

# Proposed Private Plan Change 48 – to the Auckland Unitary Plan

## Decision following the hearing of a Private Plan Change under the Resource Management Act 1991

### Proposal - in summary.

To rezone approximately 95 hectares of land from Future Urban to 35.5 hectares of Business: Metropolitan Centre zone, approximately 51.8 hectares of Business Mixed Use zone surrounding the Metropolitan Centre and 7.4 hectares of Open Space: Informal Recreation Zone at Drury known as Private Plan Change 48 – Drury Centre Precinct.

This private plan change is **APPROVED** with modifications to that notified. An Executive Summary and the full reasons for **APPROVING** the plan change are set out below.

<b>Plan modification number:</b>	48
<b>Site address:</b>	The 'site' is generally bounded by Great South Road, Waihoehoe Road, Fitzgerald Road and the Hingaia Stream.
<b>Applicant:</b>	Kiwi Property No.2 Limited (Kiwi)
<b>Hearings:</b>	<i>First Tranche 2021</i> 28 July – 30 July; 1 & 3 August  <i>Second Tranche - Combined Hearing of PCs 48, 49 and 50 - 6 – 10 and 16 December 2021</i>
<b>Hearing panel:</b>	Greg Hill (Chairperson) Karyn Kurzeja Mark Farnsworth MNZM
<b>Parties and People involved:</b>	<u>Applicant:</u> Kiwi Property No 2 Limited represented by: Mr Douglas Allan & Ms Alex Devine Legal Counsel; Mr David Schwartfeger, Corporate; Mr Joe Hruda, Master planning; Mr Robert Earl, Visual and Landscape and Landscape Master planning; Mr Cameron Wallace, Urban Design; Ms Rachel de Lambert, Landscape architect; Mr Curt Robinson, Acoustic; Mr Wilhelm Neil, Civil Engineering; Ms Justine Quinn, Ecology;

	<p>Ms Ellen Cameron, Archaeology;  Mr John Parlane, Transport (Strategic);  Mr Daryl Hughes and Mr Don McKenzie, Transport;  Ms Emma McDonald, Infrastructure Project Management;  Mr Greg Akehurst, Economics;  Dr Tim Fisher, Stormwater;  Dr Jan Kupec, Geotech;  Mr Richard Griffiths, Contaminated Land;  Mr Nick Roberts and Ms Rachel Morgan, Planning.</p> <p><u>Papakura Local Board</u></p> <p>Mr Brent Catchpole, Chairperson</p> <p><u>Submitters:</u></p> <p><i>Waka Kotahi</i>  Ms Jennifer Caldwell (first tranche)  Mr Mathew Gribben, Legal Counsel (second tranche);  Mr Evan Keating, Corporate;  Mr Andrew Mein, Traffic; and  Ms Cath Heppelthwaite, Planning</p> <p><i>Watercare</i>  Ms Ilze Gotelli, Corporate</p> <p><i>Papakura Business Association</i>  Ms Paula Schultz, Chairperson; and  Mr Richard Knott, Planning</p> <p><i>Kiwi Rail</i>  Ms Kristen Gunnell, Legal Counsel; and  Pam Butler – Planning</p> <p><i>Kāinga Ora</i>  Mr Bal Matheson, Legal Counsel;  Mr Rhys Hegley, Acoustic; and  Mr Michael Campbell, Planning</p> <p><i>Heritage NZ Pouhere Taonga</i>  Ms Robin Byron, Heritage Architect</p> <p><i>Drury South Limited</i>  Mr Daniel Minhinnick &amp; Ms Kristy Dibley, Legal Counsel;  Mr Joseph Phillips, Transport; and  Mr Greg Osborne, Planning</p>
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	<p><i>Fulton Hogan Limited</i> Ms Sue Simons and Ms Kate Storer, Legal Counsel</p> <p><i>Oyster Capital Limited</i> Mr Jeremy Brabant, Legal Counsel</p> <p><i>Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development</i> Mr Ernst Zöllner Corporate</p> <p><i>Auckland Council (Submitter) and Auckland Transport</i> Mr Matthew Allan and Mr Rowan Ashton, Legal Counsel; Ms Josephine Tam, AT Corporate (second tranche) Ms Brigid Duffield, Infrastructure Funding; Mr Gert Kloppers, Corporate Infrastructure; Mr Peter Gudsell, Finance; Mr Ezra Barwell, Open Space; Mr Andrew Prosser, Transport; Ms Claire Drewery, Acoustics and Vibration; Mr Danny Curtis, Stormwater; Ms Paula Vincent, Stormwater; Mr Rue Statham and Mr Ebi Hussain, Ecology; Ms Dawne Mackay, Strategic Planning; Mr Christopher Turbott – AC Planning Ms Karyn Sinclair, AT Planning;</p> <p><u>For the Council (regulator):</u> Craig Cairncross (Team Leader) Mr David Mead, Consultant Planner (section 42A report author) Mr Jason Smith, Ecologist; Mr Terry Church and Mr Matt Collins, Transport Engineer; Mr David Russell, Development Engineer; Mr Trent Sunich, Stormwater Engineer Ms Rebecca Skidmore, Urban Designer and Landscape Architect; Mr Robert Brassey, Heritage; Ms Ashleigh Richards and Ms Maylene Barrett, Parks; Ms Claudia Harford, Geotechnical; Mr Tim Heath, Economics; Mr Andrew Kalbarczyk, Contamination; and Mr Andrew Gordon, Noise and Vibration.</p> <p>Hearing Administrator Mr Sam Otter, Senior Hearings Advisor<sup>1</sup></p>
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<sup>1</sup> We would like to thank and acknowledge Mr Otter's excellent management of the hearing, and in particular the on-line component.

	<p><u>Tabled Statements</u></p> <p>Transpower, Ms Rebecca Eng, Planning; 13 July 2021</p> <p>Transpower, Ms Rebecca Eng, Planning; 26 November 2021</p> <p>Ministry of Education, Ms Karin Lepoutre, planning; 15 July 2021</p> <p>Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development, Mr Mike Hurley, Policy; 26 July 2021.</p> <p>Counties Power, Ms Josephine Michalakakis Planning; 15 July 2021.</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.
- 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**) in terms of B2 – Urban Growth and Form and B3 – Infrastructure, Transport and Energy.
- We are satisfied that the transport infrastructure related upgrades identified by the Applicant are those necessary to address the adverse effects from PC 48, and those necessary to give effect to the statutory planning documents.
- The Staging of Development with Transport Upgrades provisions, and the other associated precinct provisions are appropriate and workable and will ensure the necessary transport infrastructure related upgrades are provided prior to or at the same time as subdivision and or development.
- We have applied the zoning and sub-precinct, heights and activities (and their status) as set out in the Reply precinct provisions.
- We have included acoustic attenuation controls for habitable spaces (but not outdoor spaces) adjacent to the rail corridor zone to address adverse health and amenity effects. We have not included vibration as we had insufficient evidence to warrant imposing controls. We have imposed a 2.5 m building setback from the rail designation boundary.

- We have accepted the Open Space – Informal Recreation zone adjacent to the Hingaia stream. We are also satisfied that the precinct provisions (and Precinct Plan 2) will ensure the open space network will support a high quality centre that is well integrated with the Drury Central train station.
- We have retained the riparian margins (planting) at 10 metres either side of permanent or intermittent streams. The riparian provisions have been amended to focus attention on managing development impacts and mitigating them with the aim of improving ecological values while still allowing public access.
- We have not recommended the scheduling of the Flanagan Homestead or General Cameron’s residence as a category B Historic heritage place. Heritage and archaeology will be addressed by the addition of a ‘special information requirement’.

## INTRODUCTION

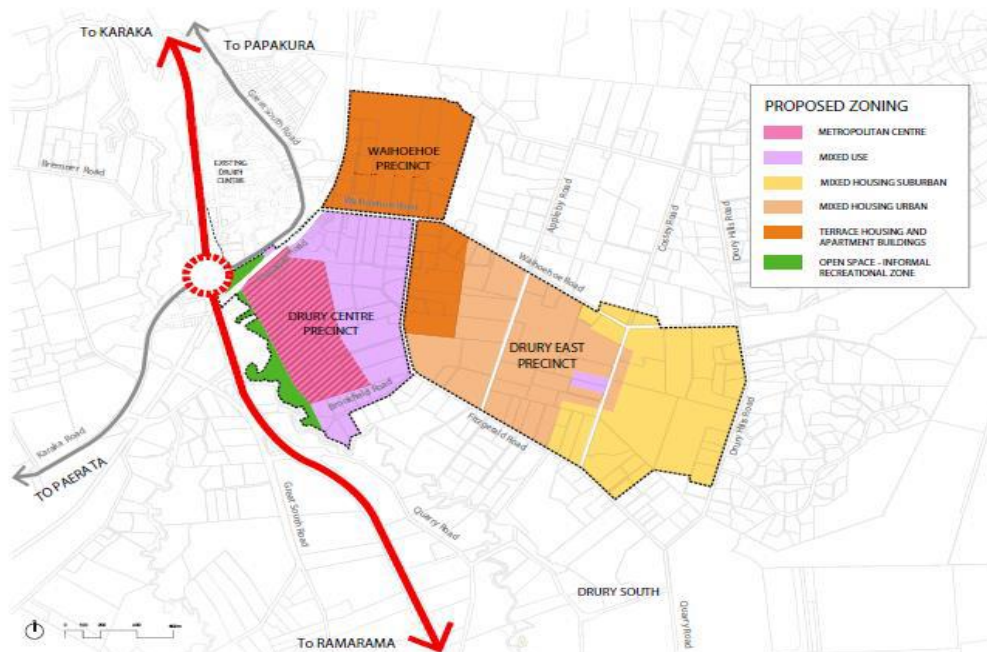
1. The Private Plan Change request was made under Clause 21 of Schedule 1 to the Resource Management Act 1991 (‘RMA’) and was accepted by Auckland Council (‘the Council’), under clause 25(2)(b) of Schedule 1 to the RMA on 2 July 2020.
2. A report in accordance with section 32 and 32AA (in relation to the changes sought) of the RMA was prepared<sup>2</sup> in support of the proposed plan change for the purpose of considering the appropriateness of the proposed plan change and its precinct provisions.
3. This decision is made on behalf of the Auckland Council (‘**the Council**’) by Independent Hearing Commissioners Greg Hill (Chair), Mark Farnsworth and Karyn Kurzeja 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 Plan Change 48 (‘**PC 48**’) to the Auckland Council Unitary Plan Operative in Part (‘**AUP OP**’). In making our decision we have considered all of the material put before us, including: the application, all of the submissions, the section 32 and 32AA evaluations, the Section 42A report, including the Addendum (report prepared by Mr David Mead, Consultant Planner), the Joint Witness Statements of Experts<sup>3</sup>, legal submissions, expert and lay evidence, tabled material and closing Reply evidence and legal submissions.

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<sup>2</sup> Kiwi Property Holding No 2 Limited Private Plan Change Request – S32 Assessment Report August 2020. B&A (Plan Change Request)

<sup>3</sup> The following Joint Witness Statements of experts were pre-circulated: Joint Statement 11 May 2021; Stormwater & Planning 17 May 2021; Transport & Planning 24 May 2021; Planning 31 May 2021; Stormwater-Technical 11 October 2021; Stormwater-Planning 14 October 2021; Transport 26 October 2021; and Additional Information Stormwater 11 November 2021;

5. Plan Change 48 (PC 48) is one of three private plan changes in the Drury East area. A summary guide document of the three Private Plan Change Requests was commissioned by the Applicants to explain what is proposed at Drury East – namely:
  - PC 48 Drury Centre Precinct – Kiwi Property Limited No 2 Limited – approximately 95 hectares – largely business - Metropolitan and Mixed Use;
  - PC 49 Drury East Precinct – Fulton Hogan Land Development Limited – approximately 184 hectares, mainly residential with a small business zone; and
  - PC 50 Waihoehoe Precinct – Oyster Capital - approximately 49 hectares, being residential (Terrace House and Apartment Buildings zone).
6. The guide also noted the three separate private plan requests had been lodged simultaneously to ensure there is a cohesive outcome for the Drury East area. It was also designed to help proposed plan readers to navigate through the material and attachments associated with the Drury East Private Plan Changes (Figure 1 below show the proposed zoning pattern as notified).



7. The Applicant's Opening Legal Submissions records<sup>4</sup>:

*"PC 48 was developed by Kiwi in conjunction with private plan change requests by Fulton Hogan Land Development Limited ("PC 49") and Oyster Capital ("PC 50") (collectively, "the PC Applicants") introducing residential zonings to adjacent FUZ land in Drury. A number of consultants have worked on all three plan changes and the proposed zonings, servicing arrangements and transportation arrangements are complementary and take account of a comprehensive structure planning process undertaken by the PC Applicants and the proponent of PC 51 at Drury West".*

<sup>4</sup> Mr D Allan's Opening Legal Submissions at [1.2]

8. The hearing of this plan change (as were PC's 49 and 50) was heard in two tranches. This was mainly due to the implications of the de-funding of Mill Road and the significance of transportation infrastructure to the plan changes being able to meet the purpose of the RMA. We explain this in more detail later in this decision.
9. The second tranche of the hearing, which mainly addressed transportation infrastructure, was essentially a combined hearing of the three plan changes. While there were separate legal submissions and corporate evidence, the expert transportation and planning evidence was 'common' to all three plan changes, as were the transport trigger provisions (Staging of Development with Transport Upgrades).
10. While this decision relates solely to PC 48, it has many commonalities with the decisions for PCs 49 and 50. This is in respect of its evaluation against the statutory and policy documents, transport infrastructure and the '*transport triggers*' (Staging of Development with Transport Upgrades). The transport triggers are the same for each of the three plan changes.

## EXISTING PLAN PROVISIONS

11. The subject site is zoned Future Urban Zone (**FUZ**) under the AUP (OP). The FUZ is a transitional zone applied to greenfield land that has been identified as suitable for urbanisation. In the interim, land in the FUZ may be used for a range of general rural activities, with urban activities either enabled by a plan change that rezones the land for urban purposes, or which are authorised by resource consent.
12. The area surrounding PC 48 to the north and east is zoned FUZ. To the south is the Drury South industrial precinct, zoned mainly Business – Light Industry. To the north-west across the railway line is the existing Drury Village with a range of zones.
13. The land is also subject to the following AUP (OP) overlays and controls:
  - High-Use & Quality-Sensitive Aquifer Management Area – Drury Sand Aquifer;
  - Macroinvertebrate Community Index – Rural and Urban;
  - Infrastructure: National Grid Corridor Overlay - National Grid Yard Uncompromised; and
  - Infrastructure: National Grid Corridor Overlay - National Grid Subdivision Corridor.

## SUMMARY OF PLAN CHANGE AS NOTIFIED AND AS AMENDED BY THE APPLICANT

14. The proposed Plan Change is described in detail in the Applicant's section 32A Planning Assessment<sup>5</sup> and in the Council's section 42A hearing report<sup>6</sup>. The Plan Change seeks to rezone 95 hectares of land in Drury, South Auckland, generally in

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<sup>5</sup> Plan Change Request in Section 5

<sup>6</sup> Section 42A at [1.1]

the area bound by Great South Road, Waihoehoe Road, Fitzgerald Road and the Hingaia Stream, and is currently zoned Future Urban Zone (**FUZ**).

15. The purpose of PC 48, as expressed<sup>7</sup> by the Applicant, is to:

*“Enable the development of a new, comprehensively planned and transit-orientated centre at Drury that supports a quality compact urban form. The Plan Change also seeks to provide additional land for housing along with a network of open spaces.”*

16. The reason for this Plan Change is that the Applicant, who is the majority land owner of the Plan Change area<sup>8</sup>, intends to develop their landholdings to increase the supply of retail, commercial and residential capacity within the southern part of Auckland.
17. The site is identified for urban development in the policy documents on future urban growth in Auckland. These include the Auckland Plan 2050, the Future Urban Land Supply Strategy 2017 (**FULSS**) which identifies the land at Opaheke/ Drury and Drury West as ‘Stage 2’ and earmarked to be ‘Development Ready’ in 2028 to 2032, and the Council’s Drury Opāheke Structure Plan (DOSP). We address these documents in relation to this plan change later in this decision.
18. The Applicant’s Opening Legal Submissions noted<sup>9</sup> Kiwi’s witnesses had recommended alterations to the PC 48 provisions (and did so throughout the hearing process (split into two tranches)) taking into account the concerns expressed by the Council (as regulator), submitters and responding to issues including the ‘de-funding’ of Mill Road and the NoR and resource consents to establish the Drury Central rail station and park and ride facility while retaining the ability for Kiwi to ensure a comprehensively designed and integrated (with PC 49 and 50 and the proposed nationally and regionally significant infrastructure) design outcome.
19. The final version of the precinct provisions was provided along with the Reply Submissions from the Applicant. Figure 2 below shows the proposed AUP (OP) zoning proposed by PC 48 as presented at the hearing and in the Reply Submissions:

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<sup>7</sup> Plan Change Request at [5.3]

<sup>8</sup> Mr Schwartfeger stated the Applicant owns 53.3 hectares of land within the Plan Change area

<sup>9</sup> Mr D Allan’s Opening legal Submissions at [3.4]



Figure 2



20. A summary of the Plan Change sought is to:

- a) Zone 35.5 hectares of land as Metropolitan Centre zone located generally to the south and within the walkable catchment of the future Drury Central train station;
- b) Zone 51.8 hectares of land Mixed Use zone applying to the majority of the remaining PC 48 area; and
- c) Zone 7.4 hectares of Informal Recreation zone applying to the western extent of PC 48, adjoining the Hingaia stream and under the National Grid Corridor Overlay.
- d) The precincts are proposed as follows:
  - Sub-precinct A is zoned Business - Metropolitan Centre Zone and contains the primary retail area, Key Retail Street and civic and green open spaces. The sub-precinct is the focal point for intensive retail, commercial and civic development and pedestrian activity;
  - Sub-precinct B is zoned Business – Metropolitan Centre Zone and is intended to be the primary location for large format retail, while also providing for other commercial and residential activities allowed in the zone. Development in this sub-precinct should ensure that a quality street environment is achieved;

- Sub-precinct C is zoned Business - Mixed Use Zone and provides for high density residential and a range of commercial activities that will complement the core centre and maximise the efficient use of land close to the rapid transport network. Eight storey buildings are enabled in this sub-precinct to provide a transition to surrounding residential zones.
- Sub-precinct E is zoned Business – Mixed Use Zone and provides for high density residential and a range of commercial activities that will complement the core centre and maximise the efficient use of land close to the rapid transport network. The Centre Fringe Office Control applies to the area within 200m of the Drury Central train station. Twelve storey buildings are enabled, and flexible ground floor designs are encouraged in this sub precinct.
- Sub-Precinct F is zoned Business – Mixed Use Zone and applies to the south-eastern part of the Drury Centre Precinct. Additional assessment criteria apply to the staging of pedestrian and cycle connections to the Drury Central train station and additional residential standards apply<sup>10</sup>.

## THE SITE AND SURROUNDING ENVIRONMENT

21. Both the Planning Assessment<sup>11</sup> and the section 42A Report<sup>12</sup> provide descriptions of the Plan Change area and the local context. We provide a very brief summary here.
22. The Plan Change area is located within Drury East on the southern edge of the Auckland metropolitan area. The 'site' is several kilometres south of the Papakura urban area, with the Hunua foothills to the east and the Drury South Business area to the south. State Highway 1 is to the west. The Plan Change area is situated in close proximity to the Drury interchange between Great South Road and State Highway 1.
23. The railway line is located to the immediate north of the Plan Change area. Although there is currently no train station at Drury, the DOSP identifies a future station here, and electrification of the line is occurring now. We note that the Drury Central train station (and associated park and ride facility) has now been granted resource consents, and the NoR confirmed under the COVID-19 Recovery (Fast-track Consenting) Act 2020 by the Expert Consenting Panel on the 3 February 2022.<sup>13</sup>
24. The overall topography of the area is relatively undulating with several elevated ridgelines. The western boundary of the Plan Change area is traversed by the Hingaia Stream and the northern extent of the Plan Change area is traversed by the Maketu Stream, draining ultimately to the Manukau Harbour via Pahurehure Inlet and

<sup>10</sup> Note - Sub-Precinct D was deleted. It was zoned Business – Metropolitan Centre Zone and provided for the establishment of the Drury Central Train Station and associated Park-and-Ride and transport interchange and incorporated into Sub-Precinct A.

<sup>11</sup> Plan Change Request at Section 4

<sup>12</sup> Section 42A Report at [1.4]

<sup>13</sup> Granted under the COVID-19 Recovery (Fast-track Consenting) Act 2020 by the Expert Consenting Panel on the 3 February 2022

Drury Creek. Across the Plan Change area there are permanent and intermittent stream tributaries of the Hingaia Stream as well as two seepage wetlands.

25. The Plan Change area is currently used primarily for farming activities (agricultural and horticultural) as well as rural lifestyle blocks. Vegetation within the Plan Change area is characterised by exotic pasture used for sheep and cattle grazing, crops and exotic trees and shrubs planted for shelter, amenity or as part of gardens. Mature native and exotic trees exist on the site at 120 Flanagan Road (the Homestead).

## **NOTIFICATION PROCESS AND SUBMISSIONS**

26. PC 48 was publicly notified for submissions on 27 August 2020. On the closing date, 22 October 2020, thirty-five submissions had been received (raising 267 submission points). The submitters and their submissions are addressed in the tables in the section titled “Decisions” later in this decision.
27. A summary of Submissions (decisions requested) was publicly notified on 11 December 2020; on the closing date, 29 January 2021, ten further submissions were received<sup>14</sup>.
28. The section 42A Report provided tabulations<sup>15</sup> of the issues raised by the submitters in their submissions and further submissions and the relief sought. In summary, submissions addressed were broadly categorised as submissions addressing:
- Supporting PC 48;
  - Opposing PC 48;
  - Traffic and Transport;
  - Timing and Funding Issues;
  - Ecology;
  - Economic;
  - Urban Design;
  - Stormwater and Flooding;
  - Open Space;
  - Archaeological and Heritage;
  - Cultural;
  - Landscape;
  - Servicing and Infrastructure;
  - Reverse Sensitivity;
  - Notification Provisions;

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<sup>14</sup> These were from, Transpower New Zealand Ltd, Auckland Council, Waka Kotahi - NZ Transport Agency, Drury South Limited, Auckland Transport, Kainga Ora, Watercare, Papakura Business Association, Counties Power Ltd and Heritage New Zealand Pouhere Taonga

<sup>15</sup> Section 42A Report at [9.2]

- Zoning;
  - Proposed Precinct Plan and its provisions;
  - Plan Change Boundary; and
  - Other / General Matters.
29. We address the submitters concerns in some detail below. Of particular significance to this decision are our findings in relation to the submissions of Auckland Transport (**AT**) and Auckland Council as a submitter (**ACS**), who, as their primary position, opposed the grant of PC 48 (noting also that AT and ACS oppose PCs 49 & 50 largely on the same basis). Their 'fall back' position was that if we approved this (and the other) plan changes we must provide a clear and directive policy framework, very detailed and extensive transport infrastructure upgrade 'triggers' specifying what upgrades needed to occur before subdivision and development occurred, and that non-compliance with the trigger provisions be classified as a non-complying activity.

## SECTION 42A REPORT – OFFICER'S RECOMMENDATION

30. In preparing the Section 42A Report Mr Mead was assisted by 'technical inputs' from a number of experts, as has been set out earlier.
31. Mr Mead's primary Section 42A Report recommended approval of the Plan Change, but contingent on adopting his suggested modifications as set out in Section 10 of his report. In this respect he stated<sup>16</sup>:

*It is my assessment that PPC48 requires substantial re-working for it to be able to meet the various statutory tests under the RMA. In particular are significant amendments to policies and zonings that I consider are necessary to ensure that the objectives of the Precinct (and the National Policy Statement for Urban Development (NPS-UD) and Regional Policy Statement of the Auckland Unitary Plan (RPS)) are effectively and efficiently implemented. These relate to public transport accessibility, increased intensity around the proposed train station and enhanced urban realm outcomes.*

*It is recommended that PPC48 be approved with modifications in response to submissions. Section 10 sets out a range of possible amendments to the plan change to better align the plan change with the RPS and NPS-UD. I have not provided a comprehensive 'track changes' version of the plan change due to the extent and interrelated nature of the changes that I have recommended.*

32. Notwithstanding Mr Mead's recommendation, he stated<sup>17</sup>:

*Note - This report was prepared on the basis of the proposed plan change as notified and taking into account resulting submissions. As discussed in this report, the notified plan change request assumed that the Mill Road extension would be in place by 2028, based on the timing set out in the 2020 NZ Upgrade Programme (NZUP). On the 4 June 2021 the Government announced a review of NZUP which involved a downgrading of the Mill Road project. It has not been possible in the time available to understand the substantial implications for the*

<sup>16</sup> Section 42A Report at [16 and 17]

<sup>17</sup> Section 42A at [8]

*plan change request of this reprioritisation of the Mill Road project to a focus on safety issues. This is a matter that the requestor needs to address and it is possible that substantial revisions will be needed, which if not clarified, would lead to significant uncertainty over the likely effects of the plan change request, sufficient to justify refusal of the request. The following assessment should be considered in this context*". [Underlining is our emphasis]

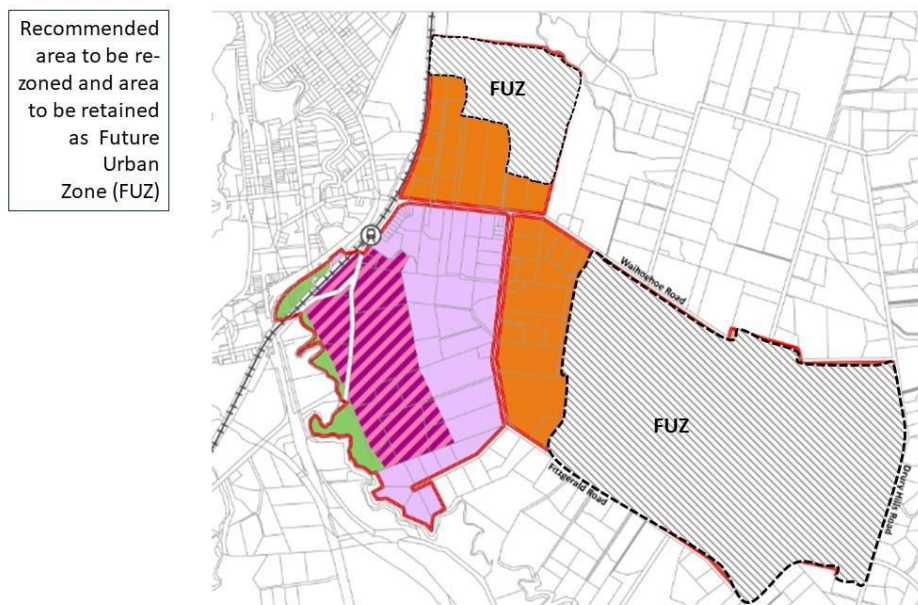
33. Mr Mead provided an Addendum section 42A Report<sup>18</sup> which addressed PCs 48 – 50 jointly, and substantially changed some of his recommendations set out in his primary section 42A reports<sup>19</sup>. He stated:<sup>20</sup>

*"Having heard the evidence of the requestors, Council and Auckland Transport; considered the extent to which PPCs 48 to 50 are placing reliance on 'off-site' projects that are not yet funded, and having reviewed possible staging techniques, I am now of the view that the plan changes should be approved 'in part'. This approach seeks to (roughly) match land use development capacity with known/likely transport upgrades"*.

34. For PC 48 Mr Mead recommended<sup>21</sup>:

*"Approval in full for PC 48 but with amended BMC zoning"*.

35. The zonings Mr Mead recommended for PCs 48 – 50 in the Addendum section 42A report are set out below, and we address that report and Mr Mead's recommendations in more detail below<sup>22</sup>:



<sup>18</sup> Dated on 19 November 2021

<sup>19</sup> We address the recommendations in the Addendum report in more detail later in this decision

<sup>20</sup> Section 42A Addendum at [74]

<sup>21</sup> Ibid at [77]

<sup>22</sup> Noting that Mr Mead recommended a different zoning layout for PC 50 in the final precinct provisions he provided us – and which align with Mr Prosser's recommended set out in his transport related presentation to the Hearing Panel on 7 December 2021.

## LOCAL BOARD COMMENTS

36. The section 42A Report provides<sup>23</sup> a summary of both the Franklin and Papakura Local Board comments. Mr Brent Catchpole, Chair of the Papakura Local Board presented at the hearing. He emphasised the following:

- The land should be released for development in line with Auckland Council's Future Urban Land Supply Strategy;
- There needs to be a holistic well-planned approach (good community outcomes);
- Impacts on Papakura town centre need to be considered.

37. Mr Catchpole also commented on:

- Green space and 'play space';
- Paths and connectivity;
- Parking and road widths; and
- Stormwater.

38. To the extent we are able, and in the context of submissions to PC 48, we have had regard to the views of the two Boards.

## EXPERT CONFERENCING

39. Following the close of the submission period, we directed that expert conferencing be facilitated. This occurred as follows:

- 11 May 2021 - Joint Statement – the experts agreeing the topics to be addressed and the timing of the conferencing sessions<sup>24</sup>;
- 17 May 2021 - Stormwater and Planning<sup>25</sup>;
- 24 May 2021 - Transport and Planning<sup>26</sup>;
- 31 May 2021 - Planning<sup>27</sup>;
- 11 October 2021 - Stormwater - Technical<sup>28</sup>;
- 14 October 2021 - Stormwater - Planning<sup>29</sup>;

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<sup>23</sup> Section 42A Report at [5.2]

<sup>24</sup> Joint Witness Statement ("JWS") dated 11 May 2021

<sup>25</sup> JWS 17 May 2021

<sup>26</sup> Ibid 24 May 2021

<sup>27</sup> Ibid 31 May 2021

<sup>28</sup> Ibid 11 October 2021

<sup>29</sup> Ibid 14 October 2021

- 26 October 2021 - Transport<sup>30</sup>; and
  - 11 November 2021 - Additional Information Stormwater<sup>31</sup>.
40. We found that the outcome of expert conferencing was extremely constructive in both narrowing and resolving issues, most notably in relation to transport and stormwater issues. We have, to a large extent, relied on the outcome of those Joint Witness Statements (JWSs) to address and agree a range of issues raised in submissions and establish the precinct provisions that we have adopted<sup>32</sup>.

## HEARING AND HEARING PROCESS

41. On 4 June 2021, prior to the hearing commencing, the Government announced the de-funding for the full Mill Road corridor upgrade including the southern section through Drury<sup>33</sup>. As a direct result of this announcement legal counsel for each of the three plan change Applicants wrote to us requesting changes to the scheduling and format of the hearings<sup>34</sup>.
42. The Applicants set out that the plan changes had assumed the implementation of the Mill Road Extension (given it had been provided funding with construction expected to commence in 2022). The Applicants requested that the hearing be split into two sections; the first addressing all matters other than those relating to traffic and transport of the three plan changes separately; with the traffic and transport issues (including the relevant planning provisions) being addressed in tranche 2 of the hearings as a combined hearing. This would enable time for the Applicant to: revise their transport modelling; provide it and its outcomes to the other parties; hold expert conferencing sessions; and complete expert evidence, the addendum section 42A report and legal submissions.
43. The Hearing Panel responded to the Memorandum by a Direction<sup>35</sup> accepting the Applicants' request and that:

*"The hearings for each of the plan changes commence and proceed as scheduled and address all aspects of the plan changes except the Traffic Evidence. Matters to be addressed would include:*

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<sup>30</sup> Ibid 26 October 2021

<sup>31</sup> Ibid 11 November 2021

<sup>32</sup> We thank all of the participants who took part in expert conferencing, which in our view made the hearing process and Plan Change outcome much more efficient and effective. We are grateful to and thank Ms Oliver, Independent Facilitator, for being able to 'bring the parties together' as much as possible given: the highly technical nature of the transport modelling information; the transport and planning provisions which were developed in response to it; and that these matters were highly contested by the parties, in particular by ACS and AT

<sup>33</sup> It had central government funding confirmed on 6 March 2020 by the Minister of Transport

<sup>34</sup> Dated 14 June 2021

<sup>35</sup> Dated 18 June 2021

*(i) Legal submissions and all evidence other than the Traffic Evidence would be presented at these hearings by all parties. This would include lay evidence that addresses traffic and transport matters.*

*(ii) The high level planning matters such as the appropriateness of the development threshold / trigger mechanism but not the detail of those thresholds / triggers.*

*The hearings for each of the plan changes then be adjourned, pending resumption once the Traffic Evidence has been exchanged.”*

44. A number of further Directions were issued by us establishing the re-convened hearing dates and the process (timetable re expert conferencing and evidence exchange).
45. Prior to the hearing reconvening, we held a “procedural meeting” on the morning of 28 July 2021. This meeting involved those parties involved in the hearings for Plan Changes 48, 49 and 50. Its main purpose was to confirm how the transport related aspects of the hearings for all three plan changes would be held later in the year once the revised transport modelling had been completed and considered by the parties. Given the commonality of the matters to be considered, all parties agreed that a combined hearing of PCs 48 - 50 would be held. This is what occurred.
46. The Hearing for PC 48 commenced on the afternoon of 28 July 2021 and was adjourned on Tuesday 3 August 2021. The second tranche of the hearing (combined with PC 49 and 50<sup>36</sup>) commenced on 6 December 2021 and was completed on 16 December 2021. Due to COVID 19 restrictions all but one day of the reconvened hearings was held by Remote Access (audio visual means via Teams).

