

Proposed Private Plan Change 50 – to the Auckland Unitary Plan



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

Proposal - in summary.

Oyster Capital Limited (Oyster or the Applicant) seeks to rezone 49 hectares of land located to the north of Waihoehoe Road and east of the North Island Main Trunk Railway (NIMT) from Future Urban zone to Residential: Terrace Housing and Apartment Buildings zone – known as Private Plan Change 50 – Waihoehoe Precinct (PC 50).

This private plan change is **APPROVED** with modifications to that notified. The reasons are set out below.

Private Plan Change number:	50
Site address:	The 'site' is generally bounded by Waihoehoe Road to the south and the North Island Main Trunk Rail line (NIMT) to the west.
Applicant:	Oyster Capital Limited (Oyster)
Hearing:	<i>First Tranche 2021</i> 29 & 30 November 2021 <i>Second Tranche (Combined Hearing of PCs 48, 49 and 50).</i> 6 – 10 and 16 December 2021
Hearing panel:	Greg Hill (Chairperson) Karyn Kurzeja Mark Farnsworth MNZM
Parties and People involved:	<u>Applicant</u> <i>Oyster Capital Limited represented by:</i> Mr Jeremy Brabant, Legal Counsel; Mr Andrew McCarthy, Corporate; Mr Vaughan Crang, Civil Engineering; Mr Shane Dolan, Contaminated Land; Mr Shane Lander, Geotechnical; Ms Ellen Cameron, Archaeology; Mr Richard Montgomerie, Ecology; Mr Jason Hogan, Landscape; Mr Matthew Prasad, Urban Design;

Dr Tim Fisher, Stormwater;
Mr John Parlane, Transport (Strategic);
Mr Daryl Hughes and Mr Don McKenzie, Transport;
Ms Emma McDonald, Infrastructure Project Management,
Mr Greg Akehurst, Economics; and
Mr Nick Roberts and Ms Rachel Morgan, Planning.

Papakura Local Board

Mr Brent Catchpole, Chairperson

Submitters:

Kiwi Property Limited represented by:

Mr Douglas Allan, Legal Counsel

Waka Kotahi represented by:

Mr Mathew Gribben, Legal Counsel;

Mr Evan Keating, Corporate;

Mr Andrew Mein, Transport; and

Ms Cath Heppelthwaite, Planning

Kāinga Ora represented by:

Mr Bal Matheson, Legal Counsel

Mr Michael Campbell, Planning

Mr Rhys Hegley, Acoustics

Drury South Ltd represented by:

Mr Daniel Minhinnick and Ms Kristy Dibley, Legal Counsel;

Mr Joseph Phillips, Transport; and

Mr Greg Osborne, Planning.

Kiwi Rail represented by:

Ms Kristen Gunnell; Legal Counsel

Dr Stephen Chiles, Noise and Vibration; and

Ms Pam Butler, Planning.

*Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban
Development represented by:*

Mr Ernst Zollner, Corporate.

Water Care represented by:

Mr Andre Stuart.

Counties Power represented by:

Lindsay Wilson.

	<p>Mr Peter Dodd – <i>representing himself</i></p> <p><i>Auckland Council (as submitter) and Auckland Transport represented by:</i></p> <p>Mr Matthew Allan / Mr Rowan Ashton, Legal Counsel; Ms Josephine Tam, Corporate; Ms Brigid Duffield, Infrastructure Funding; Mr Gert Kloppers, Corporate Infrastructure; Mr Peter Gudsell, Finance; Mr Ezra Barwell, Open Space; Mr Andrew Prosser, Transport; Ms Claire Drewery, Acoustics and Vibration; Mr Danny Curtis, Stormwater; Ms Paula Vincent, Stormwater; Mr Rue Statham and Mr Ebi Hussain, Ecology; Ms Dawne Mackay, Strategic Planning; Mr Christopher Turbott, AC Planning; and Ms Karyn Sinclair, AT Planning.</p> <p><i>Auckland Council (as regulator) represented by:</i></p> <p>Mr David Mead, Consultant Planner (section 42A report author); Mr Craig Cairncross, (Team Leader); Mr Jason Smith, Ecology; Mr Mat Collins and Mr Terry Church, Transport Engineering; Mr David Russell, Development Engineering; Ms Rebecca Skidmore, Landscape Architect & Urban Design; Mr Trent Sunich, Stormwater; 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>Tabled Statements from Submitters:</p>	<p><i>Ministry of Education</i> Ms Karin Lepoutre, Planning; 5 August 2021.</p> <p><i>Transpower</i> Ms Rebecca Eng, Planning; 13 July 2021.</p>

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

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 50, 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, sub-precinct and building 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 rail corridor zone and arterial roads to address adverse health and amenity effects. We have not included vibration as we had insufficient evidence to warrant imposing controls.
- We have imposed a 2.5 m building setback from the rail designation boundary.
- We have 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

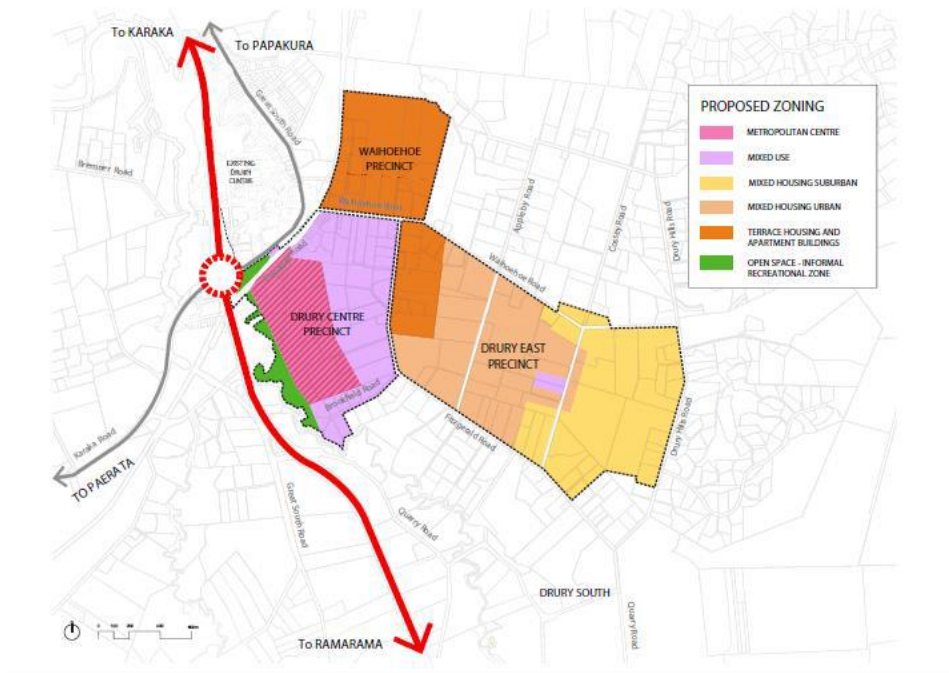
1. The private plan change request was made under Clause 21 of Schedule 1 to the RMA and was accepted by the Council, under clause 25(2)(b) of Schedule 1 to the RMA on 27 August 2020.

2. A report in accordance with section 32 and 32AA (in relation to the changes sought) of the RMA was prepared² in support of the proposed plan change for the purpose of considering the appropriateness of the proposed provisions.
3. This decision is made on behalf of the Auckland Council (“**the Council**”) by Independent Hearing Commissioners Greg Hill (Chair), Karyn Kurzeja and Mark Farnsworth appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (**RMA**).
4. The Commissioners have been delegated the authority by the Council to make a decision on Private Plan Change 50 (**PC 50**) to the Auckland Council Unitary Plan Operative in Part (**AUP OP**). In making our decision we have considered: 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 for the hearing, Joint Witness Statements of Experts³, legal submissions, the evidence presented during the hearing of submissions, and closing submissions.
5. PC 50 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 48 Drury Centre Precinct – Kiwi Property Limited No 2 Limited - 95 hectares - largely business - Metropolitan and Mixed Use;
 - PC 49 Drury East Precinct – Fulton Hogan Land Development Limited – 184 hectares – largely residential with some Neighbourhood Centre; and
 - PC 50 Waihoehoe Precinct – Oyster Capital - 49 hectares – being residential.
6. 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).

² Waihoehoe Private Plan Change Request – S32A Assessment Report – Pamela Santos B&A Urban Environment May 2020 (**S32A Assessment 2020**)

³ Eight Joint Witness Statements of experts were pre-circulated: Initial Session 11 May 2021; Stormwater 17 May 2021; Transport 24 May 2021; Planning 31 May 2021; Stormwater 17 September 2021; Stormwater 11 October 2021; Transport 26 October 2021 and Transport & Planning 3 / 8 November 2021.

Figure 1



7. The hearing of this plan change (as were PC's 48 and 49) 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.
8. 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).
9. While this decision relates solely to PC 50, it has many commonalities with the decisions for PCs 48 and 49. 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

10. The subject site is zoned Future Urban Zone (**FUZ**) in the AUP (OP)⁴. The FUZ is a transitional zone applying to greenfield land that has been identified as suitable for urbanisation. In the interim, land in the FUZ may be used for a range of general rural activities, with urban activities either enabled by a plan change that rezones the land for urban purposes, or which are authorised by resource consent.

⁴ Section 42A Report at Section 3

11. The area surrounding PC 50 is also mainly zoned FUZ, with the nearest urban zones being on the western side of the railway corridor (Open Space - Sport and Active Recreation Zone, and Residential - Mixed Housing Suburban zone over 100m away). PCs 48 and 49 land is generally to the south of PC 50.
12. The PC 50 land is also subject to the following AUP overlays and controls:
 - High-Use & Quality-Sensitive Aquifer Management Area – Drury Sand Aquifer; and
 - Macroinvertebrate Community Index – Rural and Urban.

SUMMARY OF PLAN CHANGE AS NOTIFIED

13. The proposed Plan Change is described in detail in the Applicant’s section 32A Assessment Report⁵ and an overview is provided in the Council’s section 42A hearing report⁶. In summary – PC50 seeks to rezone approximately 49 hectares of land from Future Urban Zone (**FUZ**) to Residential: Terrace Housing and Apartment Buildings (**THAB**) zone (see Figure 2 below⁷) and to introduce a new Waihoehoe Precinct.
14. The intention of the proposed zoning is to provide for the establishment of a new residential area as part of the wider development of Drury East, offering a range of housing types based on the THAB zoning. The THAB zone is proposed to be applied to provide for higher density residential development on the land. The new residential area would be integrally linked to the existing Drury Township, Kiwi Property’s proposed Metropolitan Centre, as well as the Drury Central train station.
15. The Applicant’s section 32A Assessment Report⁸ sets out the purpose of the plan change, being:

“The purpose of the Plan Change is to provide for additional housing within Drury, consistent with the Council’s draft Drury-Opāheke Structure Plan. Oyster is an experienced greenfield developer and they are seeking to rezone the land to increase the supply of high-quality housing in the southern part of Auckland.”
16. The proposed Plan Change relies on standard zones and Auckland-wide provisions to manage the way in which the Plan Change area is used and developed⁹. An additional height variation control of 22.5m was sought to enable buildings of 6 storeys.
17. In terms of housing capacity, it is estimated that approximately 1,130 dwellings could be accommodated within the PC 50 area.

⁵ Applicant’s S32A Assessment at Section 5

⁶ Section 42A at [1.1]

⁷ Noting there is no Residential – Mixed Housing Urban as shown in the legend

⁸ Ibid at [5.3]

⁹S32A Assessment Report at [5.1.1]

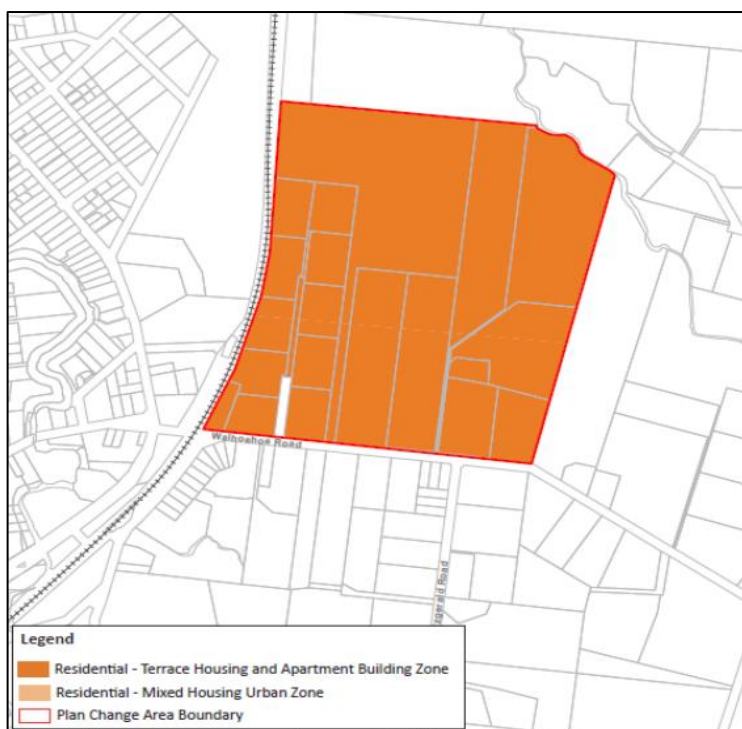


Figure 2

18. Mr Roberts and Ms Morgan noted¹⁰ two sub-precincts are proposed in the Waihoehoe precinct for the purpose of managing stormwater runoff. The maximum impervious area within sub-precinct B is 60 per cent, compared with 70 per cent in sub-precinct A. The boundaries of the sub-precincts align with the stormwater sub-catchments within the precinct.

THE SITE AND SURROUNDING ENVIRONMENT

19. The section 32A Assessment Report provided¹¹ a detailed description of the site and the surrounding locality. The area is zoned Future Urban and is bounded by Waihoehoe Road to the south; the North Island main trunk rail line to the west; Waihoihoi stream to the north-east and farmland to the north and east. The Plan Change area is currently used primarily for grazing activities, some commercial/industrial type activities, and a number of dwellings and accessory buildings.
20. Oyster owns about 40% of the PC 50 land area (the eastern side), with the other properties on the western side in different private ownerships¹².
21. The overall topography of the Plan Change area is relatively flat with a gentle cross fall from Waihoehoe Road towards the northern boundary. There are modified watercourses that traverse the site and a short section of the mainstem of the Waihoihoi Stream drains along the north-eastern boundary of the site.

¹⁰ Ibid at [4.6]

¹¹ Mr Brabant's Opening Legal Submissions at [4.1]

¹² Section 42A Report at [12]

22. The surrounding locality is described in the section 32A Assessment Report¹³. The surrounding area is characterised by a mix of activities and building types. The properties in Waihoehoe Road comprise a mixture of suburban scale residential activities and horticultural /rural production activities. To the east, south and west of the site are large rural / residential blocks. The Drury Village and light industrial area is located to the north west of the site, fronting Great South Road.
23. The railway line is located to the immediate west of the Plan Change area. Although there is currently no train station at Drury, the DOSP identifies a future station in central Drury, and electrification of the line is occurring now. We note that both of the train stations (and associated park and ride facilities) have now been granted resource consents, and the NoR confirmed under the COVID-19 Recovery (Fast-track Consenting) Act 2020 by the Expert Consenting Panel on the 3 February 2022¹⁴
24. In the wider context, the site and the surrounding locality is within the FUZ under the AUP OP. The and Opaheke /Drury FUZ provides for approximately 1,900 hectares of land for urban redevelopment. Other significant existing and planned land use characteristics of the wider locality include:
- The Drury Quarry;
 - The existing Drury Light Industrial area to the west of the site;
 - The Drury South Industrial area to the south of the site; and
 - Various Special Housing Areas (SHAs).

NOTIFICATION PROCESS AND SUBMISSIONS

25. PC 50 was publicly notified for submissions on 27 August 2020; on the closing date, 22 October 2020, thirty-five primary submissions had been received¹⁵. The submitters and their submissions are addressed in the tables in the section titled “Decisions” later in this decision.
26. A summary of submissions was publicly notified on 11 December 2020; on the closing date, being 29 January 2021 for further submissions; ten further submissions were received¹⁶.
27. The Section 42A Report records¹⁷ two submission points have been withdrawn in part. On 11 June 2021, Kāinga Ora informed the Council that it was withdrawing, in part, submission points 32.1 and 32.2.

¹³ 32A Assessment Report at [4.2]

¹⁴ Granted under the COVID-19 Recovery (Fast-track Consenting) Act 2020 by the Expert Consenting Panel on the 3 February 2022.

¹⁵ Section 42A Report at Appendix 7

¹⁶ Section 42A Report at Appendix 7

¹⁷ Section 42A Report at [329]

28. The Section 42A Report provided comprehensive tabulations¹⁸ of the issues raised by the submitters, in their submissions and further submissions; and the relief sought. In summary, submissions addressed:

- Supporting PC 50;
- Opposing PC 50;
- Timing and Funding;
- Traffic and Transport;
- Urban Design;
- Ecology;
- Landscape;
- Stormwater and Flooding;
- Cultural;
- Archaeology and Heritage;
- Servicing;
- Other Infrastructure;
- Reverse Sensitivity;
- Open Space Matters;
- Zoning and Plan Change Boundary;
- Precinct provisions;
- Notification Provisions; and
- Other General Matters.

29. We address the submitters' concerns in some detail below. Of particular significance to this decision are our findings in relation to the submissions of Auckland Transport (**AT**) and Auckland Council as a submitter (**ACS**), who, as their primary position, opposed the grant of PC 50 (noting also that AT and ACS oppose PCs 48 and 49 and opposed 51 & 61; largely on the same basis). Their 'fall back' position was that if we approved this plan change (and the others) we must provide a clear and directive policy framework, very detailed and extensive transport infrastructure upgrade 'triggers' specifying what upgrades needed to occur before subdivision and

¹⁸ Section 42A Report starting at 9.2.1

development occurred, and that non-compliance with the trigger provisions be classified as a non-complying activity.

SECTION 42A –OFFICER’S RECOMMENDATION

30. In preparing the section 42A Report Mr Mead was assisted by ‘technical inputs’ from a number of experts, as has been set out earlier.
31. Mr Mead’s primary section 42A Report recommended approval of the Plan Change. 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”¹⁹

“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”²⁰.

“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 southwest of the plan change area”²¹.

“As a result of the assessment of the plan change request and recommendations on the submissions, I recommend that PPC50 should be approved with modifications and the Auckland Unitary Plan be amended by inclusion of PPC50, 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”²².

32. Notwithstanding Mr Mead’s recommendation, he stated²³:

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

¹⁹ Section 42A Report at [567]

²⁰ Section 42A Report at [569]

²¹Section 42A Report at [570]

²² Section 42A Report at [575 – 576]

²³ Section 42A at [4]

33. Mr Mead provided an Addendum to his section 42A Report²⁴ (which dealt with the transport related issues that were to be addressed in the later combined hearing of PC 48 – 50) which addressed PCs 48 – 50 jointly and substantially changed some of his recommendations in his primary section 42A report²⁵. He stated:²⁶

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

34. Mr Mead went on to state²⁷:

“I now support a partial rezoning strategy; 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.”

35. Mr Mead’s recommended zoning for PCs 48 – 50 is set out in Figure 4 below, and we address the Addendum section 42A report and Mr Mead’s recommendations in more detail below²⁸.

²⁴ Dated on 19 November 2021

²⁵ We address the recommendations in the Addendum Report in more detail later in this decision

²⁶ Section 42A Addendum at [74]

²⁷ Section 42A Addendum Report Summary at [1(3)]

²⁸ 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.

²⁸ Section 42A Report at [5.2]

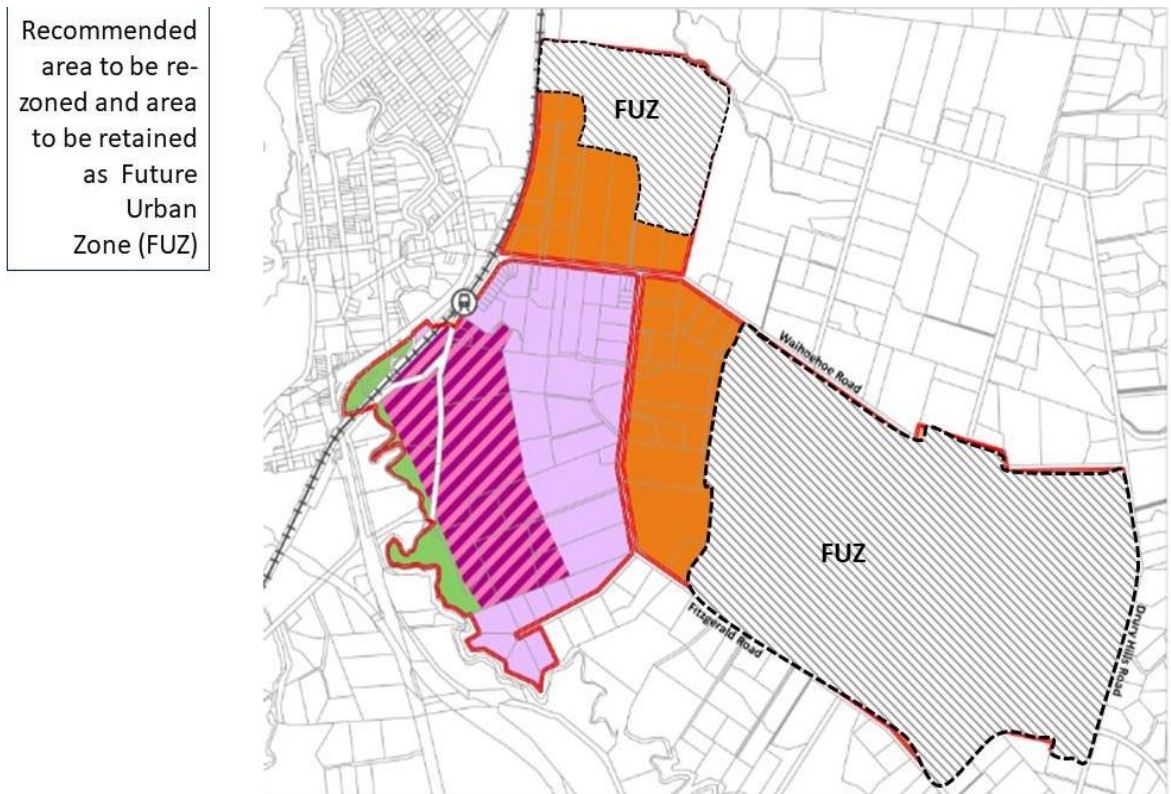


Figure 4 Recommended Rezoning

36. The Applicant's Opening Legal Submissions addressed Mr Mead's original section 42A report and the Addendum section 42A report. Mr Brabant submitted²⁹:

Council's (original) s 42A report recommends that PC50 be approved, subject to modifications³⁰. The joint planning evidence of Mr Roberts and Ms Morgan summarises the key changes Oyster has made in response to the s 42A report and submitter concerns³¹

The Waihoehoe Precinct provisions advanced in evidence have now been the subject of further consideration consequent on a series of expert conference sessions on stormwater, transport and planning matters.

