoning, surrounded by Mixed Use zoning. The Plan change area (refer to Figure 2 above) comprises both Town Centre and Mixed Use zoned land, however the majority of the Plan Change area is Town Centre zoned. From there, it transitions to Terrace Housing and Apartment Building (**THAB**) zoning, through to Mixed Housing Urban, Mixed Housing Suburban and Single House zoning.*

To the north of the Mount Albert town centre, are large older residential dwellings many of which are zoned Terrace Housing and Apartment Building. The THAB zone also extends to the east of the Mount Albert town centre to Allendale Road. Beyond Allendale Road the Single House zone and Special Character Overlay applies to the large character homes which line the residential streets that surround Ōwairaka / Mount Albert.

Directly to the west of the Plan Change area is the railway line and the Mount Albert train station. Immediately beyond the railway line is a residential area consisting of terrace housing and single dwellings. It is noted that this area has been rezoned as Business – Mixed Use along the railway line and THAB zone along Willcott Street.

The surrounding Directly east to the southern portions of the Plan Change area the Business - Mixed Use zone has been applied. The area however, is currently characterised by single dwellings.”

“New North Road and Carrington Road are both arterial roads and are serviced by the Frequent Transit Network (FTN) with buses going to the CBD, across town to Penrose/Sylvia Park and Point Chevalier via Unitec. Mount Albert town centre is on the outer link route.”

“The Plan Change area is well served by amenities, with Gladstone Primary School, Elim Christian College, Mount Albert Grammar School and the Unitec Institute of Technology being in the wider area, along with the open space of Mount Albert / Owairaka Domain, Mount Albert Tennis Club, the

⁸ Plan Change Request at [4.2]

Mount Albert Aquatic Centre, services within the town centre, Mount Albert train station, and Pak'n Save supermarket further south on New North Road."

13. We agree with this description of the site and the local and wider environment and it is adopted by us for our decision.

NOTIFICATION PROCESS AND SUBMISSIONS

14. PPC 63 was publicly notified for submissions on 22 July 2021; on the closing date, 19 August 2021, eighteen primary submissions had been received⁹. The submitters and their submissions are addressed in the tables in the section titled "Decisions" later in this decision.
15. A summary of submissions was publicly notified on 23 September 2021; on the closing date, being 7 October 2021 for further submissions; four further submissions were received¹⁰.
16. The Section 42A Report provided comprehensive tabulations¹¹ of the issues raised by the submitters, in their submissions and further submissions; and the relief sought. In summary, submissions addressed:
- Supporting PPC 63;
 - Opposing PPC 63;
 - Impingement on volcanic viewshaft;
 - Shading impacts ;
 - Building frontage control;
 - Loss of neighbourhood character;
 - Retaining existing height control;
 - Transport impacts;
 - Parking effects; and
 - Other General Matters.
17. We address the submitters' concerns in some detail below.

SECTION 42A –OFFICER'S RECOMMENDATION

18. In preparing the section 42A Report Ms Wall Shaw was assisted by 'technical inputs'¹² from a number of experts namely:
- Mat Collins & Harry Shepherd – *Transportation Hearing Report*. March 2022, Flow Transportation Specialists.
 - Peter Kensington – Memo *Landscape & Visual Effects*. 22 April 2022, KOLC

⁹ Section 42A Report at [10.1]

¹⁰ Section 42A Report at [10.1]

¹¹ Section 42A Report Section 11

¹² Section 42A Appendix 5

- Tracy Ogden-Cork – *Urban Design Specialist Review*. 22 April 2022, Motu design.
 - Todd Elder – Memo *Volcanic View shaft*. 27 October 2020
19. Ms Wall Shaw’s Section 42A Report recommended approval of the Plan Change. She noted:
- “The Auckland Unitary Plan be amended by the requested changes to the Auckland Unitary Plan proposed by PPC 63, as modified by her recommendations set out in Appendix 9 to her report”.*
20. Ms Wall Shaw recommended¹³ the following:
- Apply Height Variation Control to the properties at 955-975 New North Road of 24m; and
 - Amend the Height Variation Control which applies to the properties at 945A-953 New North Road from 18m to 24m.