## **RELEVANT STATUTORY PROVISIONS**

47. 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 Report and legal submissions.
48. The Applicant, in its Private Plan Change Request<sup>37</sup>, provided an evaluation pursuant to section 32, and the additional information (Clause 23) requested by the Council.
49. We do not need to repeat the contents of the Plan Change Request and the Section 32 Assessment Report in any detail, as we address the merits of those below. We accept the appropriate requirements for the formulation of a plan change has been comprehensively addressed in the material before us. However, in its evidence and at the hearing, we note that the Applicant proposed changes to the plan change in response to concerns raised by the Council and submitters.

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<sup>36</sup> Noting that as the evidence was the same for each plan change, with the agreement of the parties Ms Kurzeja remained throughout the hearing even though she was not delegated to sit on PC 49

<sup>37</sup> Request for Plan Change – at Section 9



50. We also note that the section 32 Assessment Report 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 PC 48 has been developed in accordance with the relevant statutory requirements.
51. Clauses 10 and 29 of Schedule 1 require that this decision must include the reasons for accepting or rejecting submissions. We address these matters below, as well as setting out our reasons for accepting or rejecting the submissions.
52. 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<sup>38</sup>. This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes<sup>39</sup>. In our view this decision, which among other things, addresses the modifications we have made to the provisions of PC 48, satisfies our section 32AA obligations.

### **National Policy Statement on Urban Development and the Regional Policy Statement**

53. The National Policy Statement on Urban Development (**NPS-UD**) was gazetted on 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 City is listed as a “Tier 1” local authority.
54. 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.
55. We address the NPS UD in more detail later in this decision, particularly in light of a recent Environment Court decision<sup>40</sup>, and the legal submissions addressing those provisions which did or did not apply.
56. The purpose of the Regional Policy Statement (**RPS**) is to achieve the purpose of the RMA by providing: an overview of the resource management issues of the region; and policies and methods to achieve integrated management of the natural and physical resources of the whole region.

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<sup>38</sup> RMA, section 32AA(1)(a)

<sup>39</sup> RMA, section 32AA(1)(c)

<sup>40</sup> *Eden-Epsom Residential Protection Society Inc v Auckland Council* [2021] NZEnvC 082

57. Pursuant to section 75(3) of the RMA, this Plan Change must “give effect” to the NPS UD and the RPS. We address this in this decision.

## STRATEGIC CONTEXT

58. The Section 42A Report sets out<sup>41</sup> a detailed strategic context to the plan change request and provided a discussion on ‘non-statutory’ documents including the Auckland Plan, the Future Urban Land Supply Strategy (**FULSS**) and the Drury-Opāheke Structure Plan (**DOSP**). We address these below as they set the strategic context in which this plan change needs to be considered vis-à-vis the statutory planning documents.
59. The section 42A report also discussed<sup>42</sup> the relevant Notices of Requirement and infrastructure projects that had been proposed. Again, these are briefly addressed below. We also address the Applicant’s master planning process and masterplan.

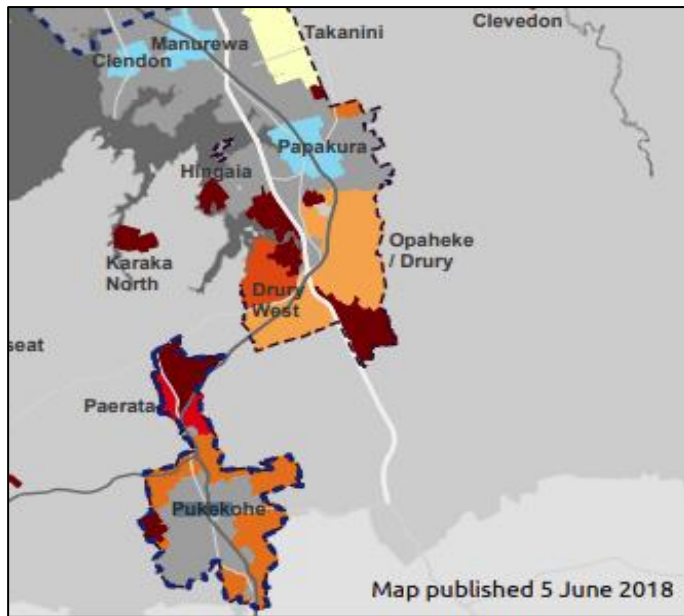
## Auckland Plan 2050

60. The Auckland Plan 2050 takes a quality compact approach to growth and development. It defines quality as:
- most development occurs in areas that are easily accessible by public transport, walking and cycling;
  - most development is within reasonable walking distance of services and facilities including centres, community facilities, employment opportunities and open space;
  - future development maximises efficient use of land; and
  - delivery of necessary infrastructure is coordinated to support growth in the right place at the right time.
61. The Auckland Plan’s Development Strategy shows a number of urban expansion areas (i.e. Future Urban areas) in the southern sector, including Drury East (the location of PC 48 (and 49 and 50)). The Auckland Plan provides limited direction for Future Urban areas and refers to the FULSS (which we address in more detail below). The Auckland Plan map is below:

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<sup>41</sup> Section 42A Report at [2]

<sup>42</sup> Ibid at [1.5]



### Future Urban Land Supply Strategy (FULSS)

62. The FULSS is a high-level strategy for the development of Auckland's Future Urban zones and is a subset of the Auckland Plan. It sets out the sequence of the release of future urban land with the supply of infrastructure over 30 years for the entire Auckland region.
63. The FULSS has a regional focus and attempts to provide a sustainable path for greenfields expansion to the north, west and south of the Auckland urban area. The FULSS was last 'refreshed' in July 2017.
64. The FULSS identifies Drury-Opāheke as having capacity to accommodate approximately 8,200 dwellings and one town and two local centres, noting that this had been subsequently refined through the DOSP.
65. The intended staging for growth in Drury-Opāheke is set out in the FULSS as:
  - Drury west of SH1 and north of SH22 is to be development ready from 2022; and
  - The remainder of the Drury-Opāheke Structure Plan area (including PC 48) is to be development ready by between 2028 and 2032.

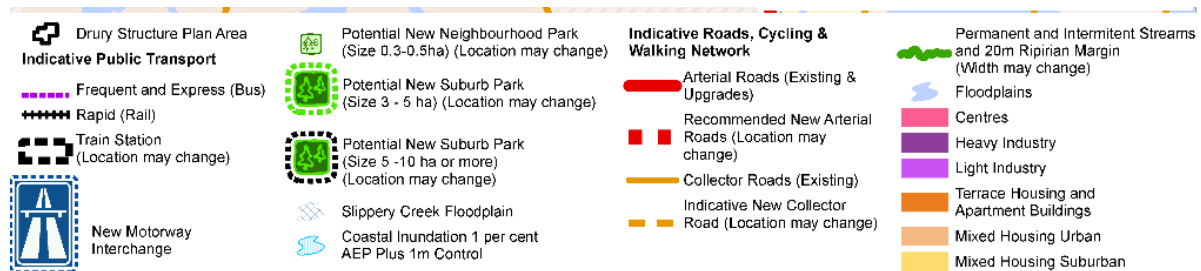
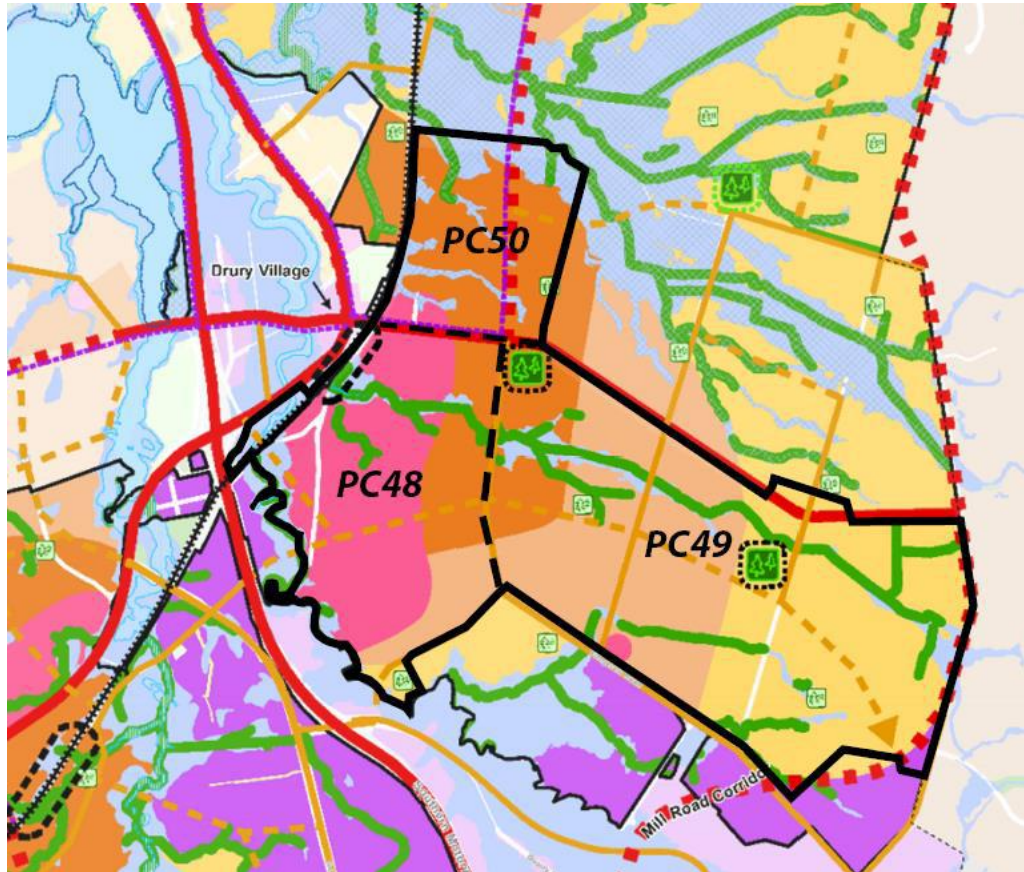
### Drury-Opāheke Structure Plan (DOSP)

66. The DOSP was adopted by the Council in August 2019, and sets out a pattern of land use and a network of infrastructure for the FUZ land at Drury and Opāheke (1,921ha). As set out in the section 42A report<sup>43</sup>:

<sup>43</sup> Section 42A report at [47]

*“The structure plan is intended to be the foundation to inform future plan changes to rezone the land and is a requirement under the AUP before Future Urban zoned areas can be urbanised and ‘live’ zoned”.*

67. The DOSP map is set out below:



68. Over the 30-year time frame envisaged by the DOSP, it is estimated to provide capacity for about 22,000 houses and 12,000 jobs, with a total population of about 60,000. The DOSP area is ultimately anticipated to have a population similar in size to Napier or Rotorua<sup>44</sup>.

69. We address the DOSP in more detail later in this decision.

<sup>44</sup> DOSP at Section 3.2

## Notices of Requirement (NoR)

70. The section 42A Report records<sup>45</sup> that AT and Waka Kotahi NZ Transport Agency (Waka Kotahi), as requiring authorities under the RMA, issued Notices of Requirements (NoRs) in January 2021 for a number of new designations for future strategic transport corridors in the Drury area. The proposed transport corridors need to be protected so that they can be implemented in the future when required. These designations are to support the planned urban growth in the Drury-Opāheke area.

71. Of relevance to PC 48 are the following three NoRs:

*D2 Jesmond to Waihoehoe West Frequent Transit Network (FTN) Upgrade*

Widening of Waihoehoe Road from the Norrie Road/Great South Road intersection to Fitzgerald Road to a four-lane FTN urban arterial with separated active transport facilities.

*D3 Waihoehoe Road East Upgrade*

Widening of Waihoehoe Road east of Fitzgerald Road to Drury Hills Road to a two lane urban arterial with separated active transport facilities.

*D4 Opāheke North South FTN Arterial*

A new four-lane FTN urban arterial with separated active transport facilities from Hunua Road in the north to Waihoehoe Road in the south.

72. In addition, as set out earlier, KiwiRail were progressing plans for a new Drury Central train station, and one at Paerata. Both of these train stations have now been granted resource consents, and the NoR confirmed on 3 February 2022 under the COVID-19 Recovery (Fast-track Consenting) Act 2020 by the Expert Consenting Panel. The Drury Central train station is to be located south of Waihoehoe Road, further north than indicated in PC 48 precinct plans.

73. We understand the recommendations on the AT and Waka Kotahi NoR's are to be 'released' in late April 2022.

## Applicant's Master Planning process and masterplan (strategic context)

74. Mr Hruda, an architect and urban designer with CIVITAS Studio Inc, provided evidence on the master planning process that had been undertaken in relation to the development of PC 48<sup>46</sup>. The Masterplan had been provided as part of the application.

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<sup>45</sup> Section 42A Report at [1.5]

<sup>46</sup> We note Mr Wallace provided urban design evidence in the context of the RMA

75. In terms of the development of the Masterplan, Mr Hruda stated<sup>47</sup>:

*“The initial development of the Master Plan included:*

- (a) Identification and analysis of key natural features and design influences on the site. These included the Hingaia and Fitzgerald Stream watercourses, the dramatic hilltop topography of the site, and existing Drury Village characteristics. The existing infrastructure including the transmission lines (National Grid Corridor) and railway line which also created important development limits and constraints to the development footprint.*
- (b) Analysis of site access and connectivity, including existing site access at Waihoehoe/Flanagan Road, Fitzgerald Road and Brookfield Road and access from and to the Motorway.*
- (c) Development of design principles to guide the establishment of a vibrant new centre, including:*
  - (i) creating a compact, mix of uses including residential, commercial, and retail services at a density that is public transport supportive;*
  - (ii) ensuring a diversity of mobility options such as buses, walking, biking in dedicated routes and lanes;*
  - (iii) ensuring diversity of housing choices and built form;*
  - (iv) integrating civic, community and cultural needs around public gathering spaces surrounded by places to live, work, and play; and*
  - (v) enhancing and engaging with the existing landscape through an extensive walking and biking network of trails.*

*Development of a vision for the community, which is governed by the design principles above. The vision identifies the opportunity to create a contemporary and next-generation centre”.*

76. The Masterplan was completed in 2019, and was prepared at the same time as the Council prepared and adopted the DOSP. As outlined by Mr Hruda it was designed to align with the outcomes of the DOSP. Following the completion of the Masterplan, Mr Hruda advised us he had been re-engaged by the Applicant in 2021 to update it - to integrate it with the latest design and location of the Drury Central train station; the park and ride facility (as mentioned now ‘approved’), and to inform further design work on Stage 1 of the Drury Centre development.

77. In terms of the landscape master planning Mr Earl stated<sup>48,49</sup>:

*“The Public Realm Plan for Drury Centre has been developed as part of the collaborative and iterative process in developing the Master Plan. The Public*

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<sup>47</sup> Mr Hruda’s evidence-in-chief at [4.2]

<sup>48</sup> Mr Earl’s evidence-in-chief at [5.1 and 5.2]

<sup>49</sup> We note Ms de Lambert provided landscape evidence in the context of the RMA



*Realm Plan responds to the overall vision of the Master Plan and has been developed based on a number of design principles and key moves.*

*A range of public open spaces have been identified in the Public Realm Plan as key spaces. These key spaces align with the Indicative Open Space Network (Precinct Plan 5) in the Drury Centre Precinct. Each of the key spaces have their own distinct character and programming. Together, these spaces aim to create a rich, diverse and multi-layered experience for residents, workers and visitors to Drury Centre”.*

78. The Masterplan (and its development process) has been a key ‘guiding document’ in the approach to and formulation of the PC 48 precinct and its provisions. We were impressed by the detail and comprehensive nature of the masterplan and accept that it has placed PC 48 in a strategic context; and has also responded to that context. It has assisted us, in section 32 terms, in determining that PC 48 meets the relevant statutory planning documents and the purpose of the RMA.

## **FINDINGS AND REASONS FOR APPROVING THE PLAN CHANGE**

79. The following section addresses our overall findings on PC 48 and why we have approved it; having heard and considered all of the material and evidence before us.
80. We had extensive evidence before us, with parties requesting a considerable number of specific and detailed changes to the precinct provisions. Many of these were addressed by the Applicant’s planners. Where they accepted them, they were incorporated into subsequent iterations of the precinct provisions, with the version provided as part of the Reply Submissions being those the planners ultimately supported. Those they did not support were addressed in their evidence.
81. We have specifically addressed those matters and those changes sought that we considered were significant in the context of this decision. Where they have not been specifically addressed, the provisions we have accepted are those in the precinct provisions attached to this decision. They are, in the vast majority of cases, those recommended by the Applicant’s planners for the reasons set out in their evidence (and addressed in the Applicant’s legal submissions).
82. We also address the submissions received to PC 48 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.
83. With respect to further submissions, they can only support or oppose an initial submission. Our decisions, on the further submissions reflects 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.

84. We also note that we must include a further evaluation of any proposed changes to the Plan Change arising from submissions; with that evaluation to be undertaken in accordance with section 32AA of the RMA. With regard to that section, the evidence presented by the Applicant, Submitters and Council Officers and this report, including the changes we have made, effectively represents that assessment. All the material needs to be read in conjunction with this decision report where we have determined that changes to PC 48 should be made.

### **Reasons for the Plan Change Proposal**

85. We accept the Applicant's rationale for seeking to change the AUP (OP) and rezoning of the site from FUZ to live urban zonings. This was detailed in the Application<sup>50</sup>, evidence and the legal submissions. We also accept that while PC 48 'stands on its own feet' PCs 48, 49 and 50 were essentially developed, processed and heard in parallel with each other, with clear synergies between all three plan changes. To further reinforce this point, the second tranche of hearings heard the three plan changes together, noting while there was separate legal counsel and corporate witnesses, the traffic and planning experts were the same – and presented once. Moreover the "Staging of Development with Transport Upgrades" provisions, which we refer to by name or 'triggers', are the same across all three plan changes.
86. For the reasons that follow, it is our view that the provisions of PC 48 (as we have determined them) are 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 RMA. We address these matters below.

### **Does Plan Change 48 give effect to the NPS UD and the RPS, and is it 'aligned' with the Auckland Plan, FULSS and the DOSP?**

87. The Applicant's position, unsurprisingly, was that the Plan Change be approved as it satisfied the provisions of the NPS UD and RPS, and the provisions of the RMA – notably sections 32 and 32AA and Part 2 of the RMA. We had extensive legal submissions and evidence (both corporate and expert) on this issue.
88. We have set out the position of Auckland Council as a submitter (ACS) and Auckland Transport (AT) first to provide better context to our decision, as well as the Applicant's<sup>51</sup> response, and rebuttal, to it. ACS and AT presented a joint case, and presented the most significant 'challenge' to PC 48, seeking that it be declined.
89. Mr Mathew Allan<sup>52</sup>, legal counsel for ACS and AT set out <sup>53</sup>:

*"PPC 48 is reliant on major infrastructure projects to service development which are not financed or funded (both capital and operating cost). While transport*

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<sup>50</sup> Plan Change Request at [5.3]

<sup>51</sup> Noting that the response from PC 49 and 50 was the same

<sup>52</sup> Referred to as Mr M Allan from so as not to confuse references to Mr Douglas Allan – PC 48's legal counsel

<sup>53</sup> Mr M Allan's Opening Legal Submissions at [1.7(b) (c) (d) and (e)].



infrastructure is a key area of focus in this regard, concerns also arise in relation to the stormwater and community infrastructure needed to support development.

While some funding for Drury transport infrastructure is being made available by the Government through the New Zealand Upgrade Programme(NZUP) and by Auckland Council through the Auckland Regional Land Transport Plan, there remains a significant infrastructure funding shortfall (both capital and operating cost). The shortfall will be addressed in the Submitters' evidence for the hearing later in the year.

As matters stand, the Submitters consider PPC 48 to be premature. The Submitters' primary relief remains that PPC 48 should be declined unless and until the concerns raised in the submissions as to the need for a fully funded and appropriately staged solution for the integration of land use, infrastructure and development are addressed.

The Submitters remain concerned that:

- I. Does not provide for the strategic integration of infrastructure, and the planning and funding of such infrastructure, with land use; and
- II. Consequently, that PPC 48 will not "give effect to" to important strategic objectives and policies in the Regional Policy Statement and National Policy Statement on Urban Development". (Underlining is our emphasis)

90. At the second tranche hearing Mr M Allan re confirmed his client's position that<sup>54</sup>:

*"... the amount of infrastructure required to support the proposed plan changes in Drury and appropriately mitigate their effects is on an unprecedented scale. Current identified sources of funding do not come close to the amount needed to finance and fund the infrastructure needed to support the live zoning of the land. Therein lies the crux of the Submitters' concerns.*

*In order to achieve good planning outcomes, it is essential that planning decisions and the provision of infrastructure be approached in an integrated manner. This is required by the AUP Regional Policy Statement (RPS) and by the National Policy Statement on Urban Development 2020 (NPS-UD). Without an integrated approach, there is a risk that development may precede necessary infrastructure, thereby risking poor-functioning urban environments and also posing safety risks to road users (as identified by Andrew Prosser in his evidence). For this reason, in order to live zone land, it should be infrastructure ready. In the short to medium term (the next 10 years), this requires settled and planned sources of funding.*

*However, for the Drury East PPCs, the funding and financing solutions required to support the live zoning of the land are not in place. Nor is there any certainty at present that the funding and financing solutions will be achieved within the timeframes needed to support live zoning, if the plan changes are approved at this time. It is not responsible and sustainable, nor does it give effect to the RPS and NPS-UD, to live zone land without ensuring that an adequate financing and*

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<sup>54</sup> Mr M Allan's 7 December 2021 legal submissions at [1.6 to 1.8]

funding solution is in place to deliver the infrastructure required in the next 10 years. The notion that such issues can be resolved following live zoning (or that funding is dependent on live zoning) is effectively putting the cart before the horse. Without certainty as to the financing and funding of necessary infrastructure to support live zoning, the Submitters regrettably cannot support the Drury East PPCs at this stage.” (Underlining is our emphasis)

91. ACS and AT’s position was that as funding was not in place, the Drury East plan changes would not meet the imperatives of the NPS UD or the RPS – namely the strategic integration of infrastructure, and the planning and funding of such infrastructure with land use, and as such would therefore not satisfy Part 2 of the RMA. ACS and AT’s experts (finance and funding, traffic and planning witnesses) supported this position.
92. Notwithstanding ACS and AT’s primary position that the plan changes should be declined, they also presented an alternative position should the Hearing Panel not accept the primary position. In this regards Mr M Allan submitted<sup>55</sup>:

*“In the event that the Panel decides to approve the Drury East PPCs, the Submitters’ secondary relief is that, at the very least:*

*(a) robust trigger provisions must be imposed;*

*(b) supported by a suite of strong objectives and policies (including a policy requiring the ‘avoidance’ of development and subdivision prior to trigger works being in place); and*

*(c) backed by non-complying activity status for the assessment of any proposals to depart from the triggers”*

93. In terms of the “giving effect” imperative to the relevant statutory planning documents Mr M Allan quoted from the Supreme Court’s King Salmon decision<sup>56</sup>. In light of that decision, he set out<sup>57</sup> that, as it stands, PC 48 would not “give effect to” key provisions in the NPS-UD and the RPS.
94. The submitters’ planning witness, Mr Turbott<sup>58</sup> in his evidence presented at the first tranche of the hearings stated<sup>59</sup>:

*“I foreshadow my concern as to whether PPC 48 is capable of giving effect to key provisions in the National Policy Statement on Urban Development and the Regional Policy Statement, and therefore whether PPC 48 should be approved”.*

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<sup>55</sup> Mr M Allan’s Legal Submissions, 7 December 2021 at [1.15]

<sup>56</sup> Ibid at [3.3]

<sup>57</sup> Mathew Allan’s Opening Legal Submissions at [3.5]

<sup>58</sup> Mr Turbott did not provide evidence to the second tranche of the hearing; a Memorandum from Mr M Allan dated 14 October 2021 noted that Ms Sinclair relies on, and adopts, the planning evidence of Mr Turbott

<sup>59</sup> Mr Turbott’s evidence-in-chief 15 July 2021 at [D]

95. Ms Sinclair in her evidence to the second tranche of the hearings (and having adopted Mr Turbott's evidence) told us that she remained<sup>60</sup> of the opinion that PCs 48 - 50 do not "give effect to" the provisions in the NPS-UD and the RPS.
96. For the reasons that follow we do not agree with Mr Turbott or Ms Sinclair. We find that PC 48 (and PCs 49 and 50), subject to the precinct provisions we have imposed, would give effect to the statutory planning documents. On this basis we prefer the evidence of the Applicant's planners, Mr Roberts and Ms Morgan; and others including Ms Heppelthwaite for Waka Kotahi.
97. The Applicant strongly opposed ACS' and AT's position. It was the Applicant's position that the infrastructure improvements it proposed (subject to the Staging of Development with Transport Upgrades provisions, along with the other relevant precinct provisions) resulted in PC 48 giving effect to both the NPS UD and the RPS. Other submitters, including Waka Kotahi, also did not agree with the primary position advanced by ACS and AT.

#### National Policy Statement on Urban Development

98. One of the significant issues in contention between the Applicants for the Drury East plan changes (and Waka Kotahi) and ACS and AT was the extent to which, and which provisions, of the NPS UD applied. This was in light of the recent Environment Court's decision - *Eden-Epsom Residential Protection Society Inc v Auckland Council* [2021] NZEnvC 082.
99. This is important as we are required to "give effect" to any National Policy Statement (and the Regional Policy Statement) pursuant to section 75 (3) of the RMA.
100. Mr Douglas Allan (D Allan), for the Applicant, set out how he considered the *Eden-Epsom* decision should be interpreted and set out the following in his legal submissions<sup>61</sup>.

*"The Eden-Epsom Decision appears to suggest that provisions of the NPS-UD 2020 are subject to different tests when considering private as opposed to public plan changes. Kiwi submits that:*

*(a) If the effect of the Eden-Epsom Decision is that Unitary Plan provisions introduced by private plan changes do not need to give effect to all or some provisions of the NPS-UD 2020, then it is contrary to the scheme of the RMA and in particular section 75(3)(a).*

*(b) The RMA requires the NPS-UD 2020 to be given effect in the Unitary Plan, regardless of the procedural route through which a provision is introduced or altered. To do otherwise would lead to inconsistent planning approaches depending on the identity of the proponent of a plan change.*

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<sup>60</sup> Ms Sinclair evidence-in-chief 8 December 2021 at [39]

<sup>61</sup> Mr D Allan's Legal Submissions dated 27 July 2021 at [5.5]

*(c) You are therefore required to give effect to the NPS-UD 2020, including the provisions discussed below and in Mr Roberts' evidence, when making your decision on the PC 48".*

101. Mr D Allan provided further submissions on this matter at the second tranche hearings<sup>62</sup> and also provided submissions in his Reply Submissions<sup>63</sup> on how the objectives and policies of the NPS-UD should be considered. We note that legal counsel for PC 49 and 50 both supported and adopted the Mr D Allan's legal submissions on the legal framework. In his closing legal submissions Mr D Allan submitted<sup>64</sup>:

*a) "You should have regard to and endeavour to give effect to the provisions of the NPS-UD; and*

*(b) While PC48 was drafted and lodged prior to the NPS-UD becoming operative, it is consistent with and does in practice give effect to that document".*

102. Ms Caldwell presented legal submissions on behalf of Waka Kotahi. With respect to the applicability of the NPS UD she submitted that<sup>65</sup>:

*"decision makers can, and should, have regard to the overall themes and outcomes that the NPS-UD seeks to achieve, while bearing in mind future planning processes that are still to come.*

*Waka Kotahi considers that in general the Plan Change is consistent with these themes, particularly to the extent that it enables high intensity development close to the planned Drury Rail Station, but it seeks some amendments to the plan provisions to ensure that the Precinct outcomes will be achieved. In respect of whether the Plan Change achieves integration with transport planning and funding decisions, Waka Kotahi will provide evidence on this during the reconvened hearing process".*

103. We note Mr Gribben presented the legal submissions on behalf of Waka Kotahi at the second tranche hearings. He referred us to Ms Caldwell's submissions on Waka Kotahi's position vis-à-vis the NPS UD at the first tranche hearing.

104. Mr M Allan submitted that only the objectives and policies specifically relating to "planning decisions" as referenced in the Court's decision were relevant. He stated<sup>66</sup>:

*"The NPS-UD objectives and policies that specifically refer to "planning decisions", and therefore those that potentially must be given effect to at this*

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<sup>62</sup> Section 3 Legal Framework -Relevant NPS-UD 2020 Provisions

<sup>63</sup> Ibid at [5.11 - 5.13]

<sup>64</sup> Mr D Allan's Closing Legal Submissions at [3.1]

<sup>65</sup> Ms Caldwell's Legal Submissions at [9.6 – 9.7]

<sup>66</sup> Mr M Allan's Legal Submissions at 2 August 2021 [4.4]

stage, are – as Mr Turbott identifies in his evidence – Objectives 2, 5 and 7 and Policies 1 and 6<sup>67</sup>”.

105. He went on to say<sup>68</sup>:

*“While the Eden-Epsom decision indicates that the provisions of the NPS-UD that must be given effect to by the Panel are limited to those which relate to “planning decisions”, this decision does not ‘change the calculus’ for the Submitters to any great extent, having regard to the relevant RPS provisions which must likewise be “given effect to” (e.g. the same themes as to integration of growth / land use with infrastructure can be found in the RPS).”*

106. Having had regard to the legal submissions received, we agree with those of the Drury East Plan Change proponents and Waka Kotaki. They have a contrary view to Mr M Allan. We find that we need consider the NPS UD in a wider context than submitted by Mr M Allan. To not do so would, in our view, be somewhat artificial and find that the NPS UD needs to be read as whole, especially in the context of greenfield development<sup>69</sup>. For example, it is not possible in our view to “give effect” to Policy 1 which contains the words “planning decision” without consideration of Objective 1, which as Mr M Allan pointed out does not contain the words “planning decision”. They are:

*Objective 1: New Zealand has 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.*

*Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:*

107. Given our view expressed above, we address a number of the key provisions of the NPS UD given the assertion of the ACS and AT planning witnesses’ and as set out in the Addendum section 42A Report that the Drury East Plan Changes are contrary to or inconsistent with NPS-UD provisions addressing the relationship between development and infrastructure.

108. We have set out Objective 1 of the NPS UD above – essentially that New Zealand (and Auckland and Drury) have well functioning urban environments. Objective 3: is -

*“Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:*

*a) the area is in or near a centre zone or other area with many employment opportunities;*

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<sup>67</sup> We note that notwithstanding ACS/AT legal position, as part of her planning evidence, Ms Sinclair assessed the plan changes against provisions which do not reference “planning decisions” (such as Objective 6 of the NPS-UD)

<sup>68</sup> Mr M Allan’s Legal Submissions at [4.7]

<sup>69</sup> Noting that the *Eden-Epsom* case was a brownfield site.

*b) the area is well serviced by existing or planned public transport;*

*c) there is high demand for housing and or for business land in the area, relative to other areas within the urban environment.”*

109. PC 48 satisfies this objective. Of relevance to item (b) we note the recently approved Drury Central rail station as well as the area is currently served by bus services. Public transport services can be expected to expand and take advantage of the PC 48 land's location on the road and rail networks once the Plan Change (and those of PC 49 and 50) is made operative and urban development is occurring. This is a focus of the precinct provisions (policy) which seeks to result in a mode shift to public and active modes of transport.

110. Objective 6 of the NPS is a key provision and was one of the main NPS UD provisions in contentions between the Applicant and ACS and AT<sup>70</sup>.

*“Local authority decisions on urban development that affect urban environments are:*

*a) integrated with infrastructure planning and funding decisions; and*

*b) strategic over the medium term and long term; and*

*c) responsive, particularly in relation to proposals that would supply significant development capacity.”*

111. Sub-clause a) was a focus for the parties. ACS and AT argued that there was no integration with infrastructure planning and funding decisions as there were major funding shortfalls (and no funding option over the next ten years at least) such that the Drury East plan changes were fundamentally flawed, and should not be live zoned on the assumption that infrastructure funding would follow.

112. It was the Drury East plan change proponents' position that Sub-clause a) did not require zoning decisions to follow infrastructure provision and it was the “decisions” that were to be integrated. We agree. In our view we find that this objective does not mean all necessary infrastructure needs to be fully funded before live zoning, or live zonings only provided when there is funding certainly (say over a 10-year period) as opined by Ms Sinclair and Mr Mead (as set out by him in terms of the zoning he recommended in the Addendum section 42A report).

113. However, it is our view that any proposed live zonings need to be consistent with the proposals for, and provisions of, transport infrastructure to serve the proposed urban development; and that there are methods by which that infrastructure or funding for it can be provided. We address funding later, but note the Drury East Plan Changes have proposed triggers (the “Staging of Development with Transport Upgrades” provisions) to ensure the necessary infrastructure is operational prior to or at the

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<sup>70</sup> Noting Objective 6 was identified by Mr M Allan as not being relevant due to the Eden Epsom decision, Ms Sinclair did address it.

same time as subdivision and development. This is alongside the substantial investments being made by central government agencies (Kiwi Rail and Waka Kotahi) in rail stations, rail electrification and roading upgrades and other improvements in Drury.