Oyster opposes the partial rezoning strategy and amended triggers and thresholds set out in the Addendum Report. The basis for Oyster's position will be addressed in the December hearing, noting that position is consistent with the PC50 application and evidence already before you on behalf of Oyster. The suggested partial rezoning is poorly conceived, ignores real world considerations, and will frustrate achievement of an integrated intensification outcome.

²⁹ Mr Brabant's Opening Legal Submissions at [23, 24 and 27]

³⁰ Section 42A report, pg 139, at [575].

³¹ Mr Roberts' and Ms Morgan's Evidence-in-Chief at [4.2].

LOCAL BOARD COMMENTS

37. The section 42A Report provides³² a summary of both the Franklin and Papakura Local Board comments.
38. The Papakura Local Board submission emphasised the following³³:
- The land should be released for development in line with Auckland Council's Future Urban Land Supply Strategy;
 - The plan change must align with DOSP;
 - There is a need for significant tree planting;
 - Green Space and 'play space';
 - Concerns over parking (off-street parking and provision of carparks and road widths);
 - Encourage consultation with Mana Whenua; and
 - Appropriate treatment of Stormwater.
39. The Franklin Local Board submission³⁴:
- Noted that the majority of public submissions (26) support this plan change or support with amendments;
 - Acknowledged public concern around the funding and timing of infrastructure upgrades required to support urbanisation of these sites, particularly transport;
 - Noted that fit for purpose roading design, integrated public transport options and active transport options will be critical to successful development and community well-being; and
 - Supported iwi submissions seeking ongoing iwi participation, consultation and engagement in the project, mauri of wai in the area, use of native trees, incorporation of Te Aranga design principles, riparian margin width, stormwater treatment and capture, accounting for natural and cultural landscaping.
40. To the extent we are able, and in the context of submissions to PC 50, we have had regard to the views of the two Boards.

³² Section 42A Report at [5.2]

³³ Section 42A Report at [95]

³⁴ Section 42A Report at [94]

EXPERT CONFERENCING

41. Following the close of the submission period, we directed that expert conferencing be facilitated. This occurred as follows:
- 11 May 2021 – Joint Statement³⁵;
 - 17 May 2021 - Stormwater and Planning³⁶;
 - 24 May 2021 - Transport and Planning³⁷;
 - 31 May 2021 - Planning³⁸;
 - 11 October 2021 - Stormwater- Technical³⁹;
 - 14 October 2021 - Stormwater-Planning⁴⁰;
 - 26 October 2021 - Transport⁴¹; and
 - 11 November 2021 - Additional Information Stormwater⁴².
42. We found that the outcome of expert conferencing was extremely constructive in both narrowing and resolving issues, most notably in relation to transport and stormwater issues. We have, to a large extent, relied on the outcome of those JWS's to address and agree a range of issues raised in submissions and establish the precinct provisions that we have adopted⁴³.

HEARING AND HEARING PROCESS

43. On 4 June 2021 the Government announced the de-funding for the full Mill Road corridor upgrade including the southern section through Drury⁴⁴. 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 hearings⁴⁵.
44. 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

³⁵ Joint Witness Statement (“JWS”) dated 11 May 2021

³⁶ JWS 17 May 2021

³⁷ Ibid 24 May 2021

³⁸ Ibid 31 May 2021

³⁹ Ibid 11 October 2021

⁴⁰ Ibid 14 October 2021

⁴¹ Ibid 26 October 2021

⁴² Ibid 11 November 2021

⁴³ 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

⁴⁴ It had central government funding confirmed on 6 March 2020 by the Minister of Transport

⁴⁵ Dated 14 June 2021

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.

45. The Hearing Panel responded to the Memorandum by a Direction⁴⁶ 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.”

46. 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).
47. 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 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, all parties agreed that a combined, reconvened hearing of the three plan changes (PC 48, PC 49 and PC 50) would be held. This is what occurred.
48. The hearing for PC 50 commenced on Monday 29, November 2021 and was adjourned on Tuesday 30, November 2021. The second tranche of the hearing (combined with PC 48 and 49⁴⁷) commenced on 6 December 2021 and was completed on 16 December 2021. Due to COVID 19 restrictions all but one day of

⁴⁶ Dated 18 June 2021

⁴⁷ 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

the reconvened hearings was held by Remote Access (audio visual means) via Teams.

RELEVANT STATUTORY PROVISIONS CONSIDERED

49. 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.
50. The Applicant in their section 32A Assessment dated May 2020, provided an evaluation pursuant to section 32⁴⁸, and the additional information (*Clause 23*) requested by Auckland Council.
51. We do not need to repeat contents of the Applicant's Plan Change Request and section 32 Assessment Report in any detail, as we accept the appropriate requirements for the formulation of a plan change has been comprehensively addressed in the material before us. However, in its evidence and at the hearing, we note that the Applicant proposed some changes to the plan change in response to concerns raised by the Council and Submitters.
52. 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 50 has been developed in accordance with the relevant statutory requirements.
53. Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions. The decision must also include a further evaluation, in accordance with section 32AA of the RMA, of any proposed changes to the Plan Change. We address these matters below, as well as setting out our reasons for accepting, accepting in part, or rejecting submissions.
54. Section 32AA of the RMA requires a further evaluation for any changes that are proposed to the notified plan change after the section 32 evaluation was carried out. This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes⁴⁹. In our view this decision, which among other things, addresses the modifications we have made to the provisions of PC 50, satisfies our section 32AA obligations.

National Policy Statement on Urban Development 2020 and Regional Policy Statement

55. The section 42A Report provides a brief commentary⁵⁰ on the National Policy Statement on Urban Development (**NPS-UD**). The NPS-UD was gazetted on the 23 July 2020, and came into force on 20 August 2020. It applies to all local authorities

⁴⁸ Plan Change Request at Section 8

⁴⁹ RMA, section 32AA(1)(c)

⁵⁰ Section 42A Report at [2.5]

that have all or part of an urban environment within their District. Auckland City is listed as a “Tier 1” local authority.

56. 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.
57. We address the NPS UD in more detail later in this decision, particularly in light of a recent Environment Court decision⁵¹, and the legal submissions addressing those provisions which did or did not apply.
58. 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.
59. 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

60. The section 42A Report set out⁵² 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.
61. The section 42A report also discussed⁵³ the relevant Notices of Requirement and infrastructure projects that had been proposed. Again, these are briefly addressed below.

Auckland Plan 2050

62. 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;

⁵¹ *Eden-Epsom Residential Protection Society Inc v Auckland Council* [2021] NZEnvC 082

⁵² Section 42A Report at Section 2

⁵³ *Ibid* at [1.4]

- 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.

63. The Auckland Plan's Development Strategy shows a number of urban expansion areas (i.e. Future Urban areas) in the southern sector, including Drury East (the location of PC 50 (and PC 48 and 49)). 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).

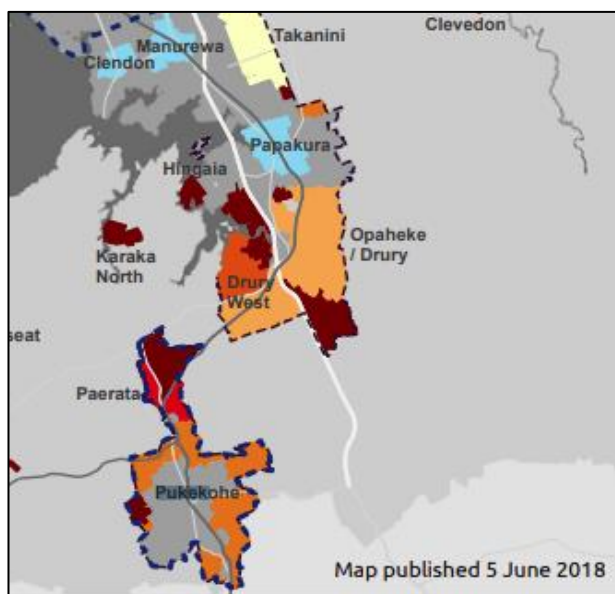


Figure 5 Auckland Plan Development Strategy

Future Urban Land Supply Strategy

64. 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.
65. 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. It 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.
66. 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

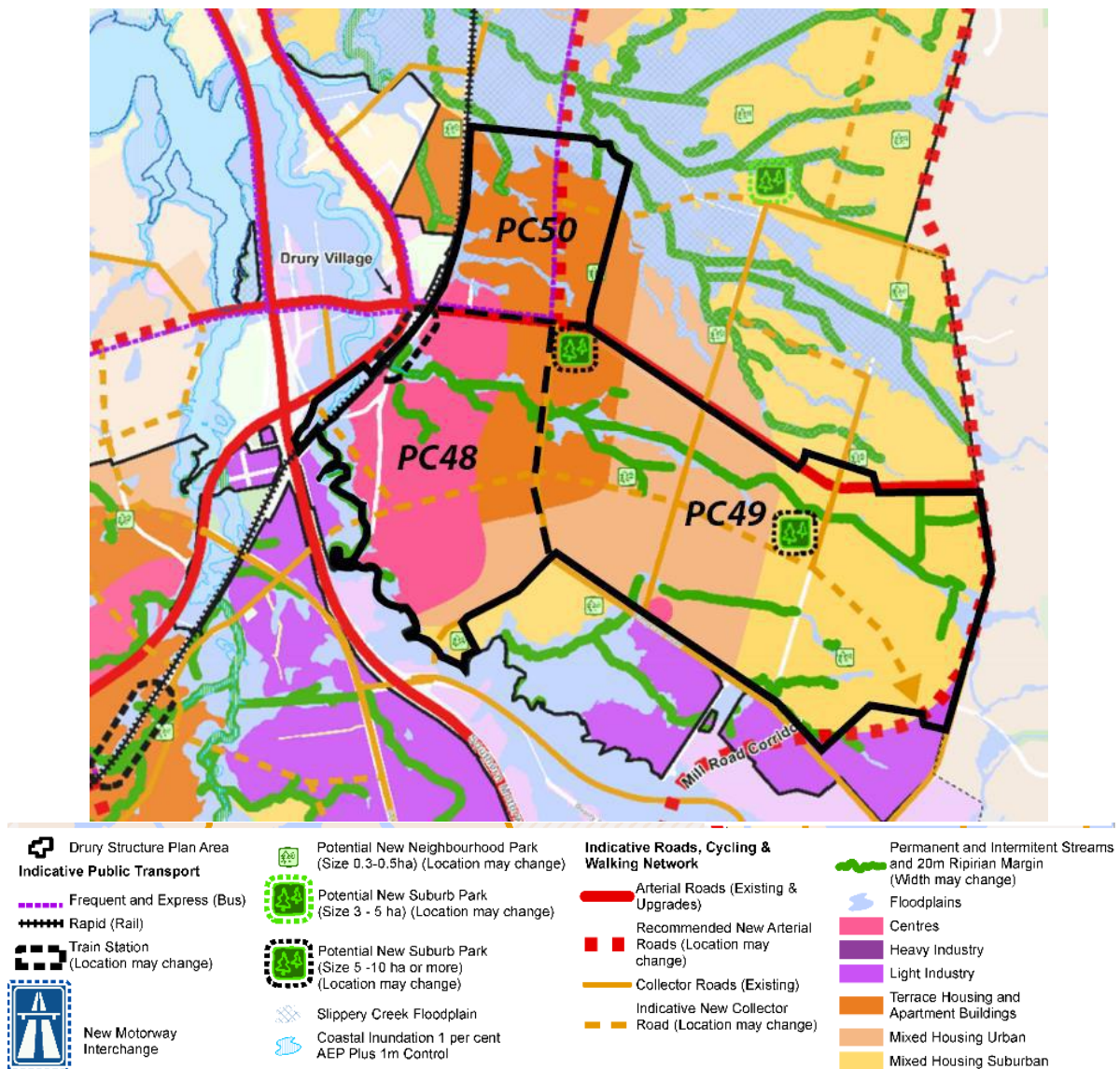
- The remainder of the Drury-Opāheke Structure Plan area (including PC 50) is to be development ready by between 2028 and 2032.

Drury-Opāheke Structure Plan (DOSP)

67. 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”⁵⁴.

68. The DOSP map is set out below:



⁵⁴ Section 42A report at [37]

69. Over the 30-year time frame envisaged by the DOSP, it is estimated to provide capacity for about 22,000 houses and 12,000 jobs, with a total population of about 60,000. The DOSP area is ultimately anticipated to have a population similar in size to Napier or Rotorua.⁵⁵
70. We address the DOSP in more detail later in this decision.

Notices of Requirement (NoRs)

71. The section 42A Report records⁵⁶ 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.

72. Of relevance to PC50 are the following three NoRs:

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

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

D3 Waihoehoe Road East Upgrade

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

D4 Opāheke North South FTN Arterial

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

73. 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 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.

Applicant's Master Planning process and Masterplan (strategic context)

74. The Plan Change Request provided⁵⁷ an overview of OCL's approach to master planning⁵⁸:

⁵⁵ DOSP at Section 3.2

⁵⁶ Section 42A Report at [1.4]

⁵⁷ Plan Change Request at [9.2]

⁵⁸ Plan Change Request at Appendix 6

“OCL 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 master planning exercise has acknowledged the Council’s desire to lead its own Structure Plan, and is premised on the ability to advance detailed planning for Drury East the short term, without undermining or predetermining the wider Drury Town and Drury East vision that the council may settle on.

The masterplan provides indicative collector and local roading patterns, positioning of key access points, roading connections and public open squares 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-Opāheke Structure Plan for the wider Drury East area”.

75. Mr Roberts addressed the Applicant’s master planning process and plan in sections 6 and 8 of his 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-Opāheke (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-Opāheke.
76. Following the completion of the DDG Structure Plan, Oyster engaged Holistic Urban Environments Ltd to develop a concept masterplan for the site as addressed above. Mr Roberts stated⁵⁹:

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 master planning 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 has been designed to enable the delivery of a connected and resilient community.

⁵⁹ Mr Roberts’ Strategic Planning Evidence at [8.2, 8.3 and 8.5]

The Masterplan is centred around the establishment of quality compact residential neighbourhoods connected to Drury Centre with supporting bus, cycling and walking connections and a comprehensive open space network”

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 50 precinct and its provisions. We accept that the masterplan has set PC 50 in a strategic context; and it has also responded to that context. It has assisted us, in section 32 terms, in determining that PC 50 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 PC 50 has not specifically addressed the Medium Density Residential Standards (**MDRS**) set out in that Act. This is because PC 50 was publicly notified and the hearings completed prior to the Act coming into force.
79. The extent that the PC 50 area will be impacted by MDRS will be addressed by the Council when it notifies its own plan change (or variations) to give effect to the NPS-UD (intensification planning instrument) and the Resource Management (Enabling Housing Supply and Other Matters) Act. We understand this plan change is scheduled to be publicly notified in August 2022.

FINDINGS AND REASONS FOR APPROVING THE PLAN CHANGE.

80. The following section addresses our overall findings on PC 50, having heard and considered all of the material and evidence before us.
81. We had extensive evidence before us, with parties requesting a number of specific 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 50 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 50 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 THAB consistent with the DOSP. The proposed change was covered in detail in: the Application⁶⁰; evidence and the legal submissions. We also accept that while PC 50 '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 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 50 (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 50 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

⁶⁰ Plan Change Request at [5.3]

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's⁶¹ response, and rebuttal, to it. ACS and AT presented a joint case, and presented the most significant 'challenge' to PC 50, seeking that it be declined.
90. Mr Mathew Allan, legal counsel for ACS and AT set out his clients' position⁶²:

"In response I repeat the submissions made for the Council and AT at the PPC 49 and 51 hearings²² and submit that only Objectives 2, 5 and 7 and Policies 1 and 6, which expressly require "planning decisions", must be given effect to. This is consistent with the Environment Court's clearly stated findings in Eden Epsom and the approach that the Panel has applied in its decisions on PPC 52 and PPC 58. As previously submitted, although the finding in the Eden-Epsom case is clearly stated and appears to be binding on the Panel, the Submitters have, as part of their evaluative planning evidence for the reconvened hearing, assessed the plan changes against provisions which do not reference "planning decisions" (such as Objective 6 of the NPS-UD) out of an abundance of caution".

91. At the second tranche hearing Mr M Allan reconfirmed his clients' position that⁶³:

"... 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

⁶¹ Noting that the response from PC 48 and 50 was the same

⁶² Mr M Allan's Opening Legal Submissions at [4.3].

⁶³ Mr M Allan's Legal Submissions 7 December 2021 at [1.6 to 1.8]

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

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 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 their primary position. In this regards Mr M Allan submitted⁶⁴:

“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 decision⁶⁵. In light of that decision, he set out⁶⁶ that, as it stands, PC 50 would not “give effect to” key provisions in the NPS-UD and the RPS.

95. The Submitters’ planning witness, Mr Turbott⁶⁷ in his evidence presented at the first tranche of the hearings stated⁶⁸:

“I foreshadow my concern as to whether PPC 50 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 50 should be approved”.

⁶⁴ Mr M Allan’s Legal Submissions, 7 December 2021 at [1.15]

⁶⁵ Ibid at [3.3]

⁶⁶ Mr M Allan’s Legal Submissions at [3.5]

⁶⁷ Mr Turbott did not provide evidence to the second tranche of the hearing; a Memorandum from Mr M Allan dated 14 October 2021 noted that Ms Sinclair relies on, and adopts, the planning evidence of Mr Turbott

⁶⁸ Mr Turbott’s Evidence-in-Chief at [D]

96. Ms Sinclair in her evidence to the second tranche of the hearings (and having adopted Mr Turbott’s evidence) told us that she remained⁶⁹ 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 50 (and PCs 48 and 49), subject to the precinct provisions we have imposed, would give effect to the statutory planning documents. On this basis we prefer the evidence of the Applicant’s planners, Mr Roberts and Ms Morgan; and others including Ms Heppelthwaite for Waka Kotahi.
98. The Applicant strongly opposed ACS’ and AT’s position. Mr Brabant in his Closing Submission stated:
- “The fundamental proposition advanced by Oyster remains that a rezoning of the PC50 land from FUZ to THAB now (subject to precinct provisions advanced, including robust infrastructure triggers) is the most appropriate method to give effect to the relevant statutory documents including the NPSUD and the AUP RPS and is the most appropriate means of achieving the purpose of the RMA”.*
99. For the reasons that follow in this decision, we agree with Mr Brabant.

National Policy Statement on Urban Development

100. 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*.
101. 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.
102. Mr Brabant, for the Applicant, set out his approach to the *Eden-Epsom* decision⁷⁰:
- Turning to Eden-Epsom, the legal submissions of Mr Douglas Allan [has] undertake a detailed analysis of the case⁷¹, as do [the] legal submissions from Ms Simons⁷² (and legal submissions from Mr Berry in PC51⁷³). I agree with Mr Allan’s observation that it is difficult to reconcile aspects of the Eden–Epsom decision with the purpose and content of the NPSUD.*

⁶⁹ Ms Sinclair’s Evidence-in-Chief at [39]

⁷⁰ Mr Brabant’s Opening Legal Submissions at [45 – 47]

⁷¹ PC 48 Applicant’s Opening legal Submissions Mr Douglas Allen at [5.3 – 5.10]

⁷² PC 49 Applicant’s Opening legal Submissions Ms Susan Simons at [6.6 – 6.22]

⁷³ PC 51 Applicant’s Opening legal Submissions Mr Simon Berry at [5.6 – 5.14]

In my view Ms Simons' assessment is correct. Thus, I align with Ms Simons (and Mr Berry) in concluding that Objectives 2, 5, 6 and 7, Policies 1, 6 and 8 and Subpart 2 must be given effect (in PC50 in this case)".