LOCAL BOARD COMMENTS

21. The Section 42A Report provides¹⁴ a summary of the Albert-Eden Local Board’s comments.
22. Mr Graeme Easte, Board Member, represented the Albert-Eden Local Board at the hearing. He noted the Board supported PPC 63 subject to the following¹⁵:
- The need for a civic square;
 - A Precinct Plan is established for the PC area;
 - The actual implementation of PPC 63 is modulated;
 - The need to avoid undue shading;
 - The building envelope should not intrude into the volcanic viewshaft;
 - Any actual development should be subject to the Urban Design Panel review process; and
 - limiting the number of vehicular entrances/exits and by spacing them well apart.
23. To the extent we are able, and in the context of submissions to PPC 63, we have had regard to the views of the Albert-Eden Board.

¹³ Section 42A Appendix 9

¹⁴ Section 42A Report at [9.2]

¹⁵ Section 42A Report at Table 9

24. However, we note at this stage that we were advised by Ms Bull (Requestor’s corporate witness) the Council had acquired a long-term lease to provide for the delivery of a civic square at the northern entrance of train station as suggested by Mr Easte. We were therefore convinced that this aspect of the Local Board comments could be achieved without the need for a Precinct Plan to be established. With this, Ms Bull assured us that the provision of a ‘civic square’ was very much part of their (Requestor) thinking for the use of this space as well.

THE HEARING

25. The hearing for PPC 63 commenced on Monday 23, May 2022 in the Council Chambers, Ground floor Auckland Town Hall. The hearing was adjourned on Tuesday 24, May 2022. The hearing was closed 14 June 2022 following the receipt of the requestor’s Closing Legal Statement.

HEARING PROCESS

26. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements were set out in the Section 42A Report¹⁶.
27. The Applicant in their section 32A Assessment¹⁷ dated February 2021, provided an evaluation pursuant to section 32, and the additional information (*Clause 23*) requested by Auckland Council.
28. We do not need to repeat contents of the Applicant’s Plan Change Request and section 32 Assessment analysis in any detail, as we accept the appropriate requirements for the formulation of a plan change has been comprehensively addressed in the material before us.
29. We accept the section 32 Assessment analysis clarifies that analysis of efficiency and effectiveness of the plan change is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal. Having considered the application and the evidence, we are satisfied that PPC 63 has been developed in accordance with the relevant statutory requirements.
30. Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions. The decision must also include a further evaluation, in accordance with section 32AA of the RMA, of any proposed changes to the Plan Change. We address these matters below, as well as setting out our reasons for accepting, accepting in part, or rejecting submissions.
31. 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

¹⁶ Section 42A at section 7

¹⁷ Plan Change Request at Section 10

scale and significance of the changes¹⁸. In our view this decision, which among other things, addresses the modifications we have made to the provisions of PPC 63, satisfies our section 32AA obligations.

RELEVANT STATUTORY PROVISIONS CONSIDERED

32. Mr Cook in Planning Evidence for the requestor opined that there was substantial agreement between his evidence¹⁹ and Ms Wall Shaw's Section 42A Report analysis²⁰ of the relevant statutory framework and the applying planning provisions. Given the level of agreement we have not provided detailed analysis other than to note the relevant documents that were considered.
33. The following documents were considered:
- Resource Management Act 1991;
 - National Policy Statement on Urban Development 2020;
 - The Auckland Unitary Plan: - Regional Policy Statement;
 - District Provisions;
 - The Auckland Plan 2050;
 - Development Strategy;
 - Tūpuna Maunga Integrated Management Plan;
 - Albert-Eden Local Paths (greenways) Plan 2018; and
 - Albert-Eden Local Board Plan 2020.

Resource Management (Enabling Housing Supply and Other Matters) Act

34. The Resource Management (Enabling Housing Supply and Other Matters) Act was given Royal assent on 20 December 2021 and came into force on 21 December 2021. The extent that the PPC 63 area will be impacted by MDRS will be addressed by the Council when it notifies its own plan change (or variations) to give effect to the NPS-UD (intensification planning instrument) and the Resource Management (Enabling Housing Supply and Other Matters) Act. We understand this plan change is scheduled to be publicly notified in August 2022 and any issues associated with this process will be addressed at this stage.
35. We note for completeness, that on this matter we sought advice from Mr Allan (through our questions) over how should address this matter in our consideration of the current PPC, given we did not want to pre-empt this process in any way. He advised that we

¹⁸ RMA, section 32AA(1)(c)

¹⁹ Mr Cook Evidence-in-chief at Section 8

²⁰ Section 42A Report at Section 7

should just consider the Plan Change in the 'normal' way and any issues related to the plan change to be publicly notified in August 2022 would be addressed through that process based on the relevant evidence etc. There was no disagreement with this advice from any of the parties, including the Council officers (Ms Wall Shaw and Ms Spratt), a point we agree with and have considered this PPC in this fashion.