114. As alluded to in the previous paragraph, major infrastructure is already in place adjacent to the Drury East plan change areas. It is also located on key transport infrastructure including the railway, the arterial road network and the Southern Motorway. We accept (and address in more detail later) that the land can be serviced in terms of water supply, wastewater and other utilities. On, this basis we accept that development of the PC48 land (and PC 49 and 50) will be integrated with the existing strategic infrastructure.
115. Moreover, a series of decisions have already been made with respect to upgrades to the strategic infrastructure, including:
- Funding of the widening of SH1 between Papakura and Drury, which is currently underway.
  - Amendments to the Drury road network, which are subject to notices of requirement which proceeded to hearing in mid-December last year.
  - Upgrades to the rail network and provision for a Drury Central Railway Station adjacent to the Drury East Plan Change area which has recently obtained approval under the COVID-19 Recovery (Fast-track Consenting) Act 2020.
116. We further note that development enabled by PCs 48, 49 and 50 will take many years to complete. In our view it is not necessary, or efficient, for infrastructure required to serve the full Drury FUZ area to be in place at an early stage of that process. What is important is that key aspects of that infrastructure can be implemented in locations and at a rate that is coordinated with and complementary to the extent of development proposed. This is what we address later; - do the precinct provisions (triggers) ensure that the necessary infrastructure will be developed, coordinated and complementary to the extent of development proposed?
117. We also acknowledge with regards to Sub-clause c) of Objective 6 that the Plan Change(s) will provide significant development capacity.
118. Also of particular importance is Policy 8:

*Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:*

- a) unanticipated by RMA planning documents; or*
- b) out of sequence with planned land release.*

119. The planning evidence for the ACS (Ms Mackay and Mr Turbott) argued that PCs 48 - 50 were not anticipated by the Unitary Plan and is out of sequence with the FULSS (and the Auckland Plan) and therefore inappropriate. While we address this issue more comprehensively below as well as the extent to which “out of sequence with planned land release” is relevant, we do not find that the development proposed is unanticipated by the RMA planning documents given the FUZ zoning of the land and the DOSP<sup>71</sup>.
120. We accept that the NPS UD does not provide support for development at any cost. A key consideration in assessing whether a plan change will give effect to the NPS UD (and RPS) and add significantly to development capacity and contribute to a well-functioning urban environment is its ‘infrastructure-readiness’. We address this below as we need to be satisfied that PC 48 (and the PC 49 and 50) can provide the infrastructure needed to support it in a timely manner.

#### Auckland Unitary Plan - Regional Policy Statement and District Plan

121. Notwithstanding the extent to which the NPS UD applies the planning witnesses for the Applicant and ACS and AT agreed that many of the NPS UD provisions were ‘mirrored’ in the RPS. We agree. These were those provisions requiring integration of infrastructure with land use<sup>72</sup>. These were set out in sections B2 – Urban Growth and Form and B3 – Infrastructure, Transport and Energy, which involve the strategic integration of infrastructure with land use through objectives, policies and methods. As already stated section 75 of the RMA requires us to be satisfied that PC 48 will “give effect to” or implement the RPS provisions.
122. We have set out our position in relation to the applicability of the NPS UD, and while that position is clear, we have not solely relied on the NPS UD for our findings given that the RPS, to a large extent, mirrors those provisions of the NPS UD.
123. There are several RPS objectives and policies in sections B2 – Urban Growth and Form and B3 – Infrastructure, Transport and Energy that have particular relevance to this Plan Change, and were addressed by a number of the witnesses and include:

#### B2 – Urban Growth and Form

##### *Objective B2.2.1(1)(c):*

*A quality compact urban form that enables all of the following:*

- (c) better use of existing infrastructure and efficient provision of new infrastructure;*
- (d) improved and more effective public transport;*

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<sup>71</sup>Noting that a structure plan is required by the RPS prior to ‘live zoning’ land

<sup>72</sup> As required by section 30 (1)(g) - the strategic integration of infrastructure with land use through objectives, policies, and methods.



Objective B2.2.1(5):

*The development of land within the Rural Urban Boundary, towns, and rural and coastal towns and villages is integrated with the provision of appropriate infrastructure.*

Policy B2.2.2(7)(c):

*Enable rezoning of land within the Rural Urban Boundary or other land zoned future urban to accommodate urban growth in ways that do all of the following: ...*

*(c) integrate with the provision of infrastructure; and ...*

Policy B2.4.2(6):

*Ensure development is adequately serviced by existing infrastructure or is provided with infrastructure prior to or at the same time as residential intensification. (Underlining is our emphasis)*

### B3 – Infrastructure, Transport and Energy

*Objective B3.2.1 (5) Infrastructure planning and land use planning are integrated to service growth efficiently:*

Objective B3.3.1(1)(b):

*(1) Effective, efficient and safe transport that: ....*

*(b) integrates with and supports a quality compact urban form; ...*

Policy B3.3.2(5):

*Improve the integration of land use and transport by:*

- ensuring transport infrastructure is planned, funded and staged to integrate with urban growth;*
- encouraging land use development and patterns that reduce the rate of growth in demand for private vehicle trips, especially during peak periods...*

124. Furthermore, the explanatory text at B3.5 – Explanation and principal reasons for adoption of the RPS, confirms the intention that:

*“Without the connections enabled by transport networks (land, sea and air), piped networks (water, wastewater and stormwater reticulation), energy generation, transmission and distribution networks (electricity, gas and liquid fuels), and telecommunication networks (wired and wireless), few other forms of activity and development could occur. This means that development, especially that associated with growth in greenfield areas, must be integrated and co-ordinated with the provision of infrastructure and the extension of networks”.*

125. We also note that the provisions of E38 – Subdivision – Urban in the District Plan part of the AUP (OP) ‘requires’ infrastructure “ *supporting subdivision and development to be planned and provided for in an integrated and comprehensive manner and provided for to be in place at the time of the subdivision or development*”.<sup>73</sup> The critical words being “*in place at the time of the subdivision or development*”.
126. It was the Applicant’s position set out in legal submissions and Mr Roberts’ strategic planning evidence that the necessary infrastructure upgrades relevant to PCs 48 – 50 had been planned and was subject to the Staging of Development with Transport Upgrades and other precinct provisions. This was to ensure the necessary upgrades are undertaken. On this basis it is the Applicant’s position that PC 48, would, in addition to giving effect to the NPS UD, also give effect to the RPS; and would be consistent with the Auckland Plan 2050, the FULSS and the DOSP. We accept and agree with the Applicant’s position for the reasons addressed above, and those that follow.
127. It was ACS and AT’s position that the Plan Change would not give effect to the RPS, and that position was supported by its experts. That is – there is no funding over the next 10 years (and beyond) to provide the necessary infrastructure to ensure transport and land use integration.

#### The Auckland Plan and the FULSS

128. The Auckland Plan provides limited direction for Future Urban areas and refers to the FULSS. Accordingly, we have focussed on the FULSS and its relevance in assessing and determining whether or not to approve or decline PC 48.
129. With respect to the Auckland Plan and the FULSS, Ms Mackay for ACS presented strategic planning evidence on, among other things, Council’s strategic planning approach and the relevant instruments that inform Council’s strategic planning approach. This included the FULSS, and how it applied to Drury-Opāheke as a mechanism to implement the strategic plans including the Auckland Plan 2050. Ms Mackay placed considerable weight on the FULSS as reasons why PC 48 (and 49 and 50) were inappropriate and premature.
130. Ms Mackay set out the purpose of Council’s spatial plan which was inter alia<sup>74</sup>:
- *Enable coherent and co-ordinated decision making by the Auckland Council (as the spatial planning agency) and other parties to determine the future location and timing of critical infrastructure, services, and investment within Auckland in accordance with the strategy; and*
  - *Provide a basis for aligning the implementation plans, regulatory plans, and funding programmes of the Auckland Council.*

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<sup>73</sup> Objective E38.2 (4)

<sup>74</sup> Section 79(3) of the Local Government (Auckland Council) Act 2009 (LGACA).

131. She also set out that the FULSS provided a<sup>75</sup>:

*“proactive approach to ensure that the future urban land has the necessary bulk infrastructure and live Unitary Plan zoning in place prior to development”*

And

*“Monitoring shows that most growth in Auckland is happening in the existing urban area and this is where the Council needs to provide support for intensification, through major infrastructure projects such as the City Rail Link (CRL) and to achieve emissions reductions in line with climate change policies.*

*There is a pipeline of sufficiently zoned land in the Drury-Opāheke future urban area and other future urban areas in the wider region. These, as part of the region-wide supply of land (both greenfield and brownfield), provide sufficient land for Auckland’s development (within the medium term) without live zoning the additional land in PPC 48 ahead of time frames in the FULSS and Drury-Opāheke Structure Plan.*

*Zoning additional land will present major challenges for servicing the Drury-Opāheke area with infrastructure in the short to medium term (an issue to be addressed at the reconvened hearing later in the year). It will also limit options in the wider region.*

*The fragmented nature of development that would result from approving PPC 48 (and the other out of sequence plan changes) would not result in an efficient use of land for long term outcomes sought by the Auckland Plan for sustainable communities. Development (both residential and business) needs to be anchored by appropriate infrastructure, including social infrastructure such as schools and community facilities that helps build sustainable communities”.*

132. In summary, and in questioning Ms Mackay, it was her view that live zoning at Drury-Opāheke was not needed as there already sufficient land zoned for urban development and therefore premature; would present major challenges for servicing the Drury-Opāheke area with infrastructure in the short to medium term; limit options in the wider region; and create “fragmented” urban development.

133. Mr Turbott’s planning evidence on behalf of Council<sup>76</sup>, included the statutory and strategic matters and the DOSP. Overall, it was his opinion that PC 48 would not give effect to the NPS UD or the RPS (and the other strategic planning documents such as the Auckland Plan and the FULSS). In coming to this view, he stated that he had relied on the evidence of Ms Mackay.

134. Mr Turbott opined that PC 48 would not provide for the strategic integration of infrastructure nor the planning and funding of such infrastructure with land use, and that this was despite some funding for Drury transport infrastructure being made available by the Government through the New Zealand Upgrade Programme (NZUP).

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<sup>75</sup> Ms Mackay’s evidence-in-chief at [6.6] and C, D, E and F

<sup>76</sup> His evidence at the later re-convened hearing adopted by Ms Sinclair as Mr Turbott was unable to attend the later hearing

135. Mr Turbott also opined that (and foreshadowing the evidence of Ms Duffield, Mr Kloppers and Mr Gudsell that was to be presented at the second tranche of the hearing) there remained a significant infrastructure funding shortfall (both capital and operating cost) and that PC 48 was reliant on major infrastructure projects to service development which were not financed or funded, again both capital and operating cost. This was also the position of Ms Sinclair for AT (and ACS in the second tranche hearing).

136. Ms Mackay and Mr Turbott agreed with Mr Mead's statement that any decision to allow the early rezoning of Drury Centre<sup>77</sup>:

*"...rests on whether infrastructure funding and delivery can be appropriately coordinated with the development in a way that does not entail a substantial reprioritisation of funding and growth from other areas, or cause significant disbenefits to future residents or workers in the area from late delivery of needed projects..."*

137. This, in effect, was the case presented by ACS (and AT) – that infrastructure funding and delivery could not be appropriately coordinated with the development. This was because the Council's position was it simply had no money over the next 10 years (and likely beyond) to fund the necessary infrastructure and it would require a substantial reprioritisation of funding and growth from other areas if Drury was to be live zoned.

138. It was Mr Roberts' opinion in his evidence-in-chief, and in rebuttal to the planning expert opinions of ACS and AT, that limited weight should be placed on the FULSS, and that greater weight should be placed on the DOSP (and the Applicant's masterplan approach) given: the FULSS's regional focus; that it was out of date; that the actual and planned urban development had not resulted in the sequenced approach as envisaged by the FULSS; and as opined by Ms Mackay that the FULSS 'looked to' the DOSP to give effect to it.

139. Mr Roberts, in support of his view, set out a range of matters, including the FULSS, why he disagreed with Ms Mackay. He accepted the FULSS – Drury East was staged for development in 2028 – 2032, but that while three waters had been identified as a 'major constraint' these had now been resolved (see later in this decision), and that the FULSS stated that staging can be redefined through a structure plan.

140. Mr Roberts outlined to us that significant changes in the statutory planning framework, Government policy and the infrastructure and development sphere had occurred since the FULSS was refreshed. These included<sup>78</sup>

- April 2018 –ATAP Update;

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<sup>77</sup> Section 42A report, Vol. 1, at [150].

<sup>78</sup> Mr Roberts' Tranche 1 rebuttal evidence at [3.1 and 3.2]

- *September 2018 –Urban Growth Agenda;*
- *December 2018 –Hamilton to Auckland Corridor Plan;*
- *January 2020 –New Zealand Upgrade Programme (NZUP);*
- *July 2020 –Infrastructure Funding and Financing Act 2020;*
- *August 2020 –National Policy Statement on Urban Development;*
- *August 2020 –National Policy Statement on Freshwater Management;*
- *November 2020 –Hamilton to Auckland Corridor Plan update;*
- *March 2021 –Housing / Infrastructure Acceleration Funds;*
- *April 2021 –Te Huia Passenger Rail services commence;*
- *April 2021 –ATAP Update;*
- *April 2021 –NZUP update;*
- *Rail Station at Drury Central, Electrification to Pukekohe, SH1 Widening, Southern Path Extension(n)June 2021 –Government Policy Statement on Housing & Urban Development Discussion Document.*
- *June State Highway widening and new interchange lodged under the COVID-19 Recovery (Fast-track Consenting Act 2020)*

141. Mr Roberts also detailed in his evidence-in-chief the Government’s policy changes that have occurred since 2017. He considered of most relevance was the prioritisation of Drury through the Urban Growth Agenda, being a joint Government and Council initiative. He also detailed the extensive infrastructure announcements made for Drury since 2017. Moreover, we have already addressed the recent decision under the Covid Fast Track process approving the train station at Drury Central (NoR and resource consents).
142. It was Mr Roberts’ view that the factors above, of themselves, would warrant a review of the FULSS as it relates to Drury.
143. At Section 4 of Mr Roberts’ rebuttal evidence (first tranche hearing), under the heading “Council’s approach to implementing the FULSS – he set out”<sup>79</sup>:

*“...at Figure 2 below shows Council’s progress with zoning Future Urban land in Auckland. This illustrates that many of the live zoned greenfield areas and Future Urban zone areas that are planned to be ‘development ready’ in 2018-2022 are, in fact, not. For example, land at Whenuapai, Silverdale West and Paerata (outside of Paerata Rise) which are planned for 2018-2022, have not been rezoned. In the case of Silverdale West and Paerata, there do not appear to be any plans on the horizon for this to occur. Of the 2018-2022 FULSS areas, only parts of Warkworth North and Drury West have been rezoned and these have*

<sup>79</sup> Mr Roberts’ Tranche 1 rebuttal evidence at [4.2 and 4.3]

*been privately initiated. This illustrates that there are blockages in development pipeline referred to by Ms Mackay.*

*I acknowledge that Council has real funding constraints that it is grappling with. However, this does not relinquish the Council's responsibility under the NPSUD to ensure sufficient development capacity is provided that can be serviced with infrastructure. PC48 can play a part in resolving this problem for Council. PC48 presents a major opportunity for the Council to work with the Government (including through the Urban Growth Agenda Partnership) and three major landowners to deliver a significant volume of housing and jobs in an area close to rapid transport and deliver an integrated infrastructure solution for Drury East, noting that much of the bulk infrastructure is already planned and funded.*

144. We asked Ms Mackay to respond to Mr Roberts' view that limited weight should be given to the FULSS (as it was out of date), and greater weight should be applied to the DOSP, the Applicant's master planning and Applicant's evidence. Ms Mackay did not concede that the FULSS was out of date, but accepted it needed a "re-fresh". Despite this, her position remained as set out in her evidence.
145. With respect to the weight to be applied to the FULSS, we agree with Mr Roberts. While we accept the importance of the FULSS at a regional level to assist the Council in its strategic planning, it is clear to us that given the matters set out by Mr Roberts, the FULSS, in the context of Drury-Opāheke, provides little guidance in assisting in determining the merits or otherwise of PC 48 (and PC 49 and 50). We have accorded it limited weight.
146. Accordingly, we do not accept, as implied by the Council witnesses, that development of Drury is 'premature' or 'out of sequence' based on the development ready dates of 2028 – 2032. We have addressed the reasons for this, but also note that with the full build out of the PC 48 area (and that of PCs 49 and 50) likely to take 20 to 30 years, it is prudent to plan now noting that 2028 – 2032, in planning terms, is not that far into the future.
147. Furthermore, we do not accept Ms Mackay's view (and because of this Mr Turbott's view) that approving PC 48 (and PCs 49 and 50) would result in fragmented and inefficient development. We find the opposite would be the case - subject to the necessary infrastructure being in place prior to, or at the same time as, subdivision and development. This was the subject of the second tranche of hearings, and we address those matters below, ultimately finding that, subject to the precinct provisions (objectives, policies and rules) and in particular the staging triggers, the necessary infrastructure would be in place prior to, or at the same time as, subdivision and development.
148. We also agree, for all of the reasons we have set out, that PC 48 (and PCs 49 and 50) presents a major opportunity for the Council, Government (including through the Urban Growth Agenda Partnership) and three major landowners to deliver a significant volume of housing and jobs in an area close to rapid transport and deliver an integrated infrastructure solution for Drury East.

## Drury-Opāheke Structure Plan (DOSP)

149. As required by the RPS, before FUZ land can be contemplated to be ‘live zoned’, it is necessary to complete a structure plan, either by the developer, or the Council (in this case the DOSP) addressing all of those matters set out in Appendix 1 – Structure plan guidelines of the RPS.

150. With respect to the DOSP, the Applicant’s Opening legal submissions noted<sup>80</sup>:

*“The PC Applicants also worked with Stevenson Group (regarding the Drury South land) and MADE Group (relating to the Auranga development in Drury West) to prepare a structure plan for the Drury-Opāheke area between 2016 and 2017 (“**Landowner Structure Plan**”). The Landowner Structure Plan identified the PC 48 Land as the appropriate location for a major centre as well as identifying complementary smaller centres, residential zonings and key transport links.*

*Kiwi subsequently provided input into Council’s Drury-Opāheke Structure Plan (“**Council Structure Plan**”) which is largely consistent with the Landowner Structure Plan. PC 48 has been designed to largely give effect to the Council Structure Plan. In addition, the PC 48 provisions have been amended to reflect the location now determined by the transport authorities for the Drury Central Railway Station (being slightly north of the location in PC 48 as notified)”.*

151. The DOSP was adopted by the Council after a robust and comprehensive process. In summary, the DOSP was initiated in 2017 and developed over a two-year period, which included significant consultation and engagement with stakeholders, the public, mana whenua, and the community. It comprised the following phases:

- The process was initiated with an analysis of opportunities and constraints in 2017
- A first phase of consultation on planning issues in September – October 2017;
- Analysis of land use options and selection of a preliminary option;
- A second phase of consultation on the Drury Opāheke Draft Land Use Plan in 2018;
- Preparation of a draft DOSP in 2019;
- The final phase of consultation on the Draft DOSP was concluded in April 2019; and
- The DOSP was unanimously adopted by the Council’s Governing Body in August 2019, and, as we understand, has not been revisited.

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<sup>80</sup> Mr D Allan’s Legal Submissions at [2.5 – 2.6.]



152. Given the comprehensive nature of, and process used, to develop both the earlier landowners' structure plan and the DOSP, the DOSP has in our view set a clear expectation that the area is to be lived zoned and developed, subject to appropriate (precinct) planning provisions.
153. It was Mr Roberts' view that the land use zonings proposed in PC 48 were largely consistent with the land use pattern set out in DOSP. This was also Mr Mead's opinion, stating in the section 42A report that at a strategic level, PC 48 accorded with the land use mix and intensity proposed for the Drury area<sup>81</sup>.
154. We record that the DOSP does not address in any detail the staging and sequencing of development within the DOSP area. The DOSP states that a staging plan was to be developed based on understanding the infrastructure requirements and the need to coordinate an increase in residential zoning with a proportionate increase in business zones that service residential areas. It also states that work is ongoing to develop a staging plan and that the FULSS 2017 sequencing applies in the interim<sup>82</sup>.
155. From questioning the various planning experts of the Council and Applicant on this matter, we understand that there are no plans or intention by the Council to prepare a staging plan for Drury-Opāheke. It was Ms Mackay's evidence that it is the Auckland Plan and the FULSS that addresses this. We have already addressed the relevance of those documents to this Plan Change process.
156. We have placed considerable weight on the DOSP. This is due to the comprehensive and robust Council process carried out under the LGA 2002 to develop and adopt it. We also accept it clearly addresses the requirements in the RPS relating to the necessary structure planning process, and has been designed to achieve the outcomes set out in the RPS with respect to urban development.

#### Funding and Financing

157. The ACS and AT's fundamental position was that the Drury East Plan Changes (as well as PC 51 and 61) required substantial provision of additional infrastructure; and there was no funding or finance options available over the next decade (and likely beyond that) to fund the necessary infrastructure upgrades. This was despite substantial and committed central government funding. On this basis it was the submitters' position that PC 48 (and PC 49 and 50) should be declined as the Plan Change was contrary to the provisions of the statutory planning documents as we have outlined.
158. In relation to transport and infrastructure financing and funding issues, ACS and AT provided detailed corporate evidence from Ms Duffield, Mr Klopers and Mr Gudsell. In summary their evidence se out:

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<sup>81</sup> Section 42A report at [9]

<sup>82</sup> Page 62 of the Drury-Opāheke Structure Plan.



- The work the Council has been involved with since the completion of the DOSP (through the Drury Transport Investment Programme (DTIP) and the Drury Infrastructure Funding and Financing programme (DIFF)) to identify the infrastructure (particularly transport infrastructure) that would be required to enable the development of Drury over the full build-out period (30 years) to ensure a sustainable well-functioning urban environment. This is addressed in the evidence of Mr Kloppers, who attached the DIFF report.
- The limited extent of funding available to support growth in Drury. Mr Gudsell identified that \$243 million in funding would be available in the last four years of this decade for transport improvements to support the *New Zealand Upgrade Programme (NZUP)*, however that funding is limited, and a significant infrastructure funding shortfall remains. He also outlined the various competing demands confronting Council – rapid growth, changing needs, transport demands, maintaining existing assets and services, responding to climate changes, and the impacts of COVID-19.
- The financing and funding shortfall in relation to that infrastructure, with a focus on the next 10 years (being both the LTP/RLTP period and the ‘time horizon’ for district plan provisions). Ms Duffield explained in her evidence the immediate problem facing the Council in this regard, is that there is currently no solution to finance and fund the infrastructure for Drury in the next 10 years (nor, she notes, is there a defined solution over the longer term).
- A key issue identified by these witnesses was that the Council had insufficient borrowing capacity to forward finance the required additional infrastructure in Drury in the short to medium term.

159. Ms Duffield, in her summary evidence statement provided us an overview (gap analysis) of the funding required and the various funding tools available and their limitations. Her analysis emphasised that there was no infrastructure financing and funding solution for the identified funding gap over the next 10-year period. She stated<sup>83</sup>:

*“There currently is no solution to finance and fund the infrastructure for Drury in the next 10 years and there is no defined solution over the long term. In my view, it is inappropriate to assume that if land is “live zoned”, the infrastructure will follow. Assuming that the infrastructure financing and funding will be provided later, including through Infrastructure Funding Agreements, is a presumptive assumption. Where the sums of money are small this may be possible. Where the sums of money are large and where there are large elements of “cumulative” infrastructure needed, as is the case in Drury, I consider it is difficult to prudently assume that a financing and funding solution can be achieved in the short to medium term, i.e. for at least the next 10 year period”.*

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<sup>83</sup> Ms Duffield’s Summary Statement at [4]

160. It was also her view that it was highly unlikely that the current infrastructure financing and funding tools could solve the funding gap in the next 10-year period, given that<sup>84</sup>:

- *“The NZUP and LTP/RLTP (incorporating ATAP) investment does not provide adequate infrastructure funding to service the PPC areas.*
- *Auckland Council has insufficient borrowing capacity to finance the required additional infrastructure investment in the short to medium term (or necessarily the ability to fund this financing).*
- *This lack of financing capacity (and funding issues) is likely to persist and there is currently no alternative process to address the Drury investment gap and to develop other funding and financing solutions within 10 years.*
- *The IFF Act could address a modest part of the infrastructure financing and funding gap. It is unlikely to bridge most of the gap, and requires certainty about the remaining infrastructure financing and funding solution before it can be implemented.*
- *There is no overall infrastructure financing and funding solution including the elements that would normally be covered by Waka Kotahi”.*

161. We accept that the Council is financially constrained, and has real funding and financing issues. These were starkly addressed by the Council witnesses in their very detailed evidence and in their response to our questions. However, the question before us is – does this lack of ability of the Council to fund necessary infrastructure over and above that to be provided by the Drury East Applicants and the Central Government agencies result in the plan changes not giving effect to the relevant statutory documents? We address this below.

162. It was the submitters’ position, and the evidence of Ms Duffield and others, that it should not be assumed that infrastructure (or its funding) will follow if land is live zoned. However, as we set out below, the Applicant and other submitters have different views on the funding options potentially available and the ability to access funding where more certainty is provided by live zoning.

163. In contrast to the ACS and AT submitter’s funding position, Ministry of Housing and Urban Development (MHUD) set out the importance of Drury to the Government’s strategy for accommodating growth in the region. MHUD tabled a statement<sup>85</sup> in which it was stated (among other things):

*“HUD’s particular interest in the Plan Changes stem from its role in co-leading the New Zealand Urban Growth Partnership Programme, and specifically the joint Council-Crown Auckland Housing and Urban Growth Programme that has identified Drury as one of four priority development areas in the region.*

*Drury is currently the largest urban development area in New Zealand, and its strategic location within the Hamilton-Auckland Corridor makes its successful*

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<sup>84</sup> Ibid at [12]

<sup>85</sup> Mr Hurley Principal Policy Analyst dated 16 July 2021

development a matter of national importance. HUD wishes to ensure that all plan changes in Drury-Opāheke appropriately reflect the area's national and regional significance and its status as a joint priority development area for both the Government and Council.

HUD agrees with the assessment of Mr Mead in the s42A Report (paragraph 619) that there is sufficient certainty around the funding of network infrastructure for the rezoning to proceed. Funding sources will still need to be identified for the long-term development of the area but there is enough certainty being provided that the development can commence in accordance with appropriate infrastructure triggers that manage the timing and sequencing of the development. HUD understands that the exact triggers will be the subject of later hearings". [Underlining is our emphasis]

164. Mr Zöllner (MHUD) presented oral evidence<sup>86</sup> and set out the following<sup>87</sup>:

- (a) "Urban development at Drury is a high priority for the Government, with Drury being one of five such locations in Auckland agreed with Council.
- (b) The Government is wanting to see implementation of an exemplar Transit Oriented Development and is pleased to see those principles reflected in the Structure Plan and the Plan Changes.
- (c) The NZ-UP investment is a direct response to the opportunity to establish a TOD at Drury and supports:
  - (i) The commitment to fund and initiate the Drury Central Railway Station which allows public transport infrastructure to lead development and not follow it.
  - (ii) Investment in road improvements, schools and Kainga Ora land purchases and development.
- (d) There will be additional investment in Drury and there is an inclusive process being undertaken with Auckland Transport and Council. Consideration is being given to the availability of extra funding through NZ-UP and there is an opportunity for some of the funding that had been allocated to the Mill Road connection to now be applied in Drury.
- (e) Government agencies are working with Council to address the financing and funding gap. It is hard to progress that discussion, however, given the lack of certainty regarding future development that arises from the land not being zoned. Live zoning is important to provide certainty which then enables funding.
- (f) He has never seen an area as well analysed as Drury or with infrastructure costs and design solutions as well understood. He is confident that over time financing will be available but considers that greater certainty is required in

<sup>86</sup> We asked Mr Zöllner to provide a written copy of his oral evidence, but that did not eventuate

<sup>87</sup> As set out at paragraph 4.4 of the closing reply submissions

order to release funds. The future funding is aimed at the issues raised by the Council Submitters.

- (g) *Having to initiate repeated plan changes will be a major brake on development.*
- (h) *He is impressed with the amount of work undertaken and recorded that it was hard to think of a site that is so well to set up for development. In comparison, the North West / Westgate area is scrambling and does not even have a busway”. [underlining added]*

165. He also set out that Drury is intended to be an “exemplar” for urban development with a strong focus on public transport connectivity. In that regard, he noted that he was pleased to see that the plan changes had been prepared consistent with the DOSP, so that they will contribute to the realisation of the strategic vision for Drury as a whole.
166. In questioning Mr Zöllner, the short point was that while he understood the Council’s funding position, the Government’s position was that the success of urban development at Drury was of national significance and too significant to fail. As he pointed out, he was confident there would be funding solutions, and part of that funding solution was the certainly provided by live zoning.
167. Mr Schwartfeger (for Kiwi) addressed in his evidence-in-chief for the second tranche hearing the application made by Kiwi to the Government’s Infrastructure Acceleration Fund for funding. He advised that that application for funding (of key infrastructure works in the Drury area) had been declined. He set out<sup>88</sup>:

*“I am advised by Kainga Ora staff involved in administering the IAF that a key aspect in the decision to decline the funding application was the lack of certainty as to when and in what form the Drury land may be rezoned for urban development. My understanding from those conversations is that the application would likely have had a different outcome had PC48 been approved and urban zoning in place. In that context, Council’s opposition to PC48 increases the level of uncertainty and, in my opinion, difficulty in obtaining central government funding for Drury infrastructure”.*

168. Mr Schwartfeger also addressed the effect of the partial zoning (as recommended by Mr Mead in Addendum section 42A report) on central and local government infrastructure funding. It was his view that the timing and extent of up-zoning at Drury would impact significantly on the availability of central and local government funding for infrastructure works. It stated<sup>89</sup>:

*“In terms of central government funding, live zoning provides certainty that the funds spent will support timely development. It is difficult for central government to fund infrastructure in an area where there is no certainty as to when urban development will be enabled. That raises a risk that funds will be spent on*

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<sup>88</sup> Mr Schwartfeger’s rebuttal evidence dated 26 November 2021 at [3.2]

<sup>89</sup> Mr Schwartfeger’s rebuttal evidence dated 26 November 2021 at [6.15]

*infrastructure that will be unused or inefficiently used for an extended period of time. The decision declining Kiwi's application for IAF funding of key infrastructure works in Drury, discussed above, is illustrative of this problem".*

169. Mr Dewe (Fulton Hogan) raised similar issues to Mr Schwartfeger, and attached to his corporate evidence correspondence from Crown Infrastructure Partners (dated 24 November 2021). In light of that letter Mr Dewe stated<sup>90</sup>:

*"Throughout this process I have been in contact with Crown Infrastructure Partners (CIP), who are also involved at Milldale, regarding infrastructure funding options at Drury. It is clear to me that they would like to be part of the solution and had hoped to be further advanced than where they currently are. Attached as Attachment A is correspondence from CIP which clearly sets out that they see a decision on the zoning being required ahead of further progress being made on the funding solutions". [Underlining is our emphasis]*

170. Ms McDonald, an experienced project manager of large-scale infrastructure projects, presented evidence-in-chief and rebuttal evidence for the three plan change proponents in relation to the transport related infrastructure identified by ACS and AT in the DIFF programme as being necessary for full implementation of the urbanisation planned for the FUZ land at Drury, including the plan change areas.

171. Ms McDonald stated<sup>91</sup>:

*"I do not consider the funding issues to be as complex as the Council Submitters say it is. I accept that there are a large number of individual projects that will need to be put in place and that the monetary sums involved are significant. That said:*

*(a) Development will occur incrementally over a period of decades and only some of the infrastructural works will be needed to enable and support the initial phases of development. It is not necessary (and can in fact be economically wasteful) to implement at the commencement of a large, staged development all the infrastructure that will be required to service the ultimate form of development in several decades time:*

*(i) Implementing infrastructure before it is required will incur unnecessary financing costs over the period when it is unused or under-utilised. It will also prevent funds being applied to other infrastructure that will be needed sooner.*

*(ii) Once implemented, infrastructure needs to be maintained, which incurs costs. Installing infrastructure only when it is needed avoids those interim maintenance costs. In the case of some of the infrastructural elements identified in the DIFF, that may be many years after development commences"*

172. Ms McDonald attached to her evidence-in-chief (and slightly updated in her rebuttal evidence) a Table setting out the DIFF Projected Schedule. As part of that, the rows she had shaded green were those works that are to be provided and funded by the

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<sup>90</sup> Mr Dewe's rebuttal evidence dated 26 November 2021 at [4.10]

<sup>91</sup> Ms McDonald's at [9.3]

Applicants (and these are included in the upgrades provided for in the precinct provisions). All three corporate witnesses for PCs 48 – 50 agreed with Ms McDonald’s categorisation of the works in the Schedule and confirmed in their evidence that they would collectively or individually (as necessary) undertake all of the works shown as green shading.

173. Having addressed the ACS and AT concerns about funding above we find that the submitters oppose the Drury East plan changes not because the proposed land uses are inappropriate, but rather because they consider that the necessary network infrastructure (and in particular transport infrastructure) will not be in place in the short to medium term due to funding and financing constraints. On this basis the legal submissions and planning evidence is that the plan changes are contrary to the policy framework in the NPS-UD and the RPS. The ACS and AT witnesses opined at the hearings (including at the PC 61 and PC 51 hearings) that in the absence of certainty of funding and financing for the transport infrastructure required for the long-term development of Drury, none of the Drury plan changes should be approved.
174. We do not agree with the ACS and AT’s primary position for the reasons already set out (lack of funding and financing issues and therefore a lack of integration between planning and funding). Their approach assumes that infrastructure planning (and funding) and zoning need to happen sequentially – i.e. only live zone land where there is certainty of funding. In our view, the essence of integration is those matters happen contemporaneously, in a complementary way, and over time. This is what the plan change proponents are promoting; and we outline later below why we find that the ‘package of precincts provisions’ proposed, and those we have imposed (in particular the transport triggers), will ensure that appropriate infrastructure is in place to support the level of development proposed.
175. A sequential approach, as set out in the previous paragraph, would compromise the potential for urban zoning and development to occur in a timely and integrated fashion in Drury East. That is because live zoning provides certainty and gives confidence to landowners (and central and local government agencies) that expenditure on infrastructure will be worthwhile and efficient.
176. As set out by the corporate witnesses, in the absence of zoning there is little, or no rationale for investing in infrastructure given the uncertainty as to whether and when development will occur. Moreover, as we have set out earlier, we accept that the Drury East Applicants are experienced developers, and there is a significant opportunity given their willingness and commitment to cooperate and work together to add substantial urban development (business, residential and open space) in Drury, which is substantially in accordance with the Council initiated and adopted DOSP.