"..PC50 enables delivery of fundamental outcomes which the NPSUD promotes".

103. Mr Gribben presented the legal submissions on behalf of Waka Kotahi at the second tranche hearings he submitted⁷⁴:

- *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.*

104. Mr M Allan submitted that only the objectives and policies specifically relating to "planning decisions" as referenced in the Court's decision were relevant. He stated⁷⁵:

"I repeat the submissions made for the Council and AT at the PPC 49 and 51 hearings and submit that only Objectives 2, 5 and 7 and Policies 1 and 6, which expressly require "planning decisions", must be given effect to".

105. Having had regard to the legal submissions received, we agree with those of the Drury East Plan Change proponents, and Waka Kotahi. 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 development⁷⁶. 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.

⁷⁴ Mr Gribben's Legal Submissions at [2.2 – 2.3]

⁷⁵ Mr M Allan's Legal Submissions at [4.3]

⁷⁶ Noting that the *Eden-Epsom case* was a brownfield site.

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

106. 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.

107. 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.”

108. PC 50 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 50 land's location on the road and rail networks once the Plan Change (and those of PC 48 and 49) 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.

109. Objective 6 of the NPS is a key provision and was one of the main NPS UD provisions in contentions between the Applicant and ACS and AT⁷⁷.

“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.”

110. Sub-clause a) was a focus for the parties. ASC 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

⁷⁷ 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.

the Drury East plan changes were fundamentally flawed, and should not be live zoned on the assumption that infrastructure funding would follow.

111. 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.
112. However, it is our view that any proposed live zonings need to be consistent with the proposals for, and provisions of, transport infrastructure to serve the proposed urban development; and that there are methods by which that infrastructure or funding for it can be provided. We address funding later, but note the Drury East Plan Changes have proposed triggers (the "Staging of Development with Transport Upgrades" provisions) to ensure the necessary infrastructure is operational prior to or at the 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.
113. 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 PC 50 (and PC 48 and 49) will be integrated with the existing strategic infrastructure.
114. 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 (2021).
 - 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.
115. 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.

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

117. 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”.

118. 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 DOSP⁷⁸.

119. We accept that the NPS UD does not provide support for development at any cost. A key consideration in assessing whether a plan change will give effect to the NPS UD (and RPS) and add significantly to development capacity and contribute to a well-functioning urban environment is its ‘infrastructure-readiness’. We address this below as we need to be satisfied that PC 50 (and PC 48 and 49) can provide the infrastructure needed to support it in a timely manner.

120. Mr Roberts and Ms Morgan in their rebuttal evidence to the second tranche of the hearings. With which we agree, stated⁷⁹:

“In our view, Ms Sinclair’s position that the Plan Changes should be declined is unrealistic and is not supported by the objectives and policies of the NPSUD or the RPS. In our view, those documents provide for the integration of development and infrastructure to occur on a staged basis as development occurs”.

Auckland Unitary Plan - Regional Policy Statement and District Plan

121. Notwithstanding the extent to which the NPS UD applies the planning witnesses for the Applicant and ACS and AT agreed that many of the NPS UD provisions were ‘mirrored’ in the RPS. We agree. These were those provisions requiring integration

⁷⁸Noting that a structure plan is required by the RPS prior to ‘live zoning’ land

⁷⁹ Mr Roberts’ and Ms Morgan’s Rebuttal Evidence 26 November 2021 at [9.5]

of infrastructure with land use⁸⁰. 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 50 will “give effect to” or implement the RPS provisions.

122. We have set out our position in relation to the applicability of the NPS UD, and while that position is clear, we have not solely relied on the NPS UD for our findings given that the RPS, to a large extent, mirrors those provisions of the NPS UD.

123. There are several RPS objectives and policies in sections B2 – Urban Growth and Form and B3 – Infrastructure, Transport and Energy that have particular relevance to this Plan Change, and were addressed by a number of the witnesses and include:

B2 – Urban Growth and Form

Objective B2.2.1(1)(c):

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

(c) better use of existing infrastructure and efficient provision of new infrastructure;

(d) improved and more effective public transport;

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)

⁸⁰ As required by section 30 (1)(g) - the strategic integration of infrastructure with land use through objectives, policies, and methods.

Infrastructure planning and land use planning are integrated to service growth efficiently:

Objective B3.3.1(1)(b):

(1) Effective, efficient and safe transport that:

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

Policy B3.3.2(5):

Improve the integration of land use and transport by:

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

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

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

125. We also note that the provisions of E38 – Subdivision – Urban in the District Plan part of the AUP (OP) ‘requires’ infrastructure:

*“supporting subdivision and development to be planned and provided for in an integrated and comprehensive manner and provided for to be in place at the time of the subdivision or development”.*⁸¹ The critical words being *“in place at the time of the subdivision or development”.*

126. It was the Applicant’s position, set out in legal submissions and Mr Roberts’ strategic planning evidence that the necessary infrastructure upgrades relevant to PCs 48 – 50 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 and funded by Oyster (and the proponents of PCs 48 and 49). On this basis it is the Applicant’s position that PC 50, would, in addition to giving effect to the NPS UD, also give effect to the RPS; and would be consistent with the Auckland

⁸¹ Objective E38.2 (4)

Plan 2050, the FULSS and the DOSP. We accept and agree with the Applicant's position for the reasons addressed above, and those that follow.

127. It was ACS and AT's position that the Plan Change would not give effect to the RPS, and that position was supported by its experts. That is – there is no funding over the next 10 years (and beyond) to provide the necessary infrastructure to ensure transport and land use integration.

The Auckland Plan and the FULSS

128. The Auckland Plan provides limited direction for future urban areas and refers to the FULSS. Accordingly, we have focussed on the FULSS and its relevance in assessing and determining whether or not to approve or decline PC 50.
129. With respect to the Auckland Plan and the FULSS Ms Mackay for ACS presented strategic planning evidence on, among other things, Council's strategic planning approach and the relevant instruments that inform Council's strategic planning approach. This included the FULSS, and how it applied to Drury-Opāheke as a mechanism to implement the strategic plans including the Auckland Plan 2050. Ms Mackay placed considerable weight on the FULSS as reasons why PC 50 (and PC 48 and PC 49) were inappropriate and premature.
130. Ms Mackay set out AC's strategic approach:

“The FLUSS provides 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”⁸²;

and⁸³

“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.

⁸² Ms Mackay's Evidence-in-chief at [6.6]

⁸³ Ms Mackay's Evidence-in-chief – C, D, E and F

Approving PPC 50 (and the other out of sequence plan changes) would increase the fragmented nature of development in Auckland's south. This 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".

131. 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 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.
132. Mr Turbott's planning evidence on behalf of Council⁸⁴, included the statutory and strategic matters⁸⁵ and the DOSP. Overall, it was his opinion that PC 50 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.
133. Mr Turbott opined that PC 50 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).
134. 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 50 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.
135. This, in effect, was the case presented by ACS (and AT) – that:
- PC 50 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 50 is reliant on major infrastructure projects to service development which are not financed or funded (both capital and operating cost); and
 - PC 50 does not "give effect to" important strategic objectives and policies.
136. We were (repeatedly) given 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

⁸⁴ Mr Turbott's evidence at the later re-convened hearing was adopted by Ms Sinclair as he was unable to attend the later hearing

⁸⁵ Mr Turbott's Evidence-in-Chief at Section 6

would require a substantial reprioritisation of funding and growth from other areas if Drury was to be live zoned.

137. It was Mr Robert's opinion in his rebuttal evidence⁸⁶ 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 conclusion⁸⁷:

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

138. 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.
139. 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 included⁸⁸

- *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;*

⁸⁶ Mr Roberts' Tranche 1 Rebuttal Evidence at [2.3 and 3.2]

⁸⁷ Ms Mackay's Evidence-in-Chief at [14.2]

⁸⁸ Mr Roberts' Tranche 1 Rebuttal Evidence at [3.1 - 3.2]

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

140. Mr Roberts also detailed⁸⁹ 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).
141. It was Mr Roberts' view that the factors above, of themselves, would warrant a review of the FULSS as it relates to Drury.
142. At Section 4 of Mr Roberts' Rebuttal evidence (first tranche hearing), under the heading "Council's approach to implementing the FULSS – he set out"⁹⁰:

"...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. PC50 can play a part in resolving this problem for Council. PC50 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.

⁸⁹ Mr Roberts' Tranche 1 Rebuttal Evidence at [3.3 - 3.5]

⁹⁰ Mr Roberts' Tranche 1 Rebuttal Evidence at [4.2 and 4.3]

143. Mr Brabant submitted⁹¹:

“In my view it is unhelpful to anchor, as witnesses for Council have done, to anticipated development ready timeframes in the FULSS. Such timeframes are not an end of themselves. The FULSS is a tool in the toolbox to assist progress toward outcomes which achieve the purpose of the RMA, but the fundamental questions before you regarding appropriate integrated development do not turn on rigid compliance with FULSS time estimates”.

144. We asked Ms Mackay to respond to Mr Roberts’ view that limited weight should be given to the FULSS (as it was out of date), and greater weight should be applied to the DOSP, the Applicant’s master planning and Applicant’s evidence. Mackay did not concede that the FULSS was out of date, but accepted it needed a “re-fresh”. Despite this, her position remained as set out in her evidence.

145. With respect to the weight to be applied to the FULSS, we agree with Mr Roberts. While we accept the importance of the FULSS at a regional level to assist the Council in its strategic planning, it is clear to us that given the matters set out by Mr Roberts, the FULSS, in the context of Drury-Opāheke, provides little guidance in assisting in determining the merits or otherwise of PC 50 (and PC 48 and 49). We have accorded it limited weight.

146. Accordingly, we do not accept, as implied by the Council witnesses, that development of Drury is ‘premature’ or ‘out of sequence’ based on the development ready dates of 2028 – 2032. We have addressed the reasons for this, but also note that with the full build out of the PC 50 area (and that of PCs 48 and 49) likely to take 20 to 30 years, it is prudent to plan now noting that 2028 – 2032, in planning terms, is not that far into the future.

147. Furthermore, we do not accept Ms Mackay’s view⁹² (and because of this Mr Turbott’s view) that approving PC 50 (and PCs 48 and 49) would result in fragmented and inefficient development. We find the opposite would be the case - subject to the necessary infrastructure being in place prior to, or at the same time as, subdivision and development. This was the subject of the second tranche of hearings, and we address those matters below, ultimately finding that, subject to the precinct provisions (Objectives, Policies and Rules) and in particular the staging triggers, the necessary infrastructure would be in place prior to, or at the same time as, subdivision and development.

148. We also agree, for all of the reasons we have set out, that PC 50 (and PCs 48 and 49) presents a major opportunity for the Council, Government (including through the Urban Growth Agenda Partnership) and three major landowners to deliver a significant volume of housing and jobs in an area close to rapid transport and deliver an integrated infrastructure solution for Drury East.

⁹¹ Mr Brabant’s Opening Legal Submissions at [50]

⁹² Ms Mackay Evidence-in-Chief at [14.4]

Drury-Opāheke Structure Plan (DOSP)

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

150. With respect to a development perspective, the Applicant’s Opening legal submissions noted⁹³:

“From a development perspective, the proposal is straight forward. Oyster seeks to establish high density residential dwellings within a walkable catchment of a train station and Metro Centre. That outcome on the land in question squarely aligns with the outcome that relevant strategic planning documents seek for this area. The site itself has physical characteristics well-suited to the proposed use, subject to appropriate provision being made for management of stormwater and protection of streams and wetlands.”

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

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

152. Given the comprehensive nature of, and process used, to develop both the earlier landowners structure plan and the DOSP, the DOSP has in our view set a clear expectation that the area is to be lived zoned and developed, subject to appropriate (precinct) planning provisions.

153. It was Mr Roberts’ view that the land use zonings proposed in PC 50 were largely consistent with the land use pattern set out in DOSP. This was also Mr Mead’s

⁹³ Mr Brabant’s Opening Legal Submissions at [35]

opinion, stating in the section 42A report that at a strategic level, the land use zoning patterns in PC 50 are largely consistent with the land use pattern in the DOSP⁹⁴.

154. We record that the DOSP does not address in any detail the staging and sequencing of development within the DOSP area. The DOSP states that a staging plan was to be developed based on understanding the infrastructure requirements and the need to coordinate an increase in residential zoning with a proportionate increase in business zones that service residential areas. It also states that work is ongoing to develop a staging plan and that the FULSS 2017 sequencing applies in the interim⁹⁵.
155. From questioning the various planning experts of the Council and Applicant on this matter, we understand that there are no plans or intention by the Council to prepare a staging plan for Drury-Opāheke. It was Ms Mackay's evidence that it is the Auckland Plan and the FULSS that addresses this. We have already addressed the relevance of those documents to this Plan Change process.
156. We have placed considerable weight on the DOSP. This is due to the comprehensive and robust Council process carried out under the LGA 2002 to develop and adopt it. We also accept it clearly addresses the requirements in the RPS relating to the necessary structure planning process, and has been designed to achieve the outcomes set out in the RPS with respect to urban development.

Funding and Financing

157. The ACS and AT's fundamental position was that the Drury East Plan Changes (as well as PC 51 and 61) required substantial provision of additional infrastructure; and there was no funding or finance options available over the next decade (and likely beyond that) to fund the necessary infrastructure upgrades. This was despite substantial and committed central Government funding. On this basis it was the submitters' position that PC50 (and PC 48 and 49) should be declined as the Plan Change was contrary to the provisions of the statutory planning documents as we have outlined.
158. In relation to transport and infrastructure financing and funding issues, ACS and AT provided detailed corporate evidence from Ms Duffield, and Mr Kloppers. In summary their evidence was:
159. 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.

⁹⁴ Section 42A report at [40]

⁹⁵ DOSP, Page 62

160. The limited extent of funding available to support growth in Drury was highlighted by Ms Duffield who noted⁹⁶:

“There is at present a significant gap in the infrastructure funding necessary to support Private Plan Changes 48 to 50 (PPCs 48 to 50) and the other Drury Plan Changes¹ over the next 10 years. The funding gap over the next 10 years just for the transport infrastructure required is estimated at between \$1.6b and \$2.0b. This amount is equal to or exceeds that allocated for all growth-related projects and programmes from 2021 to 2031 for all of Auckland. The infrastructure funding gap for the full build out of Drury through to 2046 is significant. The funding gap just for the transport infrastructure required is estimated at between \$3.4b to \$4.1b”.

161. 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, which 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).

162. 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.

163. 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 stated⁹⁷:

“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”.

164. 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 that⁹⁸:

⁹⁶ Ms Duffield’s Summary Statement at [2]

⁹⁷ Ms Duffield’s Summary Statement at [4]

⁹⁸ Ms Duffield’s Summary Statement at [12]

- *“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”.*

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

166. 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.

167. 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. Mr Zöllner, for MHUD, presented oral evidence⁹⁹ and set out the following¹⁰⁰:

- (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.*

⁹⁹ We asked Mr Zöllner to provide a written copy of his oral evidence, but that did not eventuate

¹⁰⁰ As set out at paragraph 2.4 of Mr D Allan’s closing reply submissions, but equally applied to PC 50

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

168. 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.

169. 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.

170. Mr Dewes (FHL) also addressed zoning issues, attached to his evidence correspondence from Crown Infrastructure Partners (dated 24 November 2021). He stated¹⁰¹:

“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]

171. Mr Schwartfeger (Kiwi Property) addressed the effect of the partial zoning (as recommended by Mr Mead in Addendum section 42A report) on central and local government infrastructure funding. It was his view that the timing and extent of up-zoning at Drury would impact significantly on the availability of central and local government funding for infrastructure works. He stated¹⁰²:

“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”.

172. 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.

173. Ms McDonald stated¹⁰³:

“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

¹⁰¹ Mr Dewe’s rebuttal evidence dated 26 November 2021 at [4.10]

¹⁰² Mr Schwartfeger’s rebuttal evidence dated 26 November 2021 at [6.15]

¹⁰³ Ms McDonald’s Evidence-in-Chief at [9.3]

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”

174. 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 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.
175. Having addressed the ASC 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 ASC 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.
176. 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 precinct 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.
177. 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

178. Before addressing whether PC 50 (and PCs 48 and 49) 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.
179. 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.
180. He stated in the Addendum 42A Report¹⁰⁴:
- “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”.*
181. 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 Station¹⁰⁵, 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.
182. It was his view that the partial re zoning of FUZ land was a staged approach and reflected the longer term (funding) uncertainties. He considered it more appropriate that the balance of the land remain FUZ, and be rezoned once funding was better resolved. He set out that rezoning could be contemplated within the next 10 years or sooner, either at the next AUP review, by a Council initiated plan change, or another private change.
183. 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 and 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).
184. 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

¹⁰⁴ In paragraph 78 of the Addendum 42A Report

¹⁰⁵ This appears to be based on an 800m straight line circle from the station

Applicant cannot satisfy the Council that the effects of concern would be avoided or mitigated.

185. Mr Mead asserted in response to questioning that that partial rezoning would not adversely affect the outcomes sought by the plan change proponents. In his presentation material¹⁰⁶ 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.”

186. The views held by Mr Mead were directly contrary to the evidence of all three Applicants, and in particular the corporate and economic witnesses. The three corporate witnesses for each of PCs 48 – 50 strongly and comprehensively rebutted Mr Mead’s revised re-zoning proposal¹⁰⁷. 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.
187. Having had regard to the evidence we heard, it is our view that the proposition advanced by Mr Mead would result in the near opposite of what he was recommending; that development would not occur (or occur much more slowly) given that the three plan changes had been designed to reflect a comprehensive and integrated strategy for the development of the entire Drury East area; and that the substantial central government funding for transport upgrades would either be wasted, or highly inefficient as there would not be the development or people to support that infrastructure investment (e.g. the train station).

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

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

¹⁰⁶ Dated and presented on the 10 December 2021

¹⁰⁷ Mr Schwartzfeger (Kiwi) rebuttal evidence dated 26 November 2021 at [6.1 – 6.17]; Mr McCarthy (Oyster) rebuttal evidence dated 28 November 2021 at [2.1 – 2.12]; Mr Dewe (Fulton Hogan) rebuttal evidence dated 26 November 2021 at [3.1 – 3.9].

190. As set by Mr Parlane, in his evidence on Strategic Traffic and Transportation Matters¹⁰⁸:

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

191. In making our decision on the Drury East plan changes we have had regard to all of the evidence. The ‘upshot’ of this evidence, and the legal submissions received, is that we are satisfied that the provision of transport infrastructure can be provided (over time) to ensure an efficient transport network to enable the urban development 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.
192. 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 Plans¹⁰⁹ are important too.
193. We accept that Mr Hughes and Mr McKenzie (traffic 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).
194. We also accept that the transportation modelling that formed the technical basis of the infrastructure triggers incorporated sufficient and appropriate levels of conservatism to ensure that the proposed triggers provided the necessary robustness to ensure that the overall effects associated with the Plan Changes could be appropriately managed and mitigated.

¹⁰⁸ Mr Parlane’s Evidence- In-Chief at [1.6]

¹⁰⁹ Mr Prosser’s Evidence-in-Chief at [3.18 – 3.23]

195. In terms of the model's conservatism, Mr Hughes and Mr McKenzie provided a detailed explanation of the factors which make the model conservative, including that¹¹⁰:

- *"It accounts for the cumulative effects of long-term development across the Drury/Pukekohe area and assumes development in areas such as Pukekohe and Paerata where no plan change is yet proposed.*
- *It assumes very low take up of active modes for internalised trips, despite the fact that the Drury East Plan Changes have been designed to enable a very high active mode uptake.*
- *It is based on a traffic survey undertaken at a time when significant roadworks on SH1 at Papakura were creating abnormally high traffic flows onto Great South Road. That traffic survey combined with growth projections has formed the basis for the development yields in the trigger table, which are therefore highly conservative."*

196. Mr Church also addressed the appropriateness and conservatism of the model in stating¹¹¹:

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

197. It is our view that given the conservatism in the modelling we do not support the suggested 10% reduction in the transport infrastructure triggers proposed¹¹² by Mr Phillips to the trigger table to require less development ahead of the Great South Road/Waihoehoe Road ATAP upgrade. This reduction effectively appeared to us to attempt to avoid any rerouting at all through the Drury South Precinct, as opposed to being a necessary buffer required to ensure an appropriately conservative modelling approach. We address the precinct provisions later in response to the issues raised by Drury South Ltd.

198. Despite extensive caucusing, Mr Prosser (for AT) remained of the view that the full list of DIFF projects developed as a means of delivering the long-term, strategic preferred network for the DOSP should be delivered as part of the package of measures associated with these Plan Changes. We record that Mr Prosser was the only transport expert who considered the projects in the previous paragraph were necessary before PCs 48 – 50 should be approved. The Applicants' experts and those for the Council (as regulator), Waka Kotahi and Drury South Limited agreed that interim upgrades for Waihoehoe Road and Fitzgerald Road would be appropriate as staging provisions.

¹¹⁰ Mr Hughes' and Mr McKenzie's Rebuttal evidence at [2.7-2.19].

¹¹¹ Section 42A Addendum Report Page 81.