36. The section 42A Report provides a commentary²¹ on the National Policy Statement on Urban Development (**NPS-UD**). The NPS-UD was gazetted on the 23 July 2020, and came into force on 20 August 2020. It applies to all local authorities that have all or part of an urban environment within their District. Auckland Council is listed as a "Tier 1" local authority.
37. In summary its purpose is to:
- Have well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future; and
 - Provide sufficient development capacity to meet the different needs of people and communities.
38. Ms Wall Shaw's assessment of NPS-UD took into account the Environment Court decision - *Eden-Epsom Residential Protection Society Inc v Auckland Council [2021] NZEnvC 082*. She was of the view that PPC 63, as modified by her recommendations set out in Appendix 9 will:
- PPC 63 gives effect to Objective 3 (both the operative zoning and PPC 63 give effect to the NPS UD)²²;
 - The operative provisions and PPC 63 will give effect to Policy 1(a) to (f)²³.
 - It is difficult for PPC 63 to give effect to the requirement of Policy 6(a) and (b) with regard to development capacity and the planned urban built form anticipated by those RMA planning documents that have given effect to the NPS UD because those planning documents have not yet been notified²⁴.
 - PPC 63, gives effect to Policy 6(c) in so far as it gives effect to Objective 1 and gives effect to Policy 6(d) and 6(e) by providing for an increased level of intensification, by realising development capacity in an area with existing high levels of public transport accessibility and good access to active modes²⁵.
 - PPC 63 will contribute to a well-functioning urban environment in the short-medium term and long term. The requestor's transport assessment finds that

²¹ Section 42A Report at [70 - 83]

²² Section 42A Report at [77]

²³ Section 42A Report at [78]

²⁴ Section 42A Report at [79]

²⁵ Section 42A Report at [80]

the plan change can be accommodated by the transport network without compromising its function, capacity, or safety²⁶.

- Council's transport specialist finds that the long-term intent for the New North Road corridor is to focus on enabling walking, cycling and public transport, and this focus will be supported by, and in turn supports PPC 63. Further, the relevant objectives and policies of the Unitary Plan point to PPC 63 enabling the "right" type of intensification in the "right" location.²⁷
- PPC 63 will give effect to the NPS-UD as required by s.75(3)(a) of the RMA.

FINDINGS AND REASONS FOR APPROVING THE PLAN CHANGE.

39. The following section addresses our overall findings on PPC 63, having heard and considered all of the material and evidence before us.
40. We had expert evidence, before us; with both Auckland Transport and KiwiRail requesting specific changes. The requestor offered no changes nor have we adopted any of the requested changes.
41. We address the submissions received to PPC 63 and the relief sought in those submissions. In this respect, in accordance with Clause 10(2) of the RMA, we have grouped together those submissions under the headings that were used in the section 42A report for consistency. We have no changes resulting from the submissions.
42. With respect to further submissions, they can only support or oppose an initial submission. Our decisions, on the further submissions, reflect our decisions on those initial submissions having regard, of course, to any relevant new material provided in that further submission. For example, if a Further Submission supports a submission(s) that opposes the Plan Change and we have recommended that the initial submission(s) be rejected, then it follows that the Further Submission is also rejected.
43. As we have not adopted any of the changes arising from submissions and the evidence put before us, we have not been required to provide a further evaluation in accordance with section 32AA of the RMA.

Reasons for the Plan Change Proposal

44. We accept the Requestor's rationale for seeking to change the AUP (OP) to apply a Height Variation Control of 24m over the plan change area.
45. For the reasons that follow, it is our view that PPC 63 introduces a regime that is more efficient and appropriate in terms of the section 32 and section 32AA of the RMA than those currently in the AUP (OP) and satisfies the Part 2 provisions of the

²⁶ Section 42A Report at [81]

²⁷ Section 42A at [81]

RMA. We address these matters below.

Does Plan Change 63 give effect to the NPS UD?