#### **Addendum Section 42A report and extent of zoning**

177. Before addressing whether PC 48 (and PCs 49 and 50) can ensure the appropriate contemporaneous provision of infrastructure and development, we address the

implications of the zoning recommendations made by Mr Mead in his Addendum section 42A report for all three plan changes.

178. Mr Mead recommended that all of PC 48 be 'live' zoned, but that only a partial rezoning of PCs 49 and 50 was appropriate. His reasons for this were addressed in the addendum report, but essentially those reasons are similar to those set out by ACS and AT. That is – in the absence of guaranteed infrastructure funding in the next 10 years and beyond (i.e. funding uncertainty) it would not be appropriate (in section 32 terms) to live zone the entire area sought by the three plan change proponents.
179. He stated in the Addendum 42A Report<sup>92</sup>, *"I consider a focus on the train station and its surrounds is appropriate in terms of what area of PPCs 48 to 50 to live zone for urban activities"*. It appears to us Mr Mead's rationale for recommending the spatial extent of the partial rezoning is based on estimates of walking catchments around the proposed Drury train station<sup>93</sup>, rather than on consideration of the effect that this will have on the sustainable development, and economic implications for the proposed Metropolitan Centre and the supporting residential catchment.
180. It was his view that the partial re zoning of FUZ land was a staged approach and reflected the longer term (funding) uncertainties. He considered it more appropriate that the balance of the land remain FUZ, and be rezoned once funding was better resolved. He set out that rezoning could be contemplated within next 10 years or sooner, either at the next AUP review, by a Council initiated plan change, or another private change.
181. Mr Mead (like Ms Sinclair) considered that in the face of funding uncertainty and with the entire PC 48 – 50 areas live zoned; it would likely result in landowners developing in a piecemeal way to avoid triggering the infrastructure upgrades (or that Drury would stagnate and not develop at all). He was concerned that an ad hoc approach to development would emerge as it would be difficult for the Council to deny consents in the context of the trigger mechanisms proposed (that is – he was of the view that it was not possible to draft robust 'triggers' or development staging provisions so as to avoid the "ad hoc" development he referred to).
182. We disagree with Mr Mead. The 'trigger' provisions we have imposed are in our view robust and clear and will give the Council the ability to exercise discretion to refuse consent where the specified works have not been undertaken and where the Applicant cannot satisfy the Council that the effects of concern would be avoided or mitigated.

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<sup>92</sup> In paragraph 78 of the Addendum 42A Report

<sup>93</sup> This appears to be based on an 800m straight line circle from the station



183. Mr Mead asserted in response to questioning that that partial rezoning would not adversely affect the outcomes sought by the plan change proponents. In his presentation material<sup>94</sup> he opined that his recommended zoning would:

*“get the core working” and “Partial zoning allows the centre to get underway/growth not constrained by lower density further away taking up initial transport capacity. TOD outcome prioritised.”*

184. The views held by Mr Mead were directly contrary to the evidence of all three Applicants, and in particular the corporate and economic witnesses. The three corporate witnesses for each of PCs 48 – 50 strongly and comprehensively rebutted Mr Mead’s revised re-zoning proposal<sup>95</sup>. In summary, we find that Mr Mead’s position disregards the mechanics of how development occurs in practice (as set out by the corporate witnesses) and would not achieve the outcomes (get the core working) as set out by Mr Mead.

185. Mr Mead’s view was also not supported by Mr Akehurst as set out in his 26 November 2021 rebuttal evidence. Mr Akehurst addressed in some detail the implications of Mr Mead’s partial re-zoning approach – and strongly disagrees with it from an economic perspective. He concluded by stating<sup>96</sup>:

*“For the Drury Metropolitan Centre to be sustainable and viable through its development phase, it must be supported by catchment development strategies that are in line with the way residential areas develop. In this instance, lower density needs to occur in a sufficient volume to support the higher density residential development close to the core. This means it needs to be able to occur first.*

*Restricting, through a staging mechanism [partial zoning], residential development around Drury would undermine the timely and optimised development of the centre. This will lead to an inefficient use of resources and a suboptimal centre.*

*Residential development of the PC49 and PC 50 land will not happen as Mr Mead has assumed in the Addendum 42A report. Fragmented ownership and property development cycles mean that only a portion of the zoned land will be brought to market initially. It is important that the major landowners –Fulton Hogan and Oyster Capital –have the ability to develop their land as soon as possible, thus acting as a catalyst to the development of the balance the land not owned by them.*

*Therefore, I disagree with the recommendations in the Addendum 42A Report. I consider that Mr Mead has not taken account of the manner in which townships develop”.*

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<sup>94</sup> Dated and presented on the 10 December 2021

<sup>95</sup> Mr Schwartfeger (Kiwi) rebuttal evidence dated 26 November 2021 at [6.1 – 6.17]; Mr McCarthy (Oyster) rebuttal evidence dated 28 November 2021 at [2.1 – 2.12]; Mr Dewe (Fulton Hogan) rebuttal evidence dated 26 November 2021 at [3.1 – 3.9].

<sup>96</sup> Mr Akehurst’s rebuttal evidence dated 26 November 2021 [6.1 to 6.5]



186. Mr Heath, did not (and we understand was not asked to) comment on the partial rezoning as recommended by Mr Mead in his response comments to us. However, in questioning Mr Heath on this matter, it is our understanding that he did not disagree with Mr Akehurst.
187. Having had regard to the evidence we heard, it is our view that the proposition advanced by Mr Mead would result in the near opposite of what he was recommending; that development would not occur (or occur much more slowly) given that the three plan changes had been designed to reflect a comprehensive and integrated strategy for the development of the entire Drury East area; and that the substantial central government funding for transport upgrades would either be wasted, or highly inefficient as there would not be the development or people to support that infrastructure investment (e.g. the train station).

**Transport Infrastructure and Transport Modelling - Are the transport related Precinct Provisions proposed, in particular the Staging of Development with Transport Upgrades provisions, appropriate and workable so that the Plan Changes give effect to the NPS UD, the RPS and Part 2 of the RMA?**

188. As we set out in the Introduction section of this decision, the topic of transport infrastructure and the appropriate transport triggers was essentially presented jointly by the experts for each of the three plan changes (i.e. presented once and applied to the three plan changes). Accordingly, while this decision solely relates to PC 48, there are numerous references to PCs 49 and 50 given the integrated nature of how the cases and evidence was presented to us.
189. We received extensive expert evidence and rebuttal evidence in relation to transport modelling and transportation planning. The majority of those experts had attended a number of expert conferencing sessions and prepared JWSs.
190. As set by Mr Parlane in his evidence on Strategic Traffic and Transportation Matters<sup>97</sup>:

*“The decision by the Government to defund the Mill Road arterial project has reinforced the decision to create a centre and supporting development that is focused on public transport and active modes. That has required further modelling of the Plan Changes to ensure that the transport triggers take into account the level of capacity now expected at each development stage. This work has shown that traffic effects of the Plan Changes can be managed with additional measures now also proposed to support the use of active modes and public transport”.*

191. In making our decision on the Drury East plan changes we have had regard to all of the evidence. The ‘upshot’ of this evidence, and the legal submissions received, is that we are satisfied that the provision of transport infrastructure can be provided (over time) to ensure an efficient transport network to enable the urban development

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<sup>97</sup> Mr Parlane’s evidence- in-chief at [1.6]

of Drury East as envisaged by the by PCs 48 – 50. We accept there will need to an element of “carrot and stick” in terms performance to achieving this outcome.

192. It is the precinct provisions, in particular the Staging of Development with Transport Upgrades provisions as a trigger mechanism (along with limiting the maximum number of car parking spaces and the implementation of travel demand management plans in PC 48), that are important to ensure that any adverse effects are avoided or mitigated. We also accept that other provisions, such as providing safe, convenient and efficient access to the Metro Centre and public transport routes, as proposed, are important too.
193. We accept that Mr Hughes and Mr McKenzie (traffic experts for the Applicant) had undertaken a wide range of transportation assessments and traffic modelling to ascertain and confirm there are acceptable transportation effects arising from the proposed Drury East plan changes. This included the work undertaken and reported in the Plan Change Modelling Reports (including the modelling update report provided in Appendix A of their rebuttal evidence), the Integrated Transportation Assessment reports, and their evidence in chief and in the JWSs. These showed, what we largely considered to be, an appropriate set of transportation infrastructure triggers to manage the transportation effects generated by the land-use enabled by the Plan Change(s).
194. We also accept that the transportation modelling that formed the technical basis of the infrastructure triggers incorporated sufficient and appropriate levels of conservatism to ensure that the proposed triggers provided the necessary robustness to ensure that the overall effects associated with the Plan Changes could be appropriately managed and mitigated.
195. In terms of the model’s conservatism, Mr Hughes and Mr McKenzie provided a detailed explanation of the factors which make the model conservative, including that<sup>98</sup>:
- *“It accounts for the cumulative effects of long-term development across the Drury/Pukekohe area and assumes development in areas such as Pukekohe and Paerata where no plan change is yet proposed.*
  - *It assumes very low take up of active modes for internalised trips, despite the fact that the Drury East Plan Changes have been designed to enable a very high active mode uptake.*
  - *It is based on a traffic survey undertaken at a time when significant roadworks on SH1 at Papakura were creating abnormally high traffic flows onto Great South Road. That traffic survey combined with growth projections has formed the basis for the development yields in the trigger table, which are therefore highly conservative.”*

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<sup>98</sup> Mr Hughes’ and Mr McKenzie’s rebuttal evidence at [2.7-2.19].

196. Mr Church also addressed the appropriateness and conservatism of the model in stating<sup>99</sup>:

*“I support the use of the S3M model for informing the predicted impacts about the surround transport network. It provides a reasonable basis to assess the effects of the Drury East Plan Changes. This view is similar to the position of Mr Phillips [Drury South], as set out in paragraph 5.9 of his EIC and Mr Mein [Waka Kotahi], as set out in paragraph 5.2(a) of his EIC.”*

197. It is our view that given the conservatism in the modelling we do not support the suggested 10% reduction in the transport infrastructure triggers proposed<sup>100</sup> by Mr Phillips to the trigger table to require less development ahead of the Great South Road/Waihoehoe Road ATAP upgrade. This reduction effectively appeared to us to attempt to avoid any rerouting at all through the Drury South Precinct, as opposed to being a necessary buffer required to ensure an appropriately conservative modelling approach. We address the precinct provisions later in response to the issues raised by Drury South Ltd.
198. Despite extensive caucusing, Mr Prosser (for AT) remained of the view that the full list of DIFF projects developed as a means of delivering the long-term, strategic preferred network for the DOSP should be delivered as part of the package of measures associated with these Plan Changes. We record that Mr Prosser was the only transport expert who considered the projects in the previous paragraph were necessary before PCs 48 – 50 should be approved. The Applicants’ experts and those for the Council (as regulator), Waka Kotahi and Drury South Limited agreed that interim upgrades for Waihoehoe Road and Fitzgerald Road would be appropriate as staging provisions.
199. Mr Prosser also did not agree<sup>101</sup> with the “Network Capacity Criteria” that were used in the model to determine the trigger points of land-use enabled for each piece of infrastructure provided. He also considered that the peak hour congestion experienced by the key network intersections would be undesirable for public transport and other motorised road users. We address this matter below in terms of the philosophical approach adopted in the transport modelling.
200. Mr Prosser also raised issues<sup>102</sup> that the local transport network was of a poor rural standard and has little resilience and residual capability to accommodate additional traffic demands without ongoing transport improvements. While Messer’s Hughes and McKenzie (and other transport experts) accepted that current roading conditions were poor, it was their view that the matters of pavement design/condition and construction traffic management effects could and should be addressed at the resource consent stage. We agree.

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<sup>99</sup> Section 42A Addendum Report Page 81.

<sup>100</sup> Mr Phillips’ evidence-in chief at [4.4]

<sup>101</sup> Mr Prosser’s summary evidence at [3.15]

<sup>102</sup> Ibid at [3.1 – 3.5]

201. Having regard to the above, it is our view, based on the weight of the expert evidence, that we find that the modelling approach is an appropriate basis on which to assess the transport effects of the plan changes. Given this, we address the 'philosophical' approach adopted in the modelling and the planning outcome that was derived from it, which has as a core principle significant mode shift to public and active transport modes.
202. As part of the 'philosophical' approach to the modelling and the planning outcome, it is important, in our view, to firstly set out some contextual issues. We accept that the Plan Changes relates to land that is ideally located in terms of the road and rail networks. No party disagreed with this. Also, extensive work has been undertaken regarding the transport networks that need to be in place for full urbanisation at Drury. Key elements of that work are already underway (e.g: the widening of SH1) and/or has been consented (e.g. the Drury Central Railway Station). Given this, we accept it is highly likely that the road and rail networks will continue to be developed (given the evidence of MHUD) and this will ensure investment can and will appropriately be made in public transport services, as well as private infrastructure investments.
203. In relation to the above, and importantly in the overall approach the three Applicants have taken to the modelling and precinct provisions, is the critical importance of mode shift to future transport planning. As set out in the Applicant's evidence, mode shift will be encouraged both by better services (the carrot) and as a consequence of factors such as congestion on the road network (the stick) that result in public transport becoming relatively as attractive as private vehicle travel, if not more so.
204. Also, as set out in Applicant's transportation evidence, the philosophy was that urban areas will always generate peak period traffic congestion; but to actually enable or encourage meaningful mode shift from private cars to public transport and active modes, a certain level of peak period congestion can and needs to be tolerated.
205. Mr Hughes and Mr McKenzie set out that with free-flowing roads and intersections, there is little or no incentive for people to choose other travel modes which all of the transportation experts involved in this process agree will be needed to deliver the future transport outcomes sought. As already addressed Drury East will have a new public transport hub featuring an electrified train service from 2025. However, as pointed out by Mr Hughes and Mr McKenzie without the traffic congestion tolerated in the Network Capacity Criteria, the public and active transportation options will not offer a competitive edge for commuters when making decisions in favour of public transport (and especially rail). That is - the peak network congestion is therefore a "stick" that will complement the "carrot" of well-located and frequent public transport services served by safe and efficient active mode links.
206. Notwithstanding the above, we accept the Applicant's position that blanket congestion throughout the whole of the day affecting all users would represent a system failure. On this basis it is important to enable good levels of service outside of peak periods, so that people can choose to travel by car at those times if they wish.

Traffic congestion should not substantively restrict the attractiveness of, or connection to, public transport.

207. Furthermore, we accept that the Plan Changes have not been developed to intentionally create congestion, but to take account of the principles articulated by Mr Parlane regarding the efficient allocation of resources and the efficient provision of capacity on the road network (i.e. that investing funds to create unused capacity is an inefficient use of resources and incentivises private vehicle use over public transport)<sup>103</sup>.
208. On this basis we accept that the Network Performance Criteria adopted and used for evaluation of the Plan Changes, strikes the right balance between these (often competing) factors. While we note Mr Prosser did not fully agree, he did not offer any other modelling inputs.
209. In contrast, the Council Submitters, and especially Ms Tam, took the view that all congestion was undesirable and should be avoided and she (AT) did not see congestion having any role to play in encouraging changes in mode choice or facilitating a modal shift. Ms Tam's position was, in our view, at odds with the expert transportation evidence before us in relation to congestion.
210. Mr Prosser's evidence and in his responses to our questions on this issue was somewhat contradictory: he agreed that a level of congestion was "*advantageous*" to effect mode shift but that it is also necessary to have facilities in place to facilitate a move to alternative modes. This appeared inconsistent with his position that congestion should be avoided by building new infrastructure.
211. Ms Sinclair suggested that the use of congestion as a tool was "*outdated thinking*" and one reason she gave for this was that younger generations will adopt public transport and active modes anyway. Unfortunately, she did not (nor did any other expert) present us with any evidence which validated this opinion.
212. We accept that it will take many years for the land subject to the Plan Changes to be fully developed. In this context it is efficient and rational to allocate resources to infrastructure at a rate that is coordinated and integrated with the urban development that it is to serve. This coordination is the purpose of the Staging of Development with Transport Upgrades provisions.
213. Having accepted the modelling outcomes and approach adopted by the Applicant's transportation and planning experts, we address the key themes arising from relevant case authorities (case law) and the main planning argument before us - whether there is sufficient integration between infrastructure, funding and land use, and whether that integration can be achieved through the precinct provisions, including the use of transport triggers that we have referred to earlier.

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<sup>103</sup> We note that the new Drury bus routes referred to by Mr Roberts in his evidence to the resumed hearing have now been formally approved.

214. Legal Counsel for the three plan changes as well as submitters (eg ACS/AT and Waka Kotahi) set out the relevant case law in relation to the provisions of transport infrastructure. The most often cited cases (among many) included *Landco Mt Wellington v Auckland City Council*, *Laidlaw College Inc v Auckland Council*<sup>104</sup> and *Foreworld Developments Limited v Napier City Council*<sup>105</sup>. The principles to be taken from these authorities are that:

- It is not the responsibility of a single developer to resolve existing transport issues across a wide area (Landco);
- That it is the responsibility of a developer to address the direct effects of its proposal and not significantly contribute to the existing problems (as the Court clarified in Laidlaw);
- That it is bad resource management practice and contrary to the purpose of the RMA to zone land for an activity when the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it (Foreworld); and
- Zoning or resource consent decisions should not raise un-meetable expectations (Foreworld).

215. With respect to the case law, we accept that each case (PCs 48 – 50) must be assessed on its merits. However, as already set out the key issues arising from the case authorities is whether there is sufficient integration between infrastructure, funding and land use.

216. In this context, we accept, as set out in the Waka Kotahi legal submissions, that<sup>106</sup>

*“Perfect alignment of land use, infrastructure and funding may be difficult to achieve, given that:*

*(a)Funding decisions can change over time, and sometimes very quickly<sup>107</sup>; and*

*(b)Funding commitments by the Council and Crown may not be made until some years after future infrastructure requirements are identified;*

*(c)When considering the longer term a more strategic view is required, including whether the land is identified for urban development, consistent with the NPS-UD”. (Underlining is our emphasis)*

217. The Applicant’s and Waka Kotahi’s position was that there is sufficient integration between infrastructure and land use in the short term (in this context the next 10 years) to enable the Plan Changes to be approved. This is based on the following:

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<sup>104</sup> *Landco Mt Wellington v Auckland City Council* [2009] NZRMA 132; and *Laidlaw College Inc v Auckland Council* [2011] NZEnvC 248

<sup>105</sup> *Foreworld Developments Limited v Napier CCW08/2005*

<sup>106</sup> Mr Gribben’s legal submissions at the tranche 2 hearings – 8 December 2021 at[ 2.7]

<sup>107</sup> The ‘de-funding’ of Mill Road being a good example



- (a) The development is generally consistent with the DOSP;
  - (b) There is considerable investment in new infrastructure for Drury East, including the Drury Central train station and electrification, improvements to the Drury Interchange and roading upgrades. The new train station is particularly important since it allows immediate access to an existing rapid transit system;
  - (c) The investment from the Plan Change Applicants to fund some transport projects; and
  - (d) There are adequate and appropriate plan provisions (including triggers) to manage the transport effects as development progresses over time.
218. We acknowledge there is greater uncertainty in the longer term about funding and implementation of certain infrastructure including Mill Road and the Drury South Interchange that is likely to be needed to service later stages of development in the plan change areas. Given this uncertainty it is less clear whether the necessary integration can be achieved between infrastructure and land use in the longer term.
219. This uncertainty can be addressed in a number of ways. We have already addressed the ACS/AT position on this matter which is to decline the plan changes, and Mr Mead's recommended approach to only partially zone parts of the Plan Change 49 and 50 areas. However, the alternative is the use of transport triggers supported by clear precinct provisions to ensure that the required infrastructure is operational prior to or at the same time as subdivision and development occurs. As we have already made clear, we accept that the Staging of Development with Transport Upgrades provisions set out in the precinct provisions will ensure this occurs.
220. Transport triggers and related plan provisions are a commonly used mechanism in plans (and in the AUP OP) and can be effective to allowing development to occur in a staged manner, but importantly to enable development to be refused prior to the necessary infrastructure being implemented if necessary. Numerous examples of the use of triggers to guide development were provided to us, including Mr McNutt's evidence in relation to the Peacocke development in Hamilton, where he provided an example of how, in his opinion, the triggers worked effectively from the Council's perspective.
221. ACS and AT and Mr Mead took the view that triggers were not appropriate in circumstances where the necessary infrastructure is not funded. This was part of the 'core' case run by ACS and AT. The implication of this position is that necessary planning decisions would often only be 'short term' to match committed funding. As we have set out above funding decisions can change over time, and sometimes very quickly, as in the case of Mill Road. Mr Roberts and Ms Morgan presented evidence supporting the use of triggers, as did Ms Heppelthwaite, who in our view articulated the issues well stating:

*“...if the triggers are linked to infrastructure becoming operational then in practice this should result in integration with funding, since infrastructure will have to be funded in order to be constructed and operational<sup>108</sup>”.*

222. We address the Staging of Development with Transport Upgrades provisions below. While we have largely accepted those provided by Mr Roberts and Ms Morgan in their planning evidence and the ‘marked-up’ precinct provisions, we have preferred the amendments made by Ms Heppelthwaite. We do not think those changes are fundamental but provide better clarity and understanding.
223. We accept that the amendments to the plan change provisions made through evidence and expert conferencing has resulted in a sufficiently robust set of provisions (as set out in the precinct provisions) to ensure that the required infrastructure would be operational prior to or at the same time as subdivision and development occurs. This includes the thresholds and transport infrastructure identified in the transport triggers, and in particular, the interim solution for the intersection of Great South Road and Waihoehoe Road which was altered to involve a signalised intersection (noting that this was consistent with Mr Mein's primary evidence for Waka Kotahi and Mr Phillips' for Drury South).
224. On this basis it is our decision that all of Drury East can be rezoned now given that the area is signalled for urban development in the future (through the AUP OP, DOSP and FULSS) and there are programmes and business cases in place (in particular the Supporting Growth Programme) that identify the necessary infrastructure. Together these factors mean that urban development in Drury East is consistent with the long-term planning documents, integrates with existing rapid transit networks and the necessary integration between land use and infrastructure can be achieved. It also means, in our view that rezoning all of Drury East now will result in a more holistic and integrated development.

### **The Transport Related Precinct Provisions (including the Staging of Development with Transport Upgrades)**

225. In addition to upgrades to the existing road network (as set out in the precinct provisions standards - Staging of Development with Transport Upgrades), there are a range of other measures proposed in the precinct provisions to manage effects on the transport network, and to achieve the relevant objectives that seek to promote access by public and active modes (NPS UD Policy 1(c)) and reduce the rate of growth in demand for private vehicle trips (RPS Policy B3.3.2(5)(b))<sup>109</sup>.

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<sup>108</sup> Ms Heppelthwaite's Summary Statement at [3.8 –3.9].

<sup>109</sup> Noting that we also included a new objective that subdivision and development does not occur in advance of the availability of operational transport infrastructure, including regional and local transport infrastructure. ahat



226. Those additional precinct provisions that have been included are also necessary in our view to achieve the objectives of the precincts that promote a mode shift to public and active transport. These include:
- Requiring active mode connections to the Drury Central Transport station within the walkable catchment;
  - Requiring streets to be designed to safely provide for cyclists and pedestrians;
  - Requiring secure cycle parking for all residential development.
  - Applying maximum parking rates for offices and requiring enhanced end of trip facilities in the Drury Centre precinct; and
  - Encouraging office and retail activities in the Drury Centre precinct to implement additional travel demand management measures through a travel plan.
227. With respect to the final two bullets points above, we accept the evidence of Mr Hughes, Mr McKenzie and Mr Parlane as well as their responses to our questions. That is - the overall parking approach for Drury East focuses on restricting and managing the scale and rate of carparking to encourage higher mode share for alternative modes and to support the overall direction of the Plan Changes to promote the use of the public transport facilities other than active transport modes.
228. To assist in achieving the mode shift, a maximum parking rate was proposed for the commercial developments within Drury East that is lower than the Metropolitan Centre rate in the AUP (OP). The rate proposed is to be reduced over time as the development and public transport network within the Plan Change area progresses. As set out by Mr Hughes, Mr McKenzie:
- “This approach “will ensure the provision of carparking is appropriate for the scale and intensity of the Metropolitan Centre, and will enable the market to provide the amount of carparking necessary to support development, while limiting carparking to an appropriate level to ensure that land is used efficiently”<sup>110</sup>.*
229. The other aspect to making the use of public transport and other active modes more ‘attractive’ are the precinct provisions relating to requiring enhanced end of trip facilities in the Drury Centre precinct and encouraging office and retail activities in the Drury Centre precinct to implement additional travel demand management measures through a travel plan.
230. We support the additional measure as set out above. However, we accept that they form part of a package of precinct methods to encourage a mode shift by providing facilities for cyclists and users of public transport, while at the same time, limiting those activities (office parking) that incentivise people to drive during peak periods. It is the combination of these methods, together with, but particularly, the staged

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<sup>110</sup> Mr Hughes’ and Mr McKenzie’s evidence-in-chief at [7.24]

upgrades to the transport network, which will in our view, enable the achievement of the transport objectives of the precincts.

231. As alluded to earlier we have largely accepted the transportation precinct provisions (Staging of Development with Transport Upgrades) provided by Mr Roberts and Ms Morgan, but we have preferred the amendments recommended by Ms Heppelthwaite for the reasons set out in her Hearing Summary dated 9 December 2021.
232. Ms Heppelthwaite's provisions more closely align to the Applicant's September version of the precinct provisions where the Standards include the Mill Road northern and southern connection and the Opāheke Northern connection once development is proposed beyond a prescribed threshold. In the reply version, the operation of the Mill Road northern and southern connection and the Opāheke Northern connection become a matter of discretion.
233. While we accept the Mill Road northern and southern connection and the Opāheke Northern connection are not likely to be needed in the near future, it is our view that those roading upgrades are likely to be needed to service later stages of development in the plan change areas. On this basis we think they should remain as Standards, particularly as the preferred alignment for Mill Road is illustrated in various strategic documents, including the Auckland Plan (planned project for the purpose of Council's Infrastructure Strategy), ATAP and the SGA's indicative strategic road network in the Regional Land Transport Plan 2021- 2013 as a NZUP project, and that the Opāheke Northern connection is the subject of a NoR process being considered now.
234. However, we note that subdivisions and or development that does not comply with the Standards – Staging of Development with Transport Upgrades - remains as a Restricted Discretionary Activity. This means that if a greater level of development than set out in the Standards is proposed and the Mill Road northern and southern connection and the Opāheke Northern connection are not operational, then it is open to an Applicant to apply and have that proposal assessed in terms of the matters of discretion and the relevant policies (as directly referenced in the Matters of Discretion).
235. The activity status for subdivisions and or development that did not comply with the Standards – Staging of Development with Transport Upgrades was debated between the planning witnesses. The Applicant's planners and Ms Heppelthwaite supported the Restricted Discretionary Activity status; Mr Mead considered a Discretionary Activity status was appropriate; while Ms Sinclair sought a Non-Complying Status.
236. The AUP OP at A1.7.3. Restricted discretionary activity - records:

*Activities are classed as restricted discretionary where they are generally anticipated in the existing environment and the range of potential adverse effects is able to be identified in the Plan, so that the restriction on the Council's discretion is appropriate.*

237. A1.7.4. Discretionary activity records:

*Activities are classed as discretionary where they are not generally anticipated to occur in a particular environment, location or zone or where the character, intensity and scale of their environmental effects are so variable that it is not possible to prescribe standards to control them in advance.*

238. A1.7.5. Non-complying activity records:

*Activities are classed as non-complying where greater scrutiny is required for some reason. This may include:*

- where they are not anticipated to occur; or*
- where they are likely to have significant adverse effects on the existing environment; or*
- where the existing environment is regarded as delicate or vulnerable; or*
- otherwise where they are considered less likely to be appropriate*

239. A key aspect of the appropriate activity status (in the AUP OP) is whether the activity (and their effects) is anticipated or not, and if it is possible to identify what the adverse effects may be. The position of ACS and AT's planners and the section 42A author was those activities not meeting the standards were not generally anticipated to occur and/or 'greater scrutiny' was required and the discretionary and non-complying activity status enabled this. The position of the Applicant is that the activity (subdivision and development) was anticipated and the range adverse effects from this could be identified – and were transport related.

240. We agree with the Applicant's position. However, the key aspect to the appropriateness of a restricted discretionary activity is the "Matters of Discretion"; and whether they enable the appropriate assessment of the activity and its effects. In this case, this is assessing (and determining) if the necessary infrastructure (transportation related) is operational prior to or at the same time as subdivision and development occurs.

241. We have carefully considered the Matters of Discretion (and the related assessment criteria) to ensure they enable the appropriate assessment. We are satisfied, given the amendments we have made to them, that the Matters of Discretion, with direct links to the relevant policies, will enable the appropriate assessment. And importantly, the ability to refuse consent should the necessary infrastructure not be provided and operational before development occurs.

242. Given our reasoning above we find that, in section 32 terms, the restricted discretionary activity status is the most appropriate.

## Drury South Limited

243. The precinct provisions have also been amended to address, at least partially, the concerns raised by Drury South Limited (DSL). DSL confirmed its general support for the Drury East Plan Changes but sought some amendments to address a concern about potential traffic effects on the Drury South industrial precinct. Specifically, DSL sought amendments to the trigger table to require less development ahead of the Great South Road/Waihoehoe Road ATAP upgrade so that traffic from the precinct does not avoid the intersection by diverting onto Quarry Road, with consequent effects on the Drury South Precinct.
244. As set out earlier, Mr Phillips confirmed that DSL supported the transport modelling approach and indicated his agreement with the Applicants that congestion is a useful tool to drive mode shift in Auckland. However, he departed from the Applicant's view on this matter; his view being that congestion should not spill over into the Drury South industrial precinct, and DSL's request to reduce the trigger threshold by 10% was to avoid any rerouting through the precinct. This position was supported by legal counsel and its planning witness (with specific precinct provisions sought).
245. While we understand why DSL would seek to protect the status quo as, at present, the industrial/mixed use precinct enjoys low levels of traffic (and congestion) because it is in the early stages of development and surrounded by undeveloped FUZ land and rural land. However, much of Drury and Drury South land has been identified for urban development and it is reasonable to expect that traffic will increase when that occurs. Moreover, as acknowledged, the following was set out in Fulton Hogan's legal submissions<sup>111</sup>:
- "In that regard, it is also relevant that Fulton Hogan owns the Drury Quarry, which DSL referred to numerous times, and in contrast with DSL is not concerned about the traffic increases".*
246. As we set out previously, Mr McKenzie and Mr Hughes explained that the transport modelling demonstrates (with a high degree of conservatism) that the effects on the transport network are managed well even if limited rerouting through the precinct does occur. We accept this is an entirely reasonable outcome in Auckland. However, Mr Roberts and Ms Morgan have included specific precinct provisions (policy and assessment criteria) addressing the safe and efficient movement of freight vehicles within and through the Drury South precinct.
247. The other key amendment for DSL was the introduction of the second right hand turn lane into SH22, and which has been agreed to.

## **Distributional Effects – Impact on Papakura and Pukekohe Business Centres**

248. Mr Akehurst's evidence outlined the role the Metropolitan Centre would play in meeting the needs of the southern part of Auckland and its importance to establishing

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<sup>111</sup> Fulton Hogan's Reply Submissions at [4.20]

a well-functioning urban environment in the south for the next three or more decades. It was his view that:<sup>112</sup>

*“The obvious site for a Metropolitan Centre that meets the needs of this growth community and the wider needs of the surrounding areas is the middle of the Drury-Opaheke FUZ at the intersection of SH1 and Great South Road” (i.e., where Kiwi has proposed it.*

249. Mr Akehurst supported the Metropolitan Centre zoning without any particular limitations as recommended in the section 42A report (from Mr Heath) and from the Papakura Business Association.
250. Mr Heath also confirmed that he supported the development of a Metropolitan Centre in Drury East over the long term as proposed by Kiwi from an economic perspective<sup>113</sup>. This was on the basis of the scale of anticipated long term residential and business growth in the wider Drury catchment, and his economic analysis that formed the basis of the DOSP, and which had, in part, determined a Metropolitan Centre was an appropriate outcome to meet the retail and commercial requirements of the future market in an efficient and effective way.
251. The key issues raised however was the potential impacts the Metropolitan Centre may have on the Papakura and Pukekohe centres. We address these below.

#### Papakura

252. The Papakura Business Association opposed the Metropolitan Centre zoning on the basis of the potential adverse effects it would have on the Papakura Metropolitan Centre. The Association presented expert planning evidence from Mr Knott; but no expert economic or retail planning evidence.
253. The Association accepted that Papakura was not functioning as a metropolitan centre, despite its zoning. In this respect Mr Knott stated<sup>114</sup>:

*“It is clear from my own knowledge of Papakura, and from the evidence of the applicant’s economics expert, Mr Akehurst, that Papakura is still not currently functioning as a Metropolitan Centre”.*

254. Mr Knott recommended that:

*“consideration should be given to an alternative lower order zoning being placed on the land identified as Metropolitan Centre within PC48 or at the very least controls put in place which stage the release of Metropolitan Centre zoned land,*

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<sup>112</sup> Mr Akehurst’s evidence-in-chief at [1.2]

<sup>113</sup> Mr Heath’s section 42A response dated 10 December 2021

<sup>114</sup> Mr Knott’s evidence at [2.3]

*as proposed in the Council's s42A report, to provide time for Papakura to react and for regeneration projects to proceed*"<sup>115</sup>.

