

Proposed Private Plan Change 49 – 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 184 hectares of land from Future Urban Zone (FUZ) in Drury East to Residential - Terrace Housing and Apartment Buildings Zone (THAB) on land bounded by Fitzgerald Road, Waihoehoe Road and Fielding Road (approximately 54 hectares); Residential - Mixed Housing Urban Zone (MHU) between Fielding Road and Cossey Road (approximately 60 hectares); Residential – Mixed Housing Suburban Zone (MHS) to land east of Cossey Road (approximately 67.5 hectares) and Business –Neighbourhood Centre Zone on the eastern side of Cossey Road (approximately 0.9 hectares) – known as Private Plan Change 49 – Drury East Precinct (PC 49).

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.

Plan modification number:	49
Site address:	The 'site' is generally bounded by Waihoehoe Road to the north, Drury Hills Road to the east and Fitzgerald Road to the south and west.
Applicant:	Fulton Hogan Land Developments Ltd (FHL)
Hearings	<i>First Tranche 2021</i> 11 August 2021 – 13 August 2021 <i>Second Tranche</i> (Combined Hearing of PCs 48, 49 and 50). 6 – 10 and 16 December 2021
Hearing panel:	Greg Hill (Chairperson) Mark Farnsworth MNZM
Parties and People involved:	<u>Applicant:</u> <i>Fulton Hogan Land Development Limited represented by:</i> Ms Sue Simons / Ms Kate Storer, Legal Counsel; Mr Greg Dewe, Corporate; Mr Matt Riley, Urban Design; Mr David Hughes, Civil Engineering; Mr Pranil Wadan, Stormwater; Dr Gary Bramley, Ecology; Dr Jan Kupec, Geotechnical Mr David Dangerfield, Contaminated land;

	<p>Ms Ellen Cameron, Archaeology; Mr John Parlane; Transport (Strategic); Mr Daryl Hughes and Mr Don McKenzie, Transport; Ms Emma McDonald, Infrastructure Project Management; Ms Rachel de Lambert, Landscape and Visual; Mr Greg Akehurst, Economics; and Mr Nick Roberts and Ms Rachel Morgan, Planning.</p> <p><u>Submitters:</u></p> <p><i>Jones Family Trust, represented by:</i> Mr Kitt Littlejohn, Legal Counsel; and Ms Alayna Jones, Trustee.</p> <p><i>Drury South Ltd, represented by:</i> Mr Daniel Minhinnick and Ms Kristy Dibley, Legal Counsel; Mr Joseph Phillips, Transport; and Mr Greg Osbourne, Planning.</p> <p><i>Kiwi Property Ltd, represented by:</i> Ms Alex Devine, Legal Counsel.</p> <p><i>Oyster Capital Limited, represented by:</i> Mr Jeremy Brabant, Legal Counsel.</p> <p><i>Manzi Chen, represented by:</i> Ms Elizabeth Stewart, Planning.</p> <p><i>Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development, represented by:</i> Mr Ernst Zollner, Corporate</p> <p><i>Waka Kotahi, represented by:</i> Mr Mathew Gribben, Legal Counsel; Mr Andrew Mein, Transport; Mr Evan Keating, Corporate; and Ms Cath Heppelthwaite, Planning.</p> <p><i>Watercare Services, represented by:</i> Mr Andre Stuart</p> <p><i>Kāinga Ora, represented by:</i> Mr Bal Matheson, Legal Counsel; and Mr Michael Campbell, Planning</p> <p><i>Auckland Council and Auckland Transport, represented by:</i> Mr Matthew Allan / Mr Rowan Ashton, Legal Counsel; Ms Josephine Tam, Corporate;</p>
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	<p>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; Ms Karyn Sinclair and Ms Lydia Smith, AT Planning; Ms Dawne Mackay, Strategic Planning; Mr Danny Curtis, Stormwater; Ms Paula Vincent, Stormwater; Mr Rue Statham and Mr Ebi Hussain, Ecology; Mr Christopher Turbott, AC Planning</p> <p><i>For the Council (as regulator), represented by:</i> Mr Craig Cairncross (Team Leader) Mr David Mead (Planning and section 42A 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 Maylene Barrett, Parks; Ms Claudia Harford, Geotechnical; Mr Tim Heath, Economics; Mr Andrew Kalbarczyk, Contamination; and Mr Andrew Gordon, Noise and Vibration</p> <p><i>Hearing Administrator</i> Mr Sam Otter, Senior Hearings Advisor¹</p> <p><u>Tabled Statements</u> <i>Ministry of Education</i> Ms Karin Lepoutre, Planning; 27 July 2021</p> <p><i>Ministry of Housing and Urban development</i> Mr Mike Hurley 6 August 2021</p> <p><i>Counties Power Limited</i> Qiuan Wang, Planner</p>
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¹ We would like to thank and acknowledge Mr Otter's excellent management of the hearing, and in particular the on-line component.

EXECUTIVE SUMMARY

1. 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. Given the Applicant's commitment to the proposed Staging of Development with Transport Upgrades, the associated precinct provisions are appropriate, workable and will achieve the necessary transport infrastructure related upgrades.
 - We are satisfied that the transport infrastructure related upgrades identified by the Applicant are those necessary to address the adverse effects from PC 49, 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 and heights as set out in the Reply precinct provisions.
 - We have included acoustic attenuation controls for habitable spaces (but not outdoor spaces) adjacent to the arterial road to address adverse health and amenity effects.
 - 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.

INTRODUCTION

2. 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.
3. A report in accordance with section 32 and 32AA (in relation to the changes sought) of the RMA was prepared² in support of the proposed plan change for the purpose of

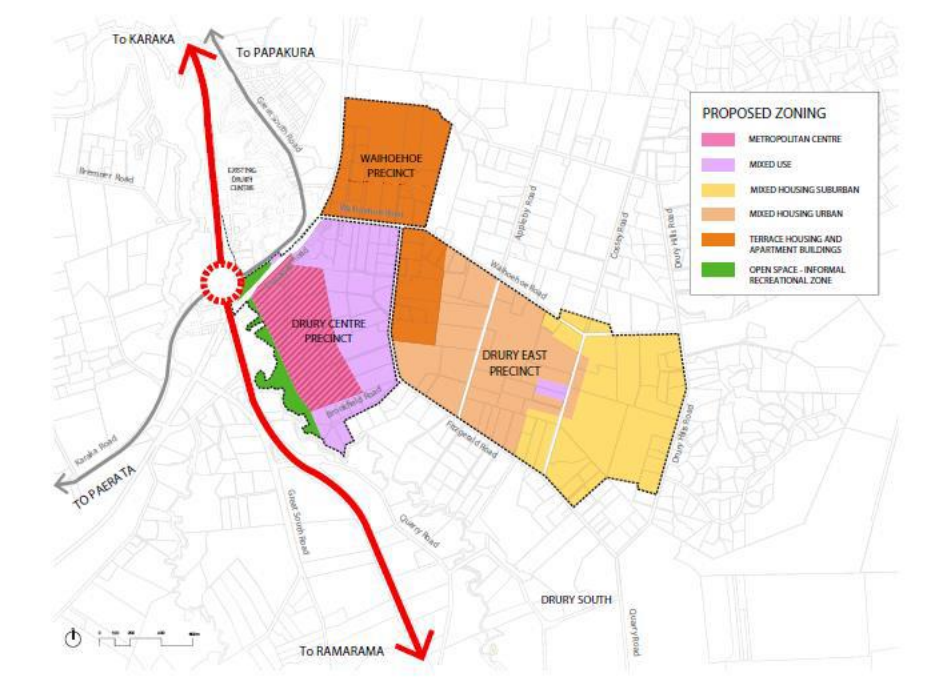
² Fulton Hogan Land Development Limited – S32 Assessment Report, Drury East Private Plan Change Request May 2020 - B&A (Plan Change Request)

considering the appropriateness of the proposed plan change and its precinct provisions.

4. This decision is made on behalf of the Auckland Council (**“the Council”**) by Independent Hearing Commissioners Greg Hill (Chair), and Mark Farnsworth appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (**“the RMA”**).
5. The Commissioners have been delegated the authority by the Council to make a decision on Plan Change 49 (**“PC 49”**) 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 (prepared by Mr David Mead, Consultant Planner), the Joint Witness Statements of Experts (JWS)³, opening legal submissions, expert and lay evidence, tabled material and closing reply evidence and closing legal submissions.
6. Private Plan Change 49 (**PC 49**) 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 three requestors to explain what is proposed at Drury East; namely:
 - PC 49 Drury East Precinct – Fulton Hogan Land Development Limited – 184 hectares - mainly residential with a small business zone;
 - PC 48 Drury Centre Precinct – Kiwi Property Limited No 2 Limited - 95 hectares - largely business - Metropolitan and Mixed Use; and
 - PC 50 Waihoehoe Precinct – Oyster Capital - 49 hectares, being residential (Terrace House and Apartment Buildings zone).
7. The guide also notes the three separate Private Plan Requests have been lodged simultaneously to ensure there is a cohesive outcome for the Drury East area. It was designed to help proposed plan readers to navigate through the material and attachments associated with the Drury East Private Plan Changes (Figure 1 below – proposed zoning pattern as notified).

³ 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. JWS Facilitator Memos: Stormwater 11 October 2021 & 14 October 2021; Transport Planning 2 -8 November 2021.

Figure 1



8. The hearing of this plan change (as were PC's 48 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 49, it has many commonalities with the decisions for PCs 48 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 section 42A Report⁴ provides a useful summary of existing zoning provisions:

"The land subject to the plan change is zoned Future Urban Zone (FUZ) under the AUP ... The FUZ is a transitional zone applied to greenfield land, within the Rural Urban Boundary, that has been identified as suitable for urbanisation in the future."

⁴ Section 42A Report at Section 3

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.

The surrounding area to the north, west and south of the PC49 area is also zoned FUZ (with the land to the west subject to the other two associated Drury East plan change requests).

Further to the south and to the west of the PC49 area, on the other side of the Hingaia Stream, is the Drury South Industrial Precinct, zoned Business: Light Industry. The eastern edge of the PPC49 area follows the Rural Urban Boundary, and beyond this (on the other side of Drury Hills Road) is Rural: Countryside Living zone.”

12. The PC 49 land is also subject to the following AUP (OP) overlays and controls:

- High-Use and Quality-Sensitive Aquifer Management Area – Drury Sand Aquifer; and
- Macroinvertebrate Community Index – Rural and Urban.

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

13. The proposed Plan Change is described in detail in the Applicant’s Plan Change Request⁵, the Council’s section 42A hearing report⁶ and the evidence of Mr Roberts. The Plan Change seeks to rezone approximately 184 hectares of land in the area generally bounded by Waihoehoe Road, Drury Hills Road and Fitzgerald, from Future Urban Zone (**FUZ**)⁷ to mostly residential zoned, but also a small area for business purposes.
14. The purpose of, and reason for, PC 49 were outlined in the Plan Change Request⁸. It is to provide additional land for housing in Drury with a supporting network of open spaces and a small-scale commercial centre to meet the local day-to-day needs of residents, consistent with the Council’s Drury-Opāheke Structure Plan (DOSP).
15. 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.

⁵ Plan Change Request in Section 5

⁶ Section 42A at [1.1]

⁷ Section 42A Report at Section 4

⁸ Plan Change Request at [5.3]

16. The Applicant's Opening Legal submission records⁹:

"FHL D has endeavoured to respond constructively to submissions seeking changes to PC49 and a number of refinements have been made to the proposal since the close of submissions, as set out in these submissions and in the evidence of FHL D's expert team."

and

"FHL D has carefully considered the recommendations in the section 42A report and a number of additional refinements have been made to the proposal as a result, as set out in the evidence of FHL D's expert team and in these submissions."

17. Specifically, the Plan Change, as modified, sought to:

- Zone approximately 54 hectares of land as Terrace Housing and Apartment Buildings (THAB) on the land bounded by Fitzgerald Road, Waihoehoe Road and Fielding Road;
- Zone approximately 60 hectares of land Residential - Mixed Housing Urban (MHU) applying largely between Fielding Road and Cossey Road;
- Zone approximately 67.5 hectares of land Residential – Mixed Housing Suburban (MHS) on land east of Cossey Road; and
- Zone approximately 0.9 hectares of land Business – Neighbourhood Centre located to the east of Cossey Road.

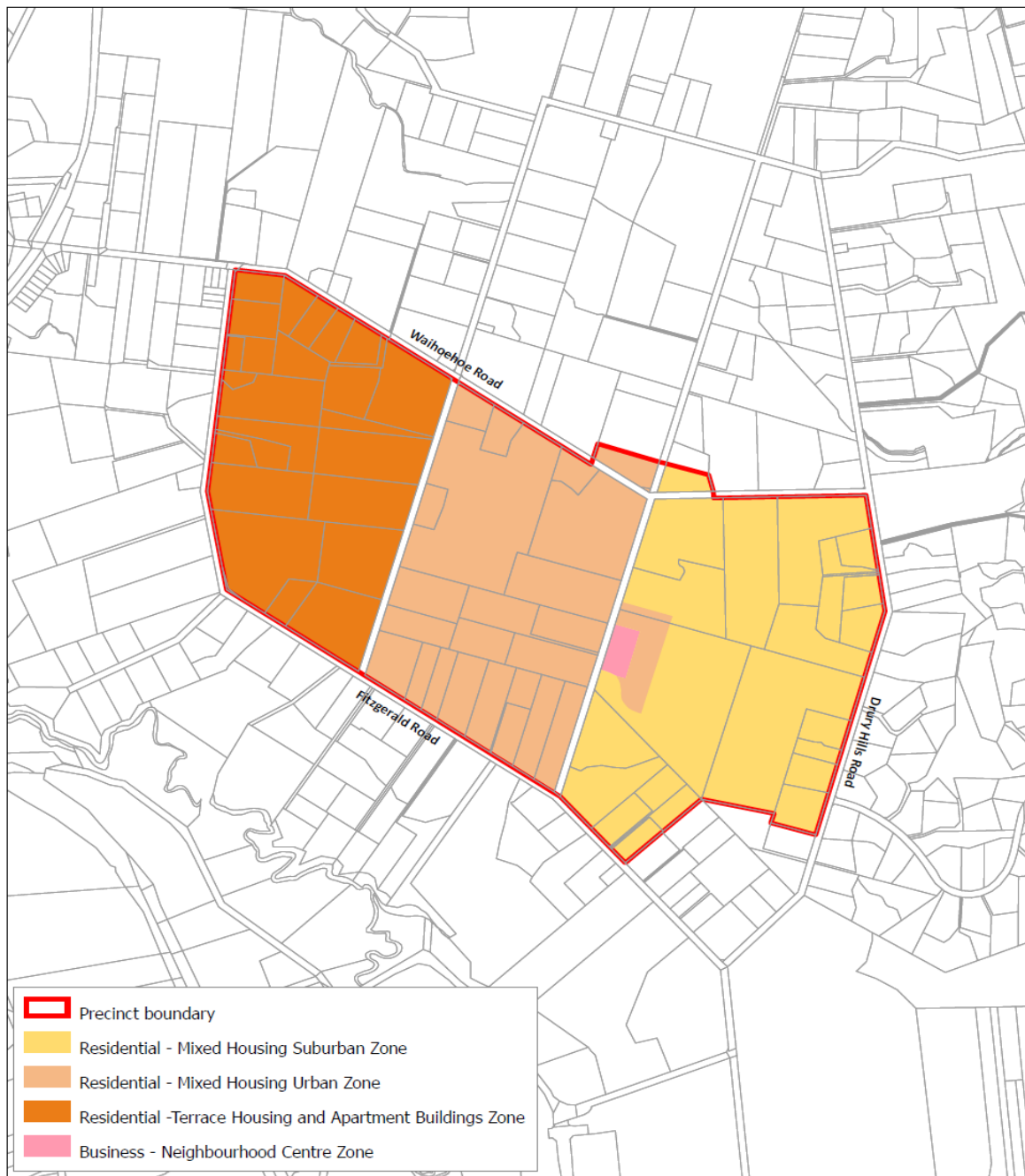
18. Other changes and refinements have been made by the Applicant in response to the section 42A report and submitters concerns. These include:

- Increasing the extent of the THAB zone to the land bounded by Waihoehoe Road, Fitzgerald Road and Cossey Road and increasing the height limit in that area to 22.5m;
- Amending the zoning of the proposed centre to Neighbourhood Centre, reducing its size to 0.9 hectares, relocating it to the eastern side of Cossey Road at the intersection with the proposed east-west collector road, and applying an 18m height limit;
- Extending the MHU zone to align with Cossey Road and to 'wrap around' the proposed Neighbourhood Centre zone further to the east;
- Amending Precinct Plan 1 to show the indicative open space and stream network and an amended alignment for the east-west collector road;

⁹ Ms Simons' Opening Legal Submissions at [1.8 and 1.11]

- Various amendments to the objectives and policies consistent with the changes outlined above and to respond to matters raised by submitters and the section 42A report;
 - Addition of a new objective and policy for education facilities;
 - New policies for stormwater management, natural hazards and Mana Whenua values;
 - Amendments to the riparian margin standard, stormwater quality standard and a new standard for fences adjoining publicly accessible open spaces; and
 - Various amendments to the matters of discretion and assessment matters consistent with the changes outlined above.
19. The final version of the precinct provisions was provided along with the Reply Submissions from the Applicant. The Figure below shows the proposed AUP (OP) zoning proposed by PC 49 as presented at the hearing and in the Reply Statement:

Drury East - Zoning Plan



THE SITE AND SURROUNDING ENVIRONMENT

20. Both the Plan Change Request¹⁰ and the section 42A Report¹¹ provided descriptions of the Plan Change area and the local context. The Plan Change area is 184

¹⁰ Plan Change Request at Section 4

¹¹ Section 42A Report at [13 - 19]

hectares, of which the Applicant currently owns 108 hectares. It is located in Drury East on the southern edge of the Auckland metropolitan area.

21. The Plan Change area is located 700 metres from Great South Road and the adjacent North Island Main Trunk line. The Government has confirmed the funding for a train station at Drury Central with the completed station expected to be delivered in 2024. Electrification of the line from Papakura to Pukekohe is occurring now.
22. In addressing the existing environment, the section 42A Report notes¹²:

“The overall topography of the area is gently undulating with several low ridgelines. The majority of the plan change area is within the Hingaia Stream catchment. A small area straddles the boundary with the Slippery Creek catchment to the north. The Fitzgerald Stream (a tributary of the Hingaia Stream) traverses the plan change area in a generally east-west direction. There are no natural wetlands remaining within the site, but several ponds have been created to provide water for livestock.

Vegetation within the plan change area is mostly pasture and exotic trees and shrubs planted for shelter, amenity or as part of gardens. The only example of predominantly indigenous vegetation is a small area of forest located near the corner of Waihoehoe Road and Drury Hills Road. This area is approximately 4,300m² (0.43ha) in extent and is surrounded to the north and west by a number of isolated mature pūriri, totara and kahikatea trees in the adjoining paddocks. Riparian vegetation where it exists along the watercourses is dominated by exotic trees and shrubs.

The Hingaia and Fitzgerald Streams discharge into Drury Creek, which in turn discharges into the Pahurehure Inlet, within the eastern Manukau harbour. The upper reaches of the Drury Creek are classified as a Significant Ecological Area (SEA) – Marine 1, under the AUP (identified as SEA-M1-29b) due to the presence of marsh land. The classification also recognises the area as a migration path between the marine and freshwater habitats for a number of native freshwater fish. A terrestrial ecology SEA applies to the fringes of the Drury Creek SEA (SEA-T-530).”

23. To the north-west of the combined plan change areas (PCs 48, 49 and 50) lies the existing Drury village and business area, while to the south-east is the developing Drury South industrial area.

NOTIFICATION PROCESS AND SUBMISSIONS

24. PC 49 was publicly notified for submissions on 27 August 2020, on the closing date, 22 October 2020 a total of forty-seven submissions had been received¹³. The submitters and their submissions are addressed in the tables in the section titled “Decisions” later in this decision.