46. Both Mr Cook and Ms Wall Shaw were of the view that PC gives effect to the NPS UD. The section 42A Report provides a commentary²⁸ on the National Policy Statement on Urban Development (**NPS-UD**). The NPS-UD was gazetted on the 23 July 2020, and came into force on 20 August 2020. It applies to all local authorities that have all or part of an urban environment within their District. Auckland Council is listed as a “Tier 1” local authority.
47. We agree with both Ms Wall Shaw’s and Mr Cook’s views on this matter and find that the PPC 63 would give effect to the NPS-UD. We note for completeness that Mr Allan was of a different view on how the NPS-UD should be applied in light of the Eden-Epsom Decision. However, as we have reached the outcome sought in his submission based on the views expressed Mr Cook’s and Ms Wall Shaw’s planning evidence, we do not see any value in exploring the differences on how NPS-UD should be applied in light of the Eden-Epsom Decision any the further.

Is there a need for a Precinct to be included in PPC63?

48. Mr Mackie (planning witness for Auckland Transport) supports the additional height and intensification proposed by the plan change, of the block in its entirety. However, he is of the opinion that a precinct for the western part of Mount Albert is required in order to manage the effects of the greater height proposed within the proposed plan change and to provide integration of land use and transport.²⁹ As part of this he also sought the introduction of a parking control seeking to limit carparking spaces based on floor area.
49. While Mr Mackie, and AT’s other witnesses, make reference to a precinct, no presentation of either a suite of provisions or a s.32AA report were provided as part of his evidence. We are not persuaded that Mount Albert is significantly different to other suburban town centres located proximate to public transport connections such that it would require its own precinct. In this regard we agree with Ms Wall Shaw’s view that a precinct would add unnecessary complexity to the AUP (OP), be confusing to plan users and disproportionate to the likely increase in development and associated vehicle movements.³⁰ Nor do we see the need to limit or prevent the provision of car parking space in this area, opposed to any similar suburban town centres. In my view, these issues are better addressed, if required in any event via global plan change across the City as a whole, and not on a piece meal basis.
50. We were unconvinced by Mr Mackie’s evidence and find in favour of the requestor that PPC63 should be approved as notified and that the AUP (OP) be amended by the changes proposed by PC63, and not as suggested by Mr Mackie nor was there a need for a precinct plan.

²⁸ Section 42A Report at [70 - 83]

²⁹ Trevor Mackie, Summary Hearing Statement, pp 2-4

³⁰ Auckland Council final comments by Clare Wall Shaw, 24 May 2022, pp3

Is there a need to protect the ‘Volcanic Viewshaft by specifying a height limit?’

50. Tūpuna Maunga Authority made a submission opposing the plan change, in particular the increase in the Height Variation Control where greater than the Regionally Significant Volcanic Viewshaft (RSVV) A13 to Ōwairaka (Mount Albert). The Authority expressed concern that establishing a zone height above the RSVV sets an expectation that this height is acceptable and can be realised across the entire plan change area, and that introducing a building height above the viewshaft.
51. As referenced in the application material³¹, much of the plan change area falls within the Regionally Significant Volcanic Viewshaft A13. As noted within the s.42A report, only the sites at 911, 913 and 915 New North Road fall outside of the viewshaft³². The Commissioners sought clarification at the hearing that the viewshaft excludes the properties at the corner of New North Road and Carrington Road, namely 911-915 New North Road and are satisfied that this is the case.
52. The requestor clearly acknowledged, within the application material³³, that the proposed height limit does exceed the viewshaft in some instances. Mr Cook in his evidence³⁴ noted:
- The volcanic viewshaft to Ōwairaka/Mount Albert ranges in height across the Plan Change 63 land between 20.5m and 27.5m. It is supported by a strong and directive policy and rule framework in the AUP, including a requirement for a notified, non-complying activity resource consent for any infringement of the viewshaft”.*
53. Mr Cook observed:
- “In the seven years since the AUP was made operative there have been no applications for buildings seeking consent to rely on a zone height as grounds to infringe a viewshaft.”*
54. Both Mr Cook and Ms Wall Shaw addressed the potential impacts of PPC 63 on the viewshaft they both agreed that there the policies and objectives of the AUP (OP) (including the RPS) provided the strategic direction to: protect significant views to and between the maunga and to recognise their outstanding values³⁵.
55. Ms Wall Shaw opined³⁶:
- “The AUP (OP) clearly establishes that where the plane of a RSVV sits below the zone height or HVC, the RSVV is the limiting factor on the height of any future development and would trigger a resource consent for a non-complying activity”.*
56. We came to understand that the combination of the general rules in chapter C1.6 and C1.10 together with the Volcanic Viewshaft provisions within chapter D14 will apply;