255. Neither Mr Akehurst nor Mr Heath agreed with the Business Association's relief, but both understood the concerns it raised.

256. Mr Akehurst set out the while Papakura was the closest Metropolitan Centre, it did not deliver the range of Metropolitan services its community requires, and was not fulfilling the Metropolitan Centre role, which for Papakura residents was being performed by (the more distant) Manukau Centre, which was sufficiently robust and distant to not be adversely affected by the Drury Centre. In this respect he stated<sup>116</sup>:

*"The nature of Papakura's location, ownership and existing structure mean that this is unlikely to change in the future. By providing for a new Metropolitan Centre at Drury that will have a retail sales impact on Papakura, Council will not be diminishing Papakura's role as a Metropolitan Centre, because Papakura does not perform such a role and is unlikely ever to do so. To the contrary, Papakura's role has diminished rather than expanded over the past 20 years or more".*

257. Mr Akehurst addressed the role of Papakura in some detail at section 9 of his evidence-in-chief. He stated in this conclusion of that section of his evidence<sup>117</sup>:

*"In combination, these aspects of the existing structure of Papakura and its role in the community, mean that the development of a Metropolitan Centre at Drury is unlikely to result in any significant impacts on Papakura. The type and nature of services offered at Papakura are those that appeal to a smaller than Metropolitan Centre catchment. Households within the Papakura community will have the ability to meet their higher order retail needs at the Drury Metropolitan Centre, with far less travel than currently.*

*The retail that is expected to locate at the Metropolitan Centre at Drury is not the type that will compete with the retail on offer at Papakura, therefore the impacts are largely avoided".*

258. With respect to Papakura, Mr Heath essentially agrees with Mr Akehurst. Mr Heath was supportive of the intention to develop the Metropolitan Centre, but accepted it may impact on Papakura, but the effect of the Metropolitan Centre zoning would likely be one of cementing in Papakura's current focus on serving a (growing) local market, rather than seeing a negative decline in its current role and function.

259. We agree with both Mr Akehurst and Mr Heath; but also agree with the Business Association that Papakura is continuing to develop and serve the local residential market. We were told of two current mixed-use developments in the Metropolitan Centre zoning; one on the 'old' New World supermarket site and the other opposite the 'old' Papakura City council building – ranging between 2 and 4 storeys. While

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<sup>115</sup> Mr Knott's evidence at [3.1]

<sup>116</sup> Mr Akehurst's evidence-in-chief at [7.34]

<sup>117</sup> Mr Akehurst's evidence-in-chief at [9.43 – 9.34]



these developments are encouraging, they are clearly not at the scale envisaged by Metropolitan Centre zoning.

260. Given the evidence, and our findings, we have not provided any limitations on the Metropolitan Centre zoning within PC 48 in relation to Papakura.

### Pukekohe

261. Mr Akehurst set out in some detail the role and function of Pukekohe and the impact the Metropolitan Centre zoning in PC 48 may have on the Pukekohe Town Centre (section 10 of his evidence-in-chief). Mr Akehurst's opinion was<sup>118</sup>:

*... "there is no risk to Pukekohe's economic and social wellbeing. Even with the Drury Metropolitan Centre open and operating as I have indicated, the only effect felt at Pukekohe is a modest growth reduction. In the year of maximum impact (2028 under these opening assumptions), the greatest impact is an 8.8% reduction from where Pukekohe would have been at that point in time if no Metropolitan Centre was developed at Drury. This is still some 24.4% above today's level of sustainable GFA [as set out in Table 10.1 of his evidence]. That anticipated growth will largely arise from the extensive proposed and zoned urbanisation around Pukekohe.*

*In that context, I disagree that there are potential risks to the social and economic wellbeing of Pukekohe. A centre in 2028 that is potentially 24% larger than today (2020) is performing strongly and will not exhibit any adverse impacts on its ability to deliver amenity to its community, social or economic".*

262. Mr Heath did not agree with Mr Akehurst. While he stated there was a lot of commonality between himself and Mr Akehurst, he maintained his view that a staging of the Drury Metropolitan Centre development (with a threshold of 35,000 m<sup>2</sup> GFA prior to 2035) was necessary to mitigate any adverse effects on the Pukekohe centre. He considered Mr Akehurst's 24% growth speculative and relied on a number of assumptions that had yet to play out in the market<sup>119</sup>. This included what Mr Heath considered to be –

*"high levels of uncertainty around the growth projections for the Drury catchment, particularly with the timing and funding of infrastructure and the 'softer' outlook for the rate of residential development"*<sup>120</sup>.

263. We have not imposed the GFA cap as suggested by Mr Heath. The reasons for this are that we agree with Mr Akehurst's detailed evidence on this matter, and accept even if the 24% figure is high, and the actual figure is lower, it will still be well into positive numbers. We also agree with Mr D Allan who addressed the relevant case law on "Relevant Distributional Effects under RMA" in his opening submissions. He stated<sup>121</sup>:

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<sup>118</sup> Mr Akehurst's evidence-in-chief at [12.3 – 12.4]

<sup>119</sup> Mr Akehurst's evidence-in-chief at [1.11 – 1.13] by 2028 Pukekohe will be 24% larger than it is today.

<sup>120</sup> Mr Heath's section 42A response - Summary.

<sup>121</sup> Mr D Allan's opening legal submissions at [8.3 and 8.6]

*"It is accepted law, however, that regard can be had to significant effects on the amenity of the public caused by any reductions in the viability or vitality of commercial centres that arise as a consequence of trade competition – i.e.: what can be termed "distributional" or "consequential" effects. and*

*For completeness, it is the negative effects (if any) on amenity that flow from the transfer of trade that are relevant in RMA terms". (Underlining is our emphasis)*

264. Mr D Allan went on state<sup>122</sup>:

*"Such a reduction in the rate of growth of the Pukekohe Centre (noting that the centre will still be growing) is not an adverse effect. Mr Akehurst's expectation is that Pukekohe will cater for an increased catchment (in terms of the extent of the township and the number of residents), will have an increased provision of retail and other activities, and will at least retain its existing level of vitality and amenity. In those circumstances, there cannot be negative effects on amenity".*

265. We also agree with Mr D Allan in his Reply submissions where he stated<sup>123</sup>:

*"For the reasons expressed by Greg Akehurst in response to questions, it is submitted that the Pukekohe Town Centre will continue to flourish albeit that its rate of growth will be slightly reduced from that which would occur if residential development occurred in Drury but without a Metropolitan Centre. Kiwi says that PC48 will not generate any adverse consequential effects that reach the "significant" threshold required for relevance under RMA".*

266. Moreover, as set out by Mr D Allan, again in the Reply Submissions, with which we agree:<sup>124</sup>

*"as a consequence of Mr Heath's suggestion would be that development at Drury over the next 15 years would be largely limited to the LFR centre (currently subject to the fast-track application). Mr Heath argued that there is no difference between LFR and other retail but that disregards the significant differences in terms of the extent of catchment (which is intended to be broad for Kiwi's LFR centre but more confined for its initial fine-grained retail development), urban design and amenity. While the LFR centre will be an important component of the completed Metropolitan Centre, Kiwi also wishes to start developing more fine-grained and pedestrian focused aspects of the Centre, initially at a scale that would serve the surrounding residential areas".*

267. Moreover, Mr Schwartfeger advised us that the development of the more fine-grained and pedestrian focused aspects of the Centre would most likely not occur within the first decade of development, and then progressively developed (presumably subject to the market demand) over time. Given this timeframe (and Mr Heath's 'uncertainties' raised above), it is questionable, in our view, whether substantial

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<sup>122</sup> Mr D Allan's opening legal submissions at [8.9 (b)]

<sup>123</sup> Mr D Allan's Reply Submissions at [11.6]

<sup>124</sup> Mr D Allan's Reply Submissions at [11.7]



development (more than a threshold of 35,000 m<sup>2</sup> GFA) would occur prior to 2035 anyway.

268. Finally, as we set out earlier in this decision, we have placed considerable weight on the DOSP given the robust and comprehensive basis on which it was formulated and adopted by the Council. The DOSP states at 3.3 – Centres:

*“A large main centre is required. The proposed location for this centre is shown close to and east of SH 1 at the existing Drury motorway interchange. It would be located near the existing Drury Village. This centre would serve the entire Drury – Opāheke structure plan area and also surrounding areas”.*

269. The DOSP clearly envisages a large centre at Drury East, and that centre is supported by all parties (including Mr Heath). To this extent we find it would be inefficient and unnecessary, in section 32 terms, to impose additional controls on the development of the Metropolitan Centre.

### **Zoning - the extent of the Metropolitan Centre Zone**

270. Mr Mead recommended changes to the extent of the Metropolitan Centre Zone. This included extending the zone to the east so it was adjacent to the (now confirmed (Drury Central Rail Station) and Waihoehoe Road, and removing a significant part of the southern extent of the Metropolitan Centre Zone. Mr Turbott also supported extending the Metropolitan Centre zone to the east in a similar location as recommended by Mr Mead.
271. The Applicant opposed the change in zoning suggested by Mr Mead and Mr Turbott, and provided detailed planning evidence from Mr Roberts and Ms Morgan on this issue.
272. It was Mr Mead’s and Mr Turbott’s view that given the train station location, it was not appropriate to have Business Mixed Use zone with a sub-precinct that focused on enabling high density residential development in a mixed-use environment, with the main shopping/retail area to the west. They considered a more business focused land use (Metropolitan Centre Zone) adjacent to the train station was likely to be a better planning outcome.
273. Mr Mead set out in the section 42A report that<sup>125</sup>:

*“A transit-orientated form of development means that built form and zoning must be integrated with the station, with the station being at the centre of the most intense development. To this end, in my judgement, sub-precinct E should be zoned BMC (with building heights up to 72m) and sub-precinct B should be zoned BMU, with a height variation control of 50m. This would then create a pattern of metropolitan centre zoning focused on the immediate station environs, wrapped around with a mixed use zoning on the periphery. This pattern would also mean that the metropolitan centre zoning would be spread over a number of*

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<sup>125</sup> Section 42A report at [223]

*different landholdings. I see this as being beneficial in the long term, a point supported by the NPS-UD's references to competitive land markets".*

274. Mr D Allan addressed this matter in his opening legal submissions under the heading "layout of Drury Metropolitan Centre" stating<sup>126</sup>:

*"PC 48 as notified identified Kiwi's preferred location for the Drury Railway Station. The transport authorities have since advised that their preference is to locate the station a short distance further north [now confirmed in this location]. The evidence for Kiwi has incorporated the revised location for the station.*

*The 42A Report suggests a number of changes to the layout of the Metropolitan Centre, most notably alterations to the underlying zoning and a particular the location of the Metropolitan Centre zone. The revised location of the Metropolitan Centre zone is potentially problematic: it effectively ignores the urban design and master-planning analysis (to be discussed by Mr Earl, Mr Hruda and Mr Wallace) which supports PC 48; and it allocates key parts of the centre to land that is not owned or controlled by Kiwi. As a consequence, that zoning would compromise Kiwi's ability to implement a master-planned and coordinated outcome.*

*It is recognised that the relocation of the rail station to the north supports provisions that would enable intensification around the station. Kiwi proposes that, in addition to some minor changes to the zoning boundaries, a control similar to the Central Fringe Office Control be applied to the Mixed Use zoning around the station to ensure that offices can be developed in that area. That will enable tall structures with a commercial function around the station whilst ensuring that the key urban design components related to the main street are undertaken on land that Kiwi controls and hence can ensure that the intended outcome is realised".*

275. Mr Roberts and Ms Morgan addressed the suggested change to the zoning<sup>127</sup> noting that Mr Mead sought:
- (a) A repositioned Metropolitan Centre zone wrapping around the Drury Central train station; and
  - (b) Zoning sub-precinct B as Mixed Use with specific provision for large format retail as a permitted activity, with other retail being a discretionary activity<sup>128</sup>.
276. Their evidence comprehensively addressed this issue setting out 4 options, and under taking a detailed section 32AA evaluation. Option 4 was:

*"A new option that extends the Metropolitan Centre zone further north to align with the Maketu Stream and which adjoins the southern extent of the Drury Central train station. Apply the Centre Fringe Office Control to the land within 200m of the train station within the Mixed Use zone adjoining Waihoehoe Road. This option is .....our preferred option".*

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<sup>126</sup> Mr D Allan's Opening Legal Submissions at [8.12 - 8.14]

<sup>127</sup> Mr Roberts' and Ms Morgan's evidence-in-chief at [8.4 to 8.17]

<sup>128</sup> Section 42A report at [666]

277. The reasons for this were (we fully quote the section of the evidence given the importance of this matter).<sup>129</sup>

- (a) *“The extended Metropolitan Centre zone to Makatu Stream and the application of the Centre Fringe Office Control over the balance of the Mixed Use zone would enable a high density mix of activities within a walkable distance of the Drury Central train station (Objective 1). This would specifically support office and other employment and supporting activities towards Waihoehoe Road and rapid transport. Offices are well suited to this location due to the high levels of public transport use associated with this activity;*
- (b) *Option 4 provides for core retail activities, include large format and fine-grained comparison retail to locate completely within the Metropolitan Centre centred around a main street. As explained by Mr Wallace<sup>130</sup>, this will support the concentration of retail activity and vitality, and ensure that the large format retail and finer grained retail activity in the southern portion of the precinct is designed together as an integrated and cohesive component of the centre which attracts people up the main street and through Homestead Park. This would assist in creating a centre that is a focal point for the community (Objective 2) and that positively contributes to pedestrian amenity (Objective 4). Conversely, Option 3 and Option 1, would potentially disperse retail activity and dilute the energy from the main street. This, combined with the natural boundary created by the Fitzgerald Stream and flood plain, creates the risk of two separate sub-areas within the centre developing that may be difficult to integrate effectively;*
- (c) *Option 4 responds to the particular context of the PC48 area. As set out by Mr Wallace<sup>131</sup>, this option capitalises on the unique natural landform of the southern portion of the PC48 area where both stream valleys and ridgelines can be used as key structuring elements for the centre. It also integrates the original homestead, which is proposed to be celebrated within Homestead park, which will form the heart of the new centre.*
- (d) *Option 4 also appropriately directs finer-grained retail away from Waihoehoe Road, which in Mr Wallace’s opinion<sup>132</sup> is not a suitable location for this type of retail, given it will be a heavily trafficked four-lane arterial route in the future with comparatively lower amenity values. Option 4 would concentrate fine grained retail activity around a pedestrian focussed main street leading up to and through Homestead Park, with the potential for large format retail in subprecinct B assisting to pull pedestrians up through this space. This*

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<sup>129</sup> Mr Roberts’ and Ms Morgan’s evidence-in-chief at [8.16]

<sup>130</sup> Mr Wallace’s evidence-in-chief at [8.10-8.20]

<sup>131</sup> Mr Wallace’s evidence-in-chief at [8.20(d)-(f)]

<sup>132</sup> Mr Wallace’s evidence-in-chief at [8.20(h)]

*assists to achieve a quality built environment and positively contributes to pedestrian amenity and vitality (Objective 4);*

- (e) *Option 4 applies to land primarily controlled by the Applicant, who has the scale and experience to deliver a new high quality integrated Metropolitan Centre for Auckland. Conversely, under Option 1 and Option 3, the northern extent of the Metropolitan Centre would primarily apply to the park and ride associated with the Drury Central train station, which KiwiRail has made a Notice of Requirement referral application for under the COVID-19 Recovery (Fast-track Consenting) Act 2020. That intended land use may mean that the Metropolitan Centre zone objectives would not be realised for some time if Option 1 or 3 were progressed. This may hold back the development of the centre and undermine the broader compact urban form objectives relating to economic growth (see RPS B2.2.1(1)(b)). Option 4 would still provide the opportunity for office and/or residential development to be constructed above the at-grade the park and ride facility on Waihoehoe Road”.*

278. As Mr Turbott noted in his evidence the Metropolitan Centre zone, Mixed Use zone or THAB zone can be used near high frequency public transport stops. We also note that the Mixed Use zone is specifically designed to enable increased height where this supports the efficient use of land, the use of public transport and supports the centres hierarchy. Substantial office activities are also enabled within parts of the Mixed Use zone, being those subject to the Centre Fringe Office Control, recognising the area’s proximity to public transport and overall accessibility.
279. We accept the suite of recommended objectives and policies proposed by Mr Roberts and Ms Morgan. They give effect to the higher order policy direction, with the application of the Metropolitan Centre zone and Centre Fringe Office Control being the most appropriate and effective approach when taking into account the range of options outlined.
280. Having regard to the above, it is our findings that the zoning layout and controls proposed by the Applicant are the most appropriate. While it is the ‘package’ of reasons that support our findings, we wish to acknowledge the considerable work undertaken by the Applicant in terms of the master planning (Mr Hruda and Mr Earl) and urban design (Mr Wallace). In this respect we accept Mr D Allan’s submissions (quoted above), that the zoning layout recommended by Mr Mead and Mr Turbott effectively ignores the urban design and master-planning analysis (including the southern part of the Metropolitan Centre zone that Mr Mead recommended become Business - Mixed Use).
281. Furthermore, the suggested zoning pattern by Mr Mead and Mr Turbott would allocate key parts of the Metropolitan Centre to land that is not owned or controlled by Kiwi. A consequence of this is that it would likely compromise Kiwi’s ability to implement a master-planned and coordinated outcome. This position is reinforced now that the Kiwi Rail NoR for the Drury Central train station has been confirmed, with that land to the east of the Metropolitan Centre Zone being designated for ‘park

and ride' facilities; and may not be available for some time, if ever, for further development.

### Heights in the sub-precincts

282. Height limits in the PC 48 area was not a particularly contentious issue. Mr Wallace in his urban design evidence addressed height and the 'Height Strategy'. He set out<sup>133</sup>:

*"A key component of the sub-precincts includes the development of a coherent height strategy in response to the locational attributes of different parts of the PC 48 area and aligned with national and local policy direction. A comparison of proposed heights within each sub-precinct between the notified PC48 provisions and subsequent amendments proposed in response to submissions and Council's s42A report is shown in ...[Figure 5 in his evidence].*

*In urban design terms, this height strategy encourages a higher intensity of use in and around the Metropolitan Centre zone and near the Rail Station and FTN routes (in addition to the activity statuses proposed further below) to better support the use of more sustainable modes of travel. It also has wider benefits of contributing to the creation of an identifiable vertical node around the central core of the Metropolitan Centre zone and Rail Station, assisting with the legibility of the wider urban area".*

283. Ms de Lambert addressed the issue of height in her landscape evidence. It was her view that<sup>134</sup>:

*"In a wider landscape context, the PC48 area is back dropped by the Hunua Ranges. Potential future development up to 72.5m height, enabled by the Metropolitan Centre zone, will reach an RL of approximately 92.5m. The toe slopes of the Hunua Ranges start at around RL 80m and extend to ridgelines at RL 250m approximately with high points of around 329m –Opāheke. The proportional potential future height and scale of the future Metropolitan Centre and Mixed Use zones will sit comfortably away from this primary landscape backdrop".*

284. Ms de Lambert acknowledged that there would be a substantial change introduced over time to the landscape, but that the potential development outcomes were considered to be in line with the expectations of the DOSP. In response to questions Ms de Lambert considered the heights proposed, in this context, were appropriate.
285. Mr Turbott, in his evidence, considered that more height should be enabled in Sub-precinct C (but did not state what that height limit should be). The height proposed of 32.5m in Sub-precinct C would enable approximately eight storey buildings. This would provide for at least eight storeys within the walkable catchment of the Drury Central train station (being more than the six storeys required by Policy 3 of the NPS UD, and provides a transition in height between Sub-precinct A and the residential dwellings proposed on the eastern side of Fitzgerald Road.

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<sup>133</sup> Mr Wallace's evidence-in-chief at [8.34 and 8.36]

<sup>134</sup> Ms de Lambert's evidence-in-chief at [6.12]

286. We are satisfied that the height limits proposed are appropriate and note that Mr Roberts and Ms Morgan provided a section 32AA analysis of the zoning options for the Metropolitan Centre zone and the heights within the Drury Centre precinct (Appendix D). This incorporated the options considered in the original Section 32 report for PC 48, and additional options, including those identified in the s42A report. We are satisfied this analysis they undertook has demonstrated that the outcome they recommend is both efficient and effective.

#### **Activities provided for in sub-precinct A**

287. Ms Heppelthwaite opined that it would be appropriate to limit certain 'bulky' activities in Sub-precinct A, which would not typically support the creation of vibrant and walkable centre (Objective 4) or the provision of high-density activities within walking distance of rapid transit (Objective 1). Mr Roberts and Ms Morgan agreed stating:<sup>135</sup>

*To this end, we agree that drive-through restaurants, motor vehicle sales, trade suppliers, garden centres and warehousing and storage, should be a non-complying activity in Sub-precinct A. This would more effectively achieve Objective 1 and 4 of PC48.*

288. We agree with Ms Heppelthwaite, as did Mr Roberts and Ms Morgan.

#### **Large format retail and department stores in sub-precincts c and e**

289. Ms Sinclair and Mr Turbott commented on the activity status of large format retail and department stores in Sub-precincts C and E and recommended a discretionary activity status. Large format retail includes supermarkets and department stores<sup>136</sup>.
290. Ms Sinclair's evidence<sup>137</sup> suggested that the reason she supported discretionary activity status for all forms of large format retail was to enable the transport effects of these activities to be considered. Supermarkets greater than 450m<sup>2</sup> are a restricted discretionary activity in the Mixed Use zone and the effects of the activity on the transport network are already able to be considered via H13.8.1(2). The transport triggers in PC 48 would also manage effects on the transport network.
291. Notwithstanding the above, Mr Roberts and Ms Morgan supported a non-complying activity status for department stores in Sub-precincts C and E given that this would discourage them locating outside of the core centre, with the reasons for this set out in paragraph 11.1 of their evidence-in-chief. We agree.

#### **Mana Whenua**

292. The Applicant's Plan Change Request addressed<sup>138</sup> cultural values noting that engagement has been undertaken with all Mana Whenua groups with known

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<sup>135</sup> Mr Roberts' and Ms Morgan's rebuttal evidence at [5.2]

<sup>136</sup> AUP (OP) Table J1.3.1 -Definitions

<sup>137</sup> Ms Sinclair's evidence-in-chief at [6.6]

<sup>138</sup> Plan Change Request at [10.9]

customary interests in the Plan Change area. A consultation report included details of the results of this engagement to date.

293. Four iwi groups: Ngati Te Ata, Ngāi Tai Ki Tāmaki, Te Akitai and Ngāti Tamaoho had prepared Cultural Valuation Assessments (**CVAs**).
294. The section 42A Report records<sup>139</sup> there are no known identified sites of Significance or Value to Mana Whenua within the Plan Change area and the CVA's, while identifying a number of values of importance to Iwi, have not identified any areas or resources that would be worthy of scheduling under the AUP.
295. Ngāti Te Ata Waiohū<sup>140</sup> submitted on PC 48, opposing it on the basis that there has been no meaningful engagement with Mana Whenua, and they had not had the opportunity to provide input into the design and detail of the proposal to ensure that their values are reflected.
296. Ngāti Tamaoho<sup>141</sup> also submitted on PC 48 opposing it in part, noting they had not had the opportunity to provide input into the design and detail of the proposal to ensure that their values are reflected.
297. Section 10.9 of the Application Request provided a summary of the areas of interest to the iwi groups, namely:
- Ongoing degradation of waterways through further development, loss of habitat and increased stormwater runoff;
  - Loss of mature vegetation and natural habitats for native species;
  - Extent of earthworks and potential to disturb kōiwi, Maori artefacts or archaeological features;
  - Protection of streams including provision for stream management plans and special policy requirements (greenspace, infrastructure, wider riparian margins);
  - Treatment of stormwater prior to discharge;
  - Unforeseen adverse impacts to the environment;
  - Sustainability;
  - Ongoing engagement has been requested;
  - The application of Te Aranga Maori Design Principles; and
  - Meaningful cultural interpretation occurs through incorporation of place names (e.g. streets and parks) and if and as appropriate cultural art and design elements to offset the impacts to the cultural and natural landscape.

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<sup>139</sup> Section 42A Report at [386]

<sup>140</sup> Section 42A Report pp 604 – 606, Submitter No 21

<sup>141</sup> Section 42A Report pp 767 - 760, Submitter No 35

298. Mr Schwartfeger in his evidence-in-chief noted<sup>142</sup> that the Applicant to-date has held fourteen hui with Mana Whenua. He expressed the view that the Applicant shared a large number of common interests and values with respect to kaitiakitanga (stewardship). He also noted that the Applicant proposed to work with Mana Whenua through the design process and have also proposed to include an integrated approach to stormwater management and use Te Aranga design principles for the design of streets and publicly accessible open spaces. This process was currently being reaffirmed and documented in memorandum of understandings (“**MoU’s**”) with Mana Whenua.
299. We questioned Mr Schwartfeger on the current status of the MoU’s; he noted that it remained work in progress and that the Applicant was committed to the MoU process.
300. Mr Roberts and Ms Morgan noted<sup>143</sup> that in response to the Section 42A Report recommendations, they had proposed a new policy that brings together a policy response to the way in which the development will respond to Mana Whenua values. This policy is given effect to by the various provisions of the AUP and PC48.
301. As Mana Whenua representatives did not attend the hearings, we were unable to question them on their issues or to seek clarification on the measures proposed to address those issues. Notwithstanding this, given the Applicant’s commitment, as set out above, we are satisfied, based on the information and evidence before us, that PC48 would give effect to the RPS and Part 2 in relation to Mana Whenua interests and values.

## **Noise and Vibration**

302. Noise and vibration was a key issue outstanding in PC 48 (and PCs 49 and 50) between the Applicant, Kāinga Ora (KO), Kiwirail and ACS/AT. The issue was, if, and if so the extent to which, noise and vibration attenuation was required to mitigate the health and amenity effects from road and rail noise and vibration.

### Rail Noise and Vibration

303. In response to the submissions received, Mr Mead originally recommended that precinct standards be introduced to address potential effects from rail vibration and set back of buildings from the rail corridor, but otherwise considered that rail and road noise issues could be managed by standards in E25.6.10 in the AUP (OP) (which require noise insulation for noise sensitive activities in Business zones).
304. With respect to rail noise, Kiwirail’s submission sought to insert permitted activity standards to require all new buildings, and alterations to existing buildings, containing noise sensitive activities located within 100m of the rail corridor to be appropriately mitigated in relation to rail noise and vibration.<sup>144</sup> Where a proposed activity did not

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<sup>142</sup> Mr Schwartfeger’s evidence-in-chief at [7.4(e)]

<sup>143</sup> Mr Roberts’ and Ms Morgan’s evidence-in-chief at [5.20]

<sup>144</sup> Kiwirail submission 24.8



comply with those standards a restricted discretionary activity resource consent would be required.

305. Ms Butler, planner for Kiwirail, advised that in applying KiwiRail's standard, all bedrooms in new buildings, or alterations to existing buildings, within 100m of the railway corridor would be required to achieve an internal noise level of 35dB LAeq, with a 40dBAeq limit for all other habitable rooms based on rail activity noise levels. If windows were required to be closed to achieve the internal noise levels, then an alternative ventilation system would be required to be installed to ensure an adequate supply of fresh air. The proposed standard also included provision for variable topography to be considered where this blocks line of sight or exposure to the noise source.<sup>145</sup>
306. It was Ms Butler's opinion that the provisions sought by KiwiRail were necessary and appropriate to ensure the ongoing safe and efficient operation of the railway network so that it is not compromised by reverse sensitivity effects, and that sensitive land uses were protected from the effects of rail noise and vibration in terms of health and amenity.<sup>146</sup>
307. Mr Mead noted in the section 42A report that the Business Mixed Use and Business Metropolitan Centre zonings contain a noise standard E25.6.10 which has very similar internal environments to those KiwiRail was seeking to introduce. However, he stated that the AUP (OP) standard doesn't specifically account for the noise generated from trains running on lines adjacent to the zone. Instead, the noise levels are based on the maximum permitted noise levels for the relevant zone or precinct standards.<sup>147</sup>
308. Mr Robinson, the Applicant's acoustic expert, considered that noise sensitive activities should be managed using the KiwiRail standard but at a distance of 60m from the railway corridor boundary, preferring the ventilation requirements associated with the KiwiRail standard in favour of those contained in the AUP OP standard E25.6.10.3.b.
309. Mr Hegley, Acoustic Consultant for KO, was of the opinion that if existing train movements were creating adverse noise and/or vibration effects (and KiwiRail's own criteria show this is the case) then KiwiRail were obliged to implement section 17 of the RMA<sup>148</sup>. He stated if KiwiRail believed there was a noise or vibration issue they should implement a programme to avoid, remedy, or mitigate those adverse effects.<sup>149</sup> He did not believe there was a reverse sensitivity issue with respect to train noise. Furthermore, Mr Hegley was not aware of any credible research or

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<sup>145</sup> Ms Butler's evidence-in-chief at [3.17]

<sup>146</sup> Ibid, at [3.18]

<sup>147</sup> E25.6.10(2)

<sup>148</sup> Mr Hegley's evidence-in-chief at [6.6]

<sup>149</sup> Ibid

studies that had been undertaken in New Zealand to demonstrate there was a noise problem from trains.<sup>150</sup>

310. Mr Hegley agreed with Mr Robinson that the design requirements of the AUP OP for the proposed re-zoning meant the façade of any residential development would provide a good level of protection from train noise.<sup>151</sup> He supported Mr Robinson's recommendation of using the AUP (OP) rule to provide general protection from what is at present, an unknown level of train noise.<sup>152</sup> Mr Campbell, KO's planner, was also of the opinion that there were already controls within the AUP (OP) to manage any actual or perceived noise or reverse sensitivity effects on the rail corridor.<sup>153</sup>
311. KiwiRail went on to acknowledge that buildings adjacent to the railway corridor have the potential to contribute towards noise mitigation by acting as barriers for activities further back from the corridor in this case. In these particular circumstances KiwiRail was willing to accept a reduced buffer distance of 60m, but only on the basis that KiwiRail's standard was applied rather than Rule E25.6.10.<sup>154</sup>
312. During the course of the hearing the Applicant's planners Mr Roberts and Ms Morgan changed their original position of support for the Kiwirail provisions to later state at the reconvened hearing that they considered the provisions regarding the proposed Kiwirail noise standard were more appropriately addressed on a region-wide basis. Despite this, the Applicant Kiwi Property advised that they would be willing to accept the provisions set out below.
313. Notwithstanding the above, the Applicant's position was that there was no evidential basis for concluding that any reverse sensitivity effects arise for either road or rail operators. The Applicant submitted that complaints alone do not amount to reverse sensitivity effects and neither did implementing mitigation measures to address effects generated by a land use. In practice, Mr D Allan submitted that road and rail links are not closed because of noise, and reverse sensitivity effects do not arise, and if these controls were warranted it was because of health and amenity effects. We agree.
314. On the issue of vibration, Mr Mead adopted KiwiRail's request for a standard relating to addressing the potential effects of railway vibration within 60m of the railway corridor.<sup>155</sup> The requested standard was included in the changes recommended to the PC text as sought by Kiwirail.<sup>156</sup> Mr Robinson considered that the management of vibration effects should be provided for by KiwiRail through the maintenance of its tracks. The Applicant maintained this position in its Reply Submissions.

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<sup>150</sup> Ibid, at [6.7]

<sup>151</sup> Ibid, at [7.5]

<sup>152</sup> Ibid

<sup>153</sup> Mr Campbell's evidence-in-chief at [1.3(a)]

<sup>154</sup> Ms Butler's evidence-in-chief at [3.22]

<sup>155</sup> Paragraphs 574 and 575 pages 129 and 130 section 42A Report 1

<sup>156</sup> Page 163 Section 10 paragraph 672 pages 163 and 164. S42A Report 1

315. Mr Hegley agreed with Mr Robinson in relation to vibration issues stating that KiwiRail needed to 'adopt' section 16 of the RMA rather than seek reliance on their neighbours to adopt an unknown limit to accommodate for the quality of the track and rolling stock.<sup>157</sup> Mr Hegley advised us that the cost of vibration isolating a dwelling for this situation (ie unknown) would be cost prohibitive for the average resident and not justified compared to the benefit.<sup>158</sup> He went on to say that he was not aware of any potential reverse sensitivity effects from train vibration for KiwiRail, and that based on information available; he did not support a train vibration control.<sup>159</sup>
316. In response to Mr Hegley's opinion, Ms Butler advised that even well-maintained tracks cannot fully internalise site-specific vibration effects. These effects are heavily dependent on the ground conditions at the development site and its ability to withstand ground movement.<sup>160</sup> She further stated that KiwiRail expends considerable time and cost in keeping its track and infrastructure in good condition. Railway corridors are relatively narrow (generally 20m wide) and while internalising noise and vibration effects might be possible in some locations, this was not realistic in all cases due to physical, operational or amenity constraints.<sup>161</sup>

#### Building Setback (rail)

317. The other matter to be considered in relation to the effects of rail noise and vibration is whether there should be a building yard setback from the rail corridor. Kiwirail sought a 5m setback on the basis that it would be a safety control that is concerned with managing the interface between operations within the rail corridor and activities on adjoining sites. Ms Butler considered there was potential for significant adverse effects in terms of health and safety if the interface between the rail corridor and adjacent activities was not appropriately managed.<sup>162</sup>
318. Mr Hegley did not consider there was any technical reason why there needed to be a 5 metre setback from the rail corridor.<sup>163</sup> Mr Campbell was of the opinion that a designation is intended to enable a range of activities to occur, including for example, maintenance and any works required for safety purposes. He considered there should be no rail activities that need to occur outside the designation, or unreasonably constrain the use of the adjoining land for its zoned purpose.
319. In response to the matters raised, the Applicant proposed a 2.5m setback from any boundary which adjoins the North Island Main Trunk in order to ensure its safe operation.<sup>164</sup>

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<sup>157</sup> Mr Hegley's evidence-in-chief at [7.10]

<sup>158</sup> Ibid, at [7.9]

<sup>159</sup> Ibid, at [7.11]

<sup>160</sup> Ms Butler's evidence-in-chief at [3.26]

<sup>161</sup> Ibid.