¹¹² Mr Phillips' evidence-in chief at [4.4]

199. Mr Prosser also did not agree¹¹³ with the “Network Capacity Criteria” that were used in the model to determine the trigger points of land-use enabled for each piece of infrastructure provided. He also considered that the peak hour congestion experienced by the key network intersections would be undesirable for public transport and other motorised road users. We address this matter below in terms of the philosophical approach adopted in the transport modelling.
200. Mr Prosser also raised issues¹¹⁴ 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 Mr McKenzie (and other transport experts) accepted that current roading conditions were poor, it was their view that the matters of pavement design/condition and construction traffic management effects could and should be addressed at the resource consent stage. We agree.
201. Having regard to the above, it is our view, based on the weight of the expert evidence, that we find that the modelling approach is an appropriate basis on which to assess the transport effects of the plan changes. Given this, we address the ‘philosophical’ approach adopted in the modelling and the planning outcome that was derived from it, which has as a core principle significant mode shift to public and active transport modes.
202. As part of the ‘philosophical’ approach to the modelling and the planning outcome, it is important, in our view, to firstly set out some contextual issues. We accept that the Plan Changes relate to land that is ideally located in terms of the road and rail networks. No party disagreed with this. Also, extensive work has been undertaken regarding the transport networks that need to be in place for full urbanisation at Drury. Key elements of that work are already underway (e.g: the widening of SH1) and/or has been consented (e.g. the Drury Central Railway Station). Given this, we accept it is highly likely that the road and rail networks will continue to be developed (given the evidence of MHUD) and this will ensure investment can and will appropriately be made in public transport services, as well as private infrastructure investments.
203. In relation to the above, and importantly in the overall approach the 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.
204. As set out in Applicants’ transportation evidence the philosophy was that urban areas will always generate peak period traffic congestion; but to actually enable or

¹¹³ Mr Prosser’s evidence-in-chief at [3.15]

¹¹⁴ Ibid at [3.1 – 3.5]

encourage meaningful mode shift from private cars to public transport and active modes, a certain level of peak period congestion can and needs to be tolerated.

205. Mr Hughes and Mr McKenzie set out that with free-flowing roads and intersections, there is little or no incentive for people to choose other travel modes which all of the transportation experts involved in this process agree will be needed to deliver the future transport outcomes sought. As already addressed Drury East will have a new public transport hub featuring an electrified train service from 2025. However, as pointed out by Mr Hughes and Mr McKenzie without the traffic congestion tolerated in the Network Capacity Criteria, the public and active transportation options will not offer a competitive edge for commuters when making decisions in favour of public transport (and especially rail). That is - the peak network congestion is therefore a “stick” that will complement the “carrot” of well-located and frequent public transport services served by safe and efficient active mode links.
206. Notwithstanding the above, we accept the 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.
207. Furthermore, we accept that the Plan Changes have not been developed to intentionally create congestion, but to take account of the principles articulated by Mr Parlane regarding the efficient allocation of resources and the efficient provision of capacity on the road network (i.e. that investing funds to create unused capacity is an inefficient use of resources and incentivises private vehicle use over public transport)¹¹⁵.
208. On this basis we accept that the Network Performance Criteria adopted and used for evaluation of the Plan Changes, strikes the right balance between these (often competing) factors. While we note Mr Prosser did not fully agree, he did not offer any other modelling inputs.
209. In contrast, the Council Submitters, and especially Ms Tam, took the view that all congestion was undesirable and should be avoided. Ms Tam did not see congestion having any role to play in encouraging changes in mode choice or facilitating a modal shift. Her position was, in our view, at odds with the expert transportation evidence before us in relation to congestion.
210. Mr Prosser’s evidence and in his responses to our questions on this issue was somewhat contradictory. He agreed that a level of congestion was “*advantageous*” to effect mode shift but that it is also necessary to have facilities in place to facilitate a

¹¹⁵ 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.

move to alternative modes. This appeared inconsistent with his position that congestion should be avoided by building new infrastructure.

211. Ms Sinclair suggested that the use of congestion as a tool was “*outdated thinking*” and one reason she gave for this was that younger generations will adopt public transport and active modes anyway. We were not presented with evidence which validated this opinion.
212. We accept that it will take many years for the land subject to the Plan Changes to be fully developed. In this context it is efficient and rational to allocate resources to infrastructure at a rate that is coordinated and integrated with the urban development that it is to serve. This coordination is the purpose of the Staging of Development with Transport Upgrades provisions.
213. Having accepted the modelling outcomes and approach adopted by the Applicant’s transportation and planning experts, we address the key themes arising from relevant case authorities (case law) and the main planning argument before us - whether there is sufficient integration between infrastructure, funding and land use, and whether that integration can be achieved through the precinct provisions, including the use of transport triggers that we have referred to earlier.
214. Legal Counsel for the three plan changes as well as submitters (e.g. 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*¹¹⁶ and *Foreworld Developments Limited v Napier City Council*¹¹⁷. The principles to be taken from these authorities are that:
- It is not the responsibility of a single developer to resolve existing transport issues across a wide area (Landco);
 - That it is the responsibility of a developer to address the direct effects of its proposal and not significantly contribute to the existing problems (as the Court clarified in Laidlaw);
 - That it is bad resource management practice and contrary to the purpose of the RMA to zone land for an activity when the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it (Foreworld); and
 - Zoning or resource consent decisions should not raise un-meetable expectations (Foreworld).
215. With respect to the case law, we accept that each case (PCs 48 – 50) must be assessed on its merits. However, as already set out the key issues arising from the

¹¹⁶ *Landco Mt Wellington v Auckland City Council* [2009] NZRMA 132; and *Laidlaw College Inc v Auckland Council* [2011] NZEnvC 248

¹¹⁷ *Foreworld Developments Limited v Napier* CCW08/2005

case authorities is whether there is sufficient integration between infrastructure, funding and land use.

216. In this context, we accept, as set out in the Waka Kotahi legal submissions, that¹¹⁸

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

(b) Funding decisions can change over time, and sometimes very quickly¹¹⁹; and

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

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

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

- 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.

218. We acknowledge there is greater uncertainty in the longer term about funding and implementation of certain infrastructure including Mill Road and the Drury South Interchange that is likely to be needed to service later stages of development in the plan change areas. Given this uncertainty it is less clear whether the necessary integration can be achieved between infrastructure and land use in the longer term.

219. This uncertainty can be addressed in a number of ways. We have already addressed the ACS/AT position on this matter which is to decline the plan changes, and Mr Mead’s recommended approach to only partially zone parts of the Plan Change 49 and 50 areas. However, the alternative is the use of transport triggers supported by clear precinct provisions to ensure that the required infrastructure is operational prior

¹¹⁸ Mr Gribben’s legal submissions at the tranche 2 hearings – 8 December 2021 at[2.7]

¹¹⁹ The ‘de-funding’ of Mill Road being a good example

to or at the same time as subdivision and development occurs. As we have already made clear, we accept that the Staging of Development with Transport Upgrades provisions set out in the precinct provisions will ensure this occurs.

220. Transport triggers and related plan provisions are a commonly used mechanism in plans (and in the AUP OP) and can be effective to allowing development to occur in a staged manner, but importantly to enable development to be refused prior to the necessary infrastructure being implemented if necessary. Numerous examples of the use of triggers to guide development were provided to us, including Mr McNutt's evidence in relation to the Peacocke development in Hamilton, where he provided an example of how, in his opinion, the triggers worked effectively from the Council's perspective.
221. ACS and AT and Mr Mead took the view that triggers were not appropriate in circumstances where the necessary infrastructure is not funded. This was part of the 'core' case run by ACS and AT. The implication of this position is that necessarily 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 with 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"¹²⁰.*
222. We address the Staging of Development with Transport Upgrades provisions below. While we have largely accepted those provided by Mr Roberts and Ms Morgan in their planning evidence and the 'marked-up' precinct provisions, we have preferred the amendments made by Ms Heppelthwaite. We do not think those changes are fundamental but provide better clarity and understanding.
223. We accept that the amendments to the plan change provisions made through evidence and expert conferencing has resulted in a sufficiently robust set of provisions (as set out in the precinct provisions) to ensure that the required infrastructure would be operational prior to or at the same time as subdivision and development occurs. This includes the thresholds and transport infrastructure identified in the transport triggers, and in particular, the interim solution for the intersection of Great South Road and Waihoehoe Road which was altered to involve a signalised intersection (noting that this was consistent with Mr Mein's primary evidence for Waka Kotahi and Mr Phillips' for Drury South).
224. On this basis it is our decision that all of Drury East can be rezoned now given that the area is signalled for urban development in the future (through the AUP (OP), DOSP and FULSS) and there are programmes and business cases in place (in

¹²⁰ Ms Heppelthwaite's Summary Statement [3.8 –3.9].

particular the Supporting Growth Programme) that identify the necessary infrastructure. Together these factors mean that urban development in Drury East is consistent with the long-term planning documents, integrates with existing rapid transit networks and the necessary integration between land use and infrastructure can be achieved. It also means, in our view that rezoning all of Drury East now will result in a more holistic and integrated development.

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

225. In addition to upgrades to the existing road network (as set out in the precinct provisions standards - Staging of Development with Transport Upgrades), there are a range of other measures proposed in the precinct provisions to manage effects on the transport network, and to achieve the relevant objectives that seek to promote access by public and active modes (NPS UD Policy 1(c)) and reduce the rate of growth in demand for private vehicle trips (RPS Policy B3.3.2(5)(b)).
226. Those additional precinct provisions that have been included are also necessary in our view to achieve the objectives of the precincts that promote a mode shift to public and active transport. These include:
- Requiring active mode connections to the Drury Central Transport station within the walkable catchment;
 - Requiring streets to be designed to safely provide for cyclists and pedestrians;
 - Requiring secure cycle parking for all residential development.
 - Applying maximum parking rates for offices and requiring enhanced end of trip facilities in the Drury Centre precinct; and
 - Encouraging office and retail activities in the Drury Centre precinct to implement additional travel demand management measures through a travel plan.
227. With respect to the final two bullets points above, we accept (the evidence of Mr Hughes, Mr McKenzie and Mr Parlane as well as their 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 other than active transport modes.
228. To assist in achieving the mode shift, a maximum parking rate was proposed for the commercial developments within Drury East that is lower than the Metropolitan Centre rate in the AUP (OP). The rate proposed is to be reduced over time as the development and public transport network within the Plan Change area progresses. As set out by Mr Hughes, Mr McKenzie:

“This approach will ensure the provision of carparking is appropriate for the scale and intensity of the Metropolitan Centre, and will enable the market to provide

*the amount of carparking necessary to support development, while limiting carparking to an appropriate level to ensure that land is used efficiently*¹²¹.

229. The other aspect to making the use of public transport and other active modes more 'attractive' are the precinct provisions relating to requiring enhanced end of trip facilities in the Drury Centre precinct and encouraging office and retail activities in the Drury Centre precinct to implement additional travel demand management measures through a travel plan.
230. We support the additional measures as set out above. However, we accept that they form part of a package of precinct methods to encourage a mode shift by providing facilities for cyclists and users of public transport, while at the same time, limiting those activities (office parking) that incentivise people to drive during peak periods. It is the combination of these methods, together with, but particularly, the staged upgrades to the transport network, which will in our view, enable the achievement of the transport objectives of the precincts.
231. As alluded to earlier we have largely accepted the transportation precinct provisions (Staging of Development with Transport Upgrades) provided by Mr Roberts and Ms Morgan, but we have preferred the amendments recommended by Ms Heppelthwaite for the reasons set out in her Hearing Summary dated 9 December 2021.
232. Ms Heppelthwaite's provisions more closely align to the Applicant's September version of the precinct provisions where the Standards include the Mill Road northern and southern connection and the Opāheke Northern connection once development is proposed beyond a prescribed threshold. In the reply version, the operation of the Mill Road northern and southern connection and the Opāheke Northern connection become a matter of discretion.
233. While we accept the Mill Road northern and southern connection and the Opāheke Northern connection are not likely to be needed in the near future, it is our view that those roading upgrades are likely to be needed to service later stages of development in the plan change areas. On this basis we think they should remain as Standards, particularly as the preferred alignment for Mill Road is illustrated in various strategic documents, including the Auckland Plan (planned project for the purpose of Council's Infrastructure Strategy), ATAP and the SGA's indicative strategic road network, 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.
234. However, we note that subdivision 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

¹²¹ Mr Hughes' and Mr McKenzie's evidence-in-chief at [7.24]

to an Applicant to apply and have that proposal assessed in terms of the matters of discretion and the relevant policies (as directly referenced in the Matters of Discretion).

235. The activity status for subdivisions and or development that did not comply with the Standards – Staging of Development with Transport Upgrades was debated between the planning witnesses. The 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.

236. The AUP (OP) at A1.7.3. Restricted discretionary activity - records:

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

237. A1.7.4. Discretionary activity records:

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

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

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

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

239. A key aspect of the appropriate activity status (in the AUP OP) is whether the activity (and their effects) is anticipated or not, and if it is possible to identify what the adverse effects may be. The position of ASC 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 adverse effects from this could be identified – and were transport related.

240. We agree with the Applicant’s position. However, the key aspect to the appropriateness of a restricted discretionary activity is the “Matters of Discretion”; and whether they enable the appropriate assessment of the activity and its effects. In this case, this is assessing (and determining) if the necessary infrastructure

(transportation related) is operational prior to or at the same time as subdivision and development occurs.

241. We have carefully considered the Matters of Discretion (and the related assessment criteria) to ensure they enable the appropriate assessment. We are satisfied, given the amendments we have made to them, that the Matters of Discretion, with direct links to the relevant policies, will enable the appropriate assessment. And importantly, the ability to refuse consent should the necessary infrastructure not be provided and operational before development occurs.
242. Given our reasoning above we find that, in section 32 terms, the restricted discretionary activity status is the most appropriate.

Drury South Limited

243. The precinct provisions have also been amended to address, at least partially, the concern raised by Drury South Limited (DSL). DSL confirmed its general support for the Drury East Plan Changes but sought some amendments to address a concern about potential traffic effects on the Drury South industrial precinct. Specifically, DSL sought amendments to the trigger table to require less development ahead of the Great South Road/Waihoehoe Road ATAP upgrade so that traffic from the precinct does not avoid the intersection by diverting onto Quarry Road, with consequent effects on the Drury South Precinct.
244. As set out earlier, Mr Phillips confirmed that DSL supported the transport modelling approach and indicated his agreement with the Applicants that congestion is a useful tool to drive mode shift in Auckland. However, he departed from the Applicant's view on this matter; his view being that congestion should not spill over into the Drury South industrial precinct, and DSL's request to reduce the trigger threshold by 10% was to avoid any rerouting through the precinct. This position was supported by legal counsel and its planning witness (with specific precinct provisions sought).
245. While we understand why DSL would seek to protect the status quo as, at present, the industrial/mixed use precinct enjoys low levels of traffic (and congestion) because it is in the early stages of development and surrounded by undeveloped FUZ land and rural land. However, much of Drury and Drury South land has been identified for urban development and it is reasonable to expect that traffic will increase when that occurs. Moreover, as acknowledged the following was set out in Fulton Hogan's legal submissions¹²²:

"In that regard, it is also relevant that Fulton Hogan owns the Drury Quarry, which DSL referred to numerous times, and in contrast with DSL is not concerned about the traffic increases".

246. As we set out previously, Mr McKenzie and Mr Hughes explained that the transport modelling demonstrates (with a high degree of conservatism) that the effects on the

¹²² Applicant's Reply Submissions at [4.20]

transport network are managed well even if limited rerouting through the precinct does occur. We accept this is an entirely reasonable outcome in Auckland. However, Mr Roberts and Ms Morgan have included specific precinct provisions (policy and assessment criteria) addressing the safe and efficient movement of freight vehicles within and through the Drury South precinct.

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

Mana Whenua

248. The Applicant's Plan Change Request addressed¹²³ cultural values noting that engagement has been undertaken with all Mana Whenua groups with known customary interests in the Plan Change area. A consultation report¹²⁴ included details of the results of this engagement to date. A number of Iwi Management Plans were reviewed as part of the structure planning process. These identified a range of matters, many of which are either reflected in the AUP (OP) or referenced in the Cultural Valuation Assessments ("CVAs") and addendums prepared by Ngāti Te Ata Waiohua, Ngāti Tamaoho, Te Ākitai and the local application of a number of the principles advanced in the Iwi Management Plans and CVAs.
249. Four iwi groups: Ngati Te Ata, Ngāi Tai Ki Tāmaki Te Akitai Waiohua and Ngāti Tamaoho had prepared CVAs¹²⁵.
250. Section 10.9 of the Plan Request summarised that the CVAs highlighted the following areas of interest to the iwi groups:
- 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, Māori 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;

¹²³ Plan Change Request at [10.9] & Section 42A Report at [304]

¹²⁴ Plan Change Request at Appendix 15

¹²⁵ Plan Change Request Appendix 16 - 19

- the application of Te Aranga Māori 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.

251. Ngāti Te Ata Waiohua¹²⁶ submitted on PC 50, seeking:

“The rejection of PC 50 unless the issues addressed in their submission can be adequately addressed”.

252. Ngāti Tamaoho¹²⁷ also submitted on PC 50. Their submission mirrored that of Ngāti Te Ata Waiohua; seeking the rejection of PC 50 unless the issues addressed in their submission were adequately addressed.

253. Mr McCarthy in his evidence-in-chief stated¹²⁸:

“Numerous hui have also been held with tangata whenua, both in the lead up to lodgement of PC50 and following acceptance of PC50 and its subsequent public notification.

Discussions with tangata whenua have been constructive, and Oyster has entered into memoranda of understanding with two iwi, being Ngaati Whanaunga and Te Akitai Waiohua. These agreements outline and confirm Oyster’s commitment to work with tangata whenua on an ongoing basis, including during future consenting and implementation phases of the development of the site’.

254. Mr McCarthy also set out¹²⁹:

“In addition to the memoranda of understanding with Ngaati Whanaunga and Te Akitai Waiohua, Oyster has drafted and circulated memoranda of understanding with Ngati Tamaoho, Ngati Te Ata and Ngai Tai ki Tamaki. These memoranda are yet to be signed by iwi. Notwithstanding, Oyster is committed to maintaining working relationships and open dialogue with all tangata whenua groups into the future”.

255. Mr Roberts and Ms Morgan noted that Mr Mead in the section 42A Report recommended a new policy to address Mana Whenua values¹³⁰. Mr Roberts and Ms Morgan largely agreed with this, and proposed a modified policy.

256. Mr Roberts and Ms Morgan opined¹³¹ that the policy has been informed by extensive consultation and engagement undertaken with Mana Whenua throughout the

¹²⁶ Section 42A Report pp 483 - 485 Submitter No 20

¹²⁷ Section 42A Report pp 629 - 631, Submitter No 34

¹²⁸ Mr McCarthy’s Evidence-in-Chief at [6.2 – 6.3]

¹²⁹ Mr McCarthy’s Evidence-in-Chief at [6.4]

¹³⁰ Mr Roberts’ and Ms Morgan’s Evidence-in-Chief at [11.1]

¹³¹ Mr Roberts’ and Ms Morgan’s Evidence-in-Chief at [11.2]

development of PC 50. It reflected their understanding of the issues of importance to Mana Whenua, as expressed in the CVAs and in their discussions with them. Mr Roberts and Ms Morgan noted that they had shared this proposed policy with Ngāti Te Ata Waiohua and Ngāti Tamaoho and sought their feedback.

257. We agree that a policy should be incorporated along the lines proposed by the planning witnesses. That policy includes development responding to Mana Whenua values – including:
- Delivering a green corridor following the stream network;
 - Taking an integrated approach to stormwater management;
 - Ensuring the design of streets and publicly accessible open spaces incorporate Te Aranga design principles.
258. As Mana Whenua representatives did not attend the hearings, we were unable to question them on these matters or to seek clarification on the measures proposed to address them. Notwithstanding this, given the Applicant’s commitment, as set out above, we are satisfied, based on the information and evidence before us, that PC 50 would give effect to the RPS and Part 2 in relation to Mana Whenua interests and values.

Zoning, Sub Precincts and Heights of Buildings

259. The Applicant sought that the entire area of PC 50 be zoned THAB, with the northern portion of the site shown on “Precinct plan 1 – Indicative Road and Open Space” as open space/drainage reserve. Two sub precincts (based on site coverage/drainage issues) were sought, and shown in the precinct plans¹³². A 22.5 metre height limit was also sought for buildings in the THAB zone, and this was supported by Mr Prasad, Mr Hogan, Mr Roberts and Ms Morgan.
260. Mr Turbott for ACS recommended that the area shown as open space/drainage reserve in Precinct plan 1 be zoned Residential – Large Lot rather than THAB zone. He also recommended amendments to the proposed height limits; being 32.5m within 1000m of the Drury Central Train Station and 19.5m limit beyond that.
261. Ms Skidmore initially supported a 21m limit in her urban design review, but then supported the 22.5m limit in her section 42A response from an urban design perspective. Mr Mead supported a 24m height limit.
262. Mr Roberts and Ms Morgan disagreed with Mr Turbott’s evidence. They set out¹³³:

Regarding the northern floodplain, the extents are indicative at this time, and its exact location would be informed by more detailed analysis to be undertaken as part of future resource consent processes in accordance with the requirements of E36 of the AUP, the PC50 provisions and the Stormwater Management Plan

¹³²These were not contested to any extent

¹³³ Mr Roberts’ and Ms Morgan’s Rebuttal Evidence at [2.2]

(“SMP”). In any case, once confirmed, the northern floodplain would be set aside as drainage reserve/open space, and residential development would not be possible. In this respect, a lower order residential zoning would not reflect the ultimate use of that part of the site. The future use of this part of the site is indicated on proposed Precinct Plan 1.