³¹ Plan Change Request at [4.1]

³² Section 42A report at [8.5]

³³ Plan Change Request at [5.22]

³⁴ Mr Cook Evidence-in-chief at [1.2]

³⁵ Mr Cook Evidence-in-chief at [5.30]

³⁶ Section 42A Report at [175]

accordingly, we are satisfied that the Regionally Significant Volcanic Viewshaft provisions are sufficiently robust to ensure protection of the views to the maunga and their values would not be compromised by this PPC.

Shading and loss of sunlight and amenity effects

57. As noted by the witnesses for the requestors and the representatives for the Council, the key point of difference between the proposed plan change request and the section 42A report is around the actual or potential amenity effects of shading to the south-eastern side of New North Road and the extent to which these effects should influence additional height in this location.
58. The shading studies, prepared by Jasmox,³⁷ are based on the massing models Jasmox prepared assuming the entire plan change area is built to the maximum height under both the operative zones and the requested height variation under PC63, taking into account the impact of the A13 Viewshaft. While based on floor-to-floor heights that are not fanciful, the commissioners note this is something of a 'worst-case' scenario as implies no breaks or built form modulation. As noted by Mr Wallace, all new development within the plan change area would be subject to a resource consent process as a restricted discretionary activity, which would likely result in modulation to building forms and roof lines, which would impact the degree of shadow cast.³⁸
59. Ms Ogden-Cork opines that an increase in height from 18m to 24m, on the block from 911-945 New North Road, will have significant shading effects and adversely affect the quality of the streetscape and vibrancy of the Mount Albert town centre by not enabling enough sunlight at key times of the day and year, when, in her opinion, it is most required to support the quality of the public realm³⁹. The Commissioners observe this opinion is not based on either detailed assessment nor any evidence of the impacts on public life and public realm as a result of reduction in sunlight onto the street.
60. Messrs Cook⁴⁰ and Wallace⁴¹ both acknowledge that the additional height will introduce shading of the eastern side of New North Road earlier in the day, than would occur under the current height control, but that there is no expectation of access to sunlight in streets within the Business zones nor amenity controls at business zone to business zone interfaces. As presented to the Commissioners, the requestor and its witnesses accept that shading is a matter to be considered when assessing a proposed plan change under s.32. However, their position differs from the s.42A report citing changes to shading are an inevitable consequence of intensification of urban areas⁴².
61. As discussed above, while Auckland Council has yet to notify its Plan Change in response to the NPS-UD, the Commissioners are cognisant policy 3 requires district plans to enable building heights of at least 6 storeys within a walkable catchment of existing and planned rapid transit stops. Further to that Mr Mackie, on behalf of AT,

³⁷ Plan Change Request Appendix 4

³⁸ Mr Wallace, Evidence in Chief at section 9.23

³⁹ Section 42A report, Appendix 5, Memo by Ms Ogden-Cork, pp3, 22 April 2022

⁴⁰ Mr Cook, Evidence in Chief at [7.3]

⁴¹ Mr Wallace, Evidence in Chief at [9.23]

⁴² Applicant's Reply Legal Submissions at [2.3]

does not consider that afternoon shading across the road would be considered a 'qualifying matter' under policy 6 to limit building height mandated by policy 3 of the NPS-UD⁴³. Both Messrs Wallace and Mackie are of the view that a building of up to 24m on the corner of New North Road and Carrington Road, which is at a major intersection within the town centre and directly adjoining the railway station would be a positive outcome, visually reinforcing the location as a 'marker' building.

62. The Commissioners are of a similar view that this location is well suited to intensification that would be enabled by the additional height proposed. The Commissioners are also of that view, noting the sites at the junction of New North Road and Carrington Road are not constrained by the A13 Volcanic Viewshaft, that it is appropriate to reinforce the corner location with a taller building. In this regard, we do not agree with the conclusion by Ms Ogden-Cork.
63. It is our view that the plan change as notified supports a compact urban form, in a location with good access to public and active transport options. Intensification within this location has the potential to support mode shift and the PPC gives effect to the NPS-UD.