<sup>162</sup> Ibid, at [3.10]

<sup>163</sup> Mr Hegley's evidence-in-chief at [7.12]

<sup>164</sup> Reply Submissions, at [8.16]

## Road Noise and Vibration

320. Turning to noise and vibration effects associated with road transport, ACS/AT put forward a similar case to that provided in Plan Change 51<sup>165</sup>. Ms Karyn Sinclair set out AT's position summarising that their primary submission identified concerns about potential health effects and reverse sensitivity challenges of noise sensitive activities developed in proximity to arterial roads. AT requested a new policy, rule and assessment criteria for noise sensitive activities in proximity to arterial roads (in this instance, Waihoehoe Road).
321. Mr Mead's initial recommendation on this submission point relied on Standard E25.6.10 Noise Levels for noise sensitive spaces in Business - Mixed Use and Metropolitan Centre zones. Further, the matters of discretion/assessment criteria in E25 include reverse sensitivity. He concluded that no specific noise standards should be recommended for road noise in PC 48.
322. Ms Drewery advised that the Drury East plan changes sought to enable urban development located in what are currently greenfield areas. The proposals precede the formation of the arterial road network required to support the development area and therefore she considered the plan changes should consider the impacts of the future road network. As a consequence, Ms Drewery advised that precinct-specific provisions were appropriate to address the reverse sensitivity and health effects likely to result from development adjacent to what would potentially be high noise generating arterial roads.<sup>166</sup>
323. Ms Drewery further advised that as the Best Practicable Option (BPO) mitigation was still to be confirmed at this stage she considered that it was appropriate to look at road traffic noise levels under the 'Do Minimum' scenario as defined by NZS 6806, for assessing reverse sensitivity effects.<sup>167</sup> Under the Do Minimum scenario, Ms Drewery advised that noise levels of up to 69 dB LAeq(24 hour) could be expected at the boundary of PC 48 adjacent to Waihoehoe Road West.<sup>168</sup>
324. Ms Drewery therefore considered there was a scenario for road traffic noise levels to exceed 65 dB LAeq(24 hour) within the boundary of Waihoehoe Road West. At levels above 65 dB LAeq(24 hour), Ms Drewery was of the opinion that the façade noise reduction required by Rule E25.6.10 was not sufficient to achieve an internal noise level of 40 dB LAeq(24 hour) and that this could lead to health and reverse sensitivity effects.<sup>169</sup>

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<sup>165</sup> Karaka and Drury Limited – to rezone 33.65 hectares of Future Urban zoned land in Drury West (located on Burberry Road and State Highway 22/Karaka Road, Drury) to enable the development of Town Centre and residential development.

<sup>166</sup> Ms Drewery's evidence-in-chief at [4.1]

<sup>167</sup> Ibid, at [5.3]

<sup>168</sup> Ibid, at [5.4]

<sup>169</sup> Ms Drewery's evidence-in-chief at [6.2]

325. Ms Sinclair agreed with Ms Drewery; that the existing provisions in Chapter E25 were not adequate to address AT's concerns of reverse sensitivity for the development of noise sensitive activities adjacent to Waihoehoe Road (as an existing and future arterial road).<sup>170</sup> Ms Sinclair proposed a set of provisions that would satisfy AT's submission to ensure health and reverse sensitivity effects were adequately managed within 60m of the boundary of an existing and/or future arterial road. She noted that her proposed provisions were consistent with those provisions agreed between the Applicant and KiwiRail to address their similar submission point for road noise.<sup>171</sup>
326. Mr Campbell agreed with the reporting officer Mr Mead. It was Mr Campbell's opinion that there were already sufficient controls within E25 (noise and vibration) chapter of the AUP (OP) to ensure effects on noise sensitive activities were appropriately managed. It was his opinion that the provision of an additional layer of controls within the precinct plan was an unnecessary doubling up of regulatory methods.<sup>172</sup> He therefore disagreed with AT's request to include reverse sensitivity controls for Waihoehoe Road (or other arterial roads), further noting that mitigation can be achieved through the future roading construction to manage any perceived or actual reverse sensitivity effects on the roading corridor.<sup>173</sup>

#### Rail and Rail – Findings

327. Mr Mead amended his recommendation as it related to rail and arterial road noise in the Addendum section 42A report. He advised he now understood that E25.6.10 assumed that the external noise received by a noise sensitive activity in Metropolitan Centre and Mixed Use zones would not exceed the maximum level of noise permitted by the zone or any adjacent zone or precinct. As there was potential for arterial road and rail noise to be louder than the relevant zone or precinct standards, he concluded a specific standard was now required.<sup>174</sup>
328. The Addendum section 42A Report acknowledged that there may be benefit from taking a region-wide approach to this issue as it relates to greenfield land. However, with no such prospect of a region-wide approach in sight, Mr Mead saw the benefit of introducing appropriate standards within the large greenfield development areas now, having reviewed the advice of Mr Gordon, Council's Acoustic expert.
329. Mr Mead now generally supported the amendments sought by KiwiRail with a suggested 60m control area from the rail corridor. His proposed wording was very similar to the Applicant's position, with the exception being that he continued to

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<sup>170</sup> Ms Sinclair's evidence-in-chief at [10.6]

<sup>171</sup> Ibid, at [10.7]

<sup>172</sup> Mr Campbell's evidence-in-chief at [7.3]

<sup>173</sup> Ibid, at [7.20]

<sup>174</sup> Section 42A Addendum report at [127]

support Kiwirail's submission and included a provision for rail vibration levels not exceeding 0.3mm/s as well as a requirement for mechanical ventilation.<sup>175</sup>

330. In addition, Mr Mead advised that the standard could be further improved by setting out the method of compliance (e.g. certification). He included within his standard provision for certification. Ms Butler expressed her support for Mr Mead's standard.<sup>176</sup>
331. Based on the evidence, Mr Mead concluded that the most sensitive development was that adjacent to the road, with development further back likely to be shielded by development fronting the road. In his view a 40m wide control area was sufficient to capture the first row of development and he proposed a standard to the effect, with an accompanying clause that requires the preparation of a compliance report.<sup>177</sup>
332. Mr Mead did not see the need for a specific road vibration standard. His understanding was that such a standard was aimed at annoyance type issues, rather than directly related to an impact on people's health. Further, vehicles driving along a well-maintained road free of any potholes or other uneven surfaces are expected to create negligible vibration at immediately adjacent buildings.<sup>178</sup>
333. With regards to the rail building setback standard, Mr Mead agreed with KiwiRail's general concerns about development adjacent to the rail corridor potentially disrupting operations. He considered a 2.5m wide set back was sufficient to address these concerns.<sup>179</sup>
334. We note that Mr Campbell stated that if we were to consider that acoustic attenuation was required, he would favour a standard based approach to address noise sensitive activities that fronted the arterial road, rather than the provision of the 40 metre deep control area along the corridor and a requirement for a suite of acoustic assessments, many of which might ultimately demonstrate that no specific acoustic attenuation is required. He recommended that acoustic controls could be limited to the first block of development fronting an arterial road, for example, a standard could apply to any noise sensitive building (whole or part) located within 10 metres of an arterial road.<sup>180</sup>
335. Mr Campbell was also of the opinion that if we were to adopt a standard to manage noise effects from the road, then it should include a requirement for the provision of ventilation for sensitive activities that front an arterial road<sup>181</sup>. He then changed his position on the appropriateness of a building setback, advising that having reviewed the matter further; he would support the provision of a maintenance yard adjoining

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<sup>175</sup> Ibid, at [140]

<sup>176</sup> Ms Butler's Fourth Statement of evidence, at [3.2]

<sup>177</sup> Ibid, at [145-146]

<sup>178</sup> Ibid, at [151]

<sup>179</sup> Ibid, at [162]

<sup>180</sup> Mr Campbell's supplementary evidence, at [2.11]

<sup>181</sup> Mr Campbell's supplementary evidence, at [2.13]

the NIMT line on that basis, with a clear policy connection being for proposed building maintenance reasons only.<sup>182</sup>

336. As a consequence of the proposed condition for the Drury Arterial Network, Ms Drewery advised us that the designation is likely to require the use of a low noise road surface regardless of NZS6806 mitigation. Based on this, Ms Drewery and Ms Sinclair revised their recommendations for PC 48 such that they now considered that no setback was required, and that compliance with E25.6.10 would suffice.
337. In light of the evidence before us (from the submitters and Mr Mead) we accept there is sufficient evidence to demonstrate that a resource management response is required to address the health and amenity effects associated with rail noise.
338. We accept the Applicant's position that specific precinct provisions are appropriate to address the identified effects in terms of rail noise. This was an agreed position with Kiwirail, and includes the reduced distance from 100m to 60m. We have however also included the requirement for mechanical ventilation and certification as recommended in the Addendum section 42A report and supported by Kiwirail. We agree with Mr Mead that this standard should include a requirement to demonstrate compliance with this standard.
339. We have therefore included acoustic attenuation controls for habitable spaces adjacent to the rail corridor zone to address adverse health and amenity effects. We were not persuaded that the noise and vibration would lead to reverse sensitivity effects on the rail network.
340. We have not included acoustic attenuation in relation to vibration, or for outdoor areas in response to rail noise. This is because we found there was insufficient evidence to warrant the imposition of a rule as being the most appropriate means to address this issue.
341. With regards to an appropriate width for a building setback from the rail designation, we are in agreement with the Applicant and Mr Mead that a 2.5m width is adequate for routine building maintenance on properties adjoining the railway line.

## Open Space

342. The Applicant's Section 32A Report set out their approach to open space and community facilities recording<sup>183</sup>:

*"Within the Plan Change area, a range of key open spaces are proposed that will cater for the varying needs of the future community, including:*

- Hingaia Creek and Maketu Creek Reserves which will provide public access to existing natural watercourses;*
- Station Plaza which will provide civic amenity and a central forecourt to public facilities; and*

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<sup>182</sup> Ibid, at [2.17]

<sup>183</sup> Application Report at [10.2]

- *Homestead Park is intended to retain some of the existing natural and built features of the Flanagan Homestead property.*

*“Other spaces, including neighbourhood parks will be determined by future development and subdivision applications.”*

343. The Applicant’s rationale to open space and community facilities was outlined in the evidence of Mr Hruda<sup>184</sup> and Mr Earl<sup>185</sup>:

*“To ensure a centre which remains connected with and enhances the experience of nature as well as reinforcing a distinctive sense of urban place, the master plan design includes an open space strategy which integrates streets with the regional and local open spaces, including Hingaia and Fitzgerald watercourses and incorporates the existing Homestead into a new gathering space at the heart of the new Drury Centre.”*

344. The section 42A report, and the evidence filed by Mr Barwell and Mr Turbott on behalf of ACS record the following concerns:

- The full extent of the Open Space - Informal Recreation zone identified adjacent to Hingaia Stream is not supported. It exceeds the standard 20m width required under s230 of the RMA. It is not all suitable for acquisition by Council and it is not required to help meet *the Council’s Open space Provision Policy* targets.
- The proposed open spaces should not be zoned but should be shown as ‘indicative’ open spaces on the Precinct Plans;
- Revised wording to provisions that imply that any of the indicative open space shown on the precinct plan will be acquired by the Council is not supported; and
- The lack of clarity as to the purpose and function of the ‘station plaza’ in the new location proposed by the Applicant, and in turn whether the plaza is consistent with the Council’s Open Space Provision Policy.

345. Mr Barwell’s evidence,<sup>186</sup> supported by both Mr Turbott and Ms Sinclair (Station Plaza), was that:

- A review of the potential open space shown in the DOSP has resulted in the Council identifying one neighbourhood park and at least one civic space within the PPC 48 area to meet the open space provision targets in the Provision Policy. They should be shown indicatively on the precinct plan in the Council’s preferred locations.
- The purpose and function<sup>187</sup> of the relocated station plaza has not been thought out. When the station plaza is annotated on the precinct plan it should read 0.2-0.4 hectares, rather than 0.4 hectares.

<sup>184</sup> Mr Hruda’s evidence-in-chief at [4.8]

<sup>185</sup> Mr Earl’s evidence-in-chief at [3.8 and 5.2]

<sup>186</sup> Mr Barwell’s evidence-in-chief at [9.2-9.7]

<sup>187</sup> Ms Sinclair noted the purpose and function was unclear.



- The 7.4 hectares of proposed Open Space - Informal Recreation Zone land adjacent to the Hingaia Stream is not required to help meet the Council's open space provision targets.
  - Rezoning of land proposed for public open space purposes to an open space zone prior to its acquisition by the Council is undesirable as it can be interpreted as signalling it will be acquired by the Council and create unrealistic and/or unsupportable expectations for landowners/developers, elected members and the public.
  - It is imperative to have adequate and sustainable funding in place for acquisition, development and ongoing maintenance of open space before urban zoning the PPC 48 area.
346. Mr Roberts and Ms Morgan questioned<sup>188</sup> the Council's approach noting the Council's Open Space Provision Policy is a non-statutory document; designed to provide direction on the provision of open space at a network scale and directing Council's investment decisions in the open space network and was therefore less applicable to open spaces that would be privately held.
347. Roberts and Morgan opined that the metrics of the policy are not a sufficiently robust framework for determining the open space network for a new high density Metropolitan Centre, citing Mr Barwell's suggestion that Homestead Park should be located further south as an example. The metrics ignore the significant place-making benefits of integrating the existing Flanagan Homestead building as a key feature of a future open space.
348. Mr Roberts and Ms Morgan explained<sup>189</sup>:
- The indicative Station Plaza is located to form the gateway urban space at the northern end of the Key Retail Street and forecourt to the Drury Central train station. Its location is shown indicatively on Precinct Plan 2 so that it can integrate with the final location for the station entrance; and
  - There is the need to ensure that the PC 48 provisions provide guidance on how the open space network can support a high quality and successful centre that is well integrated with the Drury Central train station.
349. The funding of open space was a key concern of Mr Barwell and Mr Turbott<sup>190</sup>. Mr Barwell wanted to avoid any implication that if land is zoned or shown as indicative open space, the Council will be placed under pressure to purchase it - for example, the 7.4 hectares of proposed Open Space - Informal Recreation Zone land adjacent to the Hingaia Stream. We accept the Council has concerns about how to fund new open spaces; however, this is not an RMA issue. If the Council does not wish to

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<sup>188</sup> Mr Roberts' and Ms Morgan's Rebuttal Evidence at [4.3 – 4.5]

<sup>189</sup> Mr Roberts' and Ms Morgan's Rebuttal Evidence at [section 4- provision for open space (zoning and precinct plan 2)]

<sup>190</sup> Mr Turbott's Evidence-in-Chief at [8.8 – 8.15]

purchase a site that does not meet its needs or policy, then it can exercise that right to not purchase it.

350. We agree with Mr Roberts and Ms Morgan that the PC 48, through Precinct Plan 2 provides provisions and guidance on how the open space network can support a high quality and successful centre that is well integrated with the Drury Central train station.
351. We note that Precinct Plan 2 – Structuring Elements shows a number of things including:
- Indicative neighbourhood parks;
  - Indicative Civic space;
  - Indicative pocket parks;
  - Indicative riparian margins; and
  - Open Space – Informal recreation.

## **Ecology**

352. The issues which arose in relation to ecological management related to:
- The level of stream loss;
  - Stream not been shown on the precinct plan;
  - The required width for, and protection of riparian planting and
  - The uncertainty over measures to address the provision of the full Drury-Opāheke Structure Plan Blue-Green Network to ensure the restoration of 20m riparian margins.
353. These were all addressed in detail in the evidence of the Applicant,<sup>191</sup> and in the Applicant's Reply Statement<sup>192</sup>.
354. The width of the riparian planting margin was a key point of professional difference between, Mr Statham and Mr Hussain (ACS), Mr Smith for the Council (regulator), and the Applicant's expert Ms Quinn.
355. Mr Statham and Mr Hussain, opined that the riparian planting width requirement should be increased to 20m. Mr Statham's and Mr Hussain's view was supported by Mr Smith who confirmed that the Council as regulator's position was the same as Mr Statham and Mr Hussain. It was Ms Quinn's opinion that 10m was sufficient and appropriate to achieve the necessary biodiversity outcomes in an urban setting.

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<sup>191</sup> Ms Quinn's Evidence-in-Chief at [8.28 – 8.30] and rebuttal evidence at Section 3

<sup>192</sup> Ms Storer's Reply Submissions at [8.2 – 8.12]

356. At the hearing, we discussed the advantages and benefits of various riparian widths at some length. We were faced with two clear propositions:
- Ms Quinn<sup>193</sup> was of satisfied with the 10m wide planted riparian margins noting<sup>194</sup> a width of 10m planting (of appropriate species) will achieve most of the aquatic benefits margins can provide; and
  - Mr Statham's and Mr Hussain's opinion<sup>195</sup>, and that of Mr Smith, was that a 20m planted margin is appropriate for all permanent streams and 10m planted margin for all intermittent streams.
357. There was no disagreement amongst the experts that 'more is better' in relation to the width of riparian planting in terms of ecological outcomes with respect to biodiversity, ecosystem services and terrestrial habitat provision. The disagreement that the Applicant's experts had (including Mr Roberts and Ms Morgan) with the ACS and section 42A position was what actual width of riparian margin should apply in section 32 terms (ie costs and benefits). It was Mr Roberts' and Ms Morgan's opinion, relying on Ms Quinn's evidence, that given that this area was already degraded (from current activities) and it was to become an intensive urban environment, a 10 m planted setback would appropriately contribute to improvements in freshwater sediment quality and biodiversity.
358. We accept there are potential benefits of a wider riparian margin. However, there are also costs to this; most notably the loss of development capacity, but also the increased maintenance costs. The most appropriate width needs to be based on evidence and section 32 of the RMA. Given the contested nature of the expert evidence, and that the ecological experts accepted their differences were one of their own professional view, in the absence of clear and compelling expert evidence to increase the width, we turned to the AUP (OP) provisions.
359. The AUP (OP) in the Metropolitan Centre and Mixed Use zone both specify a 10m riparian yard from the edge of all permanent and intermittent streams. It is our view that we would have needed a clear and compelling case to 'move away' from the AUP (OP) provisions so as to maintain consistency, to the extent possible, across the region.
360. We also agree with Mr D Allan's reply submissions where he stated<sup>196</sup>:

*In contrast to the open space discussion, the advice from Council's reporting ecologist, Jason Smith, identified what he considered to be the most appropriate ecological outcome (a universal 20m margin) but did not take account of other matters relevant to an intensive urban development.*

*Kiwi considers that: you need not impose the same corridor width and response everywhere; corridor widths should fairly reflect a site by site analysis; and that*

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<sup>193</sup> Dr Bramley's Rebuttal Evidence at Section 3

<sup>194</sup> Ms Quin's Evidence-in-Chief at [8.29(c)]

<sup>195</sup> Mr Statham's and Mr Husain's Evidence-in-Chief at [9.12]

<sup>196</sup> Mr D Allan's Legal Submissions at [10.1 and 10.2]

*while “wider the better” approach referred to by Mr Smith may be true in an absolute ecological sense, in this new urban area it is appropriate to aim for a balance between ecology and other matters (e.g.: amenity, convenience, urban design and functionality). Kiwi asks that you implement the recommendations of Justine Quinn.*

361. We also note that the revisions to the proposed provisions, in particular the need for a Riparian Planting Plan<sup>197</sup>, focuses attention on managing development impacts and mitigating them in relation to stream erosion and associated effects on stream health and values.

### **Archaeology and Heritage**

362. Five recorded archaeological sites were identified<sup>198</sup> within the PC 48 area, none of which are scheduled under the AUP (OP).
- R12/755, the house believed to be used as General Cameron’s headquarters during the building of Great South Road and New Zealand Wars (111 Fitzgerald Road);
  - R12/967, the Flanagan Mill on the Hingaia Stream;
  - R12/742, the former Drury Railway Station and Railyard;
  - R12/1122, the Drury Tramway/Mineral Railway; and
  - R12/1125, the Flanagan homestead.
363. The section 42A Report records<sup>199</sup>:
- The Flanagan Homestead at 120 Flanagan Road was assessed to hold “considerable local historical significance”;
  - Retaining the homestead would retain an important connection with the history of this area; and
  - The plan change intends to retain the Homestead within an open space area referred to as Homestead Park. No formal protection or scheduling of the Homestead is proposed, but an assessment criterion encourages its retention (IX.8.2(2)(b)). If necessary, the building could be relocated to an alternative location nearby.
364. In addressing heritage and archaeology, Mr Mead agreed<sup>200</sup> with the recommendations of the Council’s (as regulator) expert Mr Brassey<sup>201</sup>. Mr Brassey recommended that due to his view of the limitations on the archaeological assessment provided by the Applicant, precinct provisions requiring a detailed

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<sup>197</sup> Precinct Provisions IX.9 *Special Information Requirements*

<sup>198</sup> Section 42A Report at [365]

<sup>199</sup> Section 42A report at [367]

<sup>200</sup> Section 42A Report at [381 – 383]

<sup>201</sup> The Application material was reviewed by Mr Brassey and Ms Francesco of Auckland Council.

archaeological assessment prior to any land disturbance, planting or demolition of pre-1900s buildings (in order to give effect to RPS Objectives B5.2.1(1) and (2)) was necessary.

365. Ms Cameron, for the Applicant, addressed Mr Mead's concern; providing an assessment of the four known archaeological sites to be impacted<sup>202</sup>:

- *Site **R12/742, the early 20th century Drury Railway Railyards** should be avoided during future works if possible. If this is not possible an authority issued by Heritage NZ would be required if any modification or destruction of the site occurs. Preservation by record.*
- *Site **R12/1122, the section of the Drury Tramway/Mineral Railway** running through the northwest corner of the PC48 area should be surveyed once the properties containing the estimated alignment become accessible to determine if any subsurface remains are present. Preservation by record.*
- *Site **R12/1125, The Flanagan Homestead**. If future development will affect subsurface archaeological remains on the grounds of the homestead, an archaeological authority issued by Heritage NZ would be required for any modification or destruction of the site. If the building itself were to be demolished an authority would also be required under the Heritage New Zealand Pouhere Taonga Act 2014 ("**HNZPTA**")..*
- *Site **R12/755, General Cameron's Military Headquarters**. A heritage evaluation should be undertaken and based upon the results of the evaluation appropriate management and mitigation measures should be recommended, most likely in the form of avoidance (preservation in situ) or, if this is not possible, relocation."*

366. Ms Cameron recommended<sup>203</sup> that potential adverse effects on archaeology could be managed or mitigated by:

- Carrying out additional survey and assessment at the subdivision consent stage to identify and evaluate any additional archaeological sites and areas of archaeological potential in areas not previously accessible for field survey; and
- Having avoidance (where feasible) or appropriate mitigation measures, including archaeological monitoring in areas of potential and the investigation and recording of affected archaeological sites to recover information relating to the history of Drury.

367. She was of the view that the additional proposed *Special Information Requirement – Archaeological Assessment*, in conjunction with the archaeological provisions of the HNZPTA and the AUP (OP) Accidental Discovery Rule, will ensure that any potential effects on recorded and unrecorded archaeological sites resulting from PC 48 would be appropriately managed and mitigated. We agree.

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<sup>202</sup> Ms Cameron's Evidence-in-Chief at [8.2 – 8.5]

<sup>203</sup> Ibid at [11.2 – 11.3]

368. The Flanagan Homestead attracted considerable comment. Ms Byron, for HNZPT, specifically addressed the Flanagan Homestead at length in her evidence. It was her opinion that the values identified would support scheduling of the Flanagan Homestead and should be pursued<sup>204</sup>. She also stated<sup>205</sup>:

*“Regardless of whether the Flanagan Homestead’s values are formally acknowledged through scheduling, the place is indisputably of heritage significance and a rare survival of the area’s farming history and early European settlement.”*

369. Ms Francesco, Principal Specialist Built Heritage, Auckland Council, had also undertaken a review of the Flanagan Homestead’s values, and in her professional judgement it has overall ‘moderate’ local historic heritage rather than ‘considerable’<sup>206</sup>. While she agreed that it has considerable local value under the historical criterion, she did not consider it met the required overall threshold to be eligible as a category B historic heritage place in the AUP (OP) based on the information currently known. Ms Francesco supported refinements to the precinct provisions to clearly reinforce retaining, repurposing and incorporating the homestead into the proposed Homestead Park<sup>207</sup>.
370. General Cameron’s residence at 111 Fitzgerald Road also attracted comment. The section 42A Report records that Ms Francesco undertook a site visit to 111 Fitzgerald Road and her observations supported the case that the late 1850s residence, said to have been used by General Cameron, was in the location of the current day residence<sup>208</sup>. The residence was partially deconstructed in the 1880s and rebuilt as the existing residence.
371. Ms Francesco considered<sup>209</sup> that effects on built heritage at 111 Fitzgerald Road could be appropriately addressed through the addition of precinct provisions requiring that a detailed heritage evaluation be undertaken in the event of future development works to the residence.
372. Mr Mead adopted Ms Francesco’s recommendations, and recommended that the precinct provisions be refined and amended to ensure built heritage considerations are taken into account for the Flanagan Homestead and 111 Fitzgerald Road<sup>210</sup>.
373. Ms Cameron opined that any potential adverse effects could be managed and mitigated<sup>211</sup>. She recommended additional proposed *Special Information Requirement – Archaeological Assessment*, in conjunction with the archaeological provisions of the HNZPTA and the AUP (OP) Accidental Discovery Rule, will ensure

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<sup>204</sup> Ms Byron’s Evidence-in-Chief at [3.6]

<sup>205</sup> Ibid at [3.7]

<sup>206</sup> Section 42A Report at [375 -376]

<sup>207</sup> Ibid at [378]

<sup>208</sup> Ibid at [379]

<sup>209</sup> Ibid at [380]

<sup>210</sup> Ibid at [383]

<sup>211</sup> Ms Cameron’s Evidence-in-Chief at [11.2]

that any potential effects on recorded and unrecorded archaeological sites resulting from PC 48 will be appropriately managed and mitigated<sup>212</sup>.

374. We visited both the Homestead and General Cameron's house. We accept both residence have local historic heritage value, and note that the Applicant has recognised the value of the Flanagan Homestead by incorporating it into the planned "Homestead" park. We were told that neither the Homestead nor General Cameron's residences meet the criteria for scheduling as a category B historic heritage place. We accept this, and on this basis have not scheduled or recommended that they be scheduled.

375. Mr Roberts and Ms Morgan accepted precinct provisions should address heritage and archaeological, and adopted the recommendation of Ms Cameron for the addition of a 'special information requirement'. They stated<sup>213</sup>:

*"A special information requirement is proposed that requires an application for land modification to be accompanied by an archaeological assessment. The purpose of this assessment is to determine whether an Authority to Modify is required by the Heritage New Zealand Pouhere Taonga Act 2014."*

376. We agree with Mr Roberts and Ms Morgan. We have, accordingly, included a special information requirement - Archaeological assessment in the precinct provisions.

377. Mr Mead also adopted Mr Brassey's recommendation that a requirement for a notable tree assessment is necessary to give effect to RPS Objective B4.5.1(1) Notable trees<sup>214</sup>. A notable tree assessment should be required as part of an earthworks or subdivision application, so that any notable trees can be retained as a condition of subdivision and development consents, and they can be included in AUP Schedule 10 in due course through a future plan change. Mr Turbott supported this recommendation<sup>215</sup>.

378. We do not agree that a precinct provision needs to be provided with respect to notable trees. We are not convinced there are notable trees; agreeing with the Applicant, and as confirmed on our site visit, those surrounding the homestead are not 'notable'; being mostly exotic and relatively young. We acknowledge they add an amenity and character to the Homestead, but they are not notable in the sense of requiring a specific precinct provision.

## **Stormwater**

379. In approving PC 48 we have provided what we consider to be a set of precinct provisions to ensure the appropriate management of stormwater.

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<sup>212</sup> Ibid at [11.3]

<sup>213</sup> Mr Roberts' and Ms Morgan's Evidence-in-Chief at [5.26]

<sup>214</sup> Ibid at [382]

<sup>215</sup> Mr Turbott's Evidence-in-Chief at [17.3]



380. We acknowledge that the issue of stormwater management (quality and quantity) was largely agreed between the Applicant and Healthy Waters (Council) and other submitters after a number of expert conferencing sessions and JWS's which were issued following those sessions. There was one outstanding matter as we understood it.
381. The outstanding issue was that the Healthy Waters experts (Mr Curtis and Ms Vincent) sought that any discharge from all surfaces be subject to meeting the Guidance Document 2017/001 Stormwater Management Devices in the Auckland Region (GD01) requirements. All of the other technical and planning experts (for each of the three Plan changes and Auckland Council as regulator) supported that in some circumstances, alternative devices could be contemplated where that device could be demonstrated that it was designed to achieve an equivalent level of contaminant or sediment removal performance to that of GD01.
382. Ms Vincent's position, in putting questions to her on this matter, was that the standard set out in GD01 was required to ensure the quality of any stormwater discharge from any source, and that contemplating any 'alternative device' would result in a greater level of contamination in the downstream environment. The other technical and planning witnesses disagreed with Ms Vincent, and advised us that alternative devices for lower contaminant generating surfaces could result in the same or better stormwater quality. They were simply seeking a policy/assessment framework that enabled other devices to be contemplated.
383. We agree with the evidence presented by the Applicant's experts (PC 48, 49 and 50) and those of Auckland Council as regulator: that alternative devices could be contemplated for use where that device demonstrated it is designed to achieve an equivalent level of contaminant or sediment removal performance to that of GD01. We think the 'position' taken by Healthy Waters was too rigid, would potentially stifle innovation, denied potentially better outcomes, and was not supported by all of the other experts involved in the expert conferencing.
384. While we accept that most of issues were agreed between the experts, we were not entirely satisfied that the proposed policy was appropriate; and we questioned the experts about this in the re-convened hearing in PC 50<sup>216</sup> as they related to PC 48 (and 49 and 50). The policy 'locked in' "*any approved network discharge consent*".
385. We accept the Council (Healthy Waters) holds a network discharge consent, and that stormwater may be discharged under that consent by other parties with the agreement of Healthy Waters - subject to an agreed stormwater management plan adopted by Healthy Waters. In this way Healthy Waters can ensure any proposed discharge and stormwater management plan is consistent with the network discharge consent it holds.

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<sup>216</sup> Noting that stormwater was addressed in tranche 1 of PC 48 and 49, and the 'door left open' to address any outstanding issues in the later hearings.

386. The issue that we have with the proposed policy in PC 48 is, as mentioned above, that it 'locks in' the network discharge consent (we accept that a supporting stormwater management plan will be required)<sup>217</sup>. We do not think the policy should be 'tied' to a resource consent.
387. As part of the Applicant's Reply, we were provided with a marked up set of precinct provisions. The comment box attached to policy 21 (Stormwater Management) stated:
- "This wording refers to "any approved network discharge consent" and therefore applies to a situation where the stormwater discharge from the development is authorised via the Council's NDC or the Applicant's own discharge consent".*
388. While we understand what the Applicant is trying to do here, we disagree that reference to "any approved network discharge consent" should also be implied to mean "the Applicant's own discharge consent". It is confusing in our view given the Healthy Water's regional network discharge consent.
389. Accordingly, the policy as drafted, in our view, does not provide a reasonable 'consenting pathway' should a developer not seek to discharge via the network discharge consent held by Healthy Waters if Healthy Waters refuses access to it due to (say) not being able to get an agreed stormwater management plan. In this situation, a developer should be able to seek a discharge consent and have that assessed on its merits, along with a supporting stormwater management plan as set out in the policy. In light of this we have imposed, what we consider to be, a more appropriate stormwater policy.

### **Wastewater, water supply and other services (power and communications)**

390. We are satisfied based on the evidence before us that:
- Water supply and wastewater services can be developed on site and integrated with the broader Watercare Services Limited network; and
  - No issues arise in terms of the installation of other services (e.g: power and communications as set out in the tabled statements).
391. With respect to wastewater and water supply Ms Gotelli set out that the Plan Change Area was not currently serviced by Watercare's water supply or wastewater network. She advised that Watercare had constructed a new bulk water supply point adjacent to Watercare's existing Drury Water Pump Station, and that the bulk supply point has sufficient flows and pressure to service the Plan Change area.
392. While there is bulk wastewater infrastructure available to service the initial stages of the Plan Change area, upgrades will be required to service the future stages of this Plan Change area as well as the wider Drury area. This includes upgrades to the

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<sup>217</sup> Noting similar issues were raised in PCs 49 – 50 and PCs 51 and 61 that this Hearing Panel heard

series of wastewater pump stations and the network that conveys wastewater to the Mangere Wastewater Treatment Plant for treatment and disposal.