263. We agree with Mr Roberts and Ms Morgan.
264. With respect to building heights Mr Roberts and Ms Morgan were of the view that 19.5m was not sufficient to provide for six storeys, and 22.5m would do so comfortably and in a manner consistent with other THAB zones around Metropolitan Centres in Auckland, and consistent with the decision we have made in PC 49. Mr Turbott’s suggested 32.5m height limit did not appear to be based on any other expert opinion (eg urban design, landscape, traffic etc). It also appears that no other party expressly supported the 32.5m height limit.
265. It is our view that six storeys is sufficient to ensure land is used efficiently adjacent to centre and the public transport network (Objective H6.2(1)). At the same time, this would be in keeping with the planned urban built character of the surrounding area, and providing a transition in building scale from the adjoining higher density business zone (Policy H6.3(4)(a)), being the Mixed Use zone on the southern side of Waihoehoe Road.

Commercial Activity at Ground Floor along Waihoehoe Road

266. Mr Turbott appeared to recommend that commercial activity should be provided for at ground floor along Waihoehoe Road, and he disagreed that this frontage should have a residential neighbourhood character. The THAB zone is a residential zone and provides for a limited range of commercial activities as a restricted discretionary activity, including small dairies and restaurants/cafes, as well as some community activities.
267. In our view, commercial activities are appropriately concentrated within the PC 48 area, including within the Metropolitan Centre and Mixed Use zones. This enables the concentration of commercial activities within the Drury Centre as a means of supporting the function, role and amenity of the Drury Centre.

Noise and Vibration Matters

Rail Noise and Vibration

268. Noise and vibration was a key issue outstanding in PC 50 (and PCs 48 and 49) between the Applicant, KiwiRail, ACS/AT and Kāinga Ora (KO). The issue was, if, and if so the extent to which, noise and vibration attenuation was required to mitigate the health and amenity effects from road and rail noise and vibration.
269. In response to the submissions received, Mr Mead originally recommended that precinct standards be introduced to address potential effects from rail vibration and set back of buildings from the rail corridor, but otherwise considered that rail and road

noise issues could be managed by standards in E25.6.10 in the AUP (OP) (which require noise insulation for noise sensitive activities in Business zones).

270. With respect to rail noise, Kiwirail's submission sought to insert permitted activity standards to require all new buildings, and alterations to existing buildings, containing noise sensitive activities located within 100m of the rail corridor to be appropriately mitigated in relation to rail noise and vibration¹³⁴. Where a proposed activity did not comply with those standards a restricted discretionary activity resource consent would be required.
271. Ms Butler, planner for Kiwirail, advised that in applying KiwiRail's standard, all bedrooms in new buildings, or alterations to existing buildings, within 100m of the railway corridor would be required to achieve an internal noise level of 35dB LAeq, with a 40dB Aeq limit for all other habitable rooms based on rail activity noise levels. If windows were required to be closed to achieve the internal noise levels, then an alternative ventilation system would be required to be installed to ensure an adequate supply of fresh air¹³⁵.
272. It was Ms Butler's opinion that the provisions sought by KiwiRail would strike an appropriate balance between the onus on existing lawful emitters like the railway network to manage their effects and those new sensitive activities to protect themselves against such effects¹³⁶.
273. Ms Butler endorsed the position of Mr Roberts and Ms Morgan, planners for the applicant, who originally proposed to include a design requirement for noise sensitive activities close to the NIMT to ensure that potential reverse sensitivity and residential amenity effects are managed, in a manner that would effectively achieve objectives E25.2(1), (2) and (3).¹³⁷
274. Mr Mead noted in the section 42A report that the THAB zoning proposed does not contain any standards relating to the internal noise environment for noise sensitive activities. The AUP (OP) (Chapter 25) controls internal noise levels for noise sensitive activities in Business zones, but no similar provision exists for residential zones, despite these areas often abutting busy and noisy rail and road corridors. Mr Mead stated he generally agreed that as roads get busier, the effects of road noise on health and amenity increase; and he acknowledged that the greenfields context provided the opportunity to 'future proof' new buildings (rather than retrofit noise insulation or roadside noise barriers at a later stage)¹³⁸.
275. To address the concerns of Kiwirail and AT, Mr Mead supported a new standard that cross referenced to E25.6.10, which requires new buildings either adjacent to an arterial road or near to the rail corridor to be built to the internal noise standards

¹³⁴ Ms Butler's Evidence-in-Chief at [4.9]

¹³⁵ Ibid, at [4.10]

¹³⁶ Ibid, at [4.15]

¹³⁷ Mr Roberts' and Ms Morgan's Evidence-in-Chief at [14.6]

¹³⁸ Section 42A report at [499]

specified for noise sensitive activities in Business zones¹³⁹. He did not specify the distance in which this new standard should apply, suggesting that this was a matter that Kiwirail and the plan change proponent may wish to address (and we address this below).

276. Dr Chiles, noise and vibration expert for Kiwirail, stated in his evidence-in-chief¹⁴⁰:

“It is widely accepted nationally and internationally that sound and vibration from rail networks have the potential to cause adverse health effects on people living nearby. This has been documented by authoritative bodies such as the World Health Organisation (“WHO”),¹ including a relatively recent publication by WHO Europe in October 2018 (“2018 WHO Guidelines”), which set out guidelines for managing environmental noise.² These WHO publications are underpinned by robust scientific research. I am not aware of any fundamental disagreement in the acoustics profession with the information published by WHO regarding rail noise effects.”

277. Dr Chiles went on to say that based on the evidence of adverse effects, WHO makes recommendations to policymakers to reduce rail sound exposure to below a range of guideline values. The relief sought by KiwiRail on Plan Change 50 is consistent with this direction, as an integral part of its broader noise management activities.¹⁴¹

278. It was Dr Chiles’ opinion that the amendments sought by KiwiRail would allow for new buildings and alterations to existing buildings near the NIMT to provide people with acceptable indoor living conditions. He considered this relief should manage adverse health and amenity effects experienced by those people to a reasonable degree, which in turn should manage reverse sensitivity effects on KiwiRail¹⁴².

279. In terms of the internal noise criteria and ventilation requirements, Dr Chiles agreed with Mr Mead that, technically, cross reference could be made to E25.6.10 rather than introducing separate provisions for the plan change area. However, he advised there was a difficulty related to the fundamental structure of the rule, noting that E25.6.10 applied the same standard of sound insulation everywhere based on the external noise exposure being at the zone noise limits. Dr Chiles was of the opinion that this does not work for rail noise because¹⁴³:

“(a) Rail noise varies with distance from the track and between different sides of exposed buildings depending on whether they are facing towards or away (or side on) from the track. Therefore, the appropriate degree of sound insulation varies between buildings and between different façades of the same building.

¹³⁹ Ibid, at [500]

¹⁴⁰ Dr Chiles’ Evidence-in-Chief at [4.1]

¹⁴¹ Ibid at [4.3]

¹⁴² Ibid at [6.4]

¹⁴³ Dr Chiles’ Evidence-in-Chief at [7.4]

(b) The zone noise limits for the THAB zone are relatively low (Table E25.6.2.1) with a night-time external noise limit of 40 dB LAeq. The sound insulation requirements in E25.6.10 are based on this 10 external exposure and consequently would result in no treatment being required as the internal noise level would be met regardless. This is because the design would be based on a level that is not representative of rail noise.”

280. He concluded, the issues with E25.6.10 made it unsuitable for application to rail noise in the THAB zone. To remedy these defects Dr Chiles stated this would require specification of external rail noise exposure to over-ride the provisions in E25.6.10, which would represent a fundamental change to the way E25.6.10 currently applies. He remained of the opinion that the amendments sought by KiwiRail would provide a clearer and less ambiguous rule structure¹⁴⁴.
281. Mr Hegley, acoustic expert for KO, stated that the reason given by KiwiRail for the proposed noise and vibration controls was reverse sensitivity effects arising from the proposed plan change. He advised us that KiwiRail had, however, provided no evidence that there would be any such adverse reverse sensitivity effects from trains passing the subject site.
282. Mr Hegley further stated that the noise control levels proposed by KiwiRail were not appropriate to adopt in PC 50 as they did not provide a realistic level of the actual noise levels that would be emitted along the rail corridor¹⁴⁵. He considered this would have the effect of requiring additional but unnecessary acoustic attenuation and its associated costs.¹⁴⁶
283. Mr Hegley went on to say that he accepted it would be impracticable for KiwiRail to fully internalise its effects. On this basis he supported the concern expressed by KiwiRail and the desirability to protect residents from the adverse effects of noise and vibration from rail activities. However, his ‘support’ for appropriate controls was that any such protection needed to be based on substantiated information and evidence¹⁴⁷.
284. Like Dr Chiles, Mr Hegley noted concerns with the application of any rule imposing E25.6.10 on residential dwellings within the PC 50 area. This was due to the need to define the distance from the tracks over which the standard applied. Mr Hegley also had reservations with the 100m distance suggested by KiwiRail. He noted a further issue with the adoption of E25.6.10; that it essentially specifies a façade reduction meaning no account could be taken for the reductions in noise level a particular façade would experience given its distance, orientation and screening from other buildings, from the NIMT¹⁴⁸.

¹⁴⁴ Ibid at [8.5]

¹⁴⁵ Mr Hegley’s Evidence-in-Chief at [4.3]

¹⁴⁶ Ibid at [4.4]

¹⁴⁷ Ibid at [7.2]

¹⁴⁸ Mr Hegley’s Evidence-in-Chief at [7.10]

285. Mr Hegley concluded that if there was sufficient justification for controlling train noise, his preference was for a specific train noise rule for PC 50 rather than a modification to Rule E25.6.10.

286. Mr Campbell, planner for KO, acknowledged that¹⁴⁹:

“major infrastructure networks have the potential to generate some level of adverse effects on land in the immediate vicinity and, where appropriate, planning instruments should recognise and address those effects, noting that effects should only be mitigated following adopting of the Best Practicable Option to minimise and mitigate the off-site effects as far as possible. However, it is also important that those restrictions are no more stringent than necessary, otherwise there is a risk of unnecessary costs imposed on developers (and current and future home or business owners) and a risk that land is not developed efficiently to its full potential.

In my opinion, it is appropriate that the submitters (KiwiRail and Auckland Transport) ensure that practical measures are undertaken to reduce noise at source, and only after then, to consider managing those significant actual or potential effects that cannot be controlled at source, if required...

At the same time, any rules should only be required to manage the actual or potential effects on noise sensitive uses. In my view, any significant adverse health and safety effects should be dealt with, but I have not seen any evidence that reverse sensitivity and health and safety effects arise in the context of the rail or road corridors affected by the proposed provisions and the transport authorities have not provided evidence of circumstances in which the road or rail networks have had to constrain or cease operations as a result of complaints.”

287. Mr Campbell was of the opinion that KiwiRail was seeking that the burden to mitigate the effects of the road and rail network operations be placed solely on the surrounding community and the Council to manage. He opined there did not appear to be a corresponding obligation placed upon Kiwirail (and AT for road noise) to manage their impacts in terms of noise and vibration. In that context, it was his conclusion that the relief sought by these submitters was not an appropriate planning response¹⁵⁰.

288. Ms Butler addressed a number of these matters in her 4th Statement of Evidence. She set out¹⁵¹:

This supplementary statement of evidence responds to matters raised in the Private Plan Modifications 48,49 and 50 Addendum Hearing Report ("Addendum

¹⁴⁹ Mr Campbell's Evidence-in-Chief at [6.1-6.3]

¹⁵⁰ Ibid at [7.35]

¹⁵¹ Ms Butler's 4th Statement of Evidence at [1.2]

Hearing Report") provided by David Mead, including attachment 3 which is a memorandum from Andrew Gordon, relating to railway sound and vibration.

289. She went on to state¹⁵²:

In the Addendum Hearing Report, Mr Mead had amended his recommendation as it relates to rail noise. Mr Mead supports the rail noise standard proposed by KiwiRail to apply within 60m of the rail corridor. Mr Mead has noted that the standard could be improved further by setting out the method of compliance (e.g. by certification). I support this standard set out by Mr Mead.

I believe 100m is the optimal distance to apply the noise standard, to provide a reasonable degree of amenity and acceptable indoor living conditions for those living within proximity to the rail corridor who will be affected by noise arising from the corridor. This position is supported by Dr Chile's expert evidence. However, as KiwiRail has already agreed upon a 60 metre distance as part of pre-hearing discussions with the Applicant, KiwiRail is willing to retain its acceptance of 60 metres in this case, despite the Applicant since resiling from its acceptance of the noise standard. (Underlining is our emphasis)

290. We note that the Applicant accepted a 60m noise attenuation setback; noting it was Mr Roberts and Ms Morgan's professional view that no controls should be imposed. In section 32 terms, it was their view that noise and vibration controls should be addressed regionally, and not on a plan change by plan change basis.
291. On the issue of vibration, Mr Mead agreed that a vibration standard was appropriate. He understood that Chapter 25 of the AUP (OP) only controlled vibration from construction, but not vibration from permanent infrastructure like rail lines¹⁵³. He adopted KiwiRail's request for a standard relating to addressing the potential effects of railway vibration within 60m of the railway network¹⁵⁴.
292. Mr Hegley agreed vibration should be considered. However, it was his view compliance with a standard, such as that proposed by KiwiRail, was impractical¹⁵⁵. He advised us that the cost of vibration isolating a dwelling for this situation would be cost prohibitive for the average resident and not justified compared to the benefit¹⁵⁶. He went on to say that he was not aware of any potential reverse sensitivity effects from train vibration for KiwiRail, and that based on the information available he did not support a train vibration control¹⁵⁷.
293. Mr Roberts' and Ms Morgan's outlined their change in position on acoustic effects in their rebuttal evidence. They removed all precinct provisions relating to noise sensitive activities within 100m of the railway corridor¹⁵⁸. They stated that there was

¹⁵² Ms Butler's 4th Statement of Evidence at [3.1 and 3.3]

¹⁵³ Section 42 report at [502]

¹⁵⁴ Ibid at [501]

¹⁵⁵ Mr Hegley's Evidence-in-Chief at [7.13]

¹⁵⁶ Ibid, at [7.15]

¹⁵⁷ Ibid, at [7.18]

¹⁵⁸ Mr Roberts' and Ms Morgan's Rebuttal Evidence at [8]

insufficient evidence to suggest that the presence of residential activities in the plan change area would give rise to adverse reverse sensitivity effects in relation to the rail corridor that would need to be managed through the AUP (OP)¹⁵⁹. Ms Butler unsurprisingly was disappointed with this response as the noise provisions were highly important for Kiwirail for the reasons she had set out in her evidence.

Road Noise and Vibration

294. Turning to noise and vibration effects associated with road transport, ACS/AT put forward a similar case for PCs 48-50 to that provided in PC 51. Ms Sinclair set out AT's position summarising that their primary submission identified concerns about potential health effects and reverse sensitivity challenges of noise sensitive activities developed in proximity to arterial roads. AT requested a new policy, rule and assessment criteria for noise sensitive activities in proximity to arterial roads.¹⁶⁰
295. As discussed above, Mr Mead considered that given the greenfield nature of the development, it was appropriate to 'future proof' new buildings adjacent to arterial roads to manage noise, (rather than retrofit mitigation measures at a later stage). Mr Mead consequently recommended new provisions to cross reference Chapter E25 for noise sensitive activities that adjoin an arterial road¹⁶¹.
296. Ms Drewery advised that Waihoehoe Road was the existing transport corridor of most significance for health and reverse sensitivity effects in the PC 50 area. She also identified that the proposed Ōpāheke North-South FTN Arterial is a proposed new transport corridor that would run through the PC 50 area and would have similar potential health and reverse sensitivity effects for residents¹⁶².
297. 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 following¹⁶³:

*"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."*¹⁶⁴

298. Ms Drewery considered the current provisions of the AUP (OP) failed to address these effects and that it was appropriate to look at road traffic noise levels under a

¹⁵⁹ Ibid, at [8.10]

¹⁶⁰ Ms Sinclair's Evidence-in-chief at [9.1]

¹⁶¹ Section 42 Report at [499]

¹⁶² Ms Drewery's Evidence-in-Chief at [5.1]

¹⁶³ Ms Drewery's Evidence-in-Chief at [6.3]

¹⁶⁴ Ms Drewery's Evidence-in-Chief at [6.3]

'Mitigated' scenario in the case of the current NoR applications for assessing health and reverse sensitivity effects. She noted there was some risk to this approach as the final BPO would not be confirmed until the detailed design stage. Under the 'Do Minimum' scenario, Ms Drewery advised the Hearing Panel that noise levels of up to 69 dB LAeq(24 hour) could be expected at the boundary of PC 50 adjacent to Waihoehoe Road and in close proximity to the Ōpāheke North-South FTN Arterial. This reduces to 65 dB LAeq(24 hour) under the 'Mitigated' scenario¹⁶⁵.

299. 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 50:

“Noise sensitive activities within the Waihoehoe Road, Kath Henry Lane and Ōpāheke North-South FTN Arterial 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 spaces”.*¹⁶⁶

300. Ms Drewery advised that if consideration was given to the siting and orientation of buildings as well as their internal layout at the planning stage of a development, noise mitigation does not have to be costly. Where treatment to the buildings, such as mechanical ventilation or enhancements to the façade, are required this is only likely to be for the front row of dwellings as long as there is no line of sight from the second row of dwellings to either of the transport corridors¹⁶⁷.
301. When comparing her recommendation with Mr Mead's approach, while she agreed this was a potential option, on balance, Ms Drewery considered the standard she had proposed was simpler to apply, and provided greater certainty as to its spatial application through the use of contour mapping¹⁶⁸.
302. Ms Sinclair agreed with section 6.1 of Ms Drewery's evidence that the AUP OP does not include noise criteria for residential zones and there was no sound reduction requirement for noise sensitive activities. Ms Sinclair further noted it was her opinion that to avoid future effects that may arise (including potential health effects on future residents), it was appropriate to set rules that will manage what is an avoidable effect¹⁶⁹.
303. She agreed with Ms Drewery's recommendation to include a new standard in the precinct provisions for PC 50 to address AT's concerns. Ms Sinclair proposed a

¹⁶⁵ Ibid at [5.6]

¹⁶⁶ Ibid at [6.12]

¹⁶⁷ Ibid at [6.13]

¹⁶⁸ Ms Drewery's Evidence-in Chief at [6.15]

¹⁶⁹ Ibid at [9.4]

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 contour¹⁷⁰.

304. Mr Campbell agreed with the initial position of council's reporting officer Mr Mead. It was Mr Campbell's opinion that there were already sufficient controls within E25 (noise and vibration) chapter of the AUP (OP) to ensure effects on noise sensitive activities were appropriately managed. It was his opinion that the provision of an additional layer of controls within the precinct plan was an unnecessary doubling up of regulatory methods¹⁷¹. Mr Campbell therefore disagreed with AT's request to include reverse sensitivity controls for Waihoehoe Road (or other arterial roads), further noting that mitigation can be achieved through the future roading construction to manage any perceived or actual reverse sensitivity effects on the roading corridor¹⁷².
305. Mr Mead amended his recommendation as it related to rail and arterial road noise in the Addendum section 42A report. He stated that while there appeared to be agreement amongst the parties that road and rail noise needs to be managed as it relates to noise sensitive activities, the issue appeared to be who provides the mitigation, and in a developing urban area, when is this mitigation most effectively delivered.¹⁷³
306. Mr Mead highlighted that the rail line exists today, and that works within the rail corridor will occur and the number of trains will increase, in the future. These works and increased activity will be within the current designation and will not trigger any specific mitigation requirements. In this context, Mr Mead considered it reasonable for new development 'coming to the effect' to provide its own mitigation on amenity and well-being arising from proximity to the rail line¹⁷⁴.
307. Mr Mead advised Rule E25.6.33 required that noise levels from traffic from new and altered roads must comply with the requirements of New Zealand Standard NZS 6806: 2010 Acoustics – Road traffic noise – New and altered roads. He further outlined that Waihoehoe Road is an existing road, not a new road, but that (at least) the section between Fitzgerald Road and Great South Road was likely to be altered in the future. Depending upon noise levels, Mr Mead understood that NZ 6806:2010 would require, upon alteration, noise mitigation, either through road surfaces, noise barriers or acoustic insulation of dwellings present to achieve an internal noise environment of 40 dB LAeq(24 hour) for noise sensitive activities¹⁷⁵.

¹⁷⁰ Ms Sinclair's Evidence-in-Chief at [9.5]

¹⁷¹ Mr Campbell's Evidence-in-Chief at [7.3]

¹⁷² Ibid, at [7.20]

¹⁷³ Section 42A Addendum report at [133]

¹⁷⁴ Ibid at [134]

¹⁷⁵ Section 42A Addendum report at [135]

308. The Addendum section 42A Report acknowledged that there may be benefit from taking a region-wide approach to this issue as it relates to greenfield land. However, with no such prospect of a region-wide approach in sight, Mr Mead saw the benefit of introducing appropriate standards within the large greenfield development areas now, having reviewed the advice of Mr Gordon, Council's Acoustic expert.
309. Mr Mead now generally supported the amendments sought by KiwiRail with a suggested 60m setback from the rail corridor. He considered his recommended standard was clear as to what noise standard should be achieved within the noise sensitive activity and what level of noise should be assumed to be generated by the rail line. We note this included a provision for rail vibration levels not exceeding 0.3mm/s as well as a requirement for mechanical ventilation¹⁷⁶.
310. In addition, Mr Mead advised that the standard could be further improved by setting out the method of compliance (e.g. certification). He included within his standard provision for certification. Ms Butler expressed her support for Mr Mead's standard.¹⁷⁷
311. For the arterial road noise standard, he considered that any standard (such as that proposed by AT) needed to be clear as to where within a precinct it applied and what level of road noise should be anticipated. He outlined his concerns with the AT proposed standard including implications from changes to ground levels and isolated screening of buildings.
312. To maintain a consistent approach, Mr Mead supported a standard distance being applied within which noise attenuation would be required, where no noise contour information is available. Based on the evidence, his understanding was that the most sensitive development is that adjacent to the road, with development further back likely to be shielded by development fronting the road. In his view a 40m wide control area was sufficient to capture the first row of development and he proposed a standard to the effect, with an accompanying clause that requires the preparation of a compliance report¹⁷⁸.
313. Mr Mead did not see the need for a specific road vibration standard. His understanding was that such a standard was aimed at annoyance type issues, rather than directly related to an impact on people's health. Further, vehicles driving along a well-maintained road free of any potholes or other uneven surfaces are expected to create negligible vibration at immediately adjacent buildings¹⁷⁹.
314. We note that Mr Campbell stated that if we were to consider that acoustic attenuation was required, he would favour a standard based approach to address noise sensitive activities that fronted the arterial road, rather than the provision of the 40m width corridor and a requirement for a suite of acoustic assessments, many of which might

¹⁷⁶ Ibid, at [140]

¹⁷⁷ Ms Butler's 4th Statement of evidence, at [3.2]

¹⁷⁸ Ibid, at [145-146]

¹⁷⁹ Ibid, at [151]

ultimately demonstrate that no specific acoustic attenuation was required. He recommended that acoustic controls could be limited to the first block of development fronting an arterial road, for example, a standard could apply to any noise sensitive building (whole or part) located within 10 metres of an Arterial Road¹⁸⁰.

315. Mr Campbell was also of the opinion that if we were to adopt a standard to manage noise effects from the road, then it should include a requirement for the provision of ventilation for sensitive activities that front an Arterial Road¹⁸¹.
316. Having reviewed Mr Mead's recommended noise provisions in the Addendum Section 42A report and relying upon Ms Drewery's evidence-in-chief and supplementary evidence, Ms Sinclair provided us with a set of revised recommended provisions relating to noise sensitive activities within 75 metres of the boundary of Waihoehoe Road and Opaheke North-South FTN to ensure health, amenity and future reverse sensitivity effects are adequately managed.¹⁸² The basis for the 75m was not clear to us from either Ms Drewery's or Ms Sinclair's evidence.
317. The Applicant's final position on road and rail noise and vibration set out in Mr Brabant's Reply Submissions were¹⁸³:

"a. A specific rule for mitigation of the effects of road noise is not necessary or appropriate, given this matter is most appropriately addressed on a region-wide basis.

b. If the Panel considers that a rule is necessary, 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.

c. A 2.5m setback rule is proposed from the NIMT.

d. A vibration control as sought by KiwiRail is opposed."

Road and Rail – Findings

318. 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 rail and road noise. We do not find there is sufficient evidence to justify, in section 32 terms, controls in relation to rail vibration.
319. While we consider that these provisions 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 this plan change (along with the amount of greenfield development contemplated by PCs 48, 49 and 50 (and PC 51 and 61 that

¹⁸⁰ Mr Campbell's Supplementary Evidence, at [2.11]

¹⁸¹ Mr Campbell's Supplementary Evidence, at [2.13]

¹⁸² Ms Sinclair's Supplementary Evidence, at [2.3b]

¹⁸³ Mr Brabant's Reply Submissions at [53]

this Hearing Panel heard), controls on noise from rail and road noise, as set out above, is justified in PC 50 (and PCs 48 and 49).

320. With respect to rail noise, we have agreed with the parties that a 60m control area from the rail corridor is appropriate.
321. With respect to road noise, we preferred a standard setback (control area) approach as opposed to a noise contour approach as we considered this method provided more clarity to plan users. Based on the evidence, particularly the reasoning of Mr Mead and Mr Campbell, and for consistency with PC 49 (and the reasoning set out in that decision) we find that a 40 metre control area is appropriate.
322. Furthermore, we find that the associated provisions, for both road and rail noise should also include a requirement for mechanical ventilation and to demonstrate compliance with this standard. We have therefore included acoustic attenuation controls for habitable spaces adjacent to the rail and arterial road corridors to address adverse health and amenity effects. 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.
323. We have not included acoustic attenuation in relation to vibration, or for outdoor areas in response to either rail or road noise. This is because we found there was insufficient evidence to warrant the imposition of a rule as being the most appropriate means to address this issue.
324. We agree with KO and the legal submissions presented by Mr Matheson; that we were not persuaded that the noise and vibration would lead to reverse sensitivity effects on either the rail or the road network¹⁸⁴.

Building Setback from the North Island Main Trunk Line.

325. Kiwirail sought a 5m building yard setback from the rail corridor for a number of reasons set out in Ms Butler's evidence-in-chief¹⁸⁵. In Ms Butler's view it was mainly a safety issue and managing the interface between operations within the rail corridor and activities on adjoining sites, while also ensuring the continued operation of the rail network without disruption¹⁸⁶.
326. With regards to the rail setback standard, Mr Mead agreed with KiwiRail's general concerns about development adjacent to the rail corridor potentially disrupting operations. However, he considered a 2.5m wide set back was sufficient to address these concerns.¹⁸⁷

¹⁸⁴ Mr Matheson's Legal Submissions at [3.6]

¹⁸⁵ Noting Ms Butler filed a number statement of evidence (deemed necessary given how the hearings were structured and needing to address rail noise vibrations at the December 2021 hearing).

¹⁸⁶ Ms Butler's Evidence-in-Chief at [5.1 a-f]

¹⁸⁷ Ibid, at [162]

327. Ms Butler stated in her later evidence¹⁸⁸:

*KiwiRail has sought the inclusion of a 5 metre wide setback along the rail corridor. However, Mr Mead considers a 2.5 metre wide setback is sufficient to enable access to buildings for maintenance along the rail corridor without needing to venture into or over the rail corridor.*¹³

I am concerned that 2.5 metres does not leave sufficient room for maintenance and cleaning to be undertaken safely. I maintain my position that a 5 metre setback is required, particularly in the context of a greenfields development where there is opportunity to ensure that sufficient provision is made for safe access before houses are constructed.

328. Mr Campbell's initial view of the submission by KiwiRail seeking a 5 metre wide yard setback along the rail designation was that it should not be accepted. It was his opinion that it was not justified by specific evidence addressing the need, in this location, for this control on adjacent land.¹⁸⁹ However, Mr Campbell changed his position on the appropriateness of a building setback, advising that having reviewed the matter further he would support the provision of a maintenance yard adjoining the NIMT line on the basis it was for building maintenance reasons only¹⁹⁰.

329. With regards to an appropriate width for a building setback from the rail designation, we are in agreement with Mr Mead, the Applicant and Mr Campbell that a 2.5m width is an adequate setback for routine building maintenance on properties adjoining the railway line. We note that this is consistent with the decision we have made in PC 48 on the same issue.

Ecological Matters

330. Section 10.5 of the Plan Change Application provided a summary of the ecological effects of PC 50 highlighting that the plan change presented an opportunity to restore and enhance the aquatic and freshwater quality values in the plan change area¹⁹¹. As set out it is Applicant's intention that the Waihoihoi Stream and other intermittent streams and wetlands be retained and enhanced.

331. The section 42A report outlined the outstanding issues which arose in relation to ecological management including¹⁹²:

- streams not being shown on the precinct map;
- 10m riparian restoration;

¹⁸⁸ Ms Butler's 4th Statement of Evidence at [3.9 and 3.10]

¹⁸⁹ Mr Campbell's Evidence-in-Chief at [1.3c]

¹⁹⁰ Ibid, at [2.17]

¹⁹¹ Appendix 10 of the Plan Change Application provides a full ecological assessment.

¹⁹² Section 42A at [237]

- 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.
332. These were all addressed in detail in the evidence of the Applicant,¹⁹³ and in the Applicant's Reply Submissions¹⁹⁴.

333. Mr Montgomerie's conclusions were¹⁹⁵:

"The PC50 area is characterised by a very high level of modification typical of rural land use. Terrestrial and freshwater ecological values within and immediate to the site are low.

In my opinion adoption of available mitigation options will result in terrestrial ecological effects being negligible–low. With the mitigations and enhancements available, the overall effect of development enabled by PC50 on aquatic ecological values within and downstream of the site in my opinion will be positive".

334. Mr Montgomerie's conclusions were not contested other than in respect of the width of the riparian margins. This matter was a key point of professional difference between Mr Montgomerie, Mr Statham and Mr Hussain (for ACS) and Mr Smith (AC regulator). Mr Brabant noted¹⁹⁶:

"Ecological matters are the subject of both primary and rebuttal evidence by Mr Montgomerie, who is supportive of PC50 as advanced. The matter unresolved with Council officers is the appropriate width of riparian buffers. I am aware this issue is live before you in PC49 also".

335. Mr Statham and Mr Hussain, opined 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 streams¹⁹⁷. Their view was supported by Mr Smith and Mr Mead in the section 42A Report¹⁹⁸. Mr Turbott, for ACS also noted¹⁹⁹ that he agreed with the section 42A recommendation, relying on the evidence of Mr Statham and Mr Hussain for his opinion.

¹⁹³ Mr Montgomerie's Evidence-in-Chief at Sections 4 and 5 and Rebuttal Evidence at Section 1

¹⁹⁴ Mr Brabant's Opening Legal Submissions at [68 - 69]

¹⁹⁵ Mr Montgomerie's Evidence-in-Chief at [7.1 and 7.2]

¹⁹⁶ Mr Brabant's Opening Legal Submissions at [68]

¹⁹⁷ Mr Statham's and Mr Husain's Evidence-in-Chief at Section 4

¹⁹⁸ Section 42A Report at [243]

¹⁹⁹ Mr Turbott's Evidence-in Chief at [10.5 – 10.6]

336. Mr Montgomerie opined²⁰⁰:

“After reviewing and considering the evidence in chief and rebuttal evidence prepared²⁰¹ by Ms Quinn and Dr Bramley [PCs 48 and 49] and the evidence submitted by Mr Statham and Mr Hussain my opinion is unchanged. In my opinion a 10 m riparian buffer will meet the objective of protecting and enhancing the aquatic and terrestrial ecological values within the PC 50 area and in the wider catchment.

Ms Quinn and Dr Bramley addressed in detail Mr Statham’s evidence relating to riparian width. Like Ms Quinn and Dr Bramley am not convinced that 20 m riparian margins are necessary to achieve the ecological outcomes sought by the relevant policies and rules of the AUP OP or the NES-FW. In my opinion 10 m riparian margins will deliver significantly higher habitat values for aquatic and terrestrial organisms, increase habitat complexity and resilience, create connectivity by establishing ecological corridors, reduce stream bank erosion and sediment runoff and improve water quality (reduce stream water temperature, increase dissolved oxygen and decrease nutrient inputs) in comparison to the current state of the environment.”

337. At the hearing, we discussed, at some length, the advantages and benefits of various riparian widths. In the final analysis we were faced with two clear propositions:

- Mr Montgomerie who was of the opinion that the proposed 10m wide planted riparian margin was appropriate for the streams with the PC 50 area ; and
- Mr Statham’s and Mr Hussain’s opinion, and that of Mr Smith, was that a 20m planted margin is appropriate for all permanent streams and 10m planted margin for all intermittent streams.

338. Mr Brabant submitted²⁰²:

“In the absence of agreement between the experts, you will simply have to determine which buffer width is appropriate – either way the issue does not imperil the overall ecological merits of the plan change”.

339. 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 biodiversity²⁰³. The disagreement they had with the ASC and 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 Mr Montgomerie’s evidence, that given that this area was already degraded (from current activities) and it would be

²⁰⁰ Mr Montgomerie’s Rebuttal Evidence at [1.5 – 1.6]

²⁰¹ For PC 49

²⁰² Mr Brabant’s Opening Legal Submissions at [69]

²⁰³ Mr Roberts’ and Ms Morgan’s Rebuttal Evidence at [7.6]

enhanced while also becoming an intensive urban environment, a 10 m planted setback would appropriately contribute to improvements in freshwater sediment quality and biodiversity.

340. 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.
341. The AUP (OP) in the Residential - THAB, zone specifies 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.
342. We also note Mr Brabant's Opening Legal Submissions, where he submitted²⁰⁴:

The position advanced by Oyster is more appropriate, taking into account of both ecological considerations and other relevant considerations relating to the efficient use of the available land to achieve a suitable and effective urban design outcome.

343. We reiterate, in the absence of clear and compelling expert evidence we agree with Mr Brabant's submissions; essentially 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.
344. Overall, we agree with the position advanced by the Applicant (and its experts). That is - a 10m riparian setback would more efficiently achieve the Objective 4 of PC 50, and give effect to the higher order objectives of the NPS-FM and the AUP (OP).

Open Space

345. The Applicant's section 32A Report set out a summary²⁰⁵ of their approach to open space and community facilities recording²⁰⁶:

"With respect to open space, the Council's Open Space Provision Policy 2016 is a key guiding document."

"Open space within the Plan Change area has been developed around the existing intermittent streams and flood sensitive prone areas associated with

²⁰⁴ Mr Brabant's Opening Legal Submissions at [68]

²⁰⁵ Plan Change Request at [10.2]

²⁰⁶ More detail is provided in Section 4.5 of the *Urban Design Statement* of Mr Mathew Prasad, April 2020, Appendix 6 of the Application Request

the Slippery Creek. In particular, the indicative open spaces within the Urban Design report include:

- *Drainage reserves are proposed along the streams which will provide access to the existing natural watercourses. These drainage reserves are multi-purpose linear parks that provide recreational and passive open space, visual amenity and areas for stormwater management;*
- *A larger drainage reserve is shown north of the Plan Change area over the Slippery Creek floodplain. Due to the size of this drainage reserve, this has the potential to be converted to a neighbourhood park subject to consultation with Auckland Council; and*
- *Opportunities for playgrounds, small pocket park spaces and other similarly scaled recreational activities are also anticipated to be accommodated along the edges of, and within these drainage reserve corridors, adding to and enhancing the stream-based amenity of the development.*

346. A notable feature of the Applicant's approach to the open space was the use of drainage reserves as part of the open space network. The Plan Change Application set out²⁰⁷:

"To activate the drainage reserve spaces and to reduce CPTED related issues, pedestrian walkways and cycle paths are anticipated either along the edges of, or through these drainage reserve spaces as appropriate, adding to the overall permeability and connectivity of the area. Opportunities for playgrounds, small pocket park spaces and other similarly scaled recreational activities are also anticipated to be accommodated along the edges of, and within these drainage reserve corridors, adding to and enhancing the stream-based amenity of the development. Where possible reserve edge roads are proposed to be delivered as part of the Key Movement Network to further open and activate these spaces as an integral part of the development".

347. Mr Mead in the section 42A report noted the Plan Request had been reviewed by Ms Barrett, Principal Specialist – Parks Planning, Auckland Council with regards to open space²⁰⁸. Ms Barrett noted the following, concerns and 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 50 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;

²⁰⁷ Plan Change Request at [10.2]

²⁰⁸ Section 42A Report at [278 – 282]

- 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.
348. Mr Mead agreed²⁰⁹ with Ms Barrett’s concerns 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.
349. Mr Mead recommended²¹⁰
- The indicative locations of open space (one suburb park and four neighbourhood parks) should be shown on the precinct plan in order to better secure these being delivered through future subdivision and give effect to RPS Objective B2.7.1(1) - ensuring the recreational needs of the future residents are met.
 - Streams are shown on a precinct plan in relation to urban design and ecological effects.
 - Greenways along riparian margins and esplanade reserves need to be shown on the precinct plan to better secure this being delivered through future subdivision, helping give effect to RPS Policy B2.7.2(2) relating to physical connectivity of open spaces
 - 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 standard was provided which should apply in the Precinct.
350. Mr Barwell’s evidence stated²¹¹:
- “As a consequence of the review of potential open space provision in Drury-Opāheke, one neighbourhood park has been identified as appropriate within the PPC 50 area to meet the open space provision targets in the Provision Policy”.*
- “Additionally, pocket parks of between 0.10 – 0.15 ha each in size may be able to be vested in Council in high density residential areas at no capital cost if they meet open space policy requirements”.*

²⁰⁹ Section 42A Report at [283]

²¹⁰ Section 42A Report at [285 – 288]

²¹¹ Mr Barwell’s Evidence-in-Chief at [5.7 & 5.11]

351. Key points of Mr Barwell's conclusions included²¹²:

- The Council has identified one neighbourhood park within the PC 50 area to meet the open space provision targets in the Provision Policy. The indicative park has been located to avoid permanent streams, flood plains, flood prone areas and known contaminated land.
- Not recommending any amendment to the indicative park's location on the revised Precinct Plan 1.
- Given the Council's current financial constraints, available budget should be prioritised to acquire open space to meet the open space provision targets in the Provision Policy and provide recreational opportunities for future residents in areas that:
 - (a) have necessary infrastructure in place (Hingaia 1 sub-precinct D for example); or
 - (b) where provision of such infrastructure is imminent (Redhills Precinct for example).
- Urban zoning of the PC 50 area now may result in inequitable open space outcomes in other parts of Auckland that are currently being, or will imminently be, developed. 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 the PC 50 area.

352. Mr Turbott in his evidence for ACS set out the following ²¹³:

- Supported Mr Barwell's opinion that the Indicative Neighbourhood Park shown on the Applicant's revised Precinct Plan 1 resolves the council's submission point on indicative neighbourhood parks; and
- Provided wording for policy IX3(4) or its replacement -

"If Auckland Council ownership is proposed, the open spaces must be consistent with the council's open space and parks acquisition and provision policies".

353. Mr Roberts and Ms Morgan addressed open spaces in Section 8 of their evidence-in-chief. They set out²¹⁴:

"Several submissions have requested that PC 50 be amended to ensure there is provision of appropriate open spaces, via the precinct plans and zoning of

²¹² Mr Barwell's Evidence-in-Chief at [8.1 – 8.4]

²¹³ Mr Turbott's Evidence-in-Chief at Section 8

²¹⁴ Mr Roberts' and Ms Morgan's Evidence-in-Chief at [8.1]

additional land (Ministry of Housing and Urban Development²¹⁵, the Council (as submitter), Ministry of Education²¹⁶, Leith McFadden²¹⁷ and Kāinga Ora²¹⁸)”.

354. 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; and
 - b. A revised indicative location for the North-south collector road at the northern extent.

355. Mr Roberts and Ms Morgan opined²¹⁹:

“The proposed amendments to Precinct Plan 1 would efficiently and effectively achieve Objective 1 of PC 50 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”.

356. 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, development and ongoing maintenance of open space before urban zoning the PC 50 area.
357. We have reviewed our decision made on open space for PC 49 to ensure our decision for PC 50 is consistent with that decision.

Stormwater

358. In approving PC 50 we have provided what we consider to be a set of precinct provisions that will ensure the appropriate management of stormwater.
359. We acknowledge that the issue of stormwater management (quality and quantity) was largely agreed between the Applicant and Healthy Waters (Council) and other submitters at a number of expert conferencing sessions and JWS’s which were

²¹⁵ Section 42A Report at pages 477 – 482 Submitter 19

²¹⁶ Section 42A Report at pages 564 – 568 Submitter 24

²¹⁷ Section 42A Report at pages 569 – 570 Submitter 25

²¹⁸ Section 42A Report at pages 607 – 614 Submitter 32

²¹⁹ Mr Roberts’ and Ms Morgan’s Evidence-in-Chief at [8.8]

issued following those sessions. There was one outstanding matter as we understood it.

360. The outstanding issue was that the Healthy Waters experts (Mr Curtis and Ms Vincent) sought that any discharge from all surfaces be subject to meeting the Guidance Document 2017/001 Stormwater Management Devices in the Auckland Region (GD01) requirements. All of the other technical and planning experts (for each of the three Plan Changes and Auckland Council as regulator) supported that in some circumstances, alternative devices could be contemplated where that device could be demonstrated that it was designed to achieve an equivalent level of contaminant or sediment removal performance to that of GD01.
361. 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.
362. We agree with the evidence presented by the Applicants' 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.
363. While we accept that most of issues were agreed between the experts, we were not entirely satisfied that the proposed policy was appropriate; and we questioned the experts about this in the re-convened hearing in PC 50²²⁰. The policy 'locked in' "*any approved network discharge consent*".
364. 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.
365. The issue that we have with the proposed policy in PC 50²²¹ is, as mentioned above, that it 'locks in' the network discharge consent (we accept that a supporting

²²⁰ 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.

²²¹ Noting similar issues were raised in PCs 48 and 49 and PCs 51 and 61 that this Hearing Panel heard

stormwater management plan will be required). We do not think the policy should be 'tied' to a resource consent.

366. 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".

367. 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.
368. 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 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.

Waste Water and Water Supply

369. We are satisfied based on the evidence before us that water supply and wastewater services can be developed on site and integrated with the broader Watercare Services Limited network.
370. Mr Crang, the Applicant's expert, addressed the servicing aspects of the proposal. He outlined that a piped reticulated wastewater network was feasible and that Watercare has confirmed there is sufficient capacity to service the development (as we address below).
371. Mr Stuart set out that the Plan Change area was not currently serviced by Watercare's water supply or wastewater network. However, he advised us that in respect of water supply, Watercare had constructed a new bulk water supply point adjacent to Watercare's existing Drury Water Pump Station. This bulk supply point has sufficient flows and pressure to service the Plan Change area.
372. In respect of wastewater, the Plan Change area is intended to be serviced by a new Transmission Pump Station (refer to ON001) and Transmission Main, which will also service the southern Opaheke Area (T002 and T003). Mr Stuart stated²²²:

²²² Mr Stuart's Evidence-in-Chief at [3.4 and 3.5]

While planned, this is future infrastructure and the Transmission Pump Station and Transmission Main have yet to be constructed. Funding has been allocated to this infrastructure in Watercare’s Asset Management Plan for delivery in 2030 but the ultimate delivery and timing will be coordinated with the release of the Opaheke South Area under a Council initiated plan change.

In the interim, Watercare has agreed that the Plan Change Area can be serviced by the Drury South Wastewater Pump Station and associated network. However, this network, including planned upgrades of various parts of the network connecting to the Hingaia Wastewater Pump Station, has not been sized to accommodate development enabled in the Plan Change Area in the medium to long term.

373. All other water and wastewater infrastructure required to serve the development (i.e. within the Plan Change area) is “local infrastructure” and would be constructed and funded by the Applicant in order to facilitate connections to Watercare’s network.

Heritage and archaeological matters

374. The archaeological and heritage values of the plan change area were summarised in section 10.8 of the Plan Change Request and discussed in more detail in the Archaeology Assessment prepared by Clough & Associates (Appendix 14 to the application)²²³.

375. The Archaeological Assessment records²²⁴:

“Based on background research and an archaeological survey of part of the Plan Change area at 116-140 Waihoehoe Road, it is considered unlikely that archaeological deposits or features will be affected by future development within most of the Plan Change area. However, the properties at 44 Waihoehoe Road and 15 and 27 Kath Henry Lane contain the route of the former Drury tramway/mineral railway (R12/1122), and any further development within these properties has the potential for minor adverse effects on the site.”

376. Heritage New Zealand – Pouhere Taonga²²⁵ (HNZPT) in their submission asked that:

- Provisions are included within the precinct plan to require archaeological assessment of the area during subdivision or resource consent stage of the development; and
- Amend provision requiring the riparian margins to be planted to a minimum width of 10 metres to exclude archaeological sites.

²²³ Ms Cameron and Dr Clough – *Proposed Drury East Residential Plan Change Preliminary Archaeological Assessment* June 2019 Clough & Associates

²²⁴ Ms Cameron and Dr Clough – *Proposed Drury East Residential Plan Change Preliminary Archaeological Assessment* June 2019 Clough & Associates at page 38

²²⁵ Section 42A Report pages 573 – 575 Submitter 26

377. The section 42A Report notes that Mr Brassey (for the Council as regulator) agrees that²²⁶:

Effects on the tramway/railway within the Plan Change area can be mitigated by archaeological investigation and recording of the remains; and

The possibility of unidentified archaeological sites being present in the PC 50 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 (OP) Accidental Discovery rule to manage unidentified heritage across the remainder of the Plan Change area.

378. Mr Mead recommended²²⁷:

- 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 50 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.

379. Mr Mead also supported²²⁸ the archaeological assessment requirement proposed by Mr Brassey to be included as part of the special information requirements for riparian planting in IX9.

380. Mr Roberts and Ms Morgan noted that Mr Brassey disagreed with HNZPT about whether an archaeological assessment of the area should be required²²⁹. 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 did not meet the threshold for scheduling under the AUP (OP).

381. It was Mr Roberts' and Ms Morgan's view²³⁰:

"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

²²⁶ Section 42A Report at [299 - 300]

²²⁷ Section 42A Report [296]

²²⁸ Section 42A Report at [297]

²²⁹ Section 42A Report at [13.2]

²³⁰ *ibid*

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 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.

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

Trees

383. Mr Mead addressed ‘notable trees in his section 42A Report²³¹. He considered a requirement for a notable tree assessment was necessary to give effect to RPS Objective B4.5.1 - Notable trees. It was his view a notable tree assessment was best done at the plan change stage as this would allow for an associated amendment to AUP Schedule 10 Notable Trees if any notable trees are identified. However, in this case, he recommended a notable tree assessment be made a pre-requisite of any subdivision application, so that any notable trees can be retained as a condition of subdivision and development consents, and they can be included in AUP Schedule 10 in due course through a future Council plan change process.
384. Mr Turbott noted²³² the Council’s submission requested a survey for potential notable trees and scheduling of any trees that meet the criteria. He agreed with Mr Mead’s recommendation, that this proposal is necessary to give effect to RPS Objective B4.5.1 (Notable trees).
385. Mr Roberts and Ms Morgan disagreed that a notable tree assessment was required for PC 50, pointing out²³³ that the Council has not previously identified any notable trees within the PC 50 area, and they are able to do so through its regular review and update of the heritage schedule, as they have done via PC 7, PC 10, PC 27 and PC 31. This assessment is more appropriately undertaken by the Council on a region-wide or area-specific basis.
386. Mr Macwhinny in his submission noted the 130 year-old Oaks and Phoenix Palms needed protection²³⁴. Mr Roberts and Ms Morgan addressed this matter, stating²³⁵:

Submitter, Tim Macwhinney, seeks to amend PC50 to protect significant landscape features at 28 Waihoehoe Road, including the 130-year-old oaks and

²³¹ Section 42A Report at [297]

²³² Mr Turbott’s Evidence -in-Chief at section 12

²³³ Mr Roberts’ and Ms Morgan’s Evidence-in-Chief at [13.4]

²³⁴ Submitters No 35 Section 42A Report pages 633 - 635

²³⁵ Mr Roberts’ and Ms Morgan’s Evidence-in-Chief at [12.9]

phoenix palms. Mr Hogan has reviewed this submission and comments that the vegetation is located at road edge and would likely need to be removed to accommodate the future road widening on Waihoehoe Road. We agree and note that this would be a matter for Auckland Transport to consider through its designation process for the Waihoehoe Road widening. As pointed out by Mr Hogan, phoenix palms are a pest plant under the Auckland Regional Pest Management Plan 2020-2030, and we agree that they should not be protected for that reason.

387. We agree with Mr Roberts and Ms Morgan, and we are not persuaded that a notable tree assessment is required.

388. In terms of other trees, Mr Hogan set out²³⁶:

The most significant vegetation in landscape terms are the shelterbelts, boundary plantings and the established pin oaks (Quercus palustris) avenue running south to north through the centre of the site to form an impressive entrance at 76A Waihoehoe Road.

389. The issue of the feasibility, as well as the merits, of retaining all or some of the pin oaks was discussed with several of the Applicant's experts. While the Applicant said they may attempt to retain one row of the trees, it was made clear by the experts that the earthworks required to facilitate the development necessitated significant earthworks in the vicinity of the trees, such that they would not survive. It was also noted that their removal enabled a more efficient development of the site.

390. While we appreciate the Oak trees are a feature of the site, those trees are not protected under the AUP (OP) and they could be removed (as a permitted activity) at any time. We have not sought to seek their retention in the precinct provisions.

Waihoehoe Road Frontage

391. Mr Mead confirmed in the section 42A Addendum report that he considered there was a need for a specific design response in PC 50 (and PC 49) so as to maintain an attractive road environment, given limitations on vehicle access and the Housing Supply Bill which may see a permitted category added to this residential zone²³⁷.

392. In response to questions about this issue, Ms Morgan and Mr Roberts advised that the THAB zone requires a restricted discretionary approach to all building development, with relevant matters including the interface of development with the street environment already provided for in the AUP (OP). They did not consider additional precinct considerations were necessary beyond that already provided for.

393. We agree. We further note that any matters arising out of the Housing Supply Bill for this land will need to be addressed as part of a future plan change or variation.

²³⁶ Mr Hogan's Evidence-in-Chief at [4.18]

²³⁷ Section 42A Addendum at [163 and 168]

Geotechnical Matters

394. Mr Landers presented expert evidence relating to geotechnical matters on land within PC 50. It was his opinion that there were no fundamental geotechnical issues that could not be resolved by engineering. He stated²³⁸:

For example, there is theoretically up to 250mm widespread liquefaction induced settlement theoretically possible under the design ULS earthquake, but this is mitigated by ensuring building platforms are appropriately designed and constructed to ensure minimum levels remain after such an event.

Notwithstanding the outcome of liquefaction analyses here, I reiterate that the geology at this site is Puketoka Formation (Pleistocene age; approx.. 2.18 - 0.35 Ma) and from an age perspective these deposits are considered less susceptible to liquefaction induced deformation. Case histories show that liquefaction is limited almost exclusively to geologically recent (i.e. Holocene age; within approx. last 10,000 yrs) saturated, fine to medium grained sands and low plasticity silts.

395. Mr Landers' overall conclusion was that the site is suitable for residential zoning and development as proposed in PC 50. We are satisfied based on this evidence that the site is suitable for residential development as proposed by the Applicant.

Positive Outcomes

396. We have addressed the detail of PC 50 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, which will also help support the consented Drury Central train station and bus routes, as well as the Metropolitan Centre (PC 48).
397. We also note that PC 50 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.

DECISIONS ON SUBMISSIONS

398. 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.
399. We have set out our reasons above why we have approved PC 50 and the amendments we have made to it so it satisfies the purpose of the RMA.

²³⁸ Mr Landers' Evidence-in-Chief at [7.1 and 7.2]

Submissions Supporting PC 50

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
1.1	Danielle Haerewa	Approve the plan change
6.1	Brookfield Road Limited	Approve the plan change
11.1	Tony Chien	Approve the plan change
12.1	Kiwi Property Holdings No.2 Limited	Approve the plan change
13.1	Fulton Hogan Land Development Ltd	Approve the plan change
15.1	Fletcher Residential Limited	Approve the plan change
31.1	Karaka and Drury Limited	Approve plan change

Decision on submissions

400. 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 opposing PC 50

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
17.1	Josephine Kleinsman	Decline the plan change

Decision on submission

401. Ms Kleinsman owns the property at 112 Waihoehoe Road. She lodged a detailed submission raising a number of issues, some of which are addressed elsewhere in this decision. Neither Ms Kleinsman, nor her representatives, attended the hearing to elaborate on her concerns.
402. In respect of her overall submission that the Plan Change be declined, it appears this related to a broader concern that her land had been included in PC 50 without her permission. Furthermore, her submission sets out that Oyster have never contacted her to discuss the proposed plan change, and no access had been obtained to her land for the Applicant to undertake any technical assessments.
403. For all of the reasons set out in this decision, noting that land ownership is not a prerequisite to proposing a plan change, we have approved the Plan Change. As noted earlier, we have done so 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 this basis we have approved the Plan Change and therefore we **reject** the opposing submission.

Submissions on timing and funding Issues

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
2.1	Douglas Signal	Reject PC50 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
4.1	Fire and Emergency New Zealand	Approve the plan change, in particular proposed Policy 6 as currently worded
7.7	Oyster Capital	Amend Standard IX.6.2 Trip Generation Limit as follows: (1) Development within the area shown on IX.10.2 Waihoehoe: Precinct Plan 2 must not exceed the thresholds in Table IX.6.2.1 and Table IX6.2.2 until such time that the identified infrastructure upgrades are constructed and are operational. (2) For the purpose of this rule 'dwelling' and 'retail/commercial floorspace' means buildings for those activities that have a valid land use consent or a subdivision that has a 224c certificate for vacant lots less than 1200m². (3) Table IX.6.2.1 sets.... 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.
7.8	Oyster Capital	Amend Table IX.6.2.2 to add in " <u>Prior to any new dwellings, retail or commercial development</u> " as shown in Appendix 1 to the submission
17.10	Josephine Kleinsman	Amend plan change policies to ensure appropriate funding arrangements are in place for development
18.1	Lomai Properties Limited	Decline PPC50, unless the matters relating to alternative staging of development, provision of all required infrastructure and traffic are adequately resolved.
21.1	Auckland Council	Ensure that the council's concerns about infrastructure: funding deficit, timing and location uncertainty are resolved by the following or other means: 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. 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. 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: • 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 systems). • 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.

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		d. Notices of requirement have been lodged for the relevant infrastructure by the time of the hearing.
21.32	Auckland Council	Decline PC 50 in its entirety until there is a fully funded and appropriately staged solution for the integration of land use, infrastructure and development for the Precinct and Sub Region
22.1	Auckland Transport	Decline plan change unless submitter's concerns are addressed including about the funding, financing and delivery of required transport infrastructure and network improvements and services to support the 'out of sequence' development proposed
22.2	Auckland Transport	Decline plan change unless submitter's concerns are addressed, including about reliance on development triggers to stage transport infrastructure provision. In the alternative, amend the plan change to include alternative mechanisms/provisions, and/or include the amendments to provisions set out in AT's submission.
22.5	Auckland Transport	Amend Objective IX.2(3) as follows: (3) Development is supported by appropriate infrastructure. Subdivision and development are supported by the timely and coordinated provision of <u>robust and sustainable transport, stormwater, water, wastewater, energy and communications infrastructure networks.</u>
22.6	Auckland Transport	Amend Policy IX.3 (5) as follows: (5) Ensure that the timing of <u>subdivision and development in the wider Drury area</u> Waiheke Precinct is coordinated with the <u>funding and delivery of transport</u> infrastructure upgrades necessary to <u>avoid, remedy and mitigate the adverse effects of urbanisation development on the safe and efficient operation-effectiveness and safety</u> of the immediately surrounding <u>and wider</u> transport network.
22.7	Auckland Transport	Add new Infrastructure and Staging policy as follows: (x) <u>Avoid any subdivision and development in the wider Drury area as defined on Precinct Plan 2 until the required transport infrastructure is in place.</u>
22.8	Auckland Transport	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). In the alternative, amend Rules IX.4.1 (A2) and (A3) as follows: (A2) Development <u>and/or subdivision</u> that does not comply with Standard IX6.1 Staging of Development with Transport Upgrades but complies with Standard IX6.2 Trip Generation Limit <u>as confirmed in the Transport Assessment submitted with application for consent - RD</u> (A3) Development <u>and/or subdivision</u> that does not comply with Standard IX6.1 Staging of Development with Transport Upgrades <u>and or</u> Standard IX6.2 Trip Generation Limit <u>as confirmed in the Transport Assessment submitted with application for consent - NC-D</u> As a consequential amendment, delete Rules IX.4.1 (A5) and (A6).
22.11	Auckland Transport	Amend Standards IX.6.1 (1) and (2) and delete Standard IX.6.1 (3) and the note as follows: IX.6.1 Staging of Development with Transport Upgrades (1) Development <u>and subdivision</u> within the area shown on IX.10.3 Precinct Plan 3 must not exceed the thresholds in Table IX.6.1.1 <u>and Table IX.6.1.2</u> until such time that the identified infrastructure upgrades are constructed and are operational. (2) For the purpose of this rule 'dwelling' and 'retail/commercial floorspace' means buildings for those activities that <u>have are subject to</u> a valid land use <u>and/or building</u> consent or subdivision that <u>is subject to a subdivision consent.</u> that has a 224c certificate for vacant lots less than 1200m².

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		<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 Waihoehoe: 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 Waihoehoe: Precinct Plan 2.</p> <p>Note: Transport infrastructure projects for Drury included in the New Zealand Upgrade Programme — Transport prepared by the New Zealand Transport Agency are not included in the development thresholds below</p>
22.12	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
22.13	Auckland Transport	Delete Table IX.6.1.2.
22.14	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 on IX.10.2 Waihoehoe: 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 Waihoehoe: 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 Waihoehoe: 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><u>(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.</u></p>
22.15	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
22.16	Auckland Transport	Delete Table IX.6.2.2.
22.17	Auckland Transport	<p>Amend IX.8.1 (2) as follows:</p> <p>(2) Development <u>and/or subdivision</u> 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>(a) 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>(b) The rate of public transport uptake and travel management measures; and</p> <p>(c) The rate of coordination of retail, commercial and residential development in the wider Drury East area shown on Precinct Plan 2; <u>and</u></p> <p><u>(x) The degree of certainty around the provision of required infrastructure upgrades including confirmation of infrastructure funding or other such measures agreed; and</u></p> <p><u>(x) Any mitigation measures or review conditions required to address the effects from development occurring ahead of the required infrastructure upgrades.</u></p>

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
22.18	Auckland Transport	Amend IX.8.2 (2) as follows: (2) Development <u>and/or</u> 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) Whether the effects of the proposal on the transport network are consistent with the trips generated by development specified in Table IX.6.23.1 or Table IX.6.3-2 ; (b) Whether increased use of public transport provides additional capacity within the <u>local</u> transport network <u>included within the area shown on IX.10.2 Precinct Plan 2; including by implementing travel demand management measures.</u> (c) Whether residential development is coordinated with retail and commercial development within <u>the area shown on IX.10.2 Precinct Plan 2 Drury East</u> to minimise trips outside of the precinct providing additional capacity within the transport network; (d) The effect of the timing and development of any transport upgrades; (x) <u>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</u> (x) <u>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.</u>
22.22	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.
22.35	Auckland Transport	Amend Policy IX.3(7) as follows: (7) Provide for the staging of bus, pedestrian and cycling connections to the Drury Central train rail station <u>upon its completion</u> to encourage the <u>immediate</u> use of public and active modes of transport <u>as soon as practically possible.</u>
24.8	Ministry of Education	Retain Standard IX.6.1 Staging of Development with Transport Upgrades.
25.2	Leith McFadden	Ensure infrastructure upgrades are tied to staging through precinct provisions
28.1	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.
28.4	Drury South Limited	Amend Standard IX.6.1 / PC50 to ensure that: (a) adequate upgrading of the surrounding road network (for example Waihoehoe Road shown on Precinct Plan 1) is undertaken; and (b) any non-compliance with this standard is a discretionary activity.
29.14	NZTA	Amend Policy 7 as follows: (7) Provide for the staging of pedestrian and cycling connections to the Drury Central train station <u>and Drury Centre</u> to encourage the use of public and active modes of transport.
29.16	NZTA	Amend and/or delete Activities IX.4.1 (A2), (A3), (A5) and (A6) in a manner which responds to Waka Kotahi's submission in its entirety.

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
29.20	NZTA	Delete Standard IX.6.1(3) Staging of Development with Transport Upgrades.
29.21	NZTA	Delete italicised Note IX.6.1 (4).
29.22	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.
29.23	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".
29.24	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
29.25	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 maintain LOS E i.e. comply (noting that all development requires consent so compliance could be considered as part of this process). <u>IX.6.2 Transport Infrastructure</u> <u>Development and subdivision to comply with the following:</u> <u>(a) Great South Road/ Waihoehoe Road Intersection Operation:</u> <u>(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:</u> <u>1) a Level of Service of less than LOS E; or</u> <u>2) have a degree of saturation higher than 95%.</u> <u>(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:</u> <u>1) degrees of saturation of more than the base line scenario, or</u> <u>2) delays of more than 10% greater than the baseline scenario.</u> 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).
29.26	NZTA	Amend Tables IX.6.2.1 and IX.6.2.2, if submission point 29.25 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.
29.27	NZTA	Delete italicised Note IX.6.2 (4).
32.10	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.
32.11	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.

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
33.1	Watercare	Amend Policy 6 as follows: (6) Ensure that <u>subdivision and</u> development in Drury East Precinct is coordinated with <u>(and does not precede)</u> supporting stormwater, wastewater and water supply infrastructure <u>and manages adverse effects, including reverse sensitivity effects, which may compromise the operation or capacity of that infrastructure.</u>

Decision on submissions

404. We have comprehensively addressed these matters in the decision above.
405. 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 traffic and transportation matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
7.11	Oyster Capital	Amend Standard IX.6.4 Building Setback along Waihoehoe Road as follows: Purpose: To enable the future required widening of Waihoehoe Road. (1) A building or parts of a building must be set back from the 2020 Waihoehoe Road boundary by a minimum depth of 7.5m <u>when measured from the legal road boundary that existed as at the year 2020.</u> (2) The building setback...
8.5	Dong Leng	Confirm that intersection access to 160 Waihoehoe Road from Waihoehoe Road will not be restricted once it has been upgraded to an Arterial Road as proposed
8.6	Dong Leng	Amend the locations of the proposed collector roads to be in accordance with the draft Drury-Opaheke Structure Plan and so as to properly service the land beyond, without conflicting with the streams to the north and east
9.2	Kenneth Giffney	Amend the locations of the proposed collector roads to be in accordance with the draft Drury-Opaheke Structure Plan and so as to properly service the land beyond, without conflicting with the streams to the north and east
17.4	Josephine Kleinsman	Reclassify Fitzgerald Road extension as an Arterial
17.8	Josephine Kleinsman	Amend the road cross sections to include the proposed locations of the underground services
21.28	Auckland Council	Review the need for IX.6.4 if a notice of requirement has been lodged for the upgrade of Waihoehoe Road.
22.4	Auckland Transport	Amend Objective IX.2(2) as follows: (2)-Access to the precinct occurs in an effective, efficient and safe manner that manages effects on State Highway 1 and the effectiveness and safety of the surrounding road network. 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.
22.10	Auckland Transport	Delete Standard IX.6 (2) as follows: (2) The following zone standards do not apply to activities listed in Activity

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		Table IX.4.1 above: • E27.6.1 Trip generation
22.19	Auckland Transport	Delete all reference to 'Access A' under Standards IX.6.1 and IX.6.2. Remove 'Access A' from Precinct Plan 2
22.20	Auckland Transport	Amend the precinct provisions to better address the following related matters: • 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.
22.21	Auckland Transport	Provide further assessment of the impacts of the proposal on accessibility between the Waihoehoe Plan Change area and the Drury Central rail station for all modes including public transport and pedestrian access, focusing on safety, permeability and connectivity between the areas.
22.23	Auckland Transport	Amend IX.10.1 Waihoehoe: Precinct Plan 1 as follows: • Add to the legend and show the proposed Opāheke North-South arterial road as a future arterial road.
22.24	Auckland Transport	Add new policy as follows: <u>(x) Recognise and protect the route for the proposed Opāheke North-South arterial road as a future Frequent Transit Network arterial route which provides for the north-south movements between Papakura and Waihoehoe Road; and</u>
22.25	Auckland Transport	Add new policy as follows: <u>(x) Ensure that subdivision and development in Waihoehoe Precinct does not preclude the construction and operation of proposed Opāheke North-South arterial, as defined by:</u> • <u>The indicative Opāheke North-South arterial road alignment shown in IX.10.1 Waihoehoe: Precinct Plan 1; or</u> • <u>Relevant designations and resource consents for the proposed Opāheke North-South arterial road.</u>
22.26	Auckland Transport	Add a new rule to Table IX.4.1 Activity table as follows: <u>Subdivision and/or development of land including or adjacent to the proposed Opāheke North-South arterial road shown in IX.10.1 Waihoehoe: Precinct Plan 1 - RD</u>
22.27	Auckland Transport	Add a new matter of discretion to IX.8.1 as follows: <u>(x) Subdivision and/or development of land including or adjacent to the proposed Opāheke North-South arterial road;</u> <u>(a) Effects on the proposed Opāheke North-South arterial road.</u>
22.28	Auckland Transport	Add new assessment criteria to IX.8.2 as follows: <u>(x) Subdivision and/or development of land including or adjacent to the proposed Opāheke North-South arterial road;</u> <u>(a) Whether the subdivision and/or development preclude the construction and operation of the proposed Opāheke North-South arterial road; and</u> <u>(b) the extent to which the subdivision and/or development provide for the proposed Opāheke North-South arterial road to be developed in a cohesive manner.</u>
22.29	Auckland Transport	Add new policy as follows: <u>(x) Recognise and protect the route for Waihoehoe Road as a multi-modal arterial which provides for the east-west movements between Great South Road and Drury Hills Road intersection.</u>

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
22.30	Auckland Transport	Add new policy as follows: <u>(x) Restrict direct vehicle access onto Waihoehoe Road to support the safe and efficient operation of the transport network for walking, cycling and public transport.</u>
22.31	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.6.4 should be reviewed if a notice of requirement is lodged for the upgrade of Waihoehoe Road.
22.32	Auckland Transport	Retain the vehicle access restriction on Waihoehoe Road as per Rule E27.6.4.1 (3)(c) of the AUPOP.
22.33	Auckland Transport	Amend Objective IX.2 (1) as follows: (1) Waihoehoe Precinct is a comprehensively developed residential environment that integrates with the Drury Centre and the natural environment, supports public transport use, <u>walking and cycling</u> , and respects Mana Whenua values.
22.36	Auckland Transport	Retain Policy IX.3(1) correcting the cross reference as follows: (1) Require collector roads to be generally in the locations shown in IX.10.X1 Waihoehoe: Precinct Plan 1 while allowing for variation, where it would achieve a highly connected street layout that integrates with the surrounding transport network.
22.37	Auckland Transport	Amend Policy IX.3(2) as follows: (2) Ensure that <u>subdivision and</u> 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.
22.38	Auckland Transport	Amend Rule IX.4.1 (A1) as follows: "Development of <u>new</u> public or private road (<u>this rule does not apply to Auckland Transport</u>)" As a consequential amendment, the same changes are sought to the heading of IX.8.1 (1) matters of discretion and IX.8.2 (1) assessment criteria.
22.39	Auckland Transport	Add a new standard to require the vesting of proposed public roads in all sub-precincts as follows: <u>IX.6.X Road Vesting</u> <u>Proposed public roads (including separated pedestrian and bicycle routes) must be constructed and vested in Council upon subdivision or development of the relevant area at no cost to the Council.</u> As a consequential amendment, add a new rule as follows: <u>Development and/or subdivision that does not comply with IX.6.X Road Vesting - NC</u>
22.40	Auckland Transport	Amend matters of discretion IX.8.1 (1) as follows: (1) Development of <u>new</u> public and private roads: (a) Location and design of the collector street road , local streets roads and connections with neighbouring sites and to achieve an integrated street network; (b) Provision of <u>safe and efficient public transport</u> , cycling and pedestrian networks; (c) Location and design, and <u>sequencing</u> of connections to the Drury Central train rail station; and (d) Matters of discretion IX.8.1 (1)(a) - (b) (c) apply in addition to the matters of discretion in E38.12.1; <u>and</u> (x) <u>Location and design of intersections with existing roads.</u>

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
22.41	Auckland Transport	Amend Assessment criteria IX.8.2 (1)(a) as follows: (1) Development of <u>new</u> public and private roads: (a) Whether the collector roads are provided generally in the locations shown on IX.10.1 Waihoehoe: 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: (i) The presence of natural features, natural hazards or contours and how this impacts the placement of roads; (ii) The need to achieve <u>a permeable and efficient</u> 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.
22.42	Auckland Transport	Amend Assessment criteria IX.8.2 (1)(b) as follows: (b) Whether a high quality and integrated network of local roads is provided within the precinct that provides a good degree of <u>accessibility and connectivity</u> , and supports <u>public and active modes of transport</u> 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;
22.43	Auckland Transport	Retain Assessment criteria IX.8.2 (1)(c) and (d) for location of roads
22.44	Auckland Transport	Amend Assessment criteria IX.8.2 (1)(e) as follows: (e) Whether subdivision and development provide for <u>arterial, collector roads</u> and local roads to the site boundaries to coordinate with neighbouring sites and support the integrated completion of the network within the precinct over time;
22.45	Auckland Transport	Amend Assessment criteria IX.8.2 (1)(g) for design of roads as follows: (g) Whether the design of collector and local roads are <u>generally</u> in accordance with the <u>minimum road reserve widths and key design elements</u> road cross sections provided in IX.10.1 Waihoehoe: Appendix 1;
22.46	Auckland Transport	Amend Assessment criteria IX.8.2 (1)(h) for design of roads as follows: (h) Whether the layout of the street network provides a good degree of <u>accessibility and connectivity</u> , and <u>supports the development of Waihoehoe Precinct as a walkable centre and community street network</u> . 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; (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 <u>Drury Central rail station</u> 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: (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 .
22.47	Auckland Transport	Amend Assessment criteria IX.8.2 (1)(i) for design of roads as follows: (i) Whether safe and legible pedestrian and cycle connection to the Drury Central train rail station are provided, via facilities on Waihoehoe Road and Flanagan Road/Drury Boulevard , from the Fitzgerald Rd extension to the Drury Rail Station. Or an alternative is provided that achieves an equal or better degree of connectivity. Where development precedes the upgrade of

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		Waihoehoe Road and connecting roads, interim pedestrian and cycle facilities <u>should</u> may be provided.
22.48	Auckland Transport	Add new assessment criteria to IX8.2(1) as follows: <u>(x) Whether the layout of the street network supports the provision of a safe and efficient bus network;</u> <u>(x) Whether the design of collector and local roads include safe and efficient intersection treatments with existing roads; and</u> <u>(x) Where development is adjacent to a rural road, whether the road is to be upgraded to an urban standard.</u>
22.49	Auckland Transport	Delete IX.11 Appendix 1: Road Cross Section Details. Introduce provisions relating to the minimum road reserve widths and key design elements and functional requirements of new roads and roads which need to be upgraded to urban standards including but not limited to: <ul style="list-style-type: none"> • Carriageway • Footpaths • Cycleways • Public Transport • Ancillary Zone (parking, street trees etc.) • Berm • Frontage • Building Setback • Design Speed As part of new provisions, retain vehicle access restriction provisions, as addressed above.
22.50	Auckland Transport	Add layers to the AUPOP maps for Arterial roads within the Precinct area, including Waihoehoe Road and proposed Opāheke North-South
22.51	Auckland Transport	Show the purpose (role) of all roads on the precinct plans.
24.9	Ministry of Education	Retain objectives and policies relating to the provision of safe and legible walking and cycling connections through communities.
28.3	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.
29.1	NZTA	Provide information and suitable provisions through out the whole of the plan change to resolve the transport infrastructure issue.
29.2	NZTA	Amend the whole Plan Change to replace references to 'pedestrians and cyclists' with 'active transport' (as defined within the National Policy Statement on Urban Development 2020).
29.4	NZTA	Delete 'Access A' from Precinct Plan 2.
29.6	NZTA	Retain IX Precinct description as notified
29.7	NZTA	Amend Objective 1 as follows: (1) Waihoehoe Precinct is a comprehensively developed residential environment that integrates with the Drury Centre and the natural environment, supports <u>active and</u> public transport use, and respects Mana Whenua values.
29.8	NZTA	Retain Objective 2
29.9	NZTA	Retain Objective 3
29.10	NZTA	Retain IX.3 Policy 1 as notified
29.11	NZTA	Retain IX.3 Policy 2 as notified
29.12	NZTA	Retain IX.3 Policy 3 as notified
29.13	NZTA	Retain IX.3 Policy 5 as notified

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
29.15	NZTA	Retain Activity IX.4.1 (A1) as notified.
29.19	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.
29.28	NZTA	Amend IX.8.1 Matters of discretion (1) as follows: (1) Development of public and private roads: (a).... (d)... <u>(e) the outcome of engagement with the relevant road controlling authority.</u>
29.29	NZTA	Amend IX.8.1 Matters of discretion (2) as follows: (2) Development or subdivision that does not comply with Standard IX.6.1 Staging of Development with Transport Upgrades but complies with Standard IX6.2 Trip Generation Limit: (a)... (b)... (c)... <u>(d) the outcome of engagement with the relevant road controlling authority.</u>
29.30	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 <u>integrated active transport walkable street</u> network. [...] (c) ... (d) ... Design of roads (f) ... (g) ... (h) Whether the layout of the street network provides a good degree of accessibility and supports an <u>integrated active transport walkable street</u> network. [...] (i) Whether safe and legible <u>active transport pedestrian and cycle</u> connections to the Drury Central train station <u>and Drury Centre</u> are provided, via facilities on Waihoehoe Road and Flanagan Road/Drury Boulevard, from the Fitzgerald Rd extension to the Drury Rail Station. Or an alternative is provided that achieves an equal or better degree of connectivity. Where development precedes the upgrade of Waihoehoe Road and connecting roads, interim pedestrian and cycle facilities <u>should may</u> be provided. <u>Road Controlling Authority</u> <u>(j) how the outcome of engagement with the relevant road controlling authority has been responded to.</u>
29.31	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 <u>and active</u> transport provides additional capacity within the transport network including by implementing travel demand management measures. (d)... <u>(e) how the outcome of engagement with the relevant road controlling authority has been responded to.</u>
32.13	Kāinga Ora	Delete Assessment Criteria IX.8.2(1)(f)

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
35.2	Tim John Macwhinney	Provide finality to boundaries of property at 28 Waihoehoe Road for widening Waihoehoe Road

Decision on submissions

406. We have comprehensively addressed these matters in the decision above.
407. In approving PC 50 we have provided a set of precinct provisions that, in our view, appropriately address the traffic and transport effects raised by PC 50.
408. 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 cultural matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
20.1	Ngāti Te Ata Waiohua	Confirm ongoing iwi participation, consultation and engagement in the project
20.2	Ngāti Te Ata Waiohua	Acknowledge within the project design the history of Mana Whenua in the PPC50 area
20.3	Ngāti Te Ata Waiohua	Incorporate Te Aranga Principles in design concepts
20.4	Ngāti Te Ata Waiohua	Confirm iwi monitoring of the project
21.29	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.
21.30	Auckland Council	Enable and provide for accessible and affordable social housing for Māori.
26.3	HNZPT	Include appropriate provisions within the precinct plan to address any Māori cultural values identified
32.4	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.
34.1	Ngāti Tamaoho	Confirm ongoing iwi participation, consultation and engagement in the project
34.2	Ngāti Tamaoho	Acknowledge within the project design the history of Mana Whenua in the PPC50 area
34.3	Ngāti Tamaoho	Incorporate Te Aranga Principles in design concepts
34.4	Ngāti Tamaoho	Confirm iwi monitoring of the project

Decision on submissions

409. We have addressed these matters in the decision above.
410. In approving PC 50 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 50.
411. We are satisfied that, based on the issues and evidence before us, the matters relating to cultural issues have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address cultural matters, and **reject** those submissions which sought changes to the precinct provisions which we have not made.

Submissions on Urban Design Matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
19.1	The Ministry of Housing and Urban Development (HUD), Te Puni Kōkiri and the Department of Corrections	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
21.25	Auckland Council	Add a policy and standards to provide for increased density near RTN stations including: a. A policy to the effect of: <u>Ensure a built form and walkable environment that will provide for a high density of people living, working or visiting within an extended walkable radius of a rapid transit network station.</u> b. Building height standards enabling at least the Metropolitan Centre equivalent 22-23 storey building height in all zones within a short walkable radius of the RTN train station, and 7-8 storey building height within an extended walkable radius of the proposed RTN station; c. In areas of more than 7-8 storeys, providing tower dimension and spacing, wind, and building set back at upper floors standards if they do not exist in the underlying zone; d. Any alterations to other building standards to respond to increased building height; e. An information standard for subdivision, building and road resource consents requiring information to demonstrate how the development will contribute to implementing the above density policy and provide for a safe and attractive walkable environment.
21.26	Auckland Council	Delete standard IX.6(3) in its entirety
21.27	Auckland Council	Delete the last sentence of policy IX.3(9) as follows: Limit the maximum impervious area within Sub-precinct B to manage the stormwater runoff generated by a development to ensure that adverse flooding effects are avoided or mitigated. Provide opportunities to deliver a range of site sizes and densities in the Terrace Housing and Apartment Buildings zone.
22.34	Auckland Transport	Amend Policy IX.3 (3) as follows: (3) Require streets to be attractively designed and appropriately provide for all transport modes by: a) <u>providing a high standard of pedestrian amenity, safety and</u>

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		<u>convenience; and</u> <u>b) providing for safe separated access for cyclists on arterial and collector roads that link key destinations; and</u> <u>c) providing a level of landscaping that is appropriate for the function of the street; and</u> <u>d) providing for the safe and efficient movement of public transport and private vehicles.</u>
29.3	The New Zealand Transport Agency	Review the proposed zoning and associated provisions in light of the NPSUD requirements.
29.18	The New Zealand Transport Agency	Delete Standard IX.6(3)

Decision on submissions

412. We have addressed these matters in the decision above.
413. In approving PC 50 we have provided a set of precinct provisions that, in our view, appropriately address the relevant urban form and design effects raised by PC 50 as set out in the submissions.
414. 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 matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
20.5	Ngāti Te Ata Waiohua	Account for natural and cultural landscaping in the project design, identify and preserve landscapes including view shafts, hilltops, tuff rings and ridge lines
20.9	Ngāti Te Ata Waiohua	Confirm park edge design adjacent to all waterways
20.10	Ngāti Te Ata Waiohua	Use native trees and plants only within the precinct
20.11	Ngāti Te Ata Waiohua	Protect ridgelines, hilltops and wetlands
34.5	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
34.9	Ngāti Tamaoho	Confirm park edge design adjacent to all waterways
34.10	Ngāti Tamaoho	Use native trees and plants only within the precinct
35.1	Tim John Macwhinney	Amend plan change to protect significant landscape features at 28 Waihoehoe Road with 130 year old oaks and phoenix palms from Waihoehoe Road widening

Decision on submissions

415. We have addressed these matters in the decision above.
416. In approving PC 50 we have provided a set of precinct provisions that, in our view, appropriately address the relevant landscape effects raised by PC 50.
417. 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 ecological matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
7.6	Oyster Capital	Delete Policy IX.3(11)
7.9	Oyster Capital	Add new Matter of Discretion to IX.8.1 as follows: ... <u>(5) Infringements to Standard IX6.3 Riparian Margins</u> <u>(a) Effects on water quality and stream habitat.</u>
7.10	Oyster Capital	Add new Assessment Criteria to IX8.2 as follows: ... <u>(5) Infringement to Standard IX.6.3 Riparian Margins</u> <u>(a) Whether the infringement is consistent with Policy IX 3(8).</u>
8.2	Dong Leng	Explain why the Stream Enhancement Map does not indicate the Waihoehoe Stream abutting the north eastern corner of the PPC50 site as an enhancement opportunity
17.2	Josephine Kleinsman	Remove the overland flow paths that have been incorrectly described as intermittent streams from the western sites which have not been visited as part of the Ecological reporting
20.6	Ngāti Te Ata Waiohua	Apply a minimum of 20 metre riparian margin for all waterways, especially those to contain walkways / cycleways
21.2	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.
21.10	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 table H9.6.6.1 Yards read as follows: "Riparian - 40 <u>20</u> m from the edge of all permanent streams and <u>10m from the edge of all</u> intermittent streams" Other yards in these tables are not amended

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
21.11	Auckland Council	Add the following matters of discretion to IX.8.1: (a) Effects on water quality and stream habitat. (b) <u>Effects on floodplain management taking into account maximum probable development, climate change and the roughness coefficient of existing and planned planting.</u> (c) <u>Effects on stream bank stability taking into account the cohesiveness of the soil and steepness of the bank angle.</u> (d) <u>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.
21.12	Auckland Council	Include indicative permanent and intermittent streams and wetlands on the precinct plan.
21.13	Auckland Council	Include the indicative blue-green corridor within the precinct plan based on the urban concept in the Urban Design Assessment.
21.14	Auckland Council	Amend policy IX.3(8) as follows: Support <u>Ensure</u> improvements to water quality, and habitat and biodiversity , including by providing planting on the riparian margins of permanent and intermittent streams. And add a new policy as follows: <u>Enable a network of open space, riparian corridors and park edge roads that provides for:</u> <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>
21.16	Auckland Council	Retain policy IX.3(10).
21.17	Auckland Council	Delete policy IX.3(11).
21.18	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.
32.5	Kāinga Ora	Retain Objective (4) as notified.
34.6	Ngāti Tamaoho	Apply a minimum of 20 metre riparian margin for all waterways especially those to contain walkways / cycleways

Decision on submissions

418. We have addressed these matters in the decision above.
419. In approving PC 50 we have provided a set of precinct provisions that we think appropriately address all of the relevant ecological matters.
420. 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 stormwater and flooding matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
3.1	Peter David Dodd	Provide further flooding information for the wider Slippery Creek Catchment, and include provisions for flooding and future land use for the flood prone area north of Waihoehoe Road - suggests large lots with elevated building platforms and onsite compensation for flooding.
7.1	Oyster Capital	Add new Policy 12 as follows: <u>Policy IX.3(12): Require subdivision and development to be consistent with any approved network discharge consent and supporting stormwater management plan including the application of water sensitive design to achieve water quality and hydrology mitigation.</u>
7.2	Oyster Capital	Amend Standard IX6.6 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) <u>For all other impervious surfaces inert building materials should be used.</u>
7.3	Oyster Capital	Add new Matter of Discretion to IX8.1 as follows: ... <u>(5) Infringements to standard IX6.6 Stormwater Quality</u> <u>(a) Matters of discretion E9.8.1(1) apply.</u>
7.4	Oyster Capital	Add new Assessment Criteria to IX.8.2 as follows: ... <u>(5) Infringement to IX.6.6 Stormwater Quality</u> <u>(a) Assessment criteria E9.8.2(1) apply.</u>
7.12	Oyster Capital	Add a purpose statement for Standard IX.6.5 Maximum Impervious Area within Sub-Precinct B as follows: <u>Purpose: To appropriately manage stormwater effects generated within Sub-Precinct B.</u>
8.3	Dong Leng	Provide further analysis of the effects of minor filling within the floodplains where there could be opportunities to create more usable land without affecting flood levels
8.4	Dong Leng	Assess if a drainage reserve will be required over the overland flow path running immediately adjacent to the eastern boundary of the PPC50 site and if the reserve would need to extend across the boundary into the PPC50 site
8.7	Dong Leng	Amend the stormwater management approach to manage the whole catchment as "passing flows forward"; retain the SMAF 1 retention and detention proposal although preferably implement this via common, publicly owned, attenuation basins; and remove the implementation of water quality treatment for "all roads".
9.1	Kenneth Giffney	Provide further analysis of the effects of minor filling within the floodplains where there could be opportunities to create more usable land without affecting flood levels
9.3	Kenneth Giffney	Amend the stormwater management approach to manage the whole catchment as "passing flows forward"; retain the SMAF 1 retention and detention proposal although preferably implement this via common, publicly owned, attenuation basins; and remove the implementation of water quality treatment for "all roads".
10.1	Chunfeng Wang and Xiaoling Liu	Absorb any adverse effects of the intensive development of the applicant's