Mana Whenua

64. The Applicant's Plan Change Request noted⁴⁴ that all Mana Whenua groups with a registered interest in the Plan Change area were notified.
65. Three iwi groups responded:
- Ngāti Whātua O Kaipara – defer to Ngāti Whātua Ōrākei;
 - Ngāti Whātua Ōrākei - requested further engagement however a site visit has not yet been arranged. Consultation ongoing is ongoing at time of lodgement.
 - Ngati Te Ata Waiohua - defer comment until application is formally submitted.
66. The s.42A Report notes⁴⁵ that Auckland iwi authorities were specifically notified of PPPC 63 in accordance with clause 5(4)(f) of Schedule 1 of the RMA on 23 September 2021. No submission was received from any mana whenua group except the Tūpuna Maunga Authority.
67. The Tūpuna Maunga Authority's concerns are addressed above.
68. As representatives of Tūpuna Maunga Authority's did not attend the hearings, we were unable to seek further clarification on the measures they proposed. Notwithstanding this we are satisfied, based on the information and evidence before us (as considered above), that PPC 63 would give effect to the RPS and Part 2 in relation to Mana Whenua interests and values.

⁴³ Mr Mackie, Summary of Evidence, pp11

⁴⁴ Plan Change Request at [8.1]

⁴⁵ Section 42A Report at [189]

DECISIONS ON SUBMISSIONS

69. The following section addresses the submissions received and sets out our decision in relation to them. For efficiency reasons we have adopted the submission tables set out in the Council Officer's section 42A report.
70. We have set out our reasons above why we have approved PPC 63 and the amendments we have made to it so it satisfies the purpose of the RMA.

Submissions Supporting PPC 63

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planner's Recommendations
9.1	Vincent Heeringa	Approve the plan change without amendments	Opposed by FS02 Auckland Transport Supported by FS03 Kāinga Ora	Accept
15.1	Kāinga Ora	Amend the Height Variation Control to include all land zoned TCZ [Town Centre zone]	Opposed by FS02 Auckland Transport	Accept
15.2	Kāinga Ora	Apply the Height Variation Control at 24m height limit for the MUZ [Mixed Use zone]	No	Accept
15.3	Kāinga Ora	Review by council of overall building heights and spatial application of the HVC [Height Variation Control] across all the Business zoned land within the Mount Albert centre	No	Accept

Decision on submissions

71. The support of these submissions is noted. On the basis we have approved the Plan Change we **accept** the supporting submissions.

Submissions Opposing PPC 63

Submission Number	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Planner's Recommendations
1.1	Ronald Tapply	Seeks wider public consultation to canvas impingement of volcanic viewshaft, shading and wind tunnel effects, dominance, removal of shops and no parking provisions	No	Reject
2.1	David Ryan	Require off street parking	No	Reject
3.1	Martyn Pratt	Seeks unspecified amendment [inferred no increase in building height]	No	Reject
4.1	Trustees of the Pat & Cath Coll Family Trust	Require consideration of loss of sunlight and amenity on residents on eastern side of New North Road	No	Reject, for the reason considered above
4.2	Trustees of the Pat & Cath Coll Family Trust	No other specific decision sought [concerned at loss of traditional heritage character of the area]	No	Reject
5.1	Plunkett Family Trust	No specific decision sought [seeking protection of views and volcanic viewshafts]	No	Reject, for the reason considered above
6.1	Leon Lu	Retain the 18m building height	No	Reject
7.1	Katrina Elliot	No other specific decision sought [seeking to prevent additional shading of 5	No	Reject

		Woodward Road, Mount Albert]		
8.1	W and R Property Holdings Limited	No other specific decisions sought	No	Reject
10.1	Tūpuna Maunga o Tāmaki Makaurau Authority	Ensure the HVC [Height Variation Control] for this site does not intrude into the Regionally Significant Volcanic Viewshaft A13 to Ōwairaka	Opposed by FS03 Kāinga Ora	Reject
10.2	Tūpuna Maunga o Tāmaki Makaurau Authority	Provide confirmation from a licensed cadastral surveyor of the precise R.L. of the floor of the viewshaft relative to the plan change area to establish the maximum building height to comply with the viewshaft A13 to Ōwairaka	Opposed by FS03 Kāinga Ora	Reject
11.1	Lloyd Austin	Retain the existing building height for 911-975 New North Road, Mount Albert [18m]	Supported by FS03 Kāinga Ora Opposed by FS04 Lloyd Austin	Reject
12.1	Darryl Crocker	No other specific decision requested [concern with shading]	No	Reject
13.1	Auckland Transport	Provide a further transport assessment to confirm how the high-level transport and integration outcomes sought by Auckland Transport will be	Supported by FS01 KiwiRail Opposed by FS03 Kāinga Ora	Reject