¹² Plan Change Request at [15]

¹³ Section 42A Report at Appendix 7

25. The summary of decisions requested was notified on 11 December 2020 and closed on 29 January 2021. Nine further submissions were received¹⁴.
26. The section 42A Report provided comprehensive tabulations¹⁵ of the issues raised by the submitters in their submissions and further submissions; and the relief sought. In summary, submissions addressed:
- Supporting PC 49;
 - Opposing PC 49;
 - Timing and Funding Issues;
 - Traffic and Transport Effects;
 - Cultural;
 - Ecology;
 - Flooding and Stormwater Effects;
 - Urban Design Effects
 - Landscape Effects;
 - Open Space;
 - Reverse Sensitivity;
 - Heritage and Archaeology;
 - Servicing;
 - Other Infrastructure;
 - Plan Change Boundary;
 - Zoning and Precinct plan provisions;
 - Notification provisions; and
 - General/Other Matters.
27. 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 Council as a submitter (**ACS**) and Auckland Transport (**AT**), who, as their primary position, opposed the grant of PC 49 (noting also that AT and ACS oppose PCs 48 and 50 and opposed 51 and 61; largely on the same basis). Their 'fall back' position was that

¹⁴ Ibid

¹⁵ ibid at [9.2]

if we approved this (and the other) plan changes we must provide a clear and directive policy framework, very detailed and extensive transport infrastructure upgrades ‘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

28. In preparing the section 42A Report Mr Mead was assisted by ‘technical inputs’ from a number of experts, as has been set out earlier.
29. Mr Mead’s primary section 42A Report recommended approval of the Plan Change. He noted:

“Based on the technical reviews and analysis of submissions, the plan change request raises a number of significant potential conflicts with national and regional policies as set out in relevant RMA planning documents. The main issue is the lack of alignment in the Precinct provisions with AUP RPS and NPS-UD objectives and policies that seek a close relationship between urban development and transport investment, particularly public transport”¹⁶.

“At a strategic level, the plan change will assist with meeting housing demands and will work in with and support the proposed new Drury Centre and train station that will be situated to the immediate north-west of the plan change area”¹⁷.

“As a result of the assessment of the plan change request and recommendations on the submissions, I recommend that PPC49 should be approved with modifications and the Auckland Unitary Plan be amended by inclusion of PPC49, but as amended to address the matters set out in Section 10 of this report

If the matters set out in Section 10 cannot be appropriately resolved, then I would recommend that the plan change request be declined”¹⁸.

30. Notwithstanding Mr Mead’s recommendation, he stated¹⁹:

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 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,

¹⁶ Section 42A Report at [527 & 529]

¹⁷Section 42A Report at [531]

¹⁸ Section 42A Report at [12]

¹⁹ Section 42A Report at [5]

sufficient to justify refusal of the request. The following assessment should be considered in this context". [Underlining is our emphasis]

31. Mr Mead provided an Addendum to his section 42A Report ²⁰ which addressed PCs 48 – 50 jointly and substantially changed some of his recommendations set out in his primary section 42A reports²¹. He stated:²²

"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".

32. For PC 49 Mr Mead recommended²³:

"I now support a partial rezoning strategy (see Figure below); amended triggers and thresholds within the area to be re-zoned; and a 'hold point' on non-residential floorspace over 75,000m2 (but no 'hold point' for residential development) within the area to be rezoned."

33. 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 below²⁴:

²⁰ Dated on 19 November 2021

²¹ We address the recommendations in the Addendum Report in more detail later in this decision

²² Section 42A Addendum at [74]

²³ Addendum s42A Report Summary 1(3)

²⁴ 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.

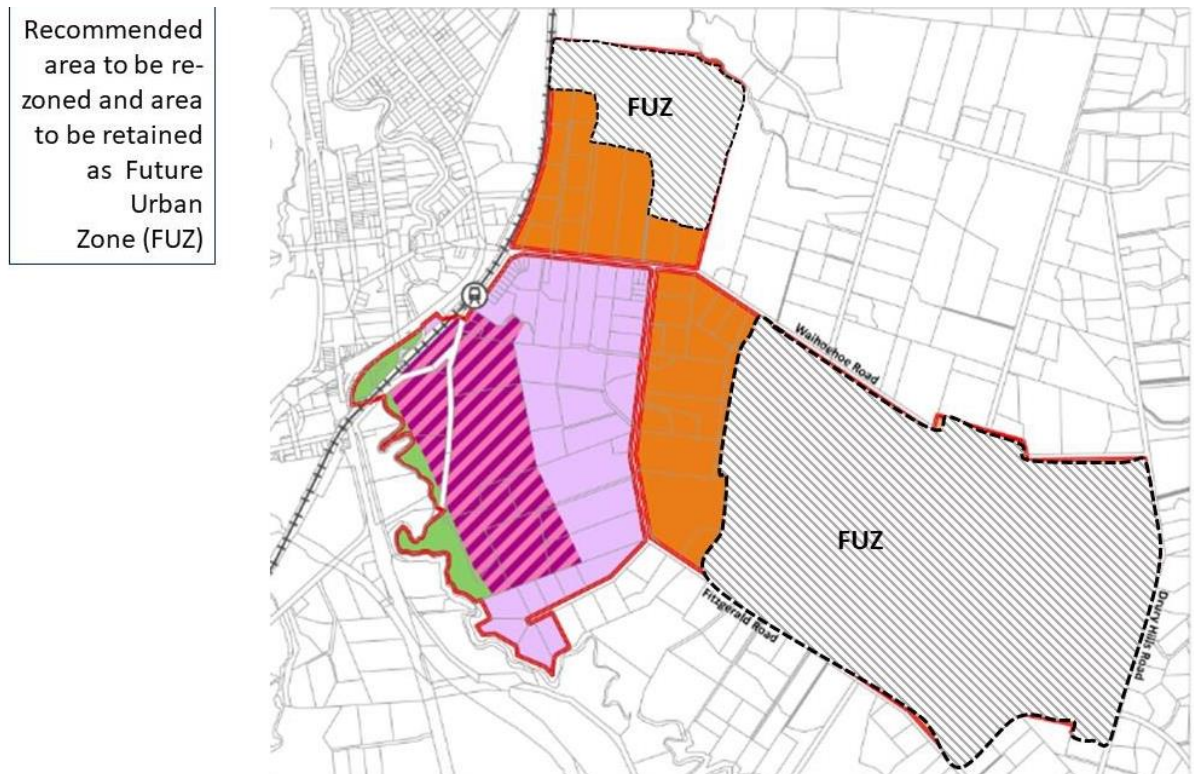


Figure 4 Recommended Rezoning

34. Mr Mead records²⁵:

“Development of the southern section of PPC 49 and the northern section of PPC 50 would be ‘held back’, given uncertainty related to funding of wider transport infrastructure projects.”

LOCAL BOARD COMMENTS

35. The section 42A Report provides²⁶ a summary of both the Franklin and Papakura Local Board comments.

36. The Papakura Local Board submission emphasised the following²⁷:

- The land should be released for development in line with Auckland Council’s Future Urban Land Supply Strategy;
- The plan change must align with the DOSP;
- There needs to be a holistic well-planned approach (good community outcomes);
- Impacts on Papakura need to be considered;
- Green Space and ‘play space’;
- Paths and connectivity;
- Parking and road widths; and

²⁵ Ibid at [90]

²⁶ Section 42A Report at [5.2]

²⁷ Ibid at [98]

- Stormwater.
37. The Franklin Local Board submission addressed²⁸:
- Public concern over lack of infrastructure funding;
 - Support for iwi submissions and on-going engagement with iwi; and
 - Active transport option will be critical to successful development.
38. To the extent we are able, and in the context of submissions to PC 49, 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 Statement²⁹;
 - 17 May 2021 - Stormwater and Planning³⁰;
 - 24 May 2021 - Transport and Planning³¹;
 - 31 May 2021 - Planning³²;
 - 11 October 2021 - Stormwater- Technical³³;
 - 14 October 2021 - Stormwater-Planning³⁴;
 - 26 October 2021 - Transport³⁵; and
 - 11 November 2021 - Additional Information Stormwater³⁶.
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 the Joint Witness Statements (JWS's) to address and agree a range of issues raised in submissions and establish the precinct provisions that we have adopted³⁷.

²⁸ Section 42A Report at [97]

²⁹ Joint Witness Statement ("JWS") dated 11 May 2021

³⁰ JWS 17 May 2021

³¹ Ibid 24 May 2021

³² Ibid 31 May 2021

³³ Ibid 11 October 2021

³⁴ Ibid 14 October 2021

³⁵ Ibid 26 October 2021

³⁶ Ibid 11 November 2021

³⁷ 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

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 Drury³⁸. 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 hearings³⁹.
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 Direction⁴⁰ 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:*
- (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 commencing the hearing for PC 48 a procedural meeting was held on the morning of 28 July 2021. This meeting involved those involved in the hearings for Plan Changes 48, 49 and 50. The main purpose of the meeting was to confirm how

³⁸ It had central government funding confirmed on 6 March 2020 by the Minister of Transport

³⁹ Dated 14 June 2021

⁴⁰ Dated 18 June 2021

the transport related aspects of the hearings for all three plan changes would be held later in the year once revised modelling of the changes to the Mill Road corridor have been completed and considered by the parties. Given commonality of the matters to be considered the meeting confirmed that a combined, reconvened hearing of the three plan changes (PC 48, PC 49 and PC 50) would be held.

46. The Hearing for PC 49 commenced on Wednesday 10 August 2021 and was adjourned on Friday 13 August 2021. The second tranche of the hearing (combined with PC 48 and 50⁴¹) 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 Request⁴², 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 amendments and additions to the plan change in response to concerns raised by the Council and submitters.
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 49 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 out⁴³. This further evaluation must be undertaken at a level of detail that corresponds

⁴¹ 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

⁴² Request for Plan Change – at Section 11

⁴³ RMA, section 32AA(1)(a)

to the scale and significance of the changes⁴⁴. In our view this decision, which among other things, addresses the modifications we have made to the provisions of PC 49, 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 decision⁴⁵, 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.
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 out⁴⁶ 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 briefly 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 discussed⁴⁷ the relevant Notices of Requirement and infrastructure projects that had been proposed. Again, these are briefly addressed below.

⁴⁴ RMA, section 32AA(1)(c)

⁴⁵ *Eden-Epsom Residential Protection Society Inc v Auckland Council* [2021] NZEnvC 082

⁴⁶ Section 42A Report at Section 2

⁴⁷ Ibid at [1.5]

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 the Drury East (the location of PC 49 (and PC 48 and 50)). The Auckland Plan (see the map below) provides limited direction for Future Urban areas and refers to the FULSS (which we address in more detail below).

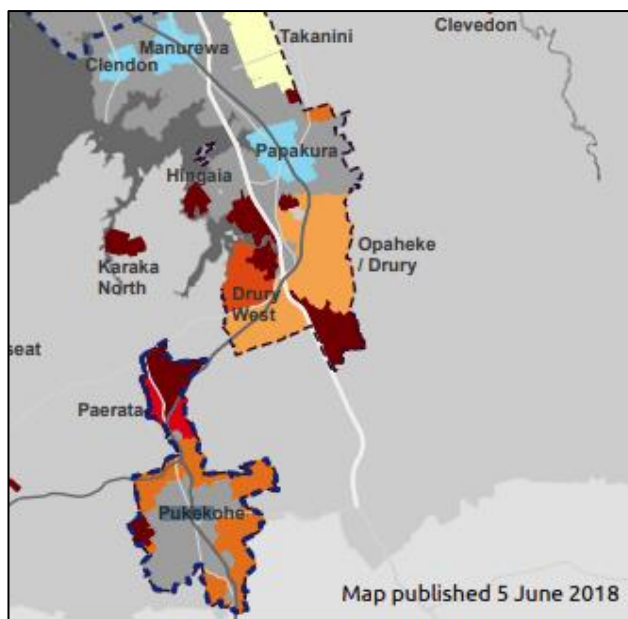


Figure 5 Auckland Plan Development Strategy

Future Urban Land Supply Strategy

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 green-fields 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 49) is to be development ready by between 2028 and 2032.

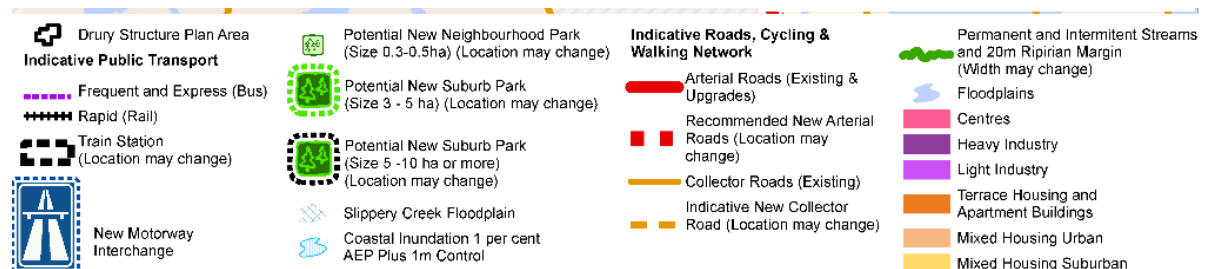
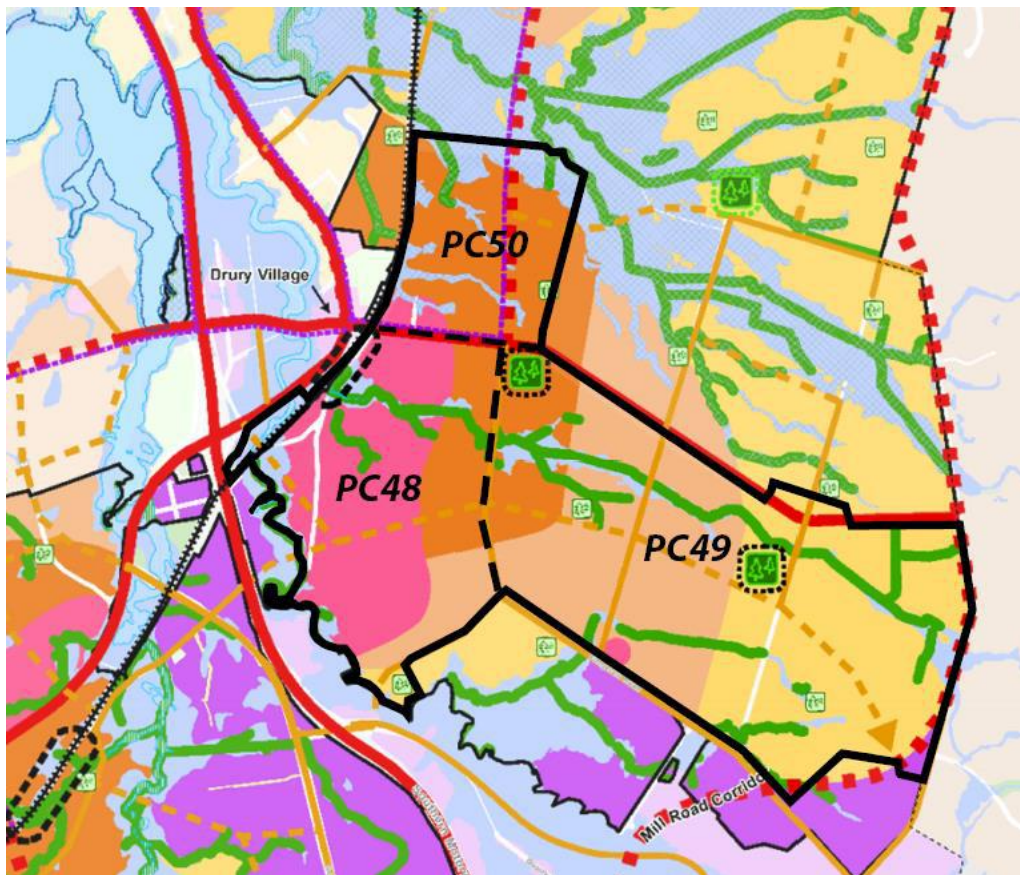
Drury-Opāheke Structure Plan (DOSP)

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:

*"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"*⁴⁸.

⁴⁸ Section 42A report at [37]

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 Rotorua⁴⁹.

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

⁴⁹ DOSP at Section 3.2

Notices of Requirement (NoRs)

70. The section 42A Report records⁵⁰ that Auckland Transport and Waka Kotahi NZ Transport Agency, as requiring authorities under the RMA, issued NoRs in January 2021 for a number of new designations for future strategic transport corridors in the Drury area. These designations are to support the planned urban growth in the Drury-Opāheke area.

71. Of relevance to PC 49 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 Ōpāheke 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, KiwiRail are 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 was 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.
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. The Plan Change Request provided⁵¹ the Applicant's approach to master planning:

"FHLD engaged Woods to undertake a broad master planning exercise for the Drury East Plan Change area. As part of the master planning exercise a comprehensive assessment of the land has been undertaken to determine the constraints and opportunities within the Plan Change area and to identify the most logical and desirable development pattern.

The masterplan provides indicative collector and local roading patterns, positioning of key access points, roading connections and public open squares

⁵⁰ Section 42A Report at [1.5]

⁵¹ Plan Change Request at [9.2]

and spaces, distribution of land use activities, and general block layout. The proposed zoning pattern for the Plan Change area and the Drury Centre Precinct Plans have been informed by the masterplan document to ensure that the outcomes sought for Drury are able to be successfully implemented.

The applicant has also undertaken high level master planning of the surrounding area in collaboration with the Drury East Developers. This has been undertaken to develop compatible land use and roading connections and to ensure transport and infrastructure solutions are available to support growth anticipated by the Councils Drury-Opaheke Structure Plan for the wider Drury East area”.

75. Mr Roberts addressed the Applicant’s master planning process and plan in sections 5 and 7 of this Strategic Planning Evidence. He set out that prior to the release of Council’s DOSP in 2017 Kiwi Property, FHLD, Oyster Capital, Stevenson and Auranga prepared a joint Structure Plan for Drury-Opaheke (known as the Drury Developer’s Group Structure Plan -“DDG Structure Plan”. The DDG Structure Plan was developed collectively to set out an agreed and integrated vision for Drury-Opaheke.
76. Following the completion of the DDG Structure Plan, FHLD engaged Woods to develop a concept masterplan for the site as addressed above. Mr Roberts stated⁵²:

The development of the masterplan was a collaborative process that involved technical inputs from planning, ecology, transport and engineering disciplines. It also involved collaboration with the Council and iwi groups.

The masterplanning process involved a comprehensive assessment of the land with its constraints and opportunities to identify the most logical and desirable development pattern for the wider Future Urban zone. The Masterplan sets out a vision, goals and principles for development. The vision for Drury East Precinct is stated as follows:

“The vision for Drury East Precinct is to create sustainable and integrated neighbourhoods that form strong communities and offer affordable and quality urban lifestyles to accommodate Auckland’s growth and demand for housing supply.”

77. As addressed by Mr Roberts, the Masterplan (and its development process) has been an important ‘guiding document’ in the approach to, and formulation of, the PC 49 precinct and its provisions. We accept that the masterplan has set PC 49 in a strategic context; and it has also responded to that context. It has assisted us, in section 32 terms, in determining that PC 49 meets the relevant statutory planning documents and the purpose of the RMA.

Resource Management (Enabling Housing Supply and Other Matters) Act

78. The Resource Management (Enabling Housing Supply and Other Matters) Act was given Royal assent on 20 December 2021 and came into force on 21 December 2021. As we understand it, this Act does not affect our decision, notwithstanding that

⁵² Mr Roberts’ Strategic Planning Evidence at [7.2 and 7.3]

PC 49 has not specifically addressed the Medium Density Residential Standards (**MDRS**) set out in that Act. This is because PC 49 was publicly notified and the hearings completed prior to the Act coming into force.

79. The extent that the PC 49 area will be impacted by the MDRS will be addressed by the Council when it notifies its own plan change (or variations) to give effect to the NPS-UD (intensification planning instrument) and the Resource Management (Enabling Housing Supply and Other Matters) Act. We understand this plan change is scheduled to be publicly notified in August 2022.

FINDINGS AND REASONS FOR APPROVING THE PLAN CHANGE.

80. The following section addresses our overall findings on PC 49 and why we have approved it; having heard and considered all of the material and evidence before us.
81. 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.
82. 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).
83. We also address the submissions received to PC 49 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.
84. 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.
85. 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 49 should be made.

Reasons for the Plan Change Proposal

86. 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 Application⁵³, evidence and the legal submissions. We also accept that while PC 49 '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.
87. For the reasons that follow, it is our view that the provisions of PC 49 (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 49 give effect to the NPS UD and the RPS, and is it 'aligned' with the Auckland Plan, FULSS and the DOSP?

88. 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. We address this in some detail below.
89. 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's⁵⁴ response, and rebuttal, to it. ACS and AT presented a joint case, and presented the most significant 'challenge' to PC 49, seeking that it be declined.
90. Mr Mathew Allan, legal counsel for ACS and AT set out his clients' significant concerns⁵⁵:
- *"PPC 49 does not provide for the strategic integration of infrastructure, and the planning and funding of such infrastructure, with land use;*
 - *PPC 49 is reliant on major infrastructure projects to service development which are not financed or funded;*

⁵³ Plan Change Request at [5.3]

⁵⁴ Noting that the response from PC 48 and 50 was the same

⁵⁵ Mr M Allan's Legal Submissions at [1.7].

- *Transport infrastructure is a key area of focus in this regard, however 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, it is limited, and a significant infrastructure funding shortfall remains;*
- *Consequently, there is a concern that PPC 49 will not “give effect to” to important strategic objectives and policies in the Regional Policy Statement (RPS) and National Policy Statement on Urban Development (NPS-UD)”.*

91. At the second tranche hearing Mr M Allan reconfirmed his clients’ position that⁵⁶:

“... 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 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)

92. 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

⁵⁶ Mr M Allan’s Legal Submissions at [1.6 to 1.8]

RMA. ACS and AT's experts (finance and funding, traffic and planning witnesses) supported this position.

93. 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 submitted⁵⁷:

"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"

94. In terms of the "giving effect" imperative to the relevant statutory planning documents Mr M Allan quoted from the Supreme Court's King Salmon decision⁵⁸. In light of that decision, he set out⁵⁹ that, as it stands, PC 49 would not "give effect to" key provisions in the NPS-UD and the RPS.

95. The Submitters' planning witness, Mr Turbott⁶⁰ in his evidence presented at the first tranche of the hearings stated⁶¹:

"I foreshadow my concern as to whether PPC 49 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 49 should be approved".

96. Ms Sinclair in her evidence to the second tranche of the hearings (and having adopted Mr Turbott's evidence) told us that she remained⁶² of the opinion that PCs 48 - 50 do not "give effect to" the provisions in the NPS-UD and the RPS.

97. For the reasons that follow we do not agree with Mr Turbott or Ms Sinclair. We find that PC 49 (and PCs 48 and 50), subject to the precinct provisions we have imposed, would give effect to the statutory planning documents. On this basis we prefer the

⁵⁷ Mr M Allan's Legal Submissions, 7 December 2021 at [1.15]

⁵⁸ Ibid at [3.3]

⁵⁹ Mr M Allan's Legal Submissions at [3.5]

⁶⁰ Mr Turbott did not provide evidence to the second tranche of the hearing; a Memorandum from Mathew Allan / Rowan Ashton dated 14 October 2021 noted that Ms Sinclair relies on, and adopts, the planning evidence of Mr Turbott

⁶¹ Mr Turbott's Evidence-in-Chief 27 July 2021 at [D]

⁶² Ms Sinclair's Evidence-in-Chief 8 December 2021 at [39]

evidence of the Applicant's planners, Mr Roberts and Ms Morgan; and others including Ms Heppelthwaite for Waka Kotahi.

98. 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 49 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

99. 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*.
100. 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.
101. Ms Simons, for the Applicant, set out in some detail how she considered the *Eden-Epsom* decision should be interpreted and assessed⁶³⁶⁴. Key points included:

"It is submitted that this language clearly anticipates their application [Objective 6 and Policy 8] in the context of "planning decisions." Indeed, it is difficult to see what the purpose of these provisions could be at all if they were not to be given effect to in decision making on private plan changes⁶⁵.

"The decision in Eden Epsom indicates that Objectives 2, 5, 6 and 7, Policies 1, 6 and 8 and Subpart 2 must be given effect in PC49"⁶⁶.

102. Mr Littlejohn, acting for the Jones Family Trust, filed supplementary legal submissions on this issue. He addressed the *Eden Epsom* decision, and stated⁶⁷:

For present purposes though, counsel agrees with the legal submissions (and supplementary submissions) from FHLDL as to the approach to be taken to the NPS-UD in the consideration of PPC49.

103. Ms Storer in the Reply Submissions supported and adopted Mr Douglas Allan's⁶⁸ Closing Reply Submissions for PC 48 on how the objectives and policies of the NPS-UD should be considered. We note that legal counsel for PC 50 also supported and

⁶³ Ms Simons' Opening Legal Submissions at [6.6 – 6.44]

⁶⁴ Noting the evidence of Mr Roberts and Ms Morgan provided a detailed assessment of PC 49 against the relevant provisions of the NPSUD, and she had provided a brief summary

⁶⁵ Ibid at [6.18]

⁶⁶ Ibid at [6.22]

⁶⁷ Mr Littlejohn's Supplementary Legal Submissions at [2.4]

⁶⁸ Applicant's (Kiwi Property Holdings No 2 Limited) Legal Counsel PC 48

adopted Mr D Allan's legal submissions on the legal framework. Mr D Allan submitted⁶⁹:

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

(b) While PC48 (49) was drafted and lodged prior to the NPS-UD becoming operative, it is consistent with and does in practice give effect to that document".

104. Mr Gribben presented the legal submissions on behalf of Waka Kotahi at the second tranche hearings he submitted⁷⁰:

- *a number of themes from the NPS-UD are relevant to the plan changes throughout Drury including:*

(a) Achieving a well-functioning urban environment;

(b) Ensuring people can live near centres and areas well served by public transport; and

(c) Integration of land use with infrastructure planning and funding.⁸

- *In addition, under the NPS planning decisions should be strategic and responsive to proposals for significant development.*

105. 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 stated⁷¹:

"The NPS-UD objectives and policies that specifically refer to "planning decisions", and therefore those that potentially must be given effect to at this stage, are – as Mr Turbott identifies in his evidence – Objectives 2, 5 and 7 and Policies 1 and 6 ⁷²".

106. He went on to say⁷³:

"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)."

⁶⁹ Mr D Allan's Closing Legal Submissions at [3.1]

⁷⁰ Mr Gribben's Legal Submissions at [2.2 – 2.3]

⁷¹ Mr M Allan's Legal Submissions at 12 August 2021 [4.3]

⁷² 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)

⁷³ Mr M Allan's Legal Submissions at [4.6]

107. Having had regard to the legal submissions received, we agree with those of the Drury East Plan Change proponents, Mr Littlejohn and Waka Kotaki. They have a contrary view to Mr M Allan. We find that we need to 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 development⁷⁴. 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:

108. 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 42A Report’ that the Drury East Plan Changes are contrary to or inconsistent with NPS-UD provisions addressing the relationship between development and infrastructure.
109. 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;*
- 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.”*

110. PC 49 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 49 land’s location on the road and rail networks once the Plan Change (and those of PC 48 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.

⁷⁴ Noting that the *Eden-Epsom* case was a brownfield site.

111. Objective 6 of the NPS is a key provision and was one of the main NPS UD provisions in contention between the Applicant and ACS and AT⁷⁵.
- “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.”*
112. 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.
113. 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.
114. However, it is our view that any proposed live zonings need to be consistent with the proposals for, and provision 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 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.
115. 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 PC 49 land (and PC 48 and 50) will be integrated with the existing strategic infrastructure.

⁷⁵ Noting Objective 6 was identified by Mr M Allan as not being relevant due to the Eden Epsom decision, but Ms Sinclair did address it.

116. 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.

117. 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?

118. We also acknowledge with regards to Sub-clause c) of Objective 6 that the Plan Change(s) will provide significant development capacity.

119. 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.*

120. 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 DOSP⁷⁶.

121. 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

⁷⁶Noting that a structure plan is required by the RPS prior to ‘live zoning’ land

below as we need to be satisfied that PC 49 (and PC 48 and 50) can provide the infrastructure needed to support it in a timely manner.

122. Finally in respect of the NPS UD we agree with Ms Simons' submission where she stated⁷⁷:

Notwithstanding, the NPS-UD is not critical to the Panel's decision because:

- (a) PC49 gives effect to the provisions of the RPS as they currently stand;*
- (b) To the extent that the Council will need to amend the AUP to give effect to the NPS-UD, PC49 has been designed to achieve as much consistency as possible (in terms of urban form, etc.) with the changes that the Council will likely be required to implement, but if further amendment is required, PC49 does not prevent the Council from doing that.*

Auckland Unitary Plan - Regional Policy Statement and District Plan

123. 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 use⁷⁸. 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 49 will "give effect to" or implement the RPS provisions.
124. 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.
125. 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;*

⁷⁷ Ms Simons Opening Legal Submissions at [6.5]

⁷⁸ As required by section 30 (1)(g) - the strategic integration of infrastructure with land use through objectives, policies, and methods.

(d) *improved and more effective public transport;*

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...*

126. 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”.

127. 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”.⁷⁹ The critical words being “in place at the time of the subdivision or development”.

128. 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 have been planned and are subject to the Staging of Development with Transport Upgrades and other precinct provisions. This is to ensure the necessary upgrades are undertaken. On this basis it is the Applicant’s position that PC 49, 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.
129. It was ACS and AT’s position that the Plan Change would not give effect to the RPS, and this 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

130. 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 49.
131. 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 49 (and PC 48 and PC 50) were inappropriate and premature.
132. Ms Mackay set out the purpose of Council’s spatial plan which was inter alia⁸⁰:

⁷⁹ Objective E38.2 (4)

⁸⁰ Section 79(3) of the Local Government (Auckland Council) Act 2009 (LGACA).

- *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.*

133. She also set out that the FULSS provided a:

“proactive approach to ensure that the future urban land has the necessary bulk infrastructure and live Unitary Plan zoning in place prior to development”⁸¹;

and⁸²

“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”.

134. In summary, and in questioning Ms Mackay, it was her view that live zoning at Drury-Opāheke was not needed as there was already sufficient land zoned for urban development and was 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.

⁸¹ Ms Mackay’s Evidence-in-Chief at [6.6]

⁸² Ms Mackay’s Evidence-in-Chief at – C, D, E and F

135. Mr Turbott's planning evidence on behalf of Council⁸³, included the statutory and strategic matters⁸⁴ and the DOSP. Overall, it was his opinion that PC 49 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.
136. Mr Turbott opined that PC 49 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).
137. 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 49 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.
138. This, in effect, was the case presented by ACS (and AT) – that:
- PC 49 does not provide for the strategic integration of infrastructure, and the planning and funding of such infrastructure, with land use;
 - There is a significant infrastructure funding shortfall (both capital and operating cost);
 - PC 49 is reliant on major infrastructure projects to service development which are not financed or funded (both capital and operating cost); and
 - PC 49 does not “give effect to” to important strategic objectives and policies.
139. We were given (repeatedly) the Council's position which 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.
140. It was Mr Roberts' opinion in his rebuttal evidence⁸⁵ that limited weight should be placed on the FULSS, and that greater weight should be placed on the Applicant's position (its AEE, masterplan and evidence) 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 outlined by Ms Mackay in Section 9 of her evidence-in-chief. Ms Mackay noted in her conclusion⁸⁶:

⁸³ Mr Turbott's evidence at the later re-convened hearing was adopted by Ms Sinclair as he was unable to attend the later hearing

⁸⁴ Mr Turbott's Evidence-in-Chief at Section 8

⁸⁵ Mr Roberts' Rebuttal Evidence at [2.3 & 3.2]

⁸⁶ Ms Mackay's Evidence-in-Chief at [14.2]

“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 49 ahead of time frames in FULSS and the Drury-Opāheke Structure Plan”.

141. 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.

142. 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 included⁸⁷

- *April 2018 –ATAP Update;*
- *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;*
- *June 2021 –Government Policy Statement on Housing and Urban Development Discussion Document.*

⁸⁷ Mr Roberts’ Tranche 1 Rebuttal Evidence at [3.1 - 3.2]

- *June State 2021 Highway widening and new interchange lodged under the COVID-19 Recovery (Fast-track Consenting Act 2020)*

143. Mr Roberts also detailed⁸⁸ 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).
144. It was Mr Roberts' view that the factors above, of themselves, would warrant a review of the FULSS as it relates to Drury.
145. At Section 4 of Mr Roberts' Rebuttal evidence (first tranche hearing), under the heading "Council's approach to implementing the FULSS – he set out"⁸⁹:

"...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 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. PC49 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.

146. 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.
147. With respect to the weight to be applied to the FULSS, and for the purposes of consideration on PC49, 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

⁸⁸ Mr Roberts' Tranche 1 Rebuttal Evidence at [3.3 - 3.5]

⁸⁹ Mr Roberts' Tranche 1 Rebuttal Evidence at [4.2 and 4.3]

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 49 (and PC 48 and 50). We have accorded it limited weight.

148. 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 49 area (and that of PCs 48 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.
149. Furthermore, we do not accept Ms Mackay's view⁹⁰ (and because of this Mr Turbott's view) that approving PC 49 (and PCs 48 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.
150. We also agree, for all of the reasons we have set out, that PC 49 (and PCs 48 and 50) present 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)

151. 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.
152. With respect to structure planning, the Applicant's Opening legal submissions noted⁹¹:

"FHL D was clear from the beginning that comprehensive structure planning of the wider Drury area would be required to ensure high quality outcomes and efficient land use. From 2016, FHL D worked with the developers of the neighbouring land, Kiwi Property No 2 Limited ("Kiwi") and Oyster Capital ("Oyster"), together with Stevenson Group (developers of Drury South) and MADE Group (developer of

⁹⁰ Ms Mackay's Evidence-in-Chief at [14.4]

⁹¹ Ms Simons' Legal Submissions at [3.4 – 3.5.]

Auranga in Drury West) to prepare a Structure Plan for the Drury-Opāheke area (“the Landowners’ Structure Plan”).

FHLD subsequently provided input into the Council’s Drury Opāheke Structure Plan, which is largely consistent with the Landowners’ Structure Plan”.

153. 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.
154. 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.
155. It was Mr Roberts’ view that the land use zonings proposed in PC 49 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, the land use zoning patterns in PC 49 are largely consistent with the land use pattern in the DOSP⁹².
156. 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 is 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 interim⁹³.

⁹² Section 42A report at [40]

⁹³ DOSP, Page 62

157. From questioning the various planning experts of the Council and Applicant on this matter, we understand that there are no plans or intentions 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.
158. 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

159. 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 49 (and PC 48 and 50) should be declined as the Plan Change was contrary to the provisions of the statutory planning documents as we have outlined.
160. In relation to transport and infrastructure financing and funding issues, ACS and AT provided detailed corporate evidence from Ms Duffield, Mr Kloppers and Mr Gudsell. In summary their evidence was:
161. The work the Council has been involved with since the completion of the Structure Plan (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 of 30 years to ensure a sustainable well-functioning urban environment. This is addressed in the evidence of Mr Kloppers, who attached the DIFF report.
162. 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.
163. 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).

164. 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.
165. 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 stated⁹⁴:

“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”.

166. 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 that⁹⁵:

- *“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”.*

167. 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

⁹⁴ Ms Duffield’s Summary Statement at [4]

⁹⁵ Ibid at [12]

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.

168. 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
169. 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.
170. Mr Zöllner, from MHUD, presented oral evidence and set out the following⁹⁶⁹⁷:
- (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*

⁹⁶ We asked Mr Zöllner to provide a written copy of his oral evidence, but that did not eventuate

⁹⁷ As set out at paragraph 2.4 of Mr D Allan's Reply Submissions, but equally applied to PC 49

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 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 is our emphasis]*

171. 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.

172. In questioning Mr Zöllner, he noted 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.

173. Mr Dewe (FHL) addressed zoning issues, attached to his evidence correspondence from Crown Infrastructure Partners (dated 24 November 2021). He stated ⁹⁸:

“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]

174. Mr Schwartfeger (Kiwi Property) addressed the effect of the partial zoning (as recommended by Mr Mead in the 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. He stated⁹⁹:

⁹⁸ Mr Dewe’s Rebuttal Evidence dated 26 November 2021 at [4.10]

⁹⁹ Mr Schwartfeger’s Rebuttal Evidence dated 26 November 2021 at [6.15]

“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 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”.

175. 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.

176. Ms McDonald stated¹⁰⁰:

“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”*

177. 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 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.

¹⁰⁰ Ms McDonald’s Evidence-in-Chief at [9.3]

178. 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 PC51 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.
179. 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.
180. 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.

Addendum Section 42A report and extent of zoning

181. Before addressing whether PC 49 (and PCs 48 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.
182. Mr Mead recommended that only a partial rezoning of PCs 49 and 50 was appropriate (but all of PC 48 could be 'live' zoned). 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.

183. He stated in the Addendum 42A Report¹⁰¹:

"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".

184. 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 Central Train Station¹⁰², 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.

185. It was his view that the partial rezoning 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 the next 10 years or sooner, either at the next AUP review, by a Council initiated plan change, or another private plan change.

186. 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).

187. 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.

188. Mr Mead asserted in response to questioning that the partial rezoning would not adversely affect the outcomes sought by the plan change proponents. In his presentation material¹⁰³ 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."

189. 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

¹⁰¹ Paragraph 78 of the Addendum section 42A Report

¹⁰² This appears to be based on an 800m straight line circle from the station

¹⁰³ Dated and presented on the 10 December 2021

corporate witnesses for each of PCs 48 – 50 strongly and comprehensively rebutted Mr Mead’s revised re-zoning proposal¹⁰⁴. 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.

190. 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?

191. 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 49, there are numerous references to PCs 48 and 50 given the integrated nature of how the cases and evidence was presented to us.
192. 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.
193. As set out by Mr Parlane, in his evidence on Strategic Traffic and Transportation Matters¹⁰⁵:

“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”.

¹⁰⁴ Mr Schwartzfeger’s (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’s (Fulton Hogan) Rebuttal Evidence dated 26 November 2021 at [3.1 – 3.9].

¹⁰⁵ Mr Parlane’s Evidence- In-Chief at [1.6]

194. 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 of Drury East as envisaged by PCs 48 – 50. We accept there will need to be an element of “carrot and stick” in terms performance to achieving this outcome.
195. It is the precinct provisions, in particular the Staging of Development with Transport Upgrades provisions as a trigger mechanism 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 public transport routes and the development of suitable Travel Management Plans¹⁰⁶ are important too.
196. We accept that Mr Hughes and Mr McKenzie (transport experts for the three Applicants - PCs 48, 49 and 50) 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).
197. 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.
198. 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 that¹⁰⁷:
- *“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*

¹⁰⁶ Mr Prosser’s Evidence-in-Chief at [3.18 – 3.23]

¹⁰⁷ Mr Hughes’ and Mr McKenzie’s Rebuttal Evidence at [2.7-2.19].

projections has formed the basis for the development yields in the trigger table, which are therefore highly conservative.”

199. Mr Church also addressed the appropriateness and conservatism of the model in stating¹⁰⁸:

“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.”

200. It is our view that given the conservatism in the modelling we do not support the suggested 10% reduction in the transport infrastructure triggers proposed¹⁰⁹ 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.
201. 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.
202. Mr Prosser also did not agree¹¹⁰ 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.
203. Mr Prosser also raised issues¹¹¹ 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 Mr 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

¹⁰⁸ Section 42A Addendum Report Page 81.

¹⁰⁹ Mr Phillips’ Evidence-In-Chief at [4.4]

¹¹⁰ Mr Prosser’s Evidence-In-Chief at [3.15]

¹¹¹ Ibid at [3.1 – 3.5]

construction traffic management effects could and should be addressed at the resource consent stage. We agree.

204. 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.
205. 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.
206. In relation to the above, and importantly, the overall approach the 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 results in public transport becoming relatively as attractive as private vehicle travel, if not more so.
207. As set out in the Applicants’ 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.
208. 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.

209. Notwithstanding the above, we accept the Applicants' 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.
210. 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)¹¹².
211. 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.
212. 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.
213. 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.
214. 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.
215. 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.
216. Having accepted the modelling outcomes and approach adopted by the Applicant's transportation and planning experts, we address the key themes arising from relevant

¹¹² 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.

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.

217. 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*¹¹³ and *Foreworld Developments Limited v Napier City Council*¹¹⁴. 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).

218. 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.

219. In this context, we accept, as set out in the Waka Kotahi legal submissions, that¹¹⁵

“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 quickly¹¹⁶; and*
- b. Funding commitments by the Council and Crown may not be made until some years after future infrastructure requirements are identified;*

¹¹³ *Landco Mt Wellington v Auckland City Council* [2009] NZRMA 132; and *Laidlaw College Inc v Auckland Council* [2011] NZEnvC 248

¹¹⁴ *Foreworld Developments Limited v Napier* CCW08/2005

¹¹⁵ Mr Gribben’s Legal Submissions at the tranche 2 hearings – 8 December 2021 at[2.7]

¹¹⁶ The ‘de-funding’ of Mill Road being a good example

- 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)*

220. 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:
- The development is generally consistent with the DOSP;
 - 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;
 - The investment from the Plan Change Applicants to fund some transport projects; and
 - There are adequate and appropriate plan provisions (including triggers) to manage the transport effects as development progresses over time.
221. 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.
222. 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.
223. 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.
224. 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 was 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"¹¹⁷.

225. 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.
226. 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).
227. 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)

228. 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

¹¹⁷ Ms Heppelthwaite's Summary Statement at [3.8 –3.9].

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)).

229. 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.
230. 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 response 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 or other active transport modes.
231. 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”¹¹⁸.*
232. 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.
233. 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

¹¹⁸ Mr Hughes’ and Mr McKenzie’s Evidence-In-Chief at [7.24]

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

234. 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.
235. 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.
236. 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, and remains in the Regional Land Transport Plan 2021- 2033 as a NZUP project, and that the Opāheke Northern connection is the subject of a NoR process being considered now.
237. 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).
238. The activity status for subdivisions and or development that do not comply with the Standards – Staging of Development with Transport Upgrades was debated between the planning witnesses. The Applicants' 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.

239. 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

240. 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.

241. 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.*

242. 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 Applicants was that the activity (subdivision and development) was anticipated and the range of adverse effects from this could be identified – and were transport related.

243. 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.

244. 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.

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

Drury South Limited

246. 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.
247. 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).
248. 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 submissions¹¹⁹:

"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".

249. 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.
250. The other key amendment for DSL was the introduction of the second right hand turn lane into SH22, which has been agreed to.

¹¹⁹ Applicant's Reply Submissions at [4.20]

Mana Whenua

251. The Applicant's Plan Change Request addressed¹²⁰ cultural values noting that engagement has been undertaken with all Mana Whenua groups with known customary interests in the Plan Change area. A consultation report included details of the results of this engagement to date.
252. Four iwi groups: Ngati Te Ata, Ngāi Tai Ki Tāmaki, Te Akitai Waiohū and Ngāti Tamaoho prepared Cultural Valuation Assessments¹²¹ (**CVAs**).
253. The section 42A Report records¹²² there are no known identified sites of Significance or Value to Mana Whenua within the Plan Change area. Section 10.8 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.
254. Ngāti Te Ata Waiohū¹²³ submitted on PC 49, seeking:
- "The rejection of PC 49 unless the issues addressed in their submission can be adequately addressed".*

¹²⁰ Plan Change Request at [10.8] & Section 42A Report at [304]

¹²¹ Plan Change Request Appendix 12 - 15

¹²² Section 42A Report at [305]

¹²³ Section 42A Report pp 501 - 503, Submitter No 32

255. Ngāti Tamaoho¹²⁴ also submitted on PC 49. Their submission mirrored that of Ngāti Te Ata Waiohū seeking the rejection of PC 49 unless the issues addressed in their submission were adequately addressed.
256. Mr Dewe in his evidence-in-chief noted¹²⁵ that the Applicant had numerous hui with tangata whenua, and as a result have entered into memoranda of understanding with two iwi (Ngāti Whanaunga and Te Ākitai Waiohū) These agreements confirm FHL's commitment to work constructively with tangata whenua on an ongoing basis.
257. Mr Dewe also noted:

“Discussions with Ngāti Tamaoho and Ngāti Te Ata are ongoing in respect of the detail of the precinct provisions and as set out in the evidence of Mr Roberts and Ms Morgan have resulted in some amendments to the latest version of the precinct provisions including, for example, the introduction of Te Aranga design principles”.

258. Mr Roberts and Ms Morgan noted¹²⁶ that Mr Mead in the section 42A Report recommended a new policy to address Mana Whenua values. They agreed in principle with Mr Mead's recommendation and proposed a modified version:

Policy 12: Development responds to Mana Whenua values by:

- a. Delivering a green corridor following the Fitzgerald stream and tributaries of the Hingaia stream;*
- b. Taking an integrated approach to stormwater management; and*
- c. Ensuring the design of streets and publicly accessible open spaces incorporate Te Aranga design principles.*

259. Mr Roberts and Ms Morgan opined¹²⁷ the policy has been informed by extensive consultation and engagement undertaken with Mana Whenua throughout the development of PC 49. It reflected their understanding of the issues of importance to Mana Whenua, as expressed in the Cultural Values Assessments and in their discussions with them. They noted that they had shared this proposed policy with Ngāti Te Ata Waiohū and Ngāti Tamaoho and sought their feedback. As noted above, FHL is committed to on-going engagement with Mana Whenua throughout the development of the project. Mr Roberts and Ms Morgan confirmed FHL had entered into memoranda of understanding with both Ngāti Whanaunga and Te Ākitai Waiohū.

¹²⁴ Section 42A Report pp 649 - 652, Submitter No 46

¹²⁵ Mr Dewe's Evidence-in-Chief at [8.2]

¹²⁶ Mr Roberts' and Ms Morgan's Evidence-in-Chief at [12.1]

¹²⁷ Mr Roberts' and Ms Morgan's Evidence-in-Chief at [12.2]

260. 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 PC 49 would give effect to the RPS and Part 2 in relation to Mana Whenua interests and values.

Heritage and archaeological effects

261. The archaeological and heritage values of the plan change area are summarised in section 10.7 of the Plan Change Request and discussed in more detail in the Archaeology Assessment prepared by Clough and Associates¹²⁸ (Appendix 11 to the application).

262. The Archaeological Assessment records:

"One archaeological site has been recorded within the plan change area, R12/1122, the Drury Tramway/Mineral Railway¹²⁹".

"An assessment report prepared for Auckland Council recommended that it was not scheduled"¹³⁰.

"Once future development plans have been determined, a detailed assessment of effects should be prepared an appropriate mitigations measures recommended, most likely in the form of archaeological monitoring and recording (preservation by record)"¹³¹.

263. The section 42A Report notes¹³² that Mr Brassey (for the Council as regulator) agrees that;
- Effects on the tramway/railway within the PC 49 area can be mitigated by archaeological investigation and recording of the remains, and the interpretation of this significant heritage feature. Mr Brassey considers they would be appropriate mitigation measures; and
 - The possibility of unidentified archaeological sites being present in the PPC area is low. In Mr Brassey's view it would be appropriate to rely on the Heritage New Zealand Pouhere Taonga Act 2014, and the AUP Accidental Discovery rule to manage unidentified heritage across the remainder of the PC area.
264. Heritage New Zealand – Pouhere Taonga (**HNZPT**), in their submission¹³³ recommended:

¹²⁸ Ms Cameron and Dr Clough – *Proposed Drury East Residential Plan Change Preliminary Archaeological Assessment* June 2019 Clough & Associates

¹²⁹ Ms Cameron and Dr Clough at page 35

¹³⁰ Ms Cameron and Dr Clough at page 37

¹³¹ Ms Cameron and Dr Clough at page 41

¹³² Section 42A Report at [299 - 300]

¹³³ Section 42A Report at pages 595 -597 - Heritage New Zealand – Pouhere Taonga Submitter 39

- Include provisions within the precinct plan to require archaeological assessment of the area during subdivision or resource consent stage of the development;
- Include provisions for the interpretation of the Drury Tramway R12/1122;
- Amend provision requiring the riparian margins to be planted to a minimum width of 10 metres to exclude archaeological sites; and
- Include provisions within precinct plan to address Māori cultural heritage values identified.

265. Mr Mead recommended:

- It is appropriate to rely on the Heritage New Zealand Pouhere Taonga Act and the AUP Accidental Discovery Rule to manage unidentified heritage across the PC 49 area; and
- An archaeological assessment of the stream margins should occur prior to riparian planting, in order to ensure that RPS Objective B5.2.1(1) and (2) are given effect to in regard to any significant historic heritage site being identified before it may be damaged by planting.

266. Mr Mead also supported the archaeological assessment requirement proposed by Mr Brassey to be included as part of the special information requirements for riparian planting.

267. Mr Roberts and Ms Morgan noted that Mr Brassey disagreed with NZHPT about whether an archaeological assessment of the area should be required. Instead, Mr Brassey was comfortable relying on the accidental discovery protocols of the AUP (OP). Mr Brassey was also of the view that the Drury Tramway/Mineral Railway does not meet the threshold for scheduling under the AUP (OP). Ms Cameron and Dr Clough, in their Archaeological Assessment, expressed the opinion¹³⁴ that the potential for archaeological material is low.

268. It was Mr Roberts' and Ms Morgan's view that:

"It would be appropriate to require an archaeological assessment to be undertaken prior to development in the general location of the Drury Tramway/Mineral Railway, as a means of informing whether an Authority to Modify is required from Heritage New Zealand. We propose to include this as a Special Information Requirement at IX.9(3), in the area shown on proposed Precinct Plan 3".

IX.9 Special Information Requirements

(3) Archaeological assessment

An application for land modification within the area shown on IX.10.X Precinct Plan 3, must be accompanied by an archaeological assessment, including a survey. This also applies to any development providing riparian planning in

¹³⁴ Ms Cameron and Dr Clough at page 39

accordance with IX.6.3. The purpose of this assessment is to evaluate the effects on archaeological values prior to any land disturbance, planting or demolition of a pre-1900 building, and to confirm whether the development will require an Authority to Modify under the Heritage New Zealand Pouhere Taonga Act 2014.

269. Our finding has been influenced by the acceptance that “*the potential for archaeological material is low*”; we accept the Roberts and Morgan view an archaeological assessment of the area is not required instead reliance can be placed on the accidental discovery protocols of the AUP (OP). We have adopted the Special Information Requirement.

Open Space

270. The Applicant’s section 32 Evaluation Report set out their approach to open space and community facilities recording¹³⁵:

“A variety of open spaces are indicated within the Urban Design report that will cater for the varying needs of the future community and which align with Council’s Open Space Provision Policy. In particular the indicative open spaces within the Urban Design report include:

- 1. Ecological Corridors: Four ecological corridors of varying lengths proposed. The main ecological corridor is the existing Waihoehoe Stream and tributaries to the main Hingaia Stream form the three southern ecological corridors;*
- 2. Suburb Parks: Two large suburb parks (3-5 hectares) are indicated at either end of the Drury East Precinct; and*
- 3. Neighbourhood Parks: In line with Council’s Open Space Provision Policy 2016, four neighbourhood parks are proposed to provide open space within walkable catchments”.*

271. Section 3.2 of the *Drury East Precinct Urban Design Report* of Mr Paul Edmond and Mr Krupa Patel, March 2010(sic)¹³⁶ outlines the Applicant’s open space development principals:

“Goal 5: Provide quality public spaces easily accessible to residents;

Protect and enhance existing stream networks and native vegetation;

Within the protected ecological corridors offer visual and recreational amenity; and

¹³⁵ Application Request at [10.2]

¹³⁶ Appendix 7 Application Request

Provide a range of high-quality suburban and neighbourhood parks in locations that are legible and walkable, bounded by both roads and ecological corridors”.

272. The Applicant was of the view¹³⁷:

“The Auckland-wide provisions will ensure the adequate provision of accessible and quality open space for future residents. The surrounding existing and planned amenities and social facilities, are and will be accessible by active and public modes of transport, and are or will be of a sufficient size to cater for the social and cultural needs and well-being of future residents of the Plan Change area”.

273. Mr Mead in the section 42A set out that the Plan Request had been reviewed by Ms Barrett, Principal Specialist – Parks Planning, Auckland Council with regards to open space¹³⁸. Ms Barrett noted her concerns and provided recommendations:

- The absence of open spaces being indicated on the precinct plan means that there is the potential for an under-provision of public recreational open space, particularly if development proceeds in a series of smaller stages;
- PC 49 does not contain sufficient provisions to deliver a network of walkways combining proposed open spaces and stream networks. She recommended that the indicative locations of streams to be retained, riparian areas to be enhanced and indicative greenways routes (walkways/cycleways) are shown on the precinct plan;
- She opposed any wording implying that any of the indicative open space shown on the precinct plan will be acquired by the Council. She recommended a new standard for maximum fence height for sites adjoining public space; and
- Ms Barrett also recommended several additions and amendments to the proposed objectives and policies for the precinct to address the issues identified above. including provision of greenway networks and interfaces of sites/dwellings with open space. She also suggested amendments to the riparian margin standard to better specify required widths.

274. Mr Mead agreed with Ms Barrett’s concern that the absence of open spaces being indicated on the precinct plan means that there is the potential for an under-provision of public recreational open space, particularly if development proceeds in a series of smaller stages.

275. Mr Mead recommended¹³⁹

- The indicative locations of open space (one suburb park and four neighbourhood parks) should be shown on the precinct plan;

¹³⁷ Application Request at page 37

¹³⁸ Section 42A Report at [8.4]

¹³⁹ Section 42A Report at [223 – 226]

- Streams are shown on a precinct plan in relation to urban design (and ecological effects as discussed below);
- A greenway along the main stem of the Fitzgerald Stream is shown indicatively on the precinct plan. This greenway should contain a legible and continuous walkway/cycleway, located outside the 10m riparian margin;
- A new policy that refers more generally to the quality of the public realm to be created, including open spaces; and
- The precinct provisions are amended / added to manage the quality of the interface between open space and built development. Wording for a new standard was provided.

276. Mr Barwell's evidence stated¹⁴⁰:

"As a consequence of the review of potential open space provision in Drury-Opāheke, one suburb park and four neighbourhood parks⁶ have been identified as appropriate within the PPC 49 area to meet the open space provision targets⁷ in the Provision Policy'.

*"All proposed parks would also need to meet the site suitability requirements of the Council's Parks and Open Space Acquisition Policy (2013) (**Acquisition Policy**) to make their acquisition supportable".*

277. Key points of Mr Barwell's conclusions included¹⁴¹:

- Open spaces are shown indicatively on the precinct plan in the Council's preferred locations. The reason for this recommendation is to provide a transparent starting point for discussion regarding potential vesting/acquisition of the open spaces at a later date that is consistent with the Council's Provision Policy and Acquisition Policy. A compelling case would need to be made by the Applicant for departing from adopted Council policy; and
- Urban zoning of the PC 49 area now may result in inequitable open space in other parts of Auckland that are currently being, or will imminently be, developed. In my view it is imperative to have adequate and sustainable funding in place for acquisition, development and ongoing maintenance of open space in place before urban zoning in the PC 49 area.

278. Mr Turbott in his evidence¹⁴² for ACS supported Mr Barwell's recommendation on the inclusion of indicative open spaces on the precinct plan. He also suggested a wording addition to precinct policy to IX3(4).

¹⁴⁰ Mr Barwell's Evidence-in-Chief at [5.7 & 5.11]

¹⁴¹ Mr Barwell's Evidence-in-Chief at [8.2 – 8.4]

¹⁴² Mr Turbott's Evidence-in-Chief at Section 8

279. Mr Roberts and Ms Morgan addressed open spaces in Section 9 of their evidence-in-chief. They set out¹⁴³:

“Several submissions have requested that PC49 be amended to ensure there is provision of appropriate open spaces, via the precinct plans and zoning of additional land (Ministry of Housing and Urban Development¹⁴⁴, the Council (as submitter), Ministry of Education¹⁴⁵, Leith McFadden¹⁴⁶ and Kāinga Ora¹⁴⁷)”.

280. To address the matters raised by Mr Mead and submitters, Mr Roberts and Ms Morgan proposed the following:

- Update Precinct Plan 1 to show the indicative open space network set out in Auckland Council’s submission;
- In addition, the updated Precinct Plan 1 will show the following:
 - a. Indicative locations for the stream network;
 - b. An indicative shared path along one side of the main stem of the Fitzgerald Stream;
 - c. The protected Puriri trees at 270 Drury Hills Road;
 - d. A revised indicative location for the east-west collector road; and
 - e. Matters of discretion and assessment criteria have been included for subdivision, and new buildings prior to subdivision, to ensure that future development is generally consistent with the Precinct Plan.

281. Mr Roberts’ and Ms Morgan opined¹⁴⁸:

“The proposed amendments to Precinct Plan 1 would efficiently and effectively achieve Objective 1 of PC49 ,and gives effect to the higher order objectives of B2.3 by responding to the intrinsic qualities and physical characteristics of the site and area, including its setting”.

282. We find the changes proposed by Mr Roberts and Ms Morgan have gone some way to meeting the concerns and needs of the submitters. The changes will cater for the varying needs of the future community and will align with Council’s Open Space Provision Policy. We do not accept the recommendation of Mr Barwell that it is imperative to have adequate and sustainable funding in place for acquisition,

¹⁴³ Mr Roberts’ and Ms Morgan’s Evidence-in-Chief at [9.1]

¹⁴⁴ Section 42A Report at pages 495 – 500

¹⁴⁵ Section 42A Report at pages 586 – 590

¹⁴⁶ Section 42A Report at pages 591 – 592

¹⁴⁷ Section 42A Report at pages 625 – 642,

¹⁴⁸ Mr Roberts’ and Ms Morgan’s Evidence-in-Chief at [9.9]

development and ongoing maintenance of open space in place before urban zoning the PC 49 area.

Extent of THAB Zoning and Height

283. The notified version of PC 49 proposed to apply the THAB zone to the north-western extent of the site, consistent with the land uses shown in the DOSP. However, since PC 49 was notified, the NPS UD has come into effect. Policy 3 of the NPS UD requires District Plans to enable building heights of at least six storeys within at least a walkable catchment of planned rapid transit stops (the Drury Central train station) and the edge of the Metropolitan Centre zones (the planned Drury Centre). The NPS UD does not define a walkable catchment and there would be various methods for applying this. The Council is yet to notify its plan change to give effect to Policy 3 and this is due in August 2022.
284. Accepting there is no currently ‘agreed’ walkable catchment, we agree with Mr Roberts and Ms Morgan that the Ministry for the Environment guidance on the NPS UD intensification on walkable catchments is appropriate to use as a guide¹⁴⁹. They are typically 400m, 800m and up to 1200m depending on the type of transport and activities/services being accessed.¹⁵⁰ We accept that determining walkable catchments is multi-faceted, and likely to require a sophisticated methodology to evaluate the relative accessibility of Auckland’s urban areas to determine the most appropriate spatial extent of zones, as well as building heights.
285. Mr Riley’s evidence plotted the 400m, 800m and 1200m catchments from the Drury Central train station and the edge of the Drury Centre and he detailed the site conditions that make these catchments appropriate for analysis purposes¹⁵¹. When plotted¹⁵² it shows the land to the west of Fielding Road is within 1200m of the Drury Central train station and within 800m of the Drury Centre.
286. Mr Turbott for ACS disagreed with the proposed extension of the THAB zone. This was based on his analysis of RTN station walkability, where he concluded that 800m was the appropriate catchment¹⁵³. Mr Turbott acknowledged to us, in answering a question, he had not sought urban design advice, but had relied on his planning expertise.
287. Mr Turbott’s analysis appeared to focus on proximity to the future Drury Central train station, which will form the future RTN network. While this is relevant, both the NPS UD and the RPS require a broader consideration of accessibility, including proximity to public transport more broadly (including the FTN), social facilities (including open

¹⁴⁹ Mr Roberts’ and Ms Morgan’s Evidence-in-Chief at [7.5]

¹⁵⁰ Clause 5.5.2 –Size of walkable catchments.

¹⁵¹ Mr Riley’s Evidence-in-Chief at [9.12]

¹⁵² Mr Roberts’ and Ms Morgan’s Evidence-In-Chief at [Figure 7]

¹⁵³ Mr Turbott’s Evidence-in-Chief at [paragraph 11]

space) and employment¹⁵⁴. Mr Turbott had not taken these matters into account in his assessment.

288. Rezoning this area THAB would enable more people to live in the area closest to the centre and an area well-served by planned public transport (Objective 3 NPS UD). It would also more effectively achieve the objectives of the RPS, which seeks a quality compact urban form and to focus residential intensification adjacent to centres, and in close proximity to public transport, social facilities and employment (RPS B2.4.1(1) and (3)).
289. Policy 3 of the NPS UD directs that building heights of at least six storeys are provided in the walkable catchment of the edge of Metropolitan Centre zones and planned rapid transit stops. Mr Riley and Ms de Lambert support six/seven storeys in this location and they addressed the broad landscape and visual effects.
290. Ms de Lambert considered that six/seven storeys could be accommodated given the site's location adjacent to PC 48 and the Metropolitan Centre and the heights enabled in PC 48. We agree that the PC 49 zoning extent and the height within the THAB zone would represent a stepping down in height away from the centre, transitioning to MHU and MHS towards the base of the Hunua ranges.
291. Mr Riley considered that six/seven storeys would, in a visual sense support a centres-based approach with greater height towards the Drury Centre and reducing height further away from it to the MHU zone on the eastern side of Fielding Road.
292. Having considered the evidence, we support extending the THAB zone extent as suggested by the Applicant and increasing the building height to 22.5m (as also agreed by Mr Mead); principally as it assists in achieving Objective 3 and Policy 3 of the NPS UD as well as RPS B2.4.1(1) and (3). Furthermore, the proposed height would enable development to visually integrate with the Drury Centre (Objective 1 of PC 49) and contribute more broadly to a quality built environment (RPS B2.3.1(1)). The proposed height is also consistent with Policy H6.3(4) of the THAB zone, in that it would provide for an appropriate transition in building scale between the Drury Centre and the Mixed Housing Urban zone to the east.

Neighbourhood Centre and Location and Heights

293. The DOSP shows a small centre in Drury East at the intersection of Fielding Road and Fitzgerald Road. When lodged PC 49 was consistent with that centre location, and was proposed as Business - Mixed Use Zone. As set out in Mr Roberts' and Ms Morgan's evidence, in response to feedback from Council officers prior to notifying PC 49, the location for the centre was changed to the notified location, being at the intersection of Cossey Road and the proposed east-west collector road, given that it

¹⁵⁴ RPS Objective B2.4.1(3) and Policy B2.4.2(2). NPS UD Objective 3, which seeks to enable more people to live in, and more businesses and community services to be located in areas close to a centre zone, other areas with many employment opportunities, areas well serviced by existing or planned public transport or where there is high demand.

would be more centrally located within the development. Mr Mead supported the 'relocation' of the centre from that shown in the DOSP¹⁵⁵.

294. Submitters have requested various amendments to the business zoning of PC 49. MHUD and Kāinga Ora requested that the Mixed Use zone be replaced with the Neighbourhood Centre zone. ACS requested that the Mixed Use zone be replaced with the Local Centre zone and potentially relocated once the location for the Mill Road corridor and points of access had been determined.
295. Ms Skidmore, urban design and landscape peer-reviewer for the Council (as regulator), supported the Local Centre zone as it provided for a range and scale of activities and design outcomes to support neighbourhood amenity. Mr Mead supported applying the Neighbourhood Centre zone (in his initial section 42 report) as it was more compatible with the outcomes sought, being a small group of local shops¹⁵⁶
296. Mr Turbott supported the change from Mixed Use zone to Neighbourhood Centre zone. However, he did not support the proposed location to the east of Cossey Road. Mr Turbott preferred the location of the Neighbourhood Centre zone in either of two locations (the corner of Waihoehoe and Cossey Roads or on Fitzgerald Road). In Mr Turbott's view these were preferred given the uncertainty over the location for the Mill Road corridor and the potential for Cossey Road to become a dead-end or loop road¹⁵⁷. Again, Mr Turbott's opinions were not based on any urban design expert opinion, as was the Mr Roberts' and Ms Morgan's opinions.
297. Furthermore, Mr Turbott recommended that PC 49 be amended to exclude all areas east of Cossey Road from it, and retain the FUZ because of, among other matters, uncertainty as to the timing and location of Mill Road. As set out in this decision we have not retained the FUZ over any part of PC 49, and on this basis have not agreed with Mr Turbott.
298. Based on the evidence before us, we agree that the Neighbourhood Centre Zone, at the scale and location as proposed by the Applicant is the most appropriate, and would effectively and efficiently provide for the needs of the community (RPS B2.5.2(2)(c)), and in particular, would enable a range of convenience activities to support and serve as a focal point (H12.2(5)).
299. The proposed Drury Centre (PC 48) would not completely fulfil the centre requirements of Drury East given that it is located beyond the walkable catchment for the eastern part of the site. However, some of the PC 49 site (mainly that zoned THAB) is within a 1200m catchment of the Drury Centre, and is therefore in close proximity to the wide range of services and amenities that would be offered there. Moreover, the eastern portion of Drury East is reasonably close to the Mixed Use

¹⁵⁵ Section 42A Report at [199]

¹⁵⁶ Section 42A Report at [460]

¹⁵⁷ Mr Turbott's Evidence-in-Chief at [12.8].

zone at Drury South that was approved as part of Plan Change 46, which will provide for a range of convenience activities. For these reasons, a smaller scale centre in Drury East (than the 2 hectare Business-Mixed Use zone as notified) is appropriate to provide for the social and economic needs of the future community.

300. We also agree with the Applicant that the optimal location for the centre is as shown in the Precinct Plan we have approved. The key considerations for this are the ability for the centre to form a focal point for the community and contribute to an efficient urban form by being accessible.
301. The key structuring elements for Drury East are shown on Precinct Plan 1. Of relevance to the location of the Neighbourhood Centre are the repositioned suburban park at the corner of Cossey Road and the east-west Collector Road, the location of the east-west Collector Road, and the stream network. The new location of the suburban park means that the centre (as notified) would be located on the northern side of the east-west Collector Road and would have a southerly orientation. We agree that a northerly orientation is preferred to maximise sunlight access and amenity for the centre, as set out in the evidence of Mr Riley¹⁵⁸. This requires the Neighbourhood Centre to locate as shown on the Precinct Plan.
302. Overall, combined with all the structuring elements, we find that the revised location for the Neighbourhood Centre, shown on the zoning plan and Precinct Plan 1, will be highly accessible to the future community and would better support the creation of a community focal point.
303. We also accept there is scope for the changes we have made in relation to the above. In this respect we agree with FHL's legal submissions (under the heading Amendments to proposal – scope) and Mr Roberts' and Ms Morgan's evidence-in-chief at paragraphs 8.12 and 8.13.

Waihoehoe Road Interface

304. Ms Skidmore recommended expanding the policy framework, assessment matters and criteria for new buildings to ensure a suitable interface is created with Waihoehoe Road. Mr Mead discussed this at paragraph 207 of the section 42A report and agreed that the matter needed attention given the proposed residential zoning. He stated that because AT was seeking an arterial road status, high front fences and/or rear elevations to the street may result and are not good urban design outcomes.
305. It was Mr Mead's view; this matter could be addressed with an assessment matter in addition to those in H4 (MHS), H5 (MHU) and H6 (THAB). In his view, low front

¹⁵⁸ Mr Riley's Evidence-in-Chief at [9.41]

fencing, front doors visible from the street and where relevant flexible spaces on the ground floor, would be the relevant matters to consider¹⁵⁹.

306. Mr Riley has considered this matter in detail in his evidence-in-chief¹⁶⁰. With reference to specific examples, in his view, the conditions along Waihoehoe Road are appropriately managed via the existing matters of discretion, assessment criteria and standards of the THAB, MHU and MHS zones. We agree with his conclusion, and consider that Policy 3 of each of those zones provides sufficient discretion for the assessment and decision of how development could achieve an 'attractive and safe' environment on Waihoehoe Road (which is applicable to all development in the THAB zone and four or more dwellings in the MHS and MHU zones). For permitted development of up to three dwellings on a site, the permitted activity standards would achieve this, principally via the fencing standard, which requires fences to be no more than 1.4m in height or 1.8m where it is at least 50 per cent visually open. For these reasons, it is our view; that no additional provisions are required in PC 49 to achieve an attractive and safe environment on Waihoehoe Road.
307. We also note that in the following section (Noise and Vibration), we have imposed internal noise standards but not outdoor standards. Outdoor standards would likely require high and solid fencing/walls resulting in the poor urban design outcomes expressed above.

Noise

308. Noise controls from arterial roads was a key issue outstanding in PC 49 (and PCs 48 and 50) between the Applicant, AT and Kāinga Ora (KO). The issue was, if, and if so, the extent to which noise attenuation was required to mitigate the health and amenity effects from arterial road noise. Noise issues were addressed at the first tranche hearing and again at the second tranche.
309. AT was the primary submitter that raised the issue of road noise and the need for precinct controls to address this. The primary submission identified concerns about potential health effects and reverse sensitivity challenges of noise sensitive activities developed in proximity to arterial roads.
310. AT presented a similar case for PCs 48-50 (and PC 51). Ms Sinclair, AT's planner 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 (in this instance Waihoehoe Road). AT requested a new policy, rule and assessment criteria for noise sensitive activities in proximity to arterial roads.¹⁶¹

¹⁵⁹ We note that Mr Mead's recommendations do not appear to be in response to any specific submissions, so are likely to be 'out of scope'

¹⁶⁰ Mr Riley's Evidence-in-Chief at [11.6- 11.33]

¹⁶¹ Ms Sinclair's Evidence-in-Chief at [11.1]

311. In the initial section 42A report, Mr Mead set out, in relation to AT's submission, that there were no provisions in the AUP OP (Chapter E25) for noise sensitive activities adjacent to arterial roads in residential zones¹⁶². Mr Mead considered that given the greenfield nature of the development, it was appropriate that new development managed noise along main roads rather than reliance on large berms or noise walls, which may have adverse urban design outcomes¹⁶³. In the initial section 42A report, Mr Mead recommended a new standard to cross reference Chapter E25 for noise sensitive activities that adjoin an arterial road¹⁶⁴. Mr Mead did not recommend any policy, matters of discretion and/or assessment criteria.
312. Ms Drewery, acoustic specialist for AT addressed the issue of noise generated from Waihoehoe Road (an arterial road). Waihoehoe Road was the noise corridor of most significance for potential health and reverse sensitivity effects in PC 49 according to Ms Drewery. She set out that the proposed rezoning and development preceded the formation of the arterial road network required to support the development area and therefore the precinct provisions should consider the impacts of the future road network.
313. Ms Drewery considered a maximum indoor design noise level of 40 dB LAeq(24hour) to be appropriate for road traffic noise. She set out that future road traffic noise levels of up to 70 dB LAeq(24 hour) could be expected at the boundary of PC 49 in the north west corner of the site adjacent to Waihoehoe Road and Fitzgerald Road.
314. Ms Drewery agreed with Mr Mead that where residential accommodation was built in residential zones adjacent to noisy roads; internal noise levels can be high, resulting in health, amenity and reverse sensitivity effects. Ms Drewery's evidence-in-chief set out the following¹⁶⁵:

"The most recent published reviews of studies relating to the health effects of noise are the World health Organisation (WHO) Environmental Noise Guidelines for the European Region (2018) and enHealth The Health Effects of Environmental Noise (2018). These reviews conclude that there is sufficient evidence of a causal relationship between environmental noise and sleep disturbance and cardiovascular disease".

315. To address the potential health and reverse sensitivity effects that could occur due to the lack of internal noise criteria in the AUP (OP) for residential receivers in residential zones, Ms Drewery recommended that the following rule be included in the precinct provisions for PC 49¹⁶⁶:

¹⁶² Section 42A Report, at [438]

¹⁶³ Section 42A Report, at [441]

¹⁶⁴ Section 42A Report, at [514]

¹⁶⁵ Ms Drewery's Evidence-in-Chief at [6.3]

¹⁶⁶ Ibid at [6.12]

Noise sensitive activities within the Waihoehoe Road and Fitzgerald Road traffic noise contour

Any new building or alteration to an existing building that contains an activity sensitive to noise within the 55 dB LAeq(24hour) traffic noise contour, must be designed, constructed and maintained to not exceed 40 dB LAeq (24 hour) in all habitable space.

316. Ms Sinclair agreed with Ms Drewery's recommendation to include a new standard in the precinct provisions for PC 49 to address AT's concerns. Ms Sinclair proposed a differently worded standard to that of Mr Mead, relying on the evidence of Ms Drewery. She concluded that her recommended provisions would ensure health and reverse sensitivity effects would be adequately managed within the traffic noise contour¹⁶⁷.
317. The Applicant's position, and that of its planning experts (Mr Roberts and Ms Morgan), was that any road noise controls were not supported. While we address this below, the major reason was that if the effects from traffic noise was a concern (noting that the Applicant was not saying it wasn't), then it should be addressed on a region-wide basis, and a change to the AUP (OP) if appropriate. This was to ensure a fulsome and robust section 32 evaluation of the issue was undertaken, and to ensure regional consistence, rather than an ad hoc plan change by plan change approach.
318. As mentioned above, noise issues were addressed again at the second tranche hearings. The Addendum section 42A report provided updated recommendations in relation to transport noise provisions for PCs 48, 49 and 50 in light of further evidence that Mr Mead had reviewed and the advice he had taken from Council's noise specialist, Mr Gordon.
319. Mr Mead, having considered the earlier evidence of Ms Drewery (and Dr Chiles for Waka Kotahi in PC 48 and 50) and the advice from Mr Gordon, was satisfied that there were health and amenity related effects that needed to be addressed from road noise. He set out his recommended approach – being a set of numeric standards, including a control area (40m), mechanical ventilation where the standards could not otherwise be met, and certification to demonstrate compliance.
320. With regard to the control area approach, the supplementary acoustic evidence of Ms Drewery agreed that a setback approach (as proposed by Mr Mead) would address potential health, amenity and reverse sensitivity effects. Ms Sinclair also supported this approach in her supplementary evidence, relying on Ms Drewery's evidence.
321. Ms Drewery's supplementary evidence also provided an update on the Drury Arterial Network Notice of Requirement (NoR) process. She set out that Waka Kotahi's and AT's rebuttal planning evidence for the Drury Arterial Network NoRs proposed a

¹⁶⁷ Ms Sinclair's Evidence-in-Chief at [11.6]

condition which would require the use of a low noise road surface on the AT Projects (NoR D2 to NoR D5) regardless of NZS6806 mitigation requirements¹⁶⁸.

322. Mr M Allan set out the following in his supplementary legal submissions¹⁶⁹:

In proposing such a condition, AT is acknowledging that there should be a shared responsibility for managing traffic noise effects between the road controlling authorities and those landowners or developers seeking to develop land adjacent to the transport corridors. The road controlling authorities are taking all reasonable steps to mitigate traffic noise at source within the relevant corridors; however developers also have a part to play. The regional policy framework – which the PPCs must give effect to – expressly recognises the role of landowners / developers. Policy B3.3.2(6) is to (emphasis added):

Require activities sensitive to adverse effects from the operation of transport infrastructure to be located or designed to avoid, remedy or mitigate those potential adverse effects.

323. Mr M Allan went on to say that as a consequence of the proposed condition for the Drury Arterial Network, which is likely to require the use of a low noise road surface regardless of NZS6806 mitigation requirements, Ms Drewery's and Ms Sinclair's revised recommendations were, in summary, as follows¹⁷⁰:

In the case of PPC 49, with the use of a low noise road surface, a 40 metre setback from the Waihoehoe Road East Upgrade will be sufficient¹⁷¹. This aligns with Mr Mead's recommendation. (Underlining is our emphasis)

324. Mr Roberts and Ms Morgan maintained their professional opposition to the imposition of road noise provisions (as they had for PCs 48 and 50). They set out that they had not proposed a specific rule for mitigation of the effects of road noise given their view that this matter was most appropriately addressed on a region-wide basis. However, they advised that if a rule was necessary, then in their view "*applying a standard requiring internal noise levels to be achieved for the first row of houses on the affected roads would be the most efficient and effective method. Generally, a 40m setback distance would achieve this*"¹⁷².

325. KO opposed the proposed changes relating to road noise recommended by Mr Mead and Ms Sinclair. Mr Matheson set out in his legal submissions (7 December 2021) the following¹⁷³:

b. Kāinga Ora says the road controlling authority should be obliged to control noise "at source" where that is practicable.

¹⁶⁸ At the time of this decision, no decision had been made of these NoRs

¹⁶⁹ Mr M Allan's Supplementary Legal Submissions at [3.5]

¹⁷⁰ Mr M Allan's Supplementary Legal Submissions at [3.6 b]

¹⁷¹ Ms Drewery's Supplementary evidence dated 2 December 2021, at [3.11]

¹⁷² Comment box 1 in their recommended PC 49 Precinct Provisions

¹⁷³ Mr Matheson's Legal Submissions dated 7 December 2021 at [3.8]

- c. *Controlling noise at source, eg road surfacing/speed controls, gives the best environmental outcome because it protects the internal and external amenity of residents and others in the community.*
- d. *While it is accepted that road noise can cause health effects, it is a question of degree. Modern building techniques and materials will offer quite significant attenuation, and so it is not the case that if the proposed control is not imposed there will not be any noise attenuation at all.*

326. Mr Campbell, planner for KO, held the same view as Mr Roberts and Ms Morgan; that the effects of road noise should be approached on a region-wide basis and not on a plan change by plan change basis. We accept this was his primary position. However, Mr Campbell accepted that in terms of arterial road noise, some form of acoustic controls maybe appropriate, but remained concerned about the lack of any proper assessment of this issue and a consideration of alternatives. However, it was his opinion that¹⁷⁴:

“... if the Commissioners were minded to impose acoustic controls, I would recommend that these are 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. In my experience, it would be highly unlikely for a building fronting an Arterial Road to be greater than 10 metres from the road frontage.

327. The Applicant’s final position on road noise set out in Ms Storer’s Reply Submissions, was¹⁷⁵:

For the purpose of this hearing, FHLD has carefully considered whether it is appropriate to prepare a precinct rule addressing road noise but has concluded that it is inappropriate to do so because:

- e. *The conditions proposed by AT on the NoR make it impossible to understand with certainty the magnitude of the effect to be mitigated; and*
- f. *FHLD agrees with the submissions of counsel for Kiwi that if any action is required, the issues arising should be addressed through a nation or regionwide initiative informed by an appropriate level of technical evidence. A careful balancing of responsibility and cost between the provider of public infrastructure and the adjacent private landowners is required, informed by an appropriate level of technical evidence. The alternative is an ad hoc and likely inconsistent approach which is likely to lead to inconsistent outcomes throughout the region*

¹⁷⁴ Mr Campbell’s Supplementary Evidence dated 2 November 2021 at[2.11]

¹⁷⁵ Ms Storer’s Reply Submissions at [10.5]

Road Noise – Findings

328. We have found that there is sufficient evidence to demonstrate that a resource management response is required to address the health and amenity effects associated with road noise. On this basis we have included a number of precinct provisions to address mitigating the health and amenity effects from road noise. We were not persuaded that the noise issue leads to reverse sensitivity effects on the road network, and agree with Mr Matheson’s legal submissions for KO in this regard¹⁷⁶.
329. While we consider that the issue of the health and amenity effects from road noise would be more appropriately addressed on a region-wide basis, we agree that from what we have been advised there is no region wide plan in the foreseeable future, and in regards to this plan change (along with the amount of greenfield development contemplated by PCs 48, 49 and 50 (and PC 51 and 61 that this Hearing Panel heard), controls on road noise from arterial roads is justified now.
330. We also agree, as set out by Mr M Allan that addressing the effects of road traffic noise is a shared responsibility between the road controlling authorities and those landowners or developers seeking to develop land adjacent to the transport corridors.
331. With respect to road noise controls, we have preferred a standard setback approach as opposed to a noise contour approach initially proposed by Ms Drewery and Mr Mead. We consider the standard setback approach method provides more clarity to plan users. This approach now appears to be accepted by the relevant experts. Based on the evidence before us, including Mr Roberts’ and Ms Morgan’s view, and for consistency with PC 50 (and the reasoning set out in that decision), we find that a 40 metre set back is appropriate.
332. Furthermore, we find that the associated provisions for road noise should also include a requirement for mechanical ventilation where the standard could not otherwise be met and to demonstrate compliance (by certification) with this standard. In this regard we accept Mr Mead’s recommendation that a cross reference to the “residential dwelling” component of Rule E25.6.10(3)(b) is appropriate in the absence of the AUP (OP) having a corresponding rule in the residential zones.
333. In imposing these controls, we are satisfied with the section 32AA evaluation undertaken by Mr Mead (addendum section 42A report) and Ms Sinclair in her Supplementary Evidence dated 2 December 2021.

Ecological

334. The section 42A report outlined¹⁷⁷ the outstanding issues which arose in relation to ecological management related matters including:

¹⁷⁶ Mr Matheson’s Legal submissions at [3.6]

¹⁷⁷ Section 42A at [231]

- the level of stream loss;
- streams not being shown on the precinct map;
- 10m riparian restoration;
- the uncertainty over the provision of the full Drury-Opāheke Structure Plan Blue-Green Network;
- lack of protection of future riparian planting by a suitable legal mechanism; and
- the detail to be included within the riparian planting standard.

335. These were all addressed in detail in the evidence of the Applicant,¹⁷⁸ and in the Applicant's Reply Submissions¹⁷⁹.

336. The width of the riparian planting margin was a key point of professional difference between, Dr Bramley for the Applicant, Mr Statham and Mr Hussain for ACS and Mr Smith for the Council (regulator).

337. Mr Statham and Mr Hussain, opined¹⁸⁰ that the riparian planting width requirement should be increased to 20m from the edge of all permanent streams and 10m from the edge of intermittent streams. Their view was supported by Mr Smith and Mr Mead in the section 42A Report. Mr Turbott, for ACS¹⁸¹ agreed with the recommendation in the section 42A report, relying on the evidence of Mr Statham and Mr Hussain for his opinion.

338. Dr Bramley's evidence was that a 10m riparian planting width was appropriate. He questioned¹⁸² the veracity of the source documents used by Mr Statham and Mr Hussain to determine that a greater width was required. He stated¹⁸³:

"I do not agree with the recommendations set out in Paragraph 7.12 of Mr Statham and Mr Hussein's evidence, or in Paragraph 10.31 of Mr Turbott's evidence with respect to riparian margin widths. I remain of the opinion that 10m planted area (excluding infrastructure) is sufficient to improve terrestrial and ecological values in a way which is commensurate with the level of effects anticipated by PC49. Whilst Mr Statham and Mr Hussain have made selective use of more recent, generally unpublished, reports to support their position, I do not consider that any of the reports they cite present data which is so relevant to the site that I need to change my original position".

¹⁷⁸ Dr Bramley's Evidence-in-Chief at Section 6 and rebuttal evidence at [Sections 5 and 6]

¹⁷⁹ Ms Simons' Opening Legal Submissions at [Section 13]

¹⁸⁰ Mr Statham's and Mr Hussain's Evidence-in-Chief at [Section 4]

¹⁸¹ Mr Turbott's Evidence-in-Chief at [10.5 – 10.6]

¹⁸² Dr Bramley's Evidence-in-Chief at Section 6 and Rebuttal Evidence at [Section 7]

¹⁸³ Dr Bramley's Rebuttal Evidence at [7.1]

339. At the hearing, we discussed at some length the benefits of various riparian widths. We were faced with two clear propositions:
- Dr Bramley's opinion¹⁸⁴ that the proposed 10m wide planted riparian margin was appropriate for all streams within the PC 49 area; and
 - Mr Statham's and Mr Hussain's opinion¹⁸⁵, and that of Mr Smith, was that a 20m planted margin was appropriate for all permanent streams and 10m planted margin for all intermittent streams.
340. Mr Roberts and Ms Morgan agreed that a wider riparian planting margin would have positive benefits from an ecological perspective; but that in their view it is not necessary to achieve the ecological objectives, given that a 10m planted setback would contribute to improvements in freshwater, sediment quality and biodiversity¹⁸⁶. The disagreement they had with the ACS and the section 42A position was what, in section 32 terms (ie costs and benefits), should the riparian width be? It was Mr Roberts' and Ms Morgan's opinion, relying on Dr Bramley's evidence, that as this area was already degraded (from current activities) and it would be enhanced while also becoming an intensive urban environment, a 10m planted setback would appropriately contribute to improvements in freshwater sediment quality and biodiversity.
341. 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 came down to their own professional view, in the absence of clear and compelling expert evidence to increase the width, we turned to AUP (OP) provisions.
342. The AUP (OP) in the Residential - THAB, MHU and MHS zones all 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.
343. In this respect, we agree with Ms Storer's Reply Submissions where she stated¹⁸⁷:

"Regardless, Dr Bramley's strong view is that a 10m riparian margin is appropriate having regard to the narrow stream widths, the flat topography and the low ecological value of the area.

Any ecological benefit of wider margins must also be weighed against the impact of increased width in development terms: Mr Dewe's evidence was that an

¹⁸⁴ Dr Bramley's Evidence-in-Chief at [8.8]

¹⁸⁵ Mr Statham's and Mr Hussain's Evidence-in-Chief at [10.1]

¹⁸⁶ Mr Roberts' and Ms Morgan's Rebuttal Evidence at [7.5]

¹⁸⁷ Ms Storer's Reply Legal Submissions at [8.7 – 8.8]

additional 10 metres would lead to a loss of 100 houses along the stream length”.

344. We reiterate, in the absence of clear and compelling expert evidence we agree with Ms Storer’s submissions; that an increase to a 20m riparian margin cannot be justified in section 32 terms when having regard to the scale of additional ecological benefit from an increased margin and the significant loss of development capacity.
345. We are also of the view that the requirements of ACS and the Council (Regulator) are met in part by the Applicant’s acknowledgement¹⁸⁸ that:

“Additional building setbacks beyond that are proposed to be managed via subdivision provisions in E38, and the underlying zone rules. These provisions require a 20m esplanade reserve for streams 3m or more in width, and a 10m riparian yard/building setback. In the case of esplanade reserves, PC 49 includes a rule requiring buildings to also be setback 20m in the event that land use precedes subdivision, which addresses a current anomaly in the AUP-OP”.

346. We also note the submissions made by Mr Littlejohn on behalf of the Jones Family Trust. The Jones Family Trust own (and where G and A Jones reside) the property at 230 Drury Hills Road. While they supported PC 49, their submission raised an issue relating to riparian margins. Their submission stated:

“The Trust notes that by reference to Figure 5 in Appendix 9 to the plan change documentation (Ecological Assessment,) proposed standard IX.6.3 Riparian Margin would require a 10m planted riparian margin on each side of an indicative stream traversing the Trust’s property. However, there is no stream within the Trust’s property, merely a drain ..., and the Ecological Assessment is therefore wrong in this regard. The Trust opposes any provision in the proposed plan change that would require riparian margins and planting on either side of the drain within its property. Note – an aerial photo was attached to the submission showing the drain.

347. In response to the submission, the section 42A report recommendation was that the subdivision and development process would determine stream alignments and classifications, and based on this whether riparian planting is to occur. That is - in essence, stream locations are indicative only, and eventual riparian margins will be determined based on ecological assessment at the time of subdivision and development.
348. Mr Roberts’ and Ms Morgan’s evidence¹⁸⁹ was that in relation to the site specific issues by submitters, including the Jones Family Trust, the streams that had been identified in the ecological report prepared by Dr Bramley were based on best available information at the time, and roadside visual inspections. On this basis the classification of the streams are indicative only and would be subject to a more detailed ecological survey as part of any future resource consent application for

¹⁸⁸ Mr Roberts’ and Ms Morgan’s Evidence-in-Chief at [10.1]

¹⁸⁹ Mr Roberts’ and Ms Morgan’s Evidence-in-Chief at [10.6]

development. This is reinforced by the clear notation on Precinct Plan 1 which states that the streams identified are indicative only.

349. We agree with the section 42A author and Mr Roberts and Ms Morgan, and note that Mr Littlejohn's submission was "*On the basis of this clarification, the Trust is content to leave this issue for someone else for another day*"¹⁹⁰.

Stormwater

350. In approving PC 49 we have provided what we consider to be a set of precinct provisions to ensure the appropriate management of stormwater.
351. 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.
352. 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 it was designed to achieve an equivalent level of contaminant or sediment removal performance to that of GD01.
353. 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. They were simply seeking a policy/assessment framework that enabled other devices to be contemplated.
354. 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.

¹⁹⁰ Mr Littlejohn's Legal Submissions at [2.7]

355. While we accept that most of issues were agreed between the experts, we were not entirely satisfied the proposed policy was appropriate; and we questioned the experts about this in the re-convened hearing in PC 50¹⁹¹ as they related to PC 49 (and 48 and 50). The policy 'locked in' "any approved network discharge consent".
356. 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.
357. The issue that we have with the proposed policy in PC 49¹⁹² is, as mentioned above, that it 'locks in' the network discharge consent (we accept a supporting stormwater management plan will be required). We do not think the policy should be 'tied' to a resource consent.
358. As part of the Applicant's Reply, we were provided with a marked up set of precinct provisions. The comment box attached to the policy 10 (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".*
359. 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.
360. 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.

Servicing – Wastewater, Water supply

361. We are satisfied based on the evidence before us that:

¹⁹¹ 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.

¹⁹² Noting similar issues were raised in PCs 48 and 50 and PCs 51 and 61 that this Hearing Panel heard

- 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).
362. With respect to wastewater and water supply Mr Stuart set out that the Plan Change area was not currently serviced by Watercare’s water supply or wastewater network. He set out 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.
363. 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 series of wastewater pump stations and the network that conveys wastewater to the Mangere Wastewater Treatment Plant for treatment and disposal.
364. Mr Stuart 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.

Counties Power

365. Qiuhan Wang provided (tabled) evidence on behalf of Counties Power. That evidence outlined the location of the overhead power lines in the site and noted that the New Zealand Code of Practice for Electrical Safe Distances (NSEC34:2001) requires building setbacks of approximately 9.5m and 7.5m from conductors.
366. Counties Power sought clarifications to ensure that the security of the existing electricity infrastructure was not compromised by the proposed layout for the new THAB zone.
367. Mr Roberts and Ms Morgan agreed that it was good practice to alert plan users to the requirements of NZECP34:2001 given that it may impact the layout and design of new buildings. To address this issue, they proposed to include an additional assessment criterion for new buildings, noting the presence of the overhead power lines and the requirements of NZECP34:2001. In agreeing with Mr Roberts and Ms Morgan we have included new assessment criteria (as part of the ‘Servicing’ Matters of Discretion) to ensure this matter is taken into account.

Civil Engineering

368. We are satisfied based on the evidence before us that the site is suitable geotechnically and topographically for intensification in accordance with the PC 49 provisions.

Notification

369. 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. 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 East precinct had been thoroughly considered through PC 49.

370. They opined that¹⁹³:

“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 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”.

371. 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 evidence (planning) presented to us.

372. 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.

373. 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.

¹⁹³ Mr Roberts’ and Ms Morgan’s Evidence-in-Chief at [17.3 and 17.4]

Matters raised by adjacent landowners

374. Eight submitters have requested extensions to the PC 49 boundary to include land on the edge of the Drury East precinct. These were shown as Figure 9 in Ms Morgan's and Mr Roberts' evidence-in-chief and paragraph 454 of the section 42A report.

375. Ms Morgan and Mr Roberts set out in their evidence-in-chief¹⁹⁴:

The PC 49 boundary generally follows the boundaries adopted in the Drury east masterplan. The Future Urban zoned land on the southern side of Brookfield Road was not included on the basis of the more fragmented landholdings there, and the fact that Council would be rezoning that land in the near future in any case. The wedge of land at the south-eastern corner of the site was also excluded to generally align the Plan Change boundary with the future Mill Road corridor. The Drury-Opāheke Structure Plan indicates Light Industry zoning on the southern side of the Mill Road Corridor to integrate with the Drury South development.

376. As set out by Mr Mead, a submission must be within the scope of a Plan Change to be considered¹⁹⁵. 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.

Other Matters

377. ACS requested that PC 49 be amended to provide for Light Industry zoning on any land in the precinct that lies to the east of the Mill Road Corridor as determined by the future Notice of Requirement. Mr Tapp requested that the land be excluded from PC 49. We have not agreed to these requests.

378. 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. This shows the Mill Road corridor aligning with Drury Hills Road and forming the eastern boundary of PC 49. Those plans have set the broad framework for the zoning pattern proposed for PC 49. Regardless, should the location of Mill Road change in the future through a Notice of Requirement process, we find that the proposed zoning pattern is appropriate.

379. Mill Road is intended to be a future four lane arterial road. These roads are typical in urban Auckland and residential either side is common (e.g. Pakuranga Road, Te-Irangi Drive, Lincoln Road). While potential residential health and amenity effects would be assessed at the time a Notice of Requirement is lodged for the Mill Road

¹⁹⁴ Mr Roberts' and Ms Morgan's Evidence-in-Chief at [18.2]

¹⁹⁵ Section 42A report at [455-457]

Corridor, as we have set out earlier we have included noise provisions to appropriately manage and address residential health and amenity effects.

Positive Outcomes

380. We have addressed the detail of PC 49 above, and find a number of positive effects will flow from approving it. These include, but are not limited to providing a significant amount of additional residential capacity, and a business area to support the day-to-day needs of residents. This additional residential capacity will also help support the consented Drury Central train station and bus routes, as well as the Metropolitan Centre (PC 48).
381. We also note that PC 49 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.

DECISION ON SUBMISSIONS

382. 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.
383. We have set out our reasons above why we have approved PC 49 and the amendments we have made to it so it satisfies the purpose of the RMA.

Submissions Supporting PC 49

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
3.1	Danielle Haerewa	Approve the plan change
5.1	Ian and Sue Ginthorp	Approve the plan change
9.1	Graham Reid	Approve the plan change
15.1	Rachel and Michael Gilmore	Approve the plan change
18.1	Oyster Capital	Approve the plan change
19.1	Brookfield Road Lid	Approve the plan change
24.1	Manzi Chen	Approve the plan change
25.1	Tony Chien	Approve the plan change
26.1	Kiwi Property Holdings No.2 Limited	Approve the plan change
29.1	Fletcher Residential Ltd	Approve the plan change
43.1	Karaka and Drury Ltd	Approve the plan change

Decisions on submissions

384. 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. On the basis we have approved the Plan Change we **accept** the supporting submissions.

Submissions on Timing and Funding issues

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
6.1	Doug Signal	Reject PC49 on the basis that all roads and intersections in the area need to be upgraded before zoning is granted, otherwise public local residents would be impacted with years of traffic problems
7.1	Catharine Reid	Delay rezoning until Mill Road route is designated, so that submitter can make an informed decision in regards to the preferred zoning of their property
30.1	Lomai Properties Limited	Decline PC49, unless the matters relating to alternative staging of development, provision of all required infrastructure and traffic are adequately resolved.
34.1	Auckland Council	<p>Ensure that the council's concerns about infrastructure: funding deficit, timing and location uncertainty are resolved by the following or other means:</p> <p>a. Evidence is presented at the hearing that a mechanism has been identified with the agreement of the council that unfunded infrastructure (as of October 2020) will be funded.</p> <p>b. Evidence is presented at the hearing that parts of the plan change area are not constrained by infrastructure funding, timing or location uncertainty and can proceed without significant adverse effects.</p> <p>c. Infrastructure development threshold or staging rules can be devised that are enforceable and effective, and supported by robust objective and policy provisions. This could for example include:</p> <ul style="list-style-type: none">• Threshold rules are not used for infrastructure works to be supplied by third party, e.g. Auckland Transport or NZTA, if these agencies do not have funds allocated for the works.• Threshold rules are not used for infrastructure works which are scheduled beyond the lifetime of the plan (2026).• Threshold rules are not used for works to be funded privately but there is no funding agreement in place.• Threshold rules are not used for works which would require a funding contribution from multiple landowners or developers and there is no agreement to apportion costs and benefits in place.• Threshold rules do not use gross floor area as a metric (the council may not be able to track this with current data)

		<p>systems).</p> <ul style="list-style-type: none"> • Threshold rules are not used in circumstances where the extent and location of works have not been determined yet. • Use of prohibited activity status for infringement could be considered. <p>d. Notices of requirement have been lodged for the relevant infrastructure by the time of the hearing.</p>
35.1	Auckland Transport	Decline plan change unless the reasons for the submission, including Auckland Transport's concerns about the funding, financing and delivery of required transport infrastructure and network improvements and services to support the 'out of sequence' development proposed by this plan change, are appropriately addressed and resolved.
35.2	Auckland Transport	<p>Decline the plan change unless the submitter's transport infrastructure funding and provision concerns, including its concerns about reliance on development triggers to stage transport infrastructure provision, are appropriately addressed and resolved.</p> <p>In the alternative:</p> <p>(a) Amend the plan change to include alternative mechanisms/provisions (including alternative objectives, policies, rules, methods or maps) to address Auckland Transport's concerns; and/or</p> <p>(b) Include amendments to relevant plan change provisions as required by Auckland Transport and outlined in the submission.</p>
35.5	Auckland Transport	<p>Amend Objective IX.2(3) as follows:</p> <p>(3) Development is supported by appropriate infrastructure. Subdivision and development are supported by the timely and coordinated provision of</p>
		robust and sustainable transport, stormwater, water, wastewater, energy and communications infrastructure networks.
35.6	Auckland Transport	<p>Amend Policy IX.3 (5) as follows:</p> <p>(5) Ensure that the timing of subdivision and development in the wider Drury East Precinct area as defined on Precinct Plan 2 is coordinated with the funding and delivery of transport infrastructure upgrades necessary to avoid, remedy and mitigate the adverse effects of urbanisation development on the safe and efficient operation effectiveness and safety of the immediately surrounding and wider transport network.</p>
35.7	Auckland Transport	<p>Add new Infrastructure and Staging policy as follows:</p> <p>(x) Avoid any subdivision and development in the wider Drury area as defined on Precinct Plan 2 until the required transport infrastructure is in place.</p>
35.8	Auckland Transport	<p>Amend Rules IX.4.1 (A2), (A3), (A5) and (A6) to introduce more onerous activity status for any development and/or subdivision not complying with Standards IX6.1 Staging of Development and IX6.2 Trip Generation Limit (such as non-complying activity status).</p> <p>In the alternative, amend Rules IX.4.1 (A2) and (A3) as follows:</p>

		<p>(A2) Development and/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 as confirmed in the Transport Assessment submitted with application for consent - RD</p> <p>(A3) Development and/or subdivision that does not comply with Standard IX.6.2 Staging of Development with Transport Upgrades and or Standard IX.6.3 Trip Generation Limit as confirmed in the Transport Assessment submitted with application for consent - NC D</p> <p>As a consequential amendment, delete Rules IX.4.1 (A5) and (A6).</p>
35.10	Auckland Transport	Delete Standard IX.6 (2)
35.11	Auckland Transport	<p>Amend Standards IX.6.1 (1) and (2) and delete Standard IX.6.1 (3) and the note as follows:</p> <p>IX.6.1 Staging of Development with Transport Upgrades</p> <p>(1) Development and subdivision within the area shown on IX.10.2 Drury East: Precinct Plan 2 must not exceed the thresholds in Table IX.6.1.1 and Table IX.6.1.2 until such time that the identified infrastructure upgrades are constructed and are operational.</p> <p>(2) For the purpose of this rule 'dwelling' and 'retail/commercial floorspace' means buildings for those activities that have are subject to a valid land use and/or building consent or subdivision that is subject to a subdivision consent. that has a 224c certificate for vacant lots less than 1200m².</p> <p>(3) Table IX.6.1.1 sets out the development thresholds if 'Access A' is not constructed to provide direct access to the Drury Centre from State Highway 1, as shown on IX.10.2 Drury East: Precinct Plan 2. Table IX.6.1.2 sets out the development thresholds if 'Access A' is constructed to provide direct access to the Drury Centre from State Highway 1 as shown on IX.10.2 Drury East: Precinct Plan 2.</p> <p>Note: Transport infrastructure projects for Drury included in the New Zealand Upgrade Programme 2020 – Transport prepared by the New Zealand Transport Agency are not included in the development thresholds below</p>
35.12	Auckland Transport	Amend Table IX.6.1.1 as set out in full in the submission, including to specify additional transport infrastructure upgrades and network improvements required to be completed
35.13	Auckland Transport	Delete Table IX.6.1.2.
35.14	Auckland Transport	<p>Amend Standards IX.6.2 (1), delete Standard IX.6.2 (2) and (3), and add a new clause as follows:</p> <p>IX.6.2 Trip Generation Limit</p> <p>(1) Development and subdivision within the Drury area shown</p>

		<p>on IX.10.2 Drury East: Precinct Plan 2 must not exceed the thresholds in Table IX.6.2.1 and Table IX.6.2.2 until such time that the identified infrastructure upgrades are constructed and are operational.</p> <p>(2) Table IX.6.2.1 sets out the development thresholds if 'Access A' is not constructed to provide direct access to the Drury Centre from State Highway 1, as shown on IX.10.2 Drury East: Precinct Plan 2. Table IX.6.2.2 sets out the development thresholds if 'Access A' is constructed to provide direct access to the Drury Centre from State Highway 1 as shown on IX.10.2 Drury East: Precinct Plan 2.</p> <p>(3) Note: Transport infrastructure projects for Drury included in the New Zealand Upgrade Programme 2020– Transport prepared by the New Zealand Transport Agency are not included in the development thresholds below</p> <p>(x) A Transport Assessment corresponding to the scale and significance of the proposed activity prepared by a suitably qualified expert must be provided in order to confirm compliance with this standard.</p>
35.15	Auckland Transport	Amend Table IX.6.2.1 as set out in full in the submission, including to specify additional transport infrastructure upgrades and network improvements required to be completed
35.16	Auckland Transport	Delete Table IX.6.2.2.
35.17	Auckland Transport	<p>Correct number and amend IX.8.1 (2) as follows:</p> <p>(2) Subdivision and/or development that does not comply with Standard IX.6.1 Staging of Development with Transport Upgrades but complies with Standard IX.6.2 Trip Generation Limit:</p> <p><u>(a)</u> Effects on the transport network consistent with the trips generated by development specified in Table IX.6.2.1 or Table IX.6.2.2;</p> <p><u>(b)</u> The rate of public transport uptake and travel management measures; and</p> <p><u>(c)</u> The rate of coordination of retail, commercial and residential development in the wider Drury East area shown on Precinct Plan 2.; and (x) The degree of certainty around the provision of required infrastructure upgrades including confirmation of infrastructure funding or other such measures agreed; and</p> <p>(x) Any mitigation measures or review conditions required to address the effects from development occurring ahead of the required infrastructure upgrades.</p>
35.18	Auckland Transport	<p>Amend IX.8.2 (2) as follows:</p> <p>(2) Development and/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:</p> <p>(a) Whether the effects of the proposal on the transport network are</p>

		<p>consistent with the trips generated by development specified in Table IX.6.3.1 or Table IX.6.3.2;</p> <p>(b) Whether increased use of public transport provides additional capacity within the local transport network included within the Drury area shown on IX.10.2 Precinct Plan 2; including by implementing travel demand management measures.</p> <p>(c) Whether residential development is coordinated with retail and commercial development within the wider Drury East area shown on Precinct Plan 2 to minimise trips outside of the precinct providing additional capacity within the transport network;</p> <p>(d) The effect of the timing and development of any transport upgrades; (x) Where new, upgrades and/or extensions to transport infrastructure are required, whether infrastructure funding agreements or other agreements exist to ensure that the new, upgraded or extended infrastructure required to service the subdivision and/or development can be funded and delivered; and</p> <p>(x) Whether the effects of development proceeding ahead of the required transport upgrades are mitigated by any conditions of consent including those relating to the scale, staging or operation of an activity, review conditions or interim network improvements proposed by the applicant.</p>
35.26	Auckland Transport	Include provisions in the plan change to ensure that funding for public transport services (i.e. bus services) is available to support and provide public transport connections between the developments and the Drury Central rail station upon its completion.
35.29	Auckland Transport	<p>Amend Policy IX.3(7) as follows:</p> <p>(7) Provide for the staging of bus, pedestrian and cycling connections to the Drury Central train rail station upon its completion to encourage the immediate use of public and active modes of transport as soon as practically possible.</p>
37.8	Ministry of Education	Retain Standard IX.6.1 Staging of Development with Transport Upgrades.
38.2	Leith McFadden	Ensure infrastructure upgrades are tied to staging through precinct provisions
41.2	Drury South Limited	Consider amending trip generation rule framework (Activity table IX.4.1(A2), (A3), (A5) and (A6) and standard IX.6.2) to replace with a simplified approach using GFA triggers alone, given the potential challenges in monitoring trip generation levels for a development of this scale.
41.6	Drury South Limited	Amend IX.6(2) 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.

41.7	Drury South Limited	Amend Standard IX.6.2 to ensure that: (a) adequate upgrading of the surrounding road network (for example Waihoehoe Road, Great South Road, Fitzgerald Road and the proposed connections between the PC48 area and Quarry Road and Pitt Road / Great South Road shown on Precinct Plan 2) is undertaken; and (b) any non-compliance with this standard is a discretionary activity.
41.8	Drury South Limited	Amend Tables IX6.1.1 and IX6.1.2 and plan change to ensure that: (a) adequate upgrading of the surrounding road network (for example Waihoehoe Road, Appleby Road, Cossey Road, Fitzgerald Road and the proposed connections between the PC49 area and Drury South Industrial Precinct Road shown on Precinct Plan 1) is undertaken; and (b) any non-compliance with this standard is a discretionary activity.
42.1	NZTA	Provide information and suitable provisions through out the whole of the plan change to resolve the transport infrastructure issue.
42.19	NZTA	Amend and/or delete Activities IX.4.1 (A5) and (A6) in a manner which responds to Waka Kotahi's submission in its entirety.
42.21	NZTA	Retain IX.6 Standard (2) as notified on the basis that transport, traffic or trip-generation provisions are retained in the precinct and that no permitted activities are enabled.
42.22	NZTA	Delete Standard IX.6.1(3) Staging of Development with Transport Upgrades.
42.23	NZTA	Delete italicised Note IX.6.1 (4).
42.25	NZTA	Amend Table IX.6.1.1 Threshold for Development to provide more specificity as to the details of works required in the right hand column by including upgrade details listed in Table 8.1 of the Integrated Transport Assessment supporting the proposal, column headed "Revised (2020) Modelling – Infrastructure Upgrades Required".
42.27	NZTA	Delete IX.6.2 Trip Generation Limit including Tables IX.6.2.1 and IX.6.2.2, and replace with provisions which provide for operational requirements and more specific transport network responses. Potential wording is set out below, and could include a new permitted activity standard with non-compliance being a restricted discretionary activity (consequential changes to Activity Table IX.4 would be required). Restricted discretionary activity assessment criteria/matters of discretion could include transport network improvements. An alternative compliance pathway would be for an applicant to propose and undertake transport network improvements to

		<p>maintain LOS E i.e. comply (noting that all development requires consent so compliance could be considered as part of this process).</p> <p>IX.6.2 Transport Infrastructure</p> <p>Development and subdivision to comply with the following:</p> <p>(a) Great South Road/ Waihoehoe Road Intersection Operation:</p> <p>(i) Where the baseline intersection operation is at Level of Service E (LOS E) or better at the time of application, no subdivision or development shall generate traffic movements which result in:</p> <p><u>1)</u> a Level of Service of less than LOS E; or</p> <p><u>2)</u> have a degree of saturation higher than 95%.</p> <p>(ii) Where the baseline intersection operation is at Level of Service F (LOS F) at the time of application, no subdivision or development shall generate traffic movements which results in:</p> <p>1) degrees of saturation of more than the base line scenario, or 2) delays of more than 10% greater than the baseline scenario.</p> <p>Other relief would include additional provisions which outline transport upgrades to be considered (as listed in Table 8.1 of the Integrated Transport Assessment supporting the proposal).</p>
42.28	NZTA	Amend Tables IX.6.2.1 and IX.6.2.2, if submission point 42.25 is not accepted, to provide more specificity as to the details of works required in the right hand columns of both Tables by including upgrade details listed in Table 8.1 of the Integrated Transport Assessment supporting the proposal, column headed Revised (2020) Modelling – Infrastructure Upgrades Required.
42.29	NZTA	Delete italicised Note IX.6.2 (3).
42.32	NZTA	<p>Amend IX.8.1 Matters of discretion (2) as follows:</p> <p>(2) Development or subdivision that does not comply with Standard IX.6.1 Staging of Development with Transport Upgrades but complies with Standard IX.6.2 Trip Generation Limit: Effects on the transport network consistent with the trips generated by development specified in Table IX.6.2.1 or Table IX.6.2.2; (b)....</p> <p>(d) the outcome of engagement with the relevant road controlling authority.</p>
44.8	Kāinga Ora	Retain Standard IX.6.1 subject to clarification and / or amendment of policies and associated provisions and thresholds to account for public infrastructure upgrades.
44.9	Kāinga Ora	Retain Standard IX.6.2 subject to clarification and / or amendment of policies and associated provisions and thresholds to account for public infrastructure upgrades.

47.1	Tim John Macwhinney	Do not proceed with plan change until the Mill Road major arterial route has been finalised
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Decision on submissions

385. We have comprehensively addressed these matters in the decision above.
386. We are satisfied that, based on the issues and evidence before us, the matters relating to timing and funding have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes relating to timing and funding, and **reject** those submissions which sought changes which we have not made.

Submissions on archaeological effects

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
39.1	Heritage New Zealand Pouhere Taonga	Include provisions within the precinct plan to require that archaeological assessments of the area are undertaken by a suitable qualified professional during the subdivision or resource consent stage of proposed developments
39.2	Heritage New Zealand Pouhere Taonga	Include provisions for the interpretation of the Drury Tramway/Mineral Railway R12/1122 that crosses the precinct diagonally running northwest to southeast
39.3	Heritage New Zealand Pouhere Taonga	Amend the provisions requiring the riparian margins of permanent or intermittent streams to be planted to a minimum width of 10 metres to exclude archaeological site extents as assessed by a professionally qualified archaeologist and require the preparation of an archaeological assessment by a suitably qualified person to inform the planting plan

Decision on submissions

387. We have addressed these matters in the decision above.
388. In approving PC 49 we have provided a set of precinct provisions that, in our view, appropriately address the relevant archaeological effects raised by PC 49.
389. 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 Cultural Effects

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
32.1	Ngāti Te Ata Waiohū	Confirm ongoing iwi participation, consultation and engagement in the project
32.2	Ngāti Te Ata Waiohū	Acknowledge within the project design the history of Mana Whenua in the PC49 area
32.3	Ngāti Te Ata Waiohū	Incorporate Te Aranga Principles in design concepts
32.4	Ngāti Te Ata Waiohū	Confirm iwi monitoring of the project
34.25	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.
34.26	Auckland Council	Enable and provide for accessible and affordable social housing for Māori.
39.4	HNZPT	Include appropriate provisions within the precinct plan to address any Maori cultural values identified
44.4	Kāinga Ora	Retain Objective (1) 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.
46.1	Ngāti Tamaoho	Confirm ongoing iwi participation, consultation and engagement in the project
46.2	Ngāti Tamaoho	Acknowledge within the project design the history of Mana Whenua in the PC49 area
46.3	Ngāti Tamaoho	Incorporate Te Aranga Principles in design concepts
46.4	Ngāti Tamaoho	Confirm iwi monitoring of the project

Decision on submissions

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

391. In approving PC 49 we have provided a set of precinct provisions, including the Te Aranga design principles, which in our view, appropriately address the relevant cultural issues raised by PC 49.

392. 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 ecological matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
11.1	Dickenson Family Trust	Amend the categorisation of a permanent waterway to the rear of 320 Fitzgerald Road
23.1	GM and AA Jones Family Trust	Amend the plan change to remove any requirement for riparian margin and planting along the indicative stream shown in the Ecological Assessment (Appendix 9 to the plan change documentation) traversing the property at 230 Drury Hills Road
32.6	Ngāti Te Ata Waiohū	Apply a minimum of 20 metre riparian margin for all waterways, especially those to contain walkways / cycleways
34.10	Auckland Council	Replace standard IX.6.3(2) with a new standard and consequential amendments to effect that the riparian yards set for buildings in tables H13.6.5.1 Yards, H6.6.9.1 Yards, H5.6.8.1 Yards and H4.6.7.1 Yards read as follows: "Riparian - 40m from the edge of all permanent streams and 10m from the edge of all intermittent streams" Other yards in these tables are not amended.
34.11	Auckland Council	Add the following matters of discretion to IX.8.1(3): <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(3).

34.15	Auckland Council	<p>Provide for improved biodiversity and ecological corridors (blue-green network) by amending IX.3(9), adding a new policy as follows, and relocating the cross-reference to all relevant overlay, Auckland-wide and zone policies, together with any other amendments that may be required to give effect to these matters:</p> <p>(X) Support <u>Ensure</u> improvements to water quality, and <u>and</u> habitat <u>and biodiversity</u>, including by providing planting on the riparian margins of permanent and intermittent streams. All relevant overlay, Auckland-wide and zone policies apply in this precinct in addition to those specified above.</p> <p><u>Enable a network of open space, riparian corridors and park edge roads that provides for:</u></p> <ul style="list-style-type: none"> <u>• potential ecological corridors along streams between Te-Manukanuka-O-Hoturoa (Manukau Harbour) and the Hunua;</u> <u>• improvement of freshwater and coastal water systems; and</u> <u>• a safe and attractive walking and cycling network.</u> <p><u>All relevant overlay, Auckland-wide and zone policies apply in this precinct in addition to those specified above.</u></p>
34.16	Auckland Council	Amend Standard IX.6.3 (1) by including a cross reference to the matters in Appendix 15.6(3)(b-f) and (4) of the Auckland Unitary Plan.
36.4	Counties Power Limited	Amend IX3 Policy 3 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
44.5	Kāinga Ora	Retain Objective (4) as notified.
46.6	Ngāti Tamaoho	Apply a minimum of 20 metre riparian margin for all waterways especially those to contain walkways / cycleways.

Decision on submissions

393. We have addressed these matters in the decision above.
394. In approving PC 49 we have provided a set of precinct provisions that we think appropriately address all of the relevant ecological matters.
395. 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 Flooding and Stormwater Effects

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
8.1	Ian David Cathcart	No specific amendments sought, but seeks confirmation that flooding on 60 Fitzgerald Road will not be worsened and that the property will not end up as a stormwater management pond
27.1	Fulton Hogan Land Development Ltd	Add a new policy as follows: (10) 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.
27.2	Fulton Hogan Land Development Ltd	Amend Standard IX6.5 Stormwater Quality as follows: (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) For all other impervious surfaces inert building materials should be used.
32.7	Ngāti Te Ata Waiohū	Apply a minimum of a two-treatment train approach for all stormwater prior to discharge to a waterway
32.8	Ngāti Te Ata Waiohū	Require roof capture for reuse and groundwater recharge
34.2	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.
34.3	Auckland Council	Amend precinct to include additional policies and rules to manage the effects of stormwater as described in the SMP. This includes: a. New policy: 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. b. Additional matters of discretion/assessment criteria that would apply to any restricted discretionary activity in the area of the precinct to ensure that new development and subdivision can be assessed for consistency with the NDC and SMP. c. Any other rules necessary to give specific effect to the SMP during development.
34.4	Auckland Council	Retain application of SMAF 1 to the plan change area.

34.5	Auckland Council	Retain policy IX.3(6).
34.6	Auckland Council	<p>Add a new policy to the following effect:</p> <p>Provide sufficient floodplain storage within the Drury East precinct to avoid increasing flood risk upstream and downstream, and manage increased flood risk within the precinct unless downstream infrastructure capacity means this is not required. This is subject to the upgrade of the downstream culvert upgrade.</p> <p>Insert rules to give effect to this.</p>
34.7	Auckland Council	<p>Add a new policy to the following effect:</p> <p>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.</p>
34.8	Auckland Council	<p>Amend standard IX6.5 (1) Stormwater Quality as follows (including a correction to the precinct reference):</p> <p>"The activity rules and standards in E9 apply to development in the Drury Centre East precinct as if the reference to 'high use roads', was were a reference to 'all existing, new, upgraded or redeveloped roads, accessways and carparks', or other amendments that would achieve the same environmental outcome."</p> <p>Insert new matters of control and discretion, in addition to those in E9, to the effect of:</p> <ul style="list-style-type: none"> • How the location and design of stormwater treatment assets reduces their operating costs. • The consolidation and community scale of stormwater treatment assets. • The location of stormwater treatment assets where they will be most effective in reducing contaminants.
34.9	Auckland Council	<p>Include a new standard to the effect that:</p> <p>Buildings cannot have exterior materials with exposed surfaces that are made from contaminants of concern to water quality including zinc, copper and lead.</p>
34.14	Auckland Council	Retain policy IX.3(8).
41.1	Drury South Limited	<p>Insert new policies to IX.3 Policies (Infrastructure and Staging) to:</p> <p>(a) Make adequate provision within the PC49 area to detain the 1% AEP event without adverse effects on the extent of flooding of upstream and downstream areas; and</p> <p>(b) Provide sufficient floodplain storage within the PC49 area to avoid increasing flood risk upstream and downstream, and manage increased flood risk within the precinct, to habitable rooms for all flood events.</p>

41.3	Drury South Limited	Amend Table IX.4.1 by introducing two new discretionary activities: (a) Development that does not comply with Standard IX.6.5 (Stormwater Quality and Flooding); and (b) Subdivision that does not comply with Standard IX.6.5 (Stormwater Quality and Flooding).
46.7	Ngāti Tamaoho	Apply a minimum of a two-treatment train approach for all stormwater prior to discharge to a waterway
46.8	Ngāti Tamaoho	Require roof capture for reuse and groundwater recharge

Decision on submissions

396. We have addressed these matters in the decision above.
397. In approving PC 49 we have provided a set of precinct provisions that, in our view, appropriately address the matters of stormwater and flooding.
398. We are satisfied that, based on the issues and evidence before us, the matters relating to the appropriate precinct plan and provisions 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 urban design matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
31.1	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

34.21	Auckland Council	<p>Add a policy and standards to provide for increased density near RTN stations including:</p> <p>a. Adding 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></p> <p>b. Building height standards enabling 7-8 storey building height within an extended walkable radius of the proposed RTN station.</p> <p>c. Any alterations to other building standards to respond to increased building height.</p> <p>d. 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.</p>
35.27	Auckland Transport	<p>Amend Objective IX.2 (1) as follows:</p> <p>(1) Drury East <u>Precinct</u> is a comprehensively developed residential environment that integrates with the Drury Centre Precinct and the natural environment, supports public transport use, <u>walking and cycling</u>, and respects Mana Whenua values.</p>
35.28	Auckland Transport	<p>Amend Policy IX.3 (3) as follows:</p> <p>(3) Require streets to be attractively designed and appropriately provide for all transport modes by:</p> <p><u>a)</u> providing a high standard of pedestrian amenity, safety and convenience; and</p> <p><u>b)</u> providing for safe separated access for cyclists on arterial and collector roads that link key destinations; and</p> <p><u>c)</u> providing a level of landscaping that is appropriate for the function of the street; and</p> <p><u>d)</u> providing for the safe and efficient movement of public transport and private vehicles.</p>

Decision on submissions

399. We have addressed these matters in the decision above.
400. In approving PC 49 we have provided a set of precinct provisions that, in our view, appropriately address the relevant urban form and design effects raised by PC 49.
401. 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 landscape effects

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
32.5	Ngāti Te Ata Waiohū	Account for natural and cultural landscaping in the project design, identify and preserve landscapes including view shafts, hilltops, tuff rings and ridge lines
32.9	Ngāti Te Ata Waiohū	Confirm park edge design adjacent to all waterways
32.10	Ngāti Te Ata Waiohū	Use native trees and plants only within the precinct
32.11	Ngāti Te Ata Waiohū	Protect ridgelines, hilltops and wetlands
34.27	Auckland Council	Provide a notable tree assessment and scheduling of any notable trees identified in that assessment.
46.5	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
46.9	Ngāti Tamaoho	Confirm park edge design adjacent to all waterways
46.10	Ngāti Tamaoho	Use native trees and plants only within the precinct
46.11	Ngāti Tamaoho	Protect ridgelines, hilltops and wetlands

Decision on submissions

402. We have addressed these matters in the decision above.
403. In approving PC 49 we have provided a set of precinct provisions that, in our view, appropriately address the relevant landscape effects raised by PC 49.
404. 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 open space matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
31.2	The Ministry of Housing and Urban Development	Enable further open space into the PC49 area through zoning
34.17	Auckland Council	Amend policy IX.3(4) to read: In addition to matters (a)-(c) of Policy E38.3.18, ensure that the location and design of publicly accessible open spaces contribute to a sense of place for Drury East, by incorporating any distinctive site features and integrating with the stream network. Also, if Auckland Council ownership is proposed, the open spaces must be consistent with the council's open space and parks acquisition and provision policies.
34.18	Auckland Council	Include indicative open spaces in the precinct plan as shown in Attachment 1 to the submission.
37.7	Ministry of Education	Amend plan change to ensure there is provision of appropriate public open space to support the surrounding community.
38.1	Leith McFadden	Zone areas for parks and public space
44.2	Kāinga Ora	Approve the plan change, subject to: • identification of future open space / park on the precinct plan (or alternatively Open Space – Informal Recreation zoning); • amendment of precinct plans to reflect overall submission.

Decision on submissions

405. We have addressed these matters in the decision above.
406. In approving PC 49 we have provided a set of precinct provisions that, in our view, appropriately address the relevant open-space issues raised by PC 49.
407. 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 we have not made.

Submissions on Transport Matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
1.1	Andrew Wildman	Approve PC49's overall subdivision goals but provide clarification on the location of Mill Road Extension

34.20	Auckland Council	Ensure that the consent categories in IX.4.1 Activity table, matters of discretion in IX.8.1, and assessment criteria in IX.8.2 are the most appropriate to give effect to: matters raised in this submission, the objectives and policies of the precinct, the RPS and any national policy statement.
34.22	Auckland Council	Review the need for Standard IX.6.4 if a notice of requirement has been lodged for the upgrade of Waihoehoe Road.
35.4	Auckland Transport	Amend Objective IX.2(2) as follows: (2) <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>
35.19	Auckland Transport	Delete all reference to 'Access A' under Standards IX.6.1 and IX.6.2. Remove 'Access A' from Precinct Plan 2.
35.20	Auckland Transport	Add new policy as follows: (x) <u>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>
35.21	Auckland Transport	Add new policy as follows: (x) <u>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>
35.22	Auckland Transport	Amend the building line restrictions in Standard IX.6.4 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.
35.23	Auckland Transport	Retain the vehicle access restriction on Waihoehoe Road as per Rule E27.6.4.1 (3)(c) of the AUPOP.
35.24	Auckland Transport	Amend the precinct provisions to better address the following related matters: <ul style="list-style-type: none"> • Define the key transit-oriented development principles, characteristics and outcomes as they apply to the plan change area. • Ensure there is consistency through the suite of precinct provisions in regard to giving effect to the transit-oriented development related outcomes. • 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.

35.25	Auckland Transport	Provide further assessment of the impacts of the proposal on accessibility between the Drury East plan change area and 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.
35.30	Auckland Transport	Amend Policy IX.3(1) as follows: (1) Require the east to west collector roads to be generally in the locations shown in IX.10.1 Drury East: Precinct Plan 1, while allowing for variation, where it would achieve a highly connected street layout that integrates with the surrounding transport network.
35.31	Auckland Transport	Amend Policy IX.3(2) as follows: (2) Ensure that subdivision and development provide 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.
35.32	Auckland Transport	Amend Rule IX.4.1 (A1) as follows: "Development of new public or private road (this rule does not apply to Auckland Transport)" 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.
35.33	Auckland Transport	Add a new standard to require the vesting of proposed public roads in all sub-precincts as follows: IX.6.X Road Vesting 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. As a consequential amendment, add a new rule as follows: Development and/or subdivision that does not comply with IX.6.X Road Vesting – NC
35.34	Auckland Transport	Amend matters of discretion IX.8.1 (1) as follows: (1) Development of new public and private roads: (a) Location and design of the collector roads streets, local roads streets and connections with neighbouring sites and to achieve an integrated street network; (b) Provision of safe and efficient public transport, cycling and pedestrian networks; (c) Location and design, and sequencing of connections to the Drury Central train rail station; and (d) Matters of discretion IX.8.1 (1)(a) - (c) apply in addition to the matters of discretion in E38.12.1.; and (x) Location and design of intersections with existing roads.
35.35	Auckland Transport	Amend Assessment criteria IX.8.2 (1)(a) as follows: (1) Development of new public and private roads: (a) Whether the collector roads are provided generally in the

		<p>locations shown on IX.10.1 Drury East: Precinct Plan 1 to achieve a highly connected street layout that integrates with the surrounding transport network. 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:</p> <p>(i) The presence of natural features, natural hazards or contours and how this impacts the placement of roads;</p> <p>(ii) The need to achieve a permeable an efficient block structure and layout within the precinct suitable to the proposed activities.; and</p> <p>(iii) The constructability of roads and the ability for it to be delivered by a single landowner.</p>
35.36	Auckland Transport	<p>Amend Assessment criteria IX.8.2 (1)(b) as follows:</p> <p>(b) Whether a high quality and integrated network of local roads is provided within the precinct that provides a good degree of accessibility and connectivity, and supports public and active modes of transport a walkable street network. Whether roads are aligned with the stream network, or whether pedestrian and/or cycle paths are provided along one or both sides of the stream network, where they would logically form part of an integrated open space network;</p>
35.37	Auckland Transport	<p>Retain Assessment criteria IX.8.2 (1)(c) and (d) for location of roads</p>
35.38	Auckland Transport	<p>Amend Assessment criteria IX.8.2 (1) for design of roads as follows:</p> <p>(A) Whether the design of collector and local roads are generally in accordance with the minimum road reserve widths and key design elements road cross sections</p> <p>(B) Whether the layout of the street network provides a good degree of accessibility and connectivity, and supports the development of Drury East Precinct as a walkable centre and community street network. As a general principle, the length of a block should be no greater than 280m, and the perimeter of the block should be no greater than 500m;</p> <p>(C) Within the walkable catchment of the Drury Central train station in the Terrace Housing and Apartment Buildings zone, whether the street network provides safe and legible pedestrian and cycle connections to the Drury Central rail station as development occurs over time. In particular, whether the following is provided, or an alternative is provided that achieves an equal or better degree of connectivity:</p> <p>(i) Development provides for a direct, legible and safe pedestrian and cycle connection to the Drury Central train rail station via connections through the Drury Centre precinct, or via Fitzgerald Road, Waihoehoe Road and Flanagan Road/Drury Boulevard.</p>
42.10	NZTA	<p>Retain Objective 3</p>
42.13	NZTA	<p>Retain IX.3 Policy 1 as notified</p>
42.14	NZTA	<p>Retain IX.3 Policy 2 as notified</p>

42.15	NZTA	Retain IX.3 Policy 3 as notified
42.16	NZTA	Retain IX.3 Policy 5 as notified
42.17	NZTA	Amend Policy 7 as follows: (7) Provide for the staging of pedestrian and cycling connections to the Drury Central train station and Drury Centre to encourage the use of public and active modes of transport.
42.18	NZTA	Retain Activity IX.4.1 (A1) as notified.
42.24	NZTA	Amend title of Table IX.6.1.1 as follows: Table IX.6.1.1 Threshold for Development with 'Access A' as shown on IX.10.2 Drury East: Precinct Plan 2 not constructed.
42.26	NZTA	Delete Table IX.6.1.2 Threshold for Development with 'Access A' as shown on IX.10.2 Drury East: Precinct Plan 2 constructed
42.30	NZTA	Amend IX.8.1 Matters of discretion (1) as follows: (1) Development of public and private roads: (a) (d) ... (e) the outcome of engagement with the relevant road controlling authority,
42.33	NZTA	Amend IX.8.2(1) Assessment criteria as follows: 1) Development of public and private roads: Location of roads (a) ... (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 an integrated active transport walkable street network. [...] (c) ... (d) ... Design of roads (a) ... (b) Whether the layout of the street network provides a good degree of accessibility and supports an integrated active transport walkable street network. [...] (c)(i) ... Road Controlling Authority (f) how the outcome of engagement with the relevant road controlling authority has been responded to.
42.34	NZTA	Amend assessment criteria IX.8.2(2) as follows: (2) 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) ...

		(b) Whether increased use of public and active transport provides additional capacity within the transport network including by implementing travel demand management measures. (d)...
		(e) how the outcome of engagement with the relevant road controlling authority has been responded to.
44.6	Kāinga Ora	Amend Policy (1) as follows: "Require the east to west collector road to be generally in the location shown in IX.10.1 Drury East: Precinct Plan 1 while allowing for variation, where it would achieve a highly connected street layout that integrates with the surrounding transport network and planned neighbourhood centre".
44.7	Kāinga Ora	Retain Policy (5), (6) and (7) subject to clarification and / or amendment of policies and associated provisions to account for public infrastructure upgrades.
44.10	Kāinga Ora	Amend Criteria IX.8.2 (1)(a) as follows: Whether the east to west collector road is provided generally in the location shown on IX.10.1 Drury East: Precinct Plan 1 to achieve a highly connected street layout that integrates with the surrounding transport network and planned neighbourhood centre. 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 an efficient block structure and layout within the precinct suitable to the proposed activities; and iii. The constructability of roads and the ability for it to be delivered by a single landowner; and iv. The need to ensure that any alternative layout integrates with and provide frontage to the planned neighbourhood centre.
47.3	Tim John Macwhinney	Provide a road directly linking Waihoehoe Road - Cossey Road intersection as shown on map attached to submission. Should the Mill Road - Drury South Rd route be moved to the east to parallel Drury Hills Road, provide some other direct link

Decision on submissions

408. We have comprehensively addressed these matters in the decision above.
409. In approving PC 49 we have provided a set of precinct provisions that, in our view, appropriately address the traffic and transport effects raised by PC 49.

410. 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 which we have not made.

Submissions on Noise and Vibration

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
35.44	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>
35.45	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 IX.4.1 as follows: (X) Development that does not comply with IX.6.X Noise Mitigation - RD
35.46	Auckland Transport	Add a new assessment criterion to IX.8.2 as follows: The extent to which noise sensitive activities in proximity to arterial roads are managed.
40.1	Matthew Royston Kerr	Decline the plan change on the basis of reverse sensitivity effects of the THAB zone on adjacent FUZ land.
42.7	NZTA	Add new objective as follows: Protect sensitive activities from potential health and amenity effects that may arise from noise and vibration associated with the operation of the transport network.
42.11	NZTA	Add new policy as follows: Locate and design new and altered buildings, and activities sensitive to noise to minimise potential effects of the transport network
42.12	NZTA	Add new policy as follows: Manage the location of sensitive activities (including subdivision) through set-backs, physical barriers and design controls.
42.31	NZTA	Add new permitted activity standards to IX.6 applying to activities within 100m of the edge of a state highway carriageway or the proposed Mill Road corridor, relating to the suite of controls sought for limiting effects on sensitive activities from noise and vibration associated with the transport network. See Attachment 1 to the submission for full proposed wording.
42.35	NZTA	Add new assessment criteria to IX.8.2 as included in Attachment 1 to the submission, relating to the suite of controls sought for limiting effects on sensitive activities from noise and vibration associated with the transport network:

		<p>Discretion is restricted to:</p> <p>(a) Whether the location of the building minimises effects;</p> <p>(b) Alternative mitigation which manages the effects of the non-compliance on the health and amenity of occupants;</p> <p>(c) Any identified topographical, ground conditions or building design features that will mitigate noise and vibration effects or; and</p> <p>(d) The outcome of any consultation with the NZ Transport Agency.</p>
42.36	NZTA	Add new permitted activity standards to IX.6 applying to activities within 100m of the edge of a state highway carriageway or the proposed Mill Road corridor, relating to the suite of controls sought for limiting effects on sensitive activities from noise and vibration associated with the transport network. See Attachment 1 to the submission for full proposed wording.

Decision on submissions

411. We have comprehensively addressed these matters in the decision above.
412. In approving PC 49 we have provided a set of noise provisions that, in our view, appropriately address the matters of concern to submitters.
413. We are satisfied that, based on the issues and evidence before us, the matters relating to noise 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 servicing/other infrastructure

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
10.1	Fire and Emergency NZ	Retain Policy 6
14.1	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 PC49 area)
22.1	First Gas Limited	Enable the Gas Transmission Network to be safely, effectively and efficiently operated, maintained, replaced, upgraded, removed and developed (i.e. recognised and provided for) through an enabling activity status
22.2	First Gas Limited	Recognise the Gas Transmission Network as having functional and operational requirements and constraints, including in respect of its location
22.3	First Gas Limited	Manage the adverse effects of third-party development or activities in close proximity to the Gas Transmission Network to the extent that adverse effects on the network are avoided or

		appropriately mitigated
22.4	First Gas Limited	Identify Firstgas as an affected party in the event resource consent is required in respect of potential effects on assets owned and operated by Firstgas especially land use changes and subdivision, or alternatively the matters of discretion or assessment criteria include technical advice from Firstgas
22.5	First Gas Limited	Identify the Gas Transmission Network on the District Plan Maps to ensure visibility of the network for plan users.
22.6	First Gas Limited	Add new objective as follows: The Drury East Precinct recognises the importance of the existing pipeline infrastructure as assets which are regionally and nationally significant and will ensure that they are protected and enabled.
22.7	First Gas Limited	Add new policy as follows: The Drury East Precinct is planned, designed and constructed so that adverse effects on existing infrastructure are avoided or mitigated.
22.8	First Gas Limited	Add new provision to IX.4-6 Activity Table, Notification and Standards requiring that 'Any activity within 20 metres of existing Gas Transmission Pipeline shall require the written authorisation from the infrastructure asset owner'
28.1	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 NPS-UD
28.2	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
28.3	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
28.4	Spark	Consult with Spark and the other telecommunication network providers to ensure funding is available through the infrastructure funding agreements
28.5	Spark	Include telecommunications infrastructure within the triggers for the staged release of development
36.1	Counties Power	Retain IX.2 Objective 2
36.2	Counties Power	Retain IX.2 Objective 3
36.3	Counties Power	Retain IX.3 Policy 1
36.5	Counties Power	Retain Policy 5
36.6	Counties Power	Amend Policy 6 to include reference to electrical, telecommunications and other infrastructure.

36.7	Counties Power	Retain Policy 7
36.8	Counties Power	Add new policy IX.3.(5)(e) as follows: Require subdivision and development to: ... (e) Enable the reduction of CO2 emissions by promoting the use of renewable energy.
36.9	Counties Power	Add new policy IX.3(5)(f) as follows: Require subdivision and development to: ... (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.
36.10	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.
36.11	Counties Power	Amend matter of discretion IX.8.1(1)(d) as follows, if this is what was intended: (d) Matters of discretion IX.8.1 (1)(a) - (bc) apply in addition to the matters of discretion in E38.12.1.
36.12	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.
36.13	Counties Power	Amend IX.11 Appendix 1 Road Cross Section Details to provide a typical road cross-section for arterial roads to ensure that the berm is an acceptable width for installation of underground electrical reticulation.
37.1	Ministry of Education	Amend Objective IX.2 (3) as follows: Development is supported by appropriate infrastructure (including education infrastructure).
37.2	Ministry of Education	Amend Policy IX.3 (6) as follows: Ensure that development in Drury East Precinct is coordinated with supporting education infrastructure, stormwater, wastewater and water supply infrastructure, having particular regard to the capacity of the Fitzgerald culvert and culverts under Great South Road.
37.3	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 (including schools) to achieve an integrated street network.
37.4	Ministry of Education	Amend IX.8.2 Assessment criteria 1)(a)(ii) for Location of roads as follows:

		ii. The need to achieve an efficient block structure and layout within the precinct suitable to the proposed activities (including provision of schools); and
37.5	Ministry of Education	Amend IX.8.2 Assessment criteria 1)(d) for Location of roads as follows: d) 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 development provides for collector roads and local roads to the site boundaries to coordinate with neighbouring sites (including potential future school sites) and support the integrated completion of the network within the precinct over time;
37.6	Ministry of Education	Amend IX.8.2 Assessment criteria 1)(b) for Design of Roads as follows: (b) Whether the layout of the street network provides a good degree of accessibility and supports a walkable street network, including to existing schools or sites designated for this purpose. As a general principle, the length of a block should be no greater than 280m, and the perimeter of the block should be no greater than 600m;
45.1	Watercare	Amend Policy 6 as follows: (6) Ensure that development in Drury East Precinct is coordinated with, and does not precede, supporting stormwater, wastewater and water supply infrastructure, having particular regard to the capacity of the Fitzgerald culvert and culverts under Great South Road.
45.2	Watercare	Add new Policy 6A as follows: (6A) 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.

Decision on submissions

414. In approving PC 49 we have provided a set of precinct provisions that, in our view, appropriately address the servicing/other infrastructure raised by PC 49.
415. We are satisfied that, based on the issues and evidence before us, the matters relating to servicing and 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 servicing and other infrastructure, and **reject** those submissions which sought changes to the precinct provisions which we have not made.

Submissions on plan change boundary

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
4.1	Warwick Hill-Rennie	Approve the plan change conditional on it rezoning the whole of Cossey Road from Future Urban to Residential, not part only

12.1	Lisa RoseLeask	Include properties on the southern side of Drury Hills Road and Fitzgerald Road within the plan change area, as this land will rely on thePC49 area for its future stormwater and wastewater provision
13.1	Bruce LloydLeask	Include properties on the southern side of Drury Hills Road and Fitzgerald Road within the plan change area, as this land will rely on thePC49 area for its future stormwater and wastewater provision
16.1	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 ResidentialUrban (with Terrace Housing / high density residential along BrookfieldRoad and Fitzgerald Road)
20.1	Jie's HoldingLimited	Include 497 Fitzgerald Road within the plan change area and zone it Business: Mixed Use, or Residential: Townhouse and Apartment BuildingZone, or other suitable operative urban zones. Further, apply the same or similar appropriate operative urban zonings toall that land west of the PC49 site on the southern side of Fitzgerald Road currently zoned Future Urban.
21.1	Neville Tapp	Reject plan change, or as a minimum exclude the area east of Cossey Road from the plan change and rezoning, and move Mill Road alignment to follow Cossey Road
33.1	George and Agnes Neate	Amend the plan change boundary to extend further south, to include the properties indicated on the map attached to the submission (south west of Fitzgerald Road and south east of Brookfields Road)
47.2	Tim John Macwhinney	Amend plan change boundary to expand to an area to the south east including 2 Drury Hills Road, as shown on map attached to submission

Decision on submissions

416. We have addressed these matters in the decision above. On this basis we have **rejected** the submissions.

Submissions on Zoning

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
31.3	The Ministry of Housing and Urban Development	Replace the Business - Mixed Use zoned area with Business -Neighbourhood Centre Zone
34.23	Auckland Council	Replace the Business - Mixed Use Zoning with Local Centre Zoneand reevaluate whether this is the best location for a centre once the position of the Mill Road Corridor and points of access off thatcorridor have been confirmed. If the Business - Mixed Use zoning is retained, then provide standards for daylight and living space (as set out in PC 48).

34.24	Auckland Council	Provide for Light Industry Zoning on any land in the precinct that lies east of the Mill Road Corridor as determined by the future notice of requirement.
44.1	Kāinga Ora	Approve the plan change, subject to amending the proposed Business – Mixed Use zone to Business – Neighbourhood Centre Zone (see Attachment Two to the submission).
42.3	NZTA	Review the proposed zoning and associated provisions in light of the NPSUD requirements.

Decision on submissions

417. We have comprehensively addressed the issue of zoning in the decision above.
418. In approving PC 49 we have provided for the zoning pattern as set out in the Applicant's Reply statement.
419. 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 49 area, and **reject** those submissions which sought changes to the zoning which we have not made.

Submissions on the precinct plan

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
34.12	Auckland Council	Include indicative permanent and intermittent streams and wetlands on the precinct plan.
34.13	Auckland Council	Include the indicative blue-green corridor within the precinct plan based on the urban concept in the Urban Design Assessment.
35.3	Auckland Transport	Amend IX.1 Precinct Description as follows: The transport network in the wider Drury East <u>area</u> as defined on Precinct Plan 2 will be progressively upgraded over time to support development in the wider area. The precinct includes provisions to ensure that the <u>subdivision and</u> development of land for housing is coordinated with the <u>funding and</u> construction of the transport network upgrades <u>in order to avoid, remedy and mitigate adverse effects on the local and wider transport network necessary to support it.</u>
39.5	HNZPT	Explore the potential of commissioning a heritage interpretation plan for the wider Drury area subject to the four jointly notified plan changes

Decision on submissions

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

421. In approving PC 49 we have provided a set of precinct provisions that, in our view, appropriately address the matters raised in these submissions.
422. We are satisfied that, based on the issues and evidence before us, the matters relating to the appropriate precinct plan and provisions addressed in these submissions 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 submitters concerns, and **reject** those submissions which sought changes to the precinct plan which we have not made.

Submissions on notification provisions

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
34.19	AucklandCouncil	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 theRMA.
35.9	AucklandTransport	Amend the IX.5 Notification rules (1) to (3) which require non-notificationto require the normal tests for notification under the relevant sections of the RMA.
41.4	Drury SouthLimited	Delete notification provision IX.5(2) so that an application for resource consent for a restricted discretionary activity listed in Table E11.4.1, TableE11.4.2 and Table 12.4.1 will be subject to the normal tests for notificationunder the RMA.
41.5	Drury SouthLimited	Delete notification provision IX.5(3) 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 theRMA.
42.20	NZTA	Either delete notification provision IX.5(3); or amend IX.5(3) to ensure thatActivity E11.4.1(A1) (new public or private roads) and infringements to standards IX6.2 and 6.3 (transport upgrades and trip generation limits) aresubject to normal notification tests.

Decision on submissions

423. We have addressed these matters in the decision above.
424. In approving PC 49 we have provided for the 'standard' notification tests as set out in the RMA.
425. 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 General Matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
2.1	Steve Airey	Remove good horticultural growing land from the plan change area and replace it with other land nearby
17.1	Dean Hancock	Reject the plan change on the basis of not wanting to lose submitter's greenhouse cucumber growing business at 215 Waihoehoe Road
32.12	Ngāti Te Ata Waiohū	Reflect sustainable development in the design and outcomes
35.43	Auckland Transport	Make any necessary amendments to PC 49 as required to achieve a consistency in approach, including in relation to objectives, policies, rules, methods and maps, across the private plan changes within the Drury growth area
43.2	Karaka and Drury Limited	Do not amend PC 49 in any way that would impact on, impede or preclude: (i) The quality of planning outcomes that the submitter seeks to achieve for Drury West; or (ii) The timing in which those outcomes are delivered.
44.3	Kāinga Ora	Retain the Drury East Precinct description (with any consequential amendments to reflect Kāinga Ora's submission).
46.12	Ngāti Tamaoho	Reflect sustainable development in the design and outcomes

Decision on submissions

426. In approving PC 49 we have provided a set of precinct provisions that we think appropriately address the general matters raised by submitters.
427. We are satisfied that, based on the issues and evidence before us, the matters relating to the range of general matters raised by submitters have been considered. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted, and **reject** those submissions which sought changes that we have not made.

SECTION 32AA EVALUATION

428. 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.¹⁹⁶ This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes.¹⁹⁷

¹⁹⁶ RMA, section 32AA(1)(a)

¹⁹⁷ RMA, section 32AA(1)(c)

429. In our view this decision report, which among other things, addresses the modifications we have made to the provisions of PC 49, satisfies our section 32AA obligations.

PART 2 OF THE RMA

430. 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 49 for the reasons we have set out above, and provide in summary below.
431. PC 49 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 (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 proposes in a manner that:
 - Takes advantage of its strategic location on the transport network;
 - Will contribute, along with the land subject to PC 48 and PC 50 to an integrated urban development incorporating residential, commercial, entertainment and other activities; and
 - Will provide high quality amenity as a consequence of the provisions proposed in PC 49 (and PCs 48 and 50).
432. PC 49 provides for the sustainable management of the PC 49 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.
433. We find that PC 49 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 had particular regard to the other matters listed in section 7 of the RMA.
434. Consultation has been undertaken with iwi and we accept FHL has endeavoured to address concerns expressed in submissions, particularly those with respect to stormwater and wastewater issues. We are satisfied that PC 49 does not raise any issues in terms of section 8 of the RMA.

OVERALL DECISION

435. That pursuant to Schedule 1, Clauses 10 and 29 of the Resource Management Act 1991, that Proposed Plan Change 49 to the Auckland Unitary Plan (Operative in Part) be **approved**, subject to the modifications as set out in this decision.

436. Submissions on the plan change are accepted, accepted in part or refused in accordance with this decision.
437. In addition to the reasons set out above, the overall reasons for the decision are that PC 49:
- 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 Commissioner Mark Farnsworth



29 April 2022

APPENDICES

The Precinct Provisions are attached as Appendix 1