393. Ms Gotelli advised that all other water and wastewater infrastructure required to serve the development is “local infrastructure” (i.e. within the Plan Change area) and will be constructed and funded by the Applicant in order to facilitate connections to Watercare’s network.
394. We note that Watercare Services Limited indicated that it sought greater clarity regarding access (vehicular) to its existing facility for maintenance (163 Flanagan Road), and it has raised the possibility of reverse sensitivity issues arising. We understand this concern. However, in response to this Mr D Allan stated in his Reply Submissions:<sup>218</sup>

*“PC 48 does not need to be amended in this regard. If future development involves the closure of relevant parts of the existing road network, that will be publicly notified and Watercare will have a right to submit”.*

### Civil Engineering

395. We are satisfied based on the evidence before us that the site is suitable geotechnically and topographically for intensification in accordance with the PC 48 provisions.

### Notification

396. The Applicant sought that a number of listed activities not be subject to the standard notification ‘tests’ set out in the RMA; and that these activities be processed on a non-notified basis and without obtaining the written approval of affected persons<sup>219</sup>. Mr Roberts and Ms Morgan supported this position. It was their opinions that the broad effects of the proposed activities and built form enabled within the Drury Centre precinct had been thoroughly considered through PC 48.
397. They opined that<sup>220</sup>:

*“Provided that future activities comply with the provisions of the AUP, in our view, it would be inefficient to enable notification and re-examination of those same issues. Based on our experience, this results in additional costs associated with preparing applications and significant inefficiencies in many cases.*

*Based on our experience, we consider that consent requirements for earthworks (AUP Chapter E11 and E12) are matters that can be addressed on a technical basis using on-site mitigation options. Subject to appropriate (usually industry standard) mitigation, these matters are very unlikely to result in more minor effects on the wider environment or on affected parties. We therefore consider*

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<sup>218</sup> Mr D Allan’s Reply Submissions at [6.3]

<sup>219</sup> This includes new buildings, and alterations and additions not otherwise provided for, that are restricted discretionary activities in the Drury Centre precinct, applications to infringe daylight and outdoor living space controls, and earthworks that are a restricted discretionary activity.

<sup>220</sup> Mr Roberts’ and Ms Morgan’s Evidence-in-Chief at [19.3 and 19.4]

*that specified non-notification for restricted discretionary consents in relation to Tables E11.4.1, E11.4.2, E12.4.1 and E11.12.6.2 is a more efficient and effective method to achieve the relevant objectives”.*

398. The Council (as submitter), Waka Kotahi, AT and Drury South Limited did not agree with the notification provisions as proposed and sought that they be deleted. We agree with those submitters and with the legal submissions and evidence (planning) presented to us.
399. In summary, and relying on the submitters' evidence, it is our view the standard notification tests should apply. The activities listed in the activity table can have a range of effects, some potentially significant on third parties. With respect to earthworks, this can alter the flood carrying capacity of the area and significantly impact on upstream or downstream properties.
400. While the effects of some activities will be less than minor, this will not always be the case. The normal tests for notification under the RMA will enable Auckland Council to determine whether an activity's adverse effects on the wider environment or a person are minor or more than minor such that public or limited notification is justified in the circumstances. Overall, it is our view it would be inappropriate and contrary to the RMA's purpose to predetermine that those activities listed are always unlikely to result in more than minor effects on the wider environment or on any affected parties.

#### **Matters raised by adjacent landowners**

401. Three submitters requested extensions to the PC 48 boundary to include land on the edge of the Drury Centre precinct. This included land on the southern side of Brookfield Road, the land bounded by Fitzgerald Road, Quarry Road and Brookfield Road, and 1A East Street Papakura.
402. We note that the PC 48 boundary generally follows the boundaries adopted in the Drury Centre Masterplan. Those boundaries were extended to the nearest roads and were designed to integrate across PC 48, PC 49 and PC 50.
403. As set out by Mr Mead in the section 42A report<sup>221</sup>, a submission must be within the scope of a Plan Change to be considered. That is - the submission must address the Plan Change itself. We agree with Mr Mead and the Applicant that these submissions are not 'on the Plan Change'; being located outside of the Plan Change area. Accordingly, we find that these submissions are outside the scope of the Plan Change.

#### **Positive Outcomes**

404. We have addressed the detail of PC 48 above and find a number of positive effects will flow from approving it. These include, but are not limited to a Metropolitan Centre, consistent with the DOSP, that will provide substantial business, employment, community facilities and residential development and will serve the large emerging

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<sup>221</sup> Paragraphs 424-425

residential and business activity in the Drury area and integrating with the proposed surrounding development in Drury West and South and the existing and new development in Papakura.

405. We also note that PC 48 will generate substantial economic activity and employment (in terms of construction) that could be of some importance as the country deals with the economic impacts of COVID 19.

## **SUBMISSIONS AND FURTHER SUBMISSIONS**

406. 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.
407. We have set out our reasons above why we have approved PC 48 and the amendments we have made to it so it satisfies the purpose of the RMA.

### **Decisions on Submissions**

#### **Submissions supporting PC 48**

<b>Sub. No.</b>	<b>Name of Submitter</b>	<b>Summary of the Relief Sought by the Submitter</b>
1.1	Dannielle Haerewa	Approve the plan change
6.1	Michael and Rachel Gilmore	Approve the plan change
12.1	Oyster Capital	Approve the plan change
13.1	Rodney Bremner	Approve the plan change
14.1	Tony Chien	Approve the plan change
16.1	Fulton Hogan Land Development Ltd	Approve the plan change
18.1	Fletcher Residential Limited	Approve the plan change
26.1	Karaka and Drury Limited	Approve plan change

### **Decision**

408. The support of these submissions is noted. We have approved the Plan Change, but have made a number of changes to the precinct provisions based on the evidence before us (including the JWS's) with many of those changes being offered and or agreed by the Applicant.
409. On the basis we have approved the Plan Change we **accept** the supporting submissions.

## Submissions on Plan Change Boundary

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
4.1	Jack Philip Burton	Extend plan change to cover land on southern side of Brookfield Road, and rezone this land to Business Mixed Use Zone
7.1	Geoff Yu and Rebecca Mao	Include the area generally bounded by Fitzgerald Road, Quarry Road and Brookfield Road within the plan change, and rezone to Residential Urban (with terrace housing / high density residential along Brookfield Road and Fitzgerald Road)
8.1	Phil Hogan	Include the property at 1A East Street Drury, currently zoned Future Urban Zone, in the plan change with a zoning of Business - Local Centre Zone to match that of the land adjoining at 200 - 212 Great South Road.
22.25	Auckland Council	Delete parts of sub-precinct D and the outer precinct boundary that that apply west and on top of the railway.
24.5	KiwiRail Holdings Ltd	Amend IX.1 Precinct Description by deleting fourth bullet point relating to sub-precinct D as follows: <del>• Sub-Precinct D is zoned Business — Metropolitan Centre Zone and provides for the establishment of the Drury East Train Station and associated Park-and-Ride and transport interchange. A public plaza is provided for that will integrate the train station with the centre and will provide a high quality pedestrian experience.</del>
27.44	Auckland Transport	Remove Sub-Precinct D from the plan change area and delete provisions in IX.1 Precinct description relating to Sub-Precinct D as follows: <del>and provides for the establishment of the Drury Central Train Station and associated Park-and-Ride and transport interchange. A public plaza is provided for that will integrate the train station with the centre and will provide a high quality pedestrian experience.</del>

## Decisions

410. We have addressed these matters in the decision above. Given this we have **rejected** the submissions Jack Philip Burton, Geoff Yu and Rebecca Mao and Phil Hogan. To the extent that Precinct D has been deleted we **accept in the part** the submissions from ACS and AT.

## Submissions on Ecological Matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
15.1	Kiwi Property	Amend policy 19 as follows: In addition to the matters in Policy E.3.3(13) <u>(a) provide for stream works, including culverting, diversion and/or reclamation, required to construct the Drury Boulevard, where it can be demonstrated that there is no practicable alternative, and where there is a functional need to construct it in the location generally shown on Precinct Plan 1.</u> <u>(b) enable the planted riparian margins of identified streams to contribute to offsetting the effects of any stream works assessed under Policy (19)(a).</u>
15.2	Kiwi Property	Amend IX.4.1 Activity table to add a new discretionary activity (A21) for "Stream works including reclamation and diversion within Stream A

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		<u>required to construct the Drury Boulevard as shown on Precinct Plan X which complies with new standard IX6.9, and which are not provided for as a permitted activity under Chapter E3."</u>
15.3	Kiwi Property	<p>Add new standard IX6.9 Stream works for the Drury Boulevard as follows:  <u>IX6.9 Stream works for the Drury Boulevard</u>  <u>Purpose:</u></p> <ul style="list-style-type: none"> <li>• <u>To provide for a limited extent of stream works to construct the Drury Boulevard to be assessed as a discretionary activity.</u></li> <li>• <u>Where offsetting is determined to be appropriate in accordance with the effects management hierarchy and Policy E3.3(4), enable the planted riparian margins of identified streams to contribute towards it.</u></li> </ul> <p><u>(1) The extent of stream works to achieve the construction of Drury Boulevard shall be limited to diversion of Stream A or 60m of reclamation along Stream A as identified on IX10.4 Precinct Plan 4.</u>  <u>(2) For the purpose of calculating the offset required for stream works provided for under IX7.1(1) the SEV and ECR methods will be used.</u>  <u>(3) The area of riparian planting identified on IX10.4 Precinct Plan 4 will count towards the offset required under IX7.1(2).</u></p>
21.6	Ngāti Te Ata Waiohū	Apply a minimum of 20 metre riparian margin for all waterways, especially those to contain walkways / cycleways
21.10	Ngāti Te Ata Waiohū	Use native trees and plants only within the precinct
22.2	Auckland Council	Include more policies and rules to give full effect to the direction in the NPS-FM, including but not limited to Te mana o te wai.
22.7	Auckland Council	Delete policy IX.3 (19).
22.10	Auckland Council	Retain and amend IX.6.4(1) by including a cross reference to the matters in Appendix 15.6(3)(b-f) and (4) of the Auckland Unitary Plan.
22.11	Auckland Council	<p>Replace standard IX.6.4(2) with a new standard and consequential amendments to effect that the riparian yards set for buildings in tables H13.6.5.1 Yards and H9.6.6.1 Yards read as follows:  <u>"Riparian - 20m from the edge of all permanent streams and 10m from the edge of all intermittent streams"</u>  Other yards in these tables are not amended</p>
22.12	Auckland Council	<p>Add the following matters of discretion to IX.8.1(7):  <u>...(b) Effects on floodplain management taking into account maximum probable development, climate change and the roughness coefficient of existing and planned planting.</u>  <u>(c) Effects on stream bank stability taking into account the cohesiveness of the soil and steepness of the bank angle.</u>  <u>(d) Effects on the ability to provide for any proposed paths, cycleways, infrastructure and facilities outside the 10m wide strip of riparian planting.</u>  Add related assessment criteria at IX.8.2(6).</p>
22.13	Auckland Council	Include indicative permanent and intermittent streams and wetlands on the precinct plan.
22.14	Auckland Council	Include the indicative blue-green corridor within the precinct plan based on the urban concept in the Urban Design Assessment.
22.15	Auckland Council	Retain policy IX.3(18).
22.16	Auckland Council	<p>Amend policy IX.3(20) and add a new policy as follows, together with any other amendments that may be required to give effect to these matters:  (20) <del>Support</del> <u>Ensure improvements to water quality, and habitat and</u></p>



Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		<p><u>biodiversity</u>, including by providing planting on the riparian margins of permanent and intermittent streams.</p> <p>(x) Enable a network of open space, riparian corridors and park edge roads that provides for:</p> <ul style="list-style-type: none"> <li>• <u>potential ecological corridors along streams between Te-Manukanuka-O-Hoturoa (Manukau Harbour) and the Hunua;</u></li> <li>• <u>improvement of freshwater and coastal water systems; and</u></li> <li>• <u>a safe and attractive walking and cycling network.</u></li> </ul>
33.5	Kāinga Ora	Retain Objective (7) as notified.
35.6	Ngāti Tamaoho	Apply a minimum of 20-meter riparian margin for all waterways especially those to contain walkways / cycleways
35.10	Ngāti Tamaoho	Use native trees and plants only within the precinct

### Decisions

411. We have addressed these matters in the decision above.
412. In approving PC 48 we have provided a set of precinct provisions that we think appropriately address all of the relevant ecological matters.
413. We are satisfied that, based on the issues and evidence before us, the matters relating to ecological matters have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address ecological matters, and **reject** those submissions which sought changes to the ecological provisions which we have not made.

### **Submissions on Economic Matters**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
11.1	Papakura Business Association	Reject the plan change, or alternatively place a lower order zoning on the land identified as Metropolitan Centre to appropriately limit the scope of development within the plan change area.
22.23	Auckland Council	Review the full extent and type of centre zoning to be applied to the Drury Centre taking into account the total business capacity available in all proposed and existing centres and business zones and the expected population demand for this capacity.
22.27	Auckland Council	Delete the non-complying status of department stores in sub-precincts C and E and replace with discretionary status.
25.1	Pukekohe Business Association	Ensure there is a catchment to serve the Metropolitan Centre before progressing; stage the centre development as required by residential growth.
25.2	Pukekohe Business Association	Reconsider whether the size and scope of the Metropolitan Centre is necessary
25.3	Pukekohe Business Association	Do not delay development and business live zoning at Pukekohe due to this plan change, and do not prioritise Drury East based on BMC zone classification

## Decisions

414. We have addressed these matters in the decision above.
415. We are satisfied that, based on the issues and evidence before us, the matters relating to economic matters have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address economic matters, and **reject** those submissions which sought changes to the precinct zonings or provisions which we have not made.

## **Submissions on Landscape Matters**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
21.5	Ngāti Te Ata Waiohua	Account for natural and cultural landscaping in the project design, identify and preserve landscapes including view shafts, hilltops, tuff rings and ridge lines
21.9	Ngāti Te Ata Waiohua	Confirm park edge design adjacent to all waterways
21.11	Ngāti Te Ata Waiohua	Protect ridgelines, hilltops and wetlands
35.5	Ngāti Tamaoho	Account for natural and cultural landscaping in the project design, identify and preserve landscapes including view shafts, hilltops, tuff rings and ridge lines
35.9	Ngāti Tamaoho	Confirm park edge design adjacent to all waterways

## Decisions

416. We have addressed these matters in the decision above.
417. In approving PC 48 we have provided a set of precinct provisions that, in our view, appropriately address the relevant landscape effects raised by PC 48.
418. We are satisfied that, based on the issues and evidence before us, the matters relating to landscape have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address landscape matters, and **reject** those submissions which sought changes to the precinct provisions which we have not made.

## **Submissions on Archaeological Matters**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
31.1	HNZPT	Undertake a fulsome archaeological assessment prior to the plan change occurring, or if effects on archaeology are to be dealt with during resource consenting or subdivision process, include conditions to this effect.
31.6	HNZPT	If general requirement for archaeological assessment prior to subdivision is not included within precinct provisions, include a provision to this effect in relation to the area surrounding General Cameron's House

31.7	HNZPT	Include within precinct provisions a record of intention for a further archaeological survey of the recorded Drury Tramway/Mineral Railway R12/1122, and if feasible, include some form of reference to the tramway/mineral railway in the future development
31.8	HNZPT	Include within precinct provisions a requirement for archaeological assessment of the riparian boundaries to inform plans, including planting
31.10	HNZPT	Include provisions to provide a buffer zone to the reported site of a mill associated with the Flanagan family (R12/967) and for any works in the reserve to avoid this area

### Decisions

419. We have addressed these matters in the decision above.
420. In approving PC 48 we have provided a set of precinct provisions that, in our view, appropriately address the relevant archaeological effects raised by PC 48.
421. We are satisfied that, based on the issues and evidence before us, the matters relating to archaeology have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address archaeological matters, and **reject** those submissions which sought changes to the precinct provisions which we have not made.

### **Submissions on Heritage Matters**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
22.33	Auckland Council	Provide a notable tree assessment and schedule any notable trees identified in that assessment.
31.2	HNZPT	Retain and re-use Flanagan Homestead R12/1125 in situ on its original site, with the park including an appropriate extent of its setting (including plants and trees with historical association to the homestead)
31.3	HNZPT	Include Flanagan Homestead within Schedule 14.1 Schedule of Historic Heritage as a Category B Historic Heritage place. Alternatively, include provisions in the precinct which more accurately reflect the location of the homestead and its extent with suitable objectives, policies and rules for its ongoing protection.
31.4	HNZPT	Amend IX.8.2(2)(c) to include any non-indigenous trees identified as having specific historic heritage association and values in relation to Flanagan Homestead.
31.5	HNZPT	Include a condition in the precinct provisions that a heritage evaluation be undertaken if General Cameron's House R12/755 is to be affected by future development
31.12	HNZPT	Explore the potential of commissioning a heritage interpretation plan for the wider Drury area subject to the four jointly notified plan changes

### Decisions

422. We have addressed these matters in the decision above.

423. In approving PC 48 we have provided a set of precinct provisions that, in our view, appropriately address the relevant heritage issues raised by PC 48.
424. We are satisfied that, based on the issues and evidence before us, the matters relating to heritage have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address heritage matters, and **reject** those submissions which sought changes to the precinct provisions which we have not made.

### Submissions on Cultural Matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
21.1	Ngāti Te Ata Waiohua	Confirm ongoing iwi participation, consultation and engagement in the project
21.2	Ngāti Te Ata Waiohua	Acknowledge within the project design the history of Mana Whenua in the PC48 area
21.3	Ngāti Te Ata Waiohua	Incorporate Te Aranga Principles in design concepts
21.4	Ngāti Te Ata Waiohua	Confirm iwi monitoring of the project
22.31	Auckland Council	Include provisions that require mana whenua culture and traditions to be explicitly incorporated into the new development taking into account the recommendations in the cultural values assessments. This could include but is not limited to actively working with mana whenua on relevant and appropriate design principles and options.
22.32	Auckland Council	Enable and provide for accessible and affordable social housing for Māori.
31.11	HNZPT	Include appropriate conditions in the precinct provisions to address any Maori cultural values that may have been identified or as requested by iwi
33.3	Kāinga Ora	Retain Objective (3) subject to clarification and amendment around the phrase '...respects Mana Whenua values', and whether a Cultural Values Assessment would be required for all applications within the precinct.
35.1	Ngāti Tamaoho	Confirm ongoing iwi participation, consultation and engagement in the project
35.2	Ngāti Tamaoho	Acknowledge within the project design the history of Mana Whenua in the PC48 area
35.3	Ngāti Tamaoho	Incorporate Te Aranga Principles in design concepts
35.4	Ngāti Tamaoho	Confirm iwi monitoring of the project

### Decisions

425. We have addressed these matters in the decision above.
426. In approving PC 48 we have provided a set of precinct provisions that, in our view, appropriately address the relevant cultural issues raised by PC 48.

427. We are satisfied that, based on the issues and evidence before us, the matters relating to cultural issues have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address cultural matters, and **reject** those submissions which sought changes to the precinct provisions which we have not made.

### Submissions on Urban Form and Design Matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
15.6	Kiwi Property	Amend building height limits on Precinct Plan 1 within sub-precincts as follows: Sub-precinct E - 40.5m (was 32.5m) Sub-precinct C - 32.5m (was 25m) Sub-precinct F - 26m (was 18m)
20.1	The Ministry of Housing and Urban Development	Revise the plan change to be consistent with the requirements of the NPS-UD including the intensification policies and removal of minimum car parking rates, and the investigation of a six storey height in the THAB zone within the walkable catchment of Drury East rail station
22.22	Auckland Council	Add a policy and standards to provide for increased density near RTN stations including: a. A policy to the effect of: <u>Ensure a built form and walkable environment that will provide for a high density of people living, working or visiting within an extended walkable radius of a rapid transit network station.</u> b. Building height standards enabling at least the Metropolitan Centre equivalent 22-23 storey building height in all zones within a short walkable radius of the RTN train station, and 7-8 storey building height within an extended walkable radius of the proposed RTN station; c. In areas of more than 7-8 storeys, providing tower dimension and spacing, wind, and building set back at upper floors standards if they do not exist in the underlying zone; d. Any alterations to other building standards to respond to increased building height; e. An information standard for subdivision, building and road resource consents requiring information to demonstrate how the development will contribute to implementing the above density policy and provide for a safe and attractive walkable environment.
22.29	Auckland Council	Retain standards IX.6.7 Daylight and IX.6.8 Outdoor Living Space for the Business – Mixed Use Zone.
22.30	Auckland Council	Include amendments to standard H13.6.9(4) (Business – Mixed Use Zone Outlook Space) to the effect that the depth is measured from the external wall of the building where the window to which it applies is inset from the wall within an inset balcony.
23.3	NZTA	Ensure the plan change reflects the final location of the train station and achieves Objective 1 by providing a transit-orientated development that supports high density residential, employment-generating and retail activities close to rapid transit and prioritises public and active modes of transport to and within the centre.
23.8	NZTA	Amend IX.2 Objective 1 as follows: (1) Drury Centre is a transit-orientated development that supports high density residential, employment-generating and retail activities <del>close to</del> <u>within walking distance of</u> rapid transit and prioritises public and active modes of transport to and within the centre.

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
23.10	NZTA	Amend IX.3 Policy 2 as follows: (2) Recognise that sub-precinct B will be the <del>primary</del> <u>only</u> location for large format retail activities.
23.11	NZTA	Retain IX.3 Policy 1 as notified
23.12	NZTA	Retain IX.3 Policy 3 as notified
23.13	NZTA	Retain IX.3 Policy 9 as notified
23.14	NZTA	Amend IX.3 Policy 4 as follows: (4) Provide for attractively designed, safe and direct access to the Drury Central train station, with a particular focus on pedestrians and cyclists <u>at the same time as land use development.</u>
23.15	NZTA	Retain IX.3 Policy 5 as notified
23.16	NZTA	Retain IX.3 Policy 6 as notified
23.17	NZTA	Retain IX.3 Policy 7 as notified
23.22	NZTA	Amend the activity tables in IX.4.1 to make large format retail a non-complying activity in all sub-precincts except sub-precinct B.
27.61	Auckland Transport	Add key retail frontage provisions to the AUPOP map notations within the precinct area, and allow them to float with the indicative roads which may be located differently upon development.
27.62	Auckland Transport	Amend Rule IX.4.1 (A10) as follows: Sub-Precinct C and E – Mixed Use (A10) <u>Large Format Retail</u> <del>Department Stores</del> – NC
33.4	Kāinga Ora	Amend Objective (4) as follows: "Drury Centre is <del>an street-based</del> environment that provides a high-quality pedestrian <u>experience throughout the street network,</u> with a particular emphasis on the Key Retail Street."
33.6	Kāinga Ora	Amend Policy (3) as follows: "(3) Provide for high density residential and supporting intensive employment activities compatible with residential amenity values in Sub-Precinct C, E and F <u>without undermining the role that recognise the primacy of Sub-Precinct A as the core centre. Provide for a greater range of intensive employment activities and greater heights in Sub-Precinct E responding to its close proximity to rapid transport, while recognising the primacy of Sub-Precinct A as the core centre.</u> " (4) Provide for a greater range of intensive employment activities and greater heights in Sub-Precinct E responding to its close proximity to rapid transport, while recognising the primacy of Sub-Precinct A as the <u>core centre.</u>

### Decisions

428. We have addressed these matters in the decision above.
429. In approving PC 48 we have provided a set of precinct provisions that, in our view, appropriately address the relevant urban form and design effects raised by PC 48.
430. We are satisfied that, based on the issues and evidence before us, the matters relating to urban form and design effects have been appropriately addressed. On this

basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address urban form and design effects matters, and **reject** those submissions which sought changes to the precinct provisions which we have not made.

### Submissions on Open Space Matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
20.2	The Ministry of Housing and Urban Development	Enable further open space through zoning (primarily refers to the PC49 area)
22.17	Auckland Council	Amend policy IX.3(14) to read as follows: (14) In addition to matters (a)-(c) of Policy E38.3.18, ensure that the location and design of publicly accessible open spaces contributes to a sense of place for the Drury Centre, including by: (a) incorporating distinctive site features; (b) reinforcing legibility within the centre; <del>and</del> (c) integrating with the stream network; <u>and</u> (d) <u>if Auckland Council ownership is proposed, the open spaces must be consistent with the council's open space and parks acquisition and provision policies.</u>
22.18	Auckland Council	Reduce the open space zoning along Hingaia Stream to a 20m wide strip adjoining the stream.
22.19	Auckland Council	Include indicative open spaces in the precinct plan as shown in Attachment 1 to the submission.
29.7	Ministry of Education	Amend plan change to ensure there is provision of appropriate public open space to support the surrounding community.
30.1	Leith McFadden	Zone areas for parks and public space
31.9	HNZPT	Extend the open space zoning slightly to the east in the northern part of the precinct where the Mixed Use zoning is closest to the Hingaia Stream
33.1	Kāinga Ora	Approve the plan change, subject to: •Identifying local open space areas within the Precinct and strengthening precinct provisions to provide an integrated and connected open space network;

### Decisions

431. We have addressed these matters in the decision above.
432. In approving PC 48 we have provided a set of precinct provisions that, in our view, appropriately address the relevant open-space issues raised by PC 48.
433. We are satisfied that, based on the issues and evidence before us, the matters relating to open space issues have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address open space issues, and **reject** those submissions which sought changes to the precinct zoning and provisions which we have not made.



## Submissions on Traffic and Transport Matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
22.28	Auckland Council	Review the need for IX.6.5 if a notice of requirement has been lodged for the upgrade of Waihoehoe Road.
23.2	NZTA	Amend the whole Plan Change (including Precinct Plans) to replace references to 'pedestrians and cyclists' with 'active transport' (as defined within the National Policy Statement on Urban Development 2020).
23.9	NZTA	Amend IX.2 Objective 3 as follows: (3) Development of the Drury Centre creates a distinctive sense of place through delivery of high density activities and a mix of uses, including by incorporating distinctive natural and built site features, responding to landform and respecting Mana Whenua values.
23.20	NZTA	Retain Activity IX.4.1 (A1) as notified.
23.24	NZTA	Retain IX.6 Standard (2)(b) as notified on the basis that transport, traffic or trip-generation provisions are retained in the precinct and that no permitted activities are enabled.
23.33	NZTA	Amend IX.8.1 Matters of discretion (1) as follows: (1) Development of public and private roads: (a).... (d)... <u>(e) the outcome of engagement with the relevant road controlling authority.</u>
23.34	NZTA	Amend IX.8.1 Matters of discretion (5) as follows: (5) Development or subdivision that does not comply with Standard IX.6.2 Staging of Development with Transport Upgrades but complies with Standard IX.6.3 Trip Generation Limit: (a).... <u>(d) the outcome of engagement with the relevant road controlling authority.</u> <u>(e) the utilisation of the development potential of the site (including its mix of uses) and its correlation with the public transport accessibility of the site.</u>
23.35	NZTA	Amend IX.8.2(1) Assessment criteria as follows: 1) Development of public and private roads: Location of roads (a) ... (e)(iii) Development in Sub-Precincts C and E provides for a direct and legible connection to the Drury Central train station via Drury Boulevard and any connecting local or collector roads and/or open spaces. <u>Road Controlling Authority</u> <u>(f) how the outcome of engagement with the relevant road controlling authority has been responded to.</u>
23.36	NZTA	Amend assessment criteria IX.8.2(5) as follows: (5) Development or subdivision that does not comply with IX.6.1 Staging of Development with Transport Upgrades but complies with IX.6.2 Trip Generation Limit: (a)... (d)... <u>(e) how the outcome of engagement with the relevant road controlling authority has been responded to.</u>
27.4	Auckland Transport	Amend Objective IX.2(5) as follows: (5) <u>A transport network that facilitates the safe and efficient movement of people, goods and services and manages effects on the safe and efficient operation of the surrounding and wider transport network.</u>

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
27.10	Auckland Transport	Delete Standard IX.6 (2)(b) as follows: (2) The following zone standards do not apply to activities listed in Activity Table IX.4.1 above: (a) H9.6.1 Building Height (b) E27.6.1 Trip generation
27.19	Auckland Transport	Delete all reference to 'Access A' under Standards IX.6.2 and IX.6.3. Remove 'Access A' from Precinct Plan 2 and Precinct Plan 3.
27.20	Auckland Transport	Amend the precinct provisions to better address the following related matters: <ul style="list-style-type: none"> <li>• Define the key transit-oriented development principles, characteristics and outcomes as they apply to the plan change area.</li> <li>• Ensure there is consistency through the suite of precinct provisions in regard to giving effect to the transit- oriented development related outcomes.</li> <li>• Applying appropriate mechanisms in the precinct provisions to support transit-oriented development related outcomes e.g. managing the provision of parking as part of the wider suite of travel demand management measures that are applied to transit- oriented development scenarios.</li> </ul>
27.21	Auckland Transport	Provide further assessment of the impacts of the proposal on accessibility to and from the Drury Central rail station for all modes including public transport and pedestrian access, focusing on safety, permeability and connectivity to and from the station.
27.24	Auckland Transport	Amend the Precinct Description as follows: There are five Sub-precincts in the Drury Centre Precinct: <ul style="list-style-type: none"> <li>• Sub-precinct A is zoned Business - Metropolitan Centre Zone and contains the primary retail area, <u>Key Retail Main Street</u> and civic and green open spaces. The sub-precinct is the focal point for intensive retail, commercial and civic development, <u>with safe and convenient active transport access to and from the Drury Central rail station being enabled and prioritised and pedestrian activity;</u></li> <li>• Sub-precinct B is zoned Business – Metropolitan Centre Zone and is intended to be the primary location for large format retail, while also providing for other commercial and residential activities allowed in the zone. Development in this sub-precinct should ensure that a quality street environment is achieved <u>with the provision of safe and convenient active transport access to and from the Drury Central rail station being enabled and prioritised;</u></li> <li>...</li> <li>• Sub-precinct E is zoned Business – Mixed Use Zone and provides for high density residential and a range of commercial activities that will complement the core centre and maximise the efficient use of land close to the rapid transport network. Eight to ten storey buildings are enabled, and flexible ground floor designs are encouraged in the sub-precinct <u>with the provision of safe and convenient active transport access to and from the rail station being enable and prioritised</u>, reflecting its close proximity to the Drury Central <del>train</del> rail station;</li> </ul>
27.25	Auckland Transport	Amend Objective IX.2(1) as follows: (1) Drury Centre is a transit-orientated development <u>which consists of that supports</u> high density residential, employment-generating and retail activities close to rapid transit and prioritises public and active modes of transport to and within the centre.
27.26	Auckland Transport	Amend Objective IX.2(4) as follows: (4) Drury Centre is <u>a walkable centre, with</u> a street-based environment that provides a high <u>standard of pedestrian amenity, safety and convenience</u> <del>quality pedestrian experience</del> , with a particular emphasis on the Key Retail Street.

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
27.27	Auckland Transport	Add a new objective to IX.2 as follows: <u>(x) The Drury Centre precinct develops and functions in a way which promotes:</u> • <u>travel mode shifts to public and active modes of transport; and</u> • <u>a well-connected and legible network of pedestrian and cycling linkages throughout and connecting the precinct to the Drury Central rail station.</u>
27.28	Auckland Transport	Amend Policy IX.3(4) as follows: (4) Provide for attractively designed, safe and direct access to <u>and from the Drury Central train rail station</u> , with <u>the provision of active transport access being prioritised</u> <del>a particular focus on pedestrians and cyclists.</del>
27.29	Auckland Transport	Amend Policy IX.3(7) as follows: (7) Require streets to be attractively designed to appropriately provide for all modes of transport by: a) providing a high standard of <u>pedestrian amenity, safety and convenience</u> <del>for pedestrians in areas where high volumes of pedestrians are expected;</del> and b) providing for safe separated access for cyclists on arterial and collector roads that link key destinations; <del>and</del> c) providing a level of landscaping that is appropriate for the function of the street; <u>and</u> d) providing for the safe and efficient movement of <u>public transport and private vehicles.</u>
27.31	Auckland Transport	Add a new rule to IX.4.1 Activity Table as follows: <u>Long-term non-accessory parking facilities - NC</u>
27.32	Auckland Transport	Add a new policy as follows: <u>(x) Recognise and provide for Drury Boulevard as the primary multi-modal access between the Precinct and the Drury Central train station.</u>
27.33	Auckland Transport	Add a new policy as follows: <u>(x) Require the closure of the northern end of Flanagan Road to provide for the Waihoehoe Road rail bridge replacement, while ensuring safe and efficient access to the Precinct.</u>
27.34	Auckland Transport	Add the following transport upgrade requirement into Tables IX.6.2.1 and IX.6.3.1 as a prerequisite for any development and/or subdivision: • <u>Construction of the northern end of Drury Boulevard as the primary multi-modal station access</u>
27.35	Auckland Transport	Add the following transport upgrade requirement into Tables IX.6.2.1 and IX.6.3.1 to provide for the Waihoehoe Road rail bridge replacement: • <u>Closure of the northern end of Flanagan Road.</u>
27.36	Auckland Transport	Amend Matter of discretion IX.8.1 (1)(c) and add a new clause as follows: (c) Location and design, <u>and sequencing</u> of connections to the Drury Central <del>train</del> rail station, <u>in particular the provision of the northern end of Drury Boulevard;</u> <u>(x) Closure of the northern end of Flanagan Road.</u>
27.37	Auckland Transport	Add two new assessment criteria under IX.8.2(1) as follows: <u>(x) Whether the northern end of Drury Boulevard is proposed as the primary multi-modal station access concurrently with the Drury Central rail station;</u> <u>and</u> <u>(x) Whether the closure of the northern end of Flanagan Road is provided for the Waihoehoe Road rail bridge replacement, while ensuring safe and efficient access to the Precinct.</u>

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
27.38	Auckland Transport	Amend IX.10.2 Precinct Plan 2 as follows: <ul style="list-style-type: none"> <li>• Include a notation for the northern end of Drury Boulevard as “primary multi-modal station access road”; and</li> <li>• Include a notation to close the northern end of Flanagan Road to provide for the Waihoehoe Road rail bridge replacement.</li> </ul>
27.39	Auckland Transport	Add new policy as follows: <u>(x) Recognise and protect the route for Waihoehoe Road as a multi-modal arterial which provides for the east-west movements between Great South Road and Drury Hills Road intersection.</u>
27.40	Auckland Transport	Add new policy as follows: <u>(x) Restrict direct vehicle access onto Waihoehoe Road to support the safe and efficient operation of the transport network for walking, cycling and public transport.</u>
27.41	Auckland Transport	Amend the building line restrictions in Standard IX.6.5 to reflect the final alignment and width required and ensure any yard requirements that apply are considered in addition to the building setbacks. The need for IX.6.5 should be reviewed if a notice of requirement is lodged for the upgrade of Waihoehoe Road.
27.42	Auckland Transport	Retain the vehicle access restriction on Waihoehoe Road as per Rule E27.6.4.1 (3)(c) of the AUPOP.
27.43	Auckland Transport	Amend IX.10.2 Precinct Plan 2 as follows: <ul style="list-style-type: none"> <li>• Delete the notation of the future rail station; and</li> <li>• Delete the notation of Station Plaza.</li> </ul>
27.45	Auckland Transport	Amend Assessment Criteria IX.8.2 (2)(a) and delete IX.8.2 (2)(d) and (e) as follows: Whether Homestead Park <del>and Station Plaza are</del> <u>is</u> provided in <u>a</u> locations generally consistent with their indicative locations shown on IX.10.2 Drury Centre Precinct Plan 2 and <del>have</del> <u>has</u> adequate street frontage to ensure the open spaces are visually prominent and safe; ... <del>(d) Whether Station Plaza is designed as an open space which will act as a major entrance way to Drury Centre, integrating the train station with the Drury Centre;</del> <del>(e) Whether any buildings or kiosks which locate in the Station Plaza are designed to ensure they do not compromise or dominate the use of the space for public recreational use.</del>
27.46	Auckland Transport	Delete Assessment Criteria IX.8.2 (3)(j) to (m).
27.47	Auckland Transport	Retain Policy IX.3(5)
27.48	Auckland Transport	Amend Policy IX.3(6) as follows: (6) Ensure that development <u>and subdivision</u> provides a local road network that achieves a highly connected street layout and integrates with the collector road network within the precinct, and the surrounding transport network, and supports the safety and amenity of the open space and stream network.

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
27.49	Auckland Transport	Amend Rule IX.4.1 (A1) as follows: "Development of <u>new</u> public or private road <u>(this rule does not apply to Auckland Transport)</u> " As a consequential amendment, the same changes are sought to the heading of IX.8.1 (1) matters of discretion and IX.8.2 (1) assessment criteria.
27.50	Auckland Transport	Add a new standard to require the vesting of proposed public roads in all sub-precincts as follows: <u>IX.6.X Road Vesting</u> <u>Proposed public roads (including separated pedestrian and bicycle routes) must be constructed and vested in Council upon subdivision or development of the relevant area at no cost to the Council.</u> As a consequential amendment, add a new rule as follows: <u>Development and/or subdivision that does not comply with IX.6.X Road Vesting – NC</u>
27.51	Auckland Transport	Amend matters of discretion IX.8.1 (1) as follows: (1) Development of <u>new</u> public and private roads: (a) Location and design of the collector <u>roads</u> <del>streets</del> , local <u>roads</u> <del>streets</del> and connections with neighbouring sites and to achieve an integrated street network; (b) Provision of <u>safe and efficient public transport</u> , cycling and pedestrian networks; (c) Location and design, <u>and sequencing</u> of connections to the Drury Central <del>train</del> <u>rail</u> station, <u>in particular the provision of the northern end of Drury Boulevard; and</u> (d) Matters of discretion IX.8.1 (1)(a) - (c) apply in addition to the matters of discretion in E38.12.1; <u>(x) Location and design of intersections with existing roads; and</u> <u>(x) Closure of the northern end of Flanagan Road.</u>
27.52	Auckland Transport	Amend Assessment criteria IX.8.2 (1)(a) as follows: (a) The extent to which the collector road network and the Key Retail Street are provided generally in the locations shown on IX.10.X Drury Centre: Precinct Plan 2 to achieve a highly connected street layout that integrates with the surrounding transport network and responds to landform. An alternative alignment that provides an equal or better degree of connectivity and amenity within and beyond the precinct may be appropriate, having regard to the following functional matters: (i) The presence of natural features, natural hazards or contours and how this impacts the placement of roads; (ii) The need to achieve <u>a permeable an efficient</u> block structure and layout within the precinct suitable to the proposed activities; <del>(iii) The constructability of roads and the ability for it to be delivered by a single landowner.</del>
27.53	Auckland Transport	Amend Assessment criteria IX.8.2 (1)(b) as follows: (b) Whether a high quality and integrated network of local roads is provided within the precinct that provides a good degree of accessibility <u>and connectivity</u> , and supports <u>public and active modes of transport</u> <del>a walkable street network</del> . Whether subdivision and development provide for collector roads and local roads to the site boundaries to coordinate with neighbouring sites and support the integrated completion of the network within the precinct over time;
27.54	Auckland Transport	Amend Assessment criteria IX.8.2 (1)(c) as follows: (c) Whether the design of collector and local roads are <u>generally</u> in accordance with the <u>minimum road reserve widths and key design elements</u> <del>road cross sections</del> provided in IX.11 Drury Centre: Appendix 1;

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
27.55	Auckland Transport	Amend Assessment criteria IX.8.2 (1)(d) as follows: (d) Whether the layout of the street network provides a good degree of accessibility <u>and connectivity</u> , and supports <u>the development of Drury Centre Precinct as a walkable centre and community street network</u> . <del>As a general principle, the length of a block should be no greater than 180m, and the perimeter of the block should be no greater than 500m;</del>
27.56	Auckland Transport	Amend Assessment criteria IX.8.2 (1)(e) as follows: (e) Whether the street network provides safe and legible pedestrian and cycle connections to the <del>operational</del> Drury Central <del>train</del> <u>rail</u> station <del>as development occurs over time</del> . In particular, whether the following is provided, or an alternative is provided that achieves an equal or better degree of connectivity: (i) Development in Sub-Precincts B and F provides for a direct, legible and safe pedestrian and cycle connection to the Drury Central <del>train</del> <u>rail</u> station via Drury Boulevard or the Key Retail Street shown on Precinct Plan 42; (ii) Development in Sub-Precinct A provides for a direct, legible and safe pedestrian and cycle connection to the Drury Central <del>train</del> <u>rail</u> station via the Key Retail Street and/or any connecting local or collector roads and/or open spaces; (iii) Development in Sub-Precincts C and E provides for a direct and legible connection to the Drury Central <del>train</del> <u>rail</u> station via Drury Boulevard and any connecting local or collector roads and/or open spaces.
27.57	Auckland Transport	Add new assessment criteria to IX.8.2(1) as follows: (x) <u>Whether the layout of the street network supports the provision of a safe and efficient bus network;</u> (x) <u>Whether the design of collector and local roads includes safe and efficient intersection treatments with existing roads;</u> (x) <u>Whether the northern end of Drury Boulevard is proposed as the primary multi-modal station access to and from the station;</u> (x) <u>Whether the closure of the northern end of Flanagan Road is provided for the Waihoehoe Road rail bridge replacement, while ensuring safe and efficient access to the Precinct; and</u> (x) <u>Where development is adjacent to a rural road, whether the road is to be upgraded to an urban standard.</u>
27.58	Auckland Transport	Delete IX.11 Appendix 1: Road Cross Section Details. Introduce provisions relating to the minimum road reserve widths and key design elements and functional requirements of new roads and roads which need to be upgraded to urban standards including but not limited to: <ul style="list-style-type: none"> <li>• Carriageway</li> <li>• Footpaths</li> <li>• Cycleways</li> <li>• Public Transport</li> <li>• Ancillary Zone (parking, street trees etc.)</li> <li>• Berm</li> <li>• Frontage</li> <li>• Building Setback</li> <li>• Design Speed</li> </ul> As part of new provisions, retain vehicle access restriction provisions, as addressed above.
27.59	Auckland Transport	Add layers to the AUPOP maps for Arterial roads within the Precinct area, including Waihoehoe Road
27.60	Auckland Transport	Show the purpose (role) of all roads on the precinct plans.
29.9	Ministry of Education	Retain objectives and policies relating to the provision of safe and legible walking and cycling connections through communities.

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
32.6	Drury South Limited	Amend IX.6(2)(b) so that any exemption is clear as to the activities that it applies to, and that the effects of those activities have been assessed through an ITA.
33.7	Kāinga Ora	Amend Policy (5) as follows: “Require collector roads to be generally in the locations shown in IX.10.1 Drury Centre: Precinct Plan 2, while allowing for variation, where it would achieve a highly connected street layout that integrates with the surrounding transport network <u>and is generally aligned with transitions in zoning</u> ”.
33.9	Kāinga Ora	Delete Standard IX.6(2)(b), removing the exclusion of E27.6.1 Trip generation standard from within the Drury Centre Precinct.
33.12	Kāinga Ora	Retain Criteria IX.8.2 (1)(a) subject to the following amendment: i. The presence of natural features, natural hazards or contours and how this impacts the placement of roads; ii. The need to achieve an efficient block structure and layout within the precinct suitable to the proposed activities; <del>and</del> iii. The constructability of roads and the ability for it to be delivered by a single landowner; <u>and</u> iv. <u>The need to ensure that any alternative Collector Road location is generally aligned with transitions in zoning</u>

### Decisions

434. We have comprehensively addressed these matters in the decision above.
435. In approving PC 48 we have provided a set of precinct provisions that, in our view, appropriately address the traffic and transport effects raised by PC 48.
436. We are satisfied that, based on the issues and evidence before us, the matters relating to traffic and transport effects have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address traffic and transport effects, and **reject** those submissions which sought changes to the precinct zoning and provisions which we have not made.

### **Submissions on Additional Infrastructure Matters**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
3.1	Fire and Emergency New Zealand	Add new Policy to the Precinct provisions as follows: •Policy xx: <u>Ensure that development in Drury Centre is coordinated with supporting stormwater, wastewater and water supply infrastructure.</u>
5.1	Wendy Hannah	Approve the plan change conditional on existing access rights to 228 Flanagan Road being maintained and access being provided to services and utilities to develop the property in future (note: property is outside PC48 area)
10.1	Transpower	Retain the application of the National Grid Corridor Overlay and associated Unitary Plan provisions to the plan change site.

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
17.1	Spark	Consult Spark and the other telecommunication network providers throughout the plan change process and any resource consents to enable development including infrastructure to ensure that telecommunications are recognised as essential infrastructure and additional infrastructure under the NPSUD
17.2	Spark	Consult Spark and the other telecommunication network providers to ensure that there is adequate infrastructure to support the demand for telecommunication services generated by the development proposed
17.3	Spark	Consult Spark and the other telecommunication network providers to ensure staging of infrastructure is appropriate and underground ducting, above ground mobile sites/facilities are provided for and designed into the development
17.4	Spark	Consult with Spark and the other telecommunication network providers to ensure funding is available through the infrastructure funding agreements
17.5	Spark	Include telecommunications infrastructure within the triggers for the staged release of development
27.5	Auckland Transport	Amend Objective IX.2(6) as follows: (6) <del>Development is supported by appropriate infrastructure. Subdivision and development are supported by the timely and coordinated provision of robust and sustainable transport, stormwater, water, wastewater, energy and communications infrastructure networks.</del>
28.1	Counties Power	Retain Objective 5
28.2	Counties Power	Retain Objective 6
28.3	Counties Power	Amend Policy 7(c) so that electrical infrastructure is taken into consideration when planning landscaping and planting of street trees; require consultation with Counties Power regarding species in the vicinity of overhead lines; and apply a typical road cross section for arterial roads to ensure that the berm is an acceptable width for the installation of underground electrical reticulation
28.5	Counties Power	Amend Policy 16 to include reference to electrical, telecommunications and other infrastructure.
28.6	Counties Power	Retain Policy 17
28.7	Counties Power	Add new policy IX.3.(5)(e) as follows: Require subdivision and development to: ... <u>(e) Enable the reduction of CO2 emissions by promoting the use of renewable energy.</u>
28.8	Counties Power	Add new policy IX.3(5)(f) as follows: Require subdivision and development to: ... <u>(f) Provide for the inclusion of vehicle recharging areas within parking areas and for the ability to upgrade additional spaces for increased demand when required.</u>



Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
28.9	Counties Power	Amend matters of discretion in IX.8.1(1) to consider provision of suitable space for installation of electrical infrastructure to meet the needs of the area or building, as well as adequate separation between the different utilities, landscaping and other road users. Where electrical infrastructure is required, vehicular access of a suitable construction standard must be provided to allow access for maintenance of electrical infrastructure.
28.10	Counties Power	Include matter of discretion IX.8.1(3) as drafted but clarify whether the intent of the word 'servicing' includes provision of electrical infrastructure.
28.11	Counties Power	Include matter of discretion IX.8.1(4) as drafted but clarify whether the intent of the word 'servicing' includes provision of electrical infrastructure.
28.12	Counties Power	Amend IX.8.2(1) assessment criteria to recognise the rights that the Electricity Act 1992, New Zealand Electrical Code of Practice for Electrical Safe Distances, NZECP 34:2001 and the Electricity (Hazards from Trees) Regulations 2003 offer in order to protect the lines from encroachment from vegetation/ trees to ensure their safe and reliable operation and ensure access for maintenance is not restricted; and provide a typical road cross-section for arterial roads to ensure that the berm is an acceptable width for installation of underground electrical reticulation.
28.13	Counties Power	Amend IX.8.2(3) assessment criteria to recognise the rights that the Electricity Act 1992, New Zealand Electrical Code of Practice for Electrical Safe Distances, NZECP 34:2001 and the Electricity (Hazards from Trees) Regulations 2003 offer in order to protect the lines from encroachment from vegetation/ trees to ensure their safe and reliable operation and ensure access for maintenance is not restricted; and provide a typical road cross-section for planting in the vicinity of the train station to ensure that there will be no conflict with electrical infrastructure (potentially an assessment criterion).
28.14	Counties Power	Amend IX.11 Appendix 1 Road Cross Section Details to provide a typical road cross-section for each roading type (including arterial roads) to identify the proposed location of the street trees and landscaping and to ensure that the berm is an acceptable width for installation of underground electrical reticulation.
29.1	Ministry of Education	Amend Objective IX.2 (6) as follows: Development is supported by appropriate infrastructure ( <u>including education infrastructure</u> ).
29.2	Ministry of Education	Amend Policy IX.3 (16) as follows: Ensure that development in Drury Centre Precinct is coordinated with supporting <u>education</u> , stormwater, wastewater and water supply infrastructure.
29.3	Ministry of Education	Amend IX.8.1 Matter of discretion 1)(a) Development of public and private roads as follows: (a) Location and design of the collector streets, local streets and connections with neighbouring sites ( <u>including schools</u> ) to achieve an integrated street network.
29.4	Ministry of Education	Amend IX.8.2 Assessment criteria 1)(a)(ii) as follows: ii. The need to achieve an efficient block structure and layout within the precinct suitable to the proposed activities ( <u>including provision of schools</u> ); and
29.5	Ministry of Education	Amend IX.8.2 Assessment criteria 1)(b) as follows: b) Whether a high quality and integrated network of local roads is provided within the precinct that provides a good degree of accessibility and supports a walkable street network. Whether subdivision and

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		development provides for collector roads and local roads to the site boundaries to coordinate with neighbouring sites ( <u>including potential future school sites</u> ) and support the integrated completion of the network within the precinct over time;
29.6	Ministry of Education	Amend IX.8.2 Assessment criteria 1)(d) as follows: (d) Whether the layout of the street network provides a good degree of accessibility and supports a walkable street network, <u>including to existing schools or sites designated for this purpose</u> . As a general principle, the length of a block should be no greater than 180m, and the perimeter of the block should be no greater than 500m;
34.1	Watercare	Amend Policy 16 as follows: (16) Ensure that development in Drury Centre Precinct is coordinated with, <u>and does not precede</u> , supporting stormwater, wastewater and water supply infrastructure
34.2	Watercare	Add new Policy 16A as follows: <u>(16A) Manage subdivision and development to avoid, remedy or mitigate adverse effects on infrastructure, including reverse sensitivity effects or those which may compromise the operation or capacity of existing or authorised infrastructure.</u>

### Decisions

437. In approving PC 48 we have provided a set of precinct provisions that, in our view, appropriately address the other infrastructure issues raised by PC 48.
438. We are satisfied that, based on the issues and evidence before us, the matters relating to other infrastructure have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address other infrastructure, and **reject** those submissions which sought changes to the precinct provisions which we have not made.

### **Submissions on Notification Provisions**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
22.20	Auckland Council	Amend the IX.5 Notification rules (1) to (3) which require non-notification to apply the normal tests for notification under the relevant sections of the RMA.
23.23	NZTA	Either delete notification provision IX.5(3); or amend IX.5(3) to ensure that Activity E11.4.1(A1) (new public or private roads) and infringements to standards IX6.2 and 6.3 (transport upgrades and trip generation limits) are subject to normal notification tests.
27.9	Auckland Transport	Amend the IX.5 Notification rules (1) to (3) which require non-notification to require the normal tests for notification under the relevant sections of the RMA.
32.4	Drury South Limited	Delete notification provision IX.5(3) so that an application for resource consent for a restricted discretionary activity listed in Table E11.4.1, Table

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		E11.4.2 and Table 12.4.1 will be subject to the normal tests for notification under the RMA.
32.5	Drury South Limited	Delete notification provision IX.5(4) so that an application for resource consent for a restricted discretionary activity listed in Table E11.6.2 and Table E12.6.2 will be subject to the normal tests for notification under the RMA.

### Decisions

439. We have addressed these matters in the decision above.
440. In approving PC 48 we have provided for the 'standard' notification tests as set out in the RMA.
441. We are satisfied that, based on the issues and evidence before us, the matters relating to notification have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address notification.

### **Submissions on the Proposed Precinct Plan**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
9.1	Brookfield Road Limited	Amend "Indicative Collector Road" on figure 1 to ensure the site at 61 Brookfield Road has a block depth of approximately 40m to the west of the indicative road.
22.26	Auckland Council	Delete the indicative railway station shown on the precinct plan and make any other consequential changes to the precinct provisions.
23.3	NZTA	Ensure the plan change reflects the final location of the train station and achieves Objective 1 by providing a transit-orientated development that supports high density residential, employment-generating and retail activities close to rapid transit and prioritises public and active modes of transport to and within the centre.
23.6	NZTA	Delete 'Access A' from Precinct Plan 3. On Precinct Plan 2, replace 'Access A' between the two yellow lines with a dashed orange line. Amend Precinct Plan 2 Legend as follows: Potential connection to Drury West and <u>possible Access A to State Highway 1</u> . Re-orientate the collector road which is currently shown to extend from Access A from an eastern alignment to a southerly one (i.e. so that it turns south to sub-precinct B).
23.7	NZTA	Amend IX Precinct description as follows: The purpose of the Drury Centre Precinct is to provide for the development of a new, comprehensively planned and transit-orientated <u>high-density</u> centre at Drury that supports a quality compact urban form. ... • Sub-precinct B is zoned Business – Metropolitan Centre Zone and is intended to be the <del>primary</del> <u>only</u> location for large format retail, while also providing for other commercial and residential activities allowed in the zone. Development in this sub-precinct should ensure that a quality street environment is achieved;

24.4	KiwiRail Holdings Limited	Amend IX.1 Precinct Description as follows: "precinct also provides for the highest employment generating activities and retail and residential densities <del>around</del> <u>in the vicinity of</u> the future Drury Central train station"
24.11	KiwiRail Holdings Limited	Remove the land within Sub-precinct D from the listed plans. In addition, remove the reference to Sub-precinct D from the legend in Precinct Plan 1.
24.12	KiwiRail Holdings Limited	Move the 'future train station' and 'Station Plaza' symbols to the preferred location further north. In addition, annotate Precinct Plan 2 to make it clear that the 'future train station' and 'Station Plaza' are shown as indicative only. For ease of readership it would be preferable to have two legends, one for indicative features and one for confirmed features on Precinct Plan 2. Remove the land within Sub-Precinct D from the plan change area.
32.8	Drury South Limited	Assess the effects of the connections identified in Precinct Plan 2 - Spatial Features in the ITA and / or through the PC48 provisions, and include appropriate upgrades to mitigate any effects arising.

### Decisions

442. We have comprehensively addressed these matters in the decision above.
443. In approving PC 48 we have provided a set of precinct provisions that, in our view, appropriately address the matters of concern to submitters.
444. We are satisfied that, based on the issues and evidence before us, the matters relating to the appropriate precinct plan and provisions have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address the precinct plan and provisions, and **reject** those submissions which sought changes to the precinct provisions which we have not made.

### **Submissions on Noise and Vibration Matters**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
24.1	KiwiRail Holdings Limited	Amend IX.1 Precinct Description to add: <u>The North Island Main Trunk railway line is protected from reverse sensitivity effects by ensuring that new buildings and activities will be designed and located to manage any adverse effects</u>
24.2	KiwiRail Holdings Limited	Add new Objective IX.2(8) as follows: <u>(8) The NIMT is protected from adverse effects, including reverse sensitivity effects, of subdivision, use and development by,</u> <u>1. setbacks within which incompatible activities will be managed;</u> <u>2. standards designed to protect noise sensitive receiver's health and amenity.</u>
24.3	KiwiRail Holdings Limited	Add new policy IX.3 as follows: <u>(XX) Adverse effects on the operation of the regionally significant NIMT and on the health and safety of adjacent development and noise sensitive receivers are managed through setbacks and performance standards.</u>

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
24.6	KiwiRail Holdings Limited	Insert new activity (A8) to Activity table IX.4.1 as set out below and renumber existing (A8) to (A20) accordingly. <u>(A8) Development that does not comply with IX6.9 Setback from NIMT and IX6.10 Noise Sensitive Activities within 100m of a Rail Network Boundary - RD</u>
24.7	KiwiRail Holdings Limited	Add to IX.6 Standards a new standard IX.6.9 as follows: <u>IX.6.9 Setback from NIMT</u> <u>Buildings must be setback at least 5 metres from any boundary which adjoins the NIMT railway line.</u>
24.8	KiwiRail Holdings Limited	Add to IX.6 Standards a new standard IX.6.10 to manage potential human health effects from rail noise and vibration where buildings containing noise sensitive activities are located adjacent to (within 100m of) the railway corridor. See submission for full proposed wording.
24.9	KiwiRail Holdings Limited	Insert new matters of discretion in IX.8.1 as follows: <u>(12) Setback from NIMT and Noise Sensitive Activities within 100m of a Rail Network Boundary</u> <u>Effects from non-compliance with Standards IX.6.9 and IX.6.10</u>
24.10	KiwiRail Holdings Limited	Insert new assessment criteria in IX.8.2 as follows: <u>(11) Setback from NIMT</u> <u>(a) The size, nature and location of the buildings on the site.</u> <u>(b) The extent to which the safety and efficiency of railway operations will be adversely affected.</u> <u>(c) The outcome of any consultation with KiwiRail.</u> <u>(d) Any characteristics of the proposed use that will make compliance unnecessary.</u>  <u>(12) Noise Sensitive Activities within 100m of a Rail Network Boundary</u> <u>(a) Whether the activity sensitive to noise could be located further from the railway corridor</u> <u>(b) The extent to which the noise and vibration criteria are achieved and the effects of any non-compliance</u> <u>(c) The character of and degree of amenity provided by the existing environment and proposed activity.</u> <u>(d) The reverse sensitivity effects on the railway corridor and the extent to which mitigation measures can enable their ongoing operation, maintenance and upgrade.</u> <u>(e) Special topographical, building features or ground conditions which will mitigate vibration impacts;</u> <u>(f) The outcome of any consultation with KiwiRail.</u>
27.64	Auckland Transport	Add a new policy as follows: <u>Ensure that new activities sensitive to noise adjacent to arterial roads are located, designed and constructed to mitigate adverse effects of road noise on occupants.</u>
27.65	Auckland Transport	Add a new standard to IX.6 to require that the assessed incident noise level to the façade of any building facing an arterial road that accommodates a noise-sensitive space is limited to a given level (Auckland Transport to confirm appropriate level). As a consequential amendment, add a new rule to Activity table IX4.1 as follows: <u>(X) Development that does not comply with IX.6.X Noise Mitigation - RD</u>
27.66	Auckland Transport	Add a new assessment criterion as follows: <u>The extent to which noise sensitive activities in proximity to arterial roads are managed.</u>

## Decisions

445. We have comprehensively addressed these matters in the decision above.
446. In approving PC 48 we have provided a set of noise provisions that, in our view, appropriately address the matters of concern to submitters.
447. We are satisfied that, based on the issues and evidence before us, the matters relating to noise and vibration have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address the noise issues, and **reject** those submissions which sought changes to the precinct provisions which we have not made.

## Submissions on Stormwater and Flooding Matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
15.4	Kiwi Property	Add new policy 21 to clarify stormwater management approach as follows: <u>Stormwater Management</u> <u>Policy IX.3(21): Require subdivision and development to be consistent with any approved network discharge consent and supporting stormwater management plan including the application of water sensitive design to achieve water quality and hydrology mitigation.</u>
15.5	Kiwi Property	Amend Standard IX6.6 as follows: IX6.6 Stormwater Quality (1) The activity rules and standards in E9 apply to development in the Drury Centre precinct as if the reference to 'high use roads', was a reference to 'all roads'. (2) <u>For all other impervious surfaces inert building materials should be used.</u>
21.7	Ngāti Te Ata Waiohū	Apply a minimum of a two-treatment train approach for all stormwater prior to discharge to a waterway
21.8	Ngāti Te Ata Waiohū	Require roof capture for reuse and groundwater recharge
22.3	Auckland Council	Amend the precinct to include additional policies and rules to manage the effects of stormwater as described in an approved SMP. This includes: • New policy: <u>Require subdivision and development to be assessed for consistency with any approved network discharge consent and supporting stormwater management plan including the application of water sensitive design to achieve water quality and hydrology mitigation.</u> • Additional matters of discretion/assessment... • Any other rules necessary...
22.4	Auckland Council	Retain application of SMAF 1 to the plan change area.
22.5	Auckland Council	Add a new policy to the following effect: <u>Ensure that all impervious services are treated through a treatment train approach to enhance water quality and protect the health of stream and marine environments.</u>
22.6	Auckland Council	Add a new policy to the following effect: <u>Provide sufficient floodplain storage within the Drury Centre precinct to avoid increasing flood risk upstream and downstream and manage increased flood risk within the precinct unless downstream infrastructure</u>

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		capacity means this is not required. This is subject to the upgrade of the downstream culvert upgrade. And insert rules to give effect to this.
22.8	Auckland Council	Retain and amend standard IX6.6 (1) Stormwater Quality but amend it to read as follows: "The activity rules and standards in E9 apply to development in the Drury Centre precinct as if the reference to 'high use roads', <del>was were</del> a reference to 'all <u>existing, new, upgraded or redeveloped roads accessways and carparks</u> ' or other amendments that would achieve the same environmental outcome. Insert new matters of control and discretion, in addition to those in E9, to the effect of: <ul style="list-style-type: none"> <li>• How the location and design of stormwater treatment assets reduces their operating costs.</li> <li>• The consolidation and community scale of stormwater treatment assets.</li> <li>• The location of stormwater treatment assets where they will be most effective in reducing contaminants.</li> </ul>
22.9	Auckland Council	Include a new standard to the effect that: <u>Buildings cannot have exterior materials with exposed surfaces that are made from contaminants of concern to water quality including zinc, copper and lead.</u>
22.15	Auckland Council	Retain policy IX.3(18)
32.1	Drury South Limited	Insert new policies to IX.3 Policies (Infrastructure and Staging) to: (a) Make adequate provision within the PC48 area to detain the 1% AEP event without adverse effects on the extent of flooding of upstream and downstream areas; and (b) Provide sufficient floodplain storage within the PC48 area to avoid increasing flood risk upstream and downstream, and manage increased flood risk within the precinct, to habitable rooms for all flood events.
32.3	Drury South Limited	Amend Table IX.4.1 by introducing two new discretionary activities: (a) Development that does not comply with Standard IX.6.6 (Stormwater Quality and Flooding); and (b) Subdivision that does not comply with Standard IX.6.6 (Stormwater Quality and Flooding).
32.9	Drury South Limited	Amend Standard IX6.6 by adding the words "and Flooding" to the heading and adding the following clause (2): <u>(2) any stormwater management plan or earthworks proposed as part of subdivision or development must:</u> <ul style="list-style-type: none"> <li><u>(i) comply with any approved discharge consent;</u></li> <li><u>(ii) be effective in avoiding, remedying or mitigating the potential adverse effects of stormwater discharge on water quality and flood hazards. In the case of stormwater management facilities within private land this assessment will include how the operation and maintenance of such facilities is to be secured by way of appropriate covenants or consent notices;</u></li> <li><u>(iii) be effective in containing all the natural and diverted streams and their margins, wetlands, and other off-site stormwater management devices;</u></li> <li><u>(iv) provide for overland flowpaths;</u></li> <li><u>(v) ensure that subdivision and development does not result in increased flood risk to land for all flood events from the 50% and up to 1% AEP flood event downstream and upstream of the precinct.</u></li> </ul>
35.7	Ngāti Tamaoho	Apply a minimum of a two-treatment train approach for all stormwater prior to discharge to a waterway

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
35.8	Ngāti Tamaoho	Require roof capture for reuse and groundwater recharge

### Decisions

448. We have addressed these matters in the decision above.
449. In approving PC 48 we have provided a set of precinct provisions that, in our view, appropriately address the matters of stormwater and flooding.
450. We are satisfied that, based on the issues and evidence before us, the matters relating to stormwater and flooding have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address stormwater and flooding, and **reject** those submissions which sought changes to the precinct provisions which we have not made.

### **Submissions on Zoning Matters**

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
22.24	Auckland Council	Extend the Business – Metropolitan Centre Zoning west along Flanagan Road as far as Waihoehoe Road.
23.4	NZTA	Amend the Precinct plans and zoning by extending the Metropolitan Centre zoning and sub-precinct A to incorporate sub-precinct E; make consequential amendments to Precinct Plan 2 in line with the NPSUD; and delete provisions relating to sub-precinct E.
23.5	NZTA	Amend the Precinct plans by reducing the spatial extent of sub-precinct B by 50%. The Sub-precinct B boundary should be moved in a southerly direction.
27.22	Auckland Transport	Extend the Business – Metropolitan Centre Zoning west along Flanagan Road.
33.1	Kāinga Ora	Approve the plan change, subject to the inclusion of spatial zoning (i.e. Special Purpose Zone) and corresponding precinct provisions to enable the provision of identified future tertiary and hospital activities within the precinct provisions that are necessary to support the intensity of urbanisation sought

### Decisions

451. We have comprehensively addressed the issue of zoning in the decision above.
452. In approving PC 48 we have provided for the zoning pattern as set out in the Applicant's Reply statement.
453. We are satisfied that, based on the issues and evidence before us, that we have provided for the appropriate zoning pattern. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted



to address the zoning of the PC 48 area, and **reject** those submissions which sought changes to the zoning which we have not made.

## **SECTION 32AA EVALUATION**

454. 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.<sup>222</sup> This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes.<sup>223</sup>
455. In our view this decision report, which among other things, addresses the modifications we have made to the provisions of PC 48, satisfies our section 32AA obligations.

## **PART 2 OF THE RMA**

456. 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 PC 48 for the reasons we have set out above and provide in summary below.
457. PC 48 enables urban development of a site that:
- (a) Is located adjacent to the existing urban area and forms a logical and desirable connection with the Drury South precinct (which is also zoned for urban purposes and is currently under development); and
  - (b) Is zoned FUZ and hence has been identified by Council for future urban purposes in a manner that:
    - Takes advantage of its strategic location on the transport network;
    - Will contribute, along with the land subject to PC 49 and PC 50 to an integrated urban development incorporating residential, commercial, recreation and other activities; and
    - Will provide high quality amenity as a consequence of the provisions proposed in PC 48 (and PCs 49 and 50).
458. PC 48 provides for the sustainable management of the PC 48 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.
459. We find that PC 48 incorporates provisions that, in conjunction with the balance of the AUP (OP), appropriately recognises and provides for the matters of national importance listed in section 6 of the RMA and have particular regard to the other matters listed in section 7 of the RMA.

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<sup>222</sup> RMA, section 32AA(1)(a)

<sup>223</sup> RMA, section 32AA(1)(c)

460. Consultation has been undertaken with iwi and we accept the Requestor has endeavoured to address concerns expressed in submissions, particularly those with respect to stormwater and wastewater issues. We are satisfied that PC 48 does not raise any issues in terms of section 8 of the RMA.

## OVERALL DECISION

461. That pursuant to Schedule 1, Clauses 10 and 29 of the Resource Management Act 1991, that Proposed Plan Change 48 to the Auckland Unitary Plan (Operative in Part) be **approved**, subject to the modifications as set out in this decision.
462. Submissions on the plan change are accepted, accepted in part or refused in accordance with this decision.
463. In addition to the reasons set out above, the overall reasons for the decision are that PC 48:
- 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 National Policy Statement for Freshwater Management;
  - gives effect to the Auckland Regional Policy Statement; and
  - satisfies Part 2 of the RMA.

Greg Hill - Chairperson

- for Commissioners Karyn Kurzeja and Mark Farnsworth



29 April 2022

## APPENDICES

The Precinct Provisions are attached as Appendix 1