		given effect to. Include mechanisms (e.g. precinct provisions) to give effect to these outcomes		
13.2	Auckland Transport	Assess cumulative transport effects of plan change 63 and plan change 64 together. Identify any mitigation required and the delivery mechanism	Opposed by FS03 Kāinga Ora	Reject
13.3	Auckland Transport	Provide a further assessment to address the cumulative transport effects on the transport network, including the operation of intersections and key routes in the vicinity. Identify any mitigation required and the delivery mechanism	Opposed by FS03 Kāinga Ora	Reject
13.4	Auckland Transport	Provide a further assessment based on appropriate assumptions that reflect travel patterns for the plan change area. Identify any mitigation required and the delivery mechanism	Opposed by FS03 Kāinga Ora	Reject
13.5	Auckland Transport	Provide a further assessment of parking effects including effects on the use of public transport and on the	Opposed by FS03 Kāinga Ora	Reject

		transport network. Identify any mitigation required and the delivery mechanism		
13.6	Auckland Transport	Retain the existing pedestrian access to the train station [through 915-919 New North Road] and provide a further assessment of effects on this access and servicing facilities, including need for enhanced or additional access to the train station. Identify any mitigation required and the delivery mechanism	Opposed by FS03 Kāinga Ora	Reject
14.1	Derek Bing	Retain the existing 18m maximum height limit	No	Reject
16.1	Michael Reid	No other specific decision sought. [concerned at shading and loss of maunga views]	No	Reject
17.1	Lauren Mentjox	No other specific decision sought [concerned at traffic congestion, emissions, lack of measures to increase walking, cycling and public transport use]	No	Reject
18.1	Richard Harry Wilburn	Maintain building frontage control	No	Reject

Decision on submission

72. We have comprehensively addressed these matters in the decision above. We are satisfied that, based on the evidence before us, the matters relating to Transport matters have been appropriately considered, including the need for a precinct plan. We are also satisfied issues associated A13 Volcanic Viewshaft have been appropriately considered.

SECTION 32AA EVALUATION

73. 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.⁴⁶ This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes.⁴⁷
74. As we have not made changes to PPC 63 as sought and a section 32AA analysis is not required.

PART 2 OF THE RMA

75. Section 5(1) RMA provides that the purpose of the Act is to promote the sustainable management of natural and physical resources. We find that Part 2 of the RMA is met by PPC 63 for the reasons we have set out above and provide in summary below.
76. PPC 63 provides for the sustainable management of the PPC 63 land, in a manner that contributes to the region's ability to accommodate future growth in accordance with the Council's "quality compact city" goal.
77. We find that PPC 63 appropriately recognises and provides for the matters of national importance listed in section 6 RMA and has had particular regard to the other matters listed in section 7 RMA.
78. The Requestor notified iwi, and we have considered the concerns of the Tūpuna Maunga Authority's. We are satisfied that PPC 63 does not raise any issues in terms of section 8 RMA.

OVERALL DECISION

79. That pursuant to Schedule 1, Clauses 10 and 29 of the Resource Management Act 1991, that Proposed Plan Change 63 to the Auckland Unitary Plan (Operative in Part) be **approved** as sought.
80. Submissions on the plan change are accepted, accepted in part or refused in accordance with this decision.

⁴⁶ RMA, section 32AA(1)(a)

⁴⁷ RMA, section 32AA(1)(c)

81. In addition to the reasons set out above, the overall reasons for the decision are that PPC 63:

- is supported by necessary evaluation in accordance with section 32 and s32AA;
- gives effect to the National Policy Statement on Urban Development;
- gives effect to the Auckland Regional Policy Statement; and
- satisfies Part 2 of the RMA.



Dr Lee Beattie - Chairperson

For Commissioners Lisa Mein, Mark Farnsworth MNZM and Dr Lee Beattie

3 August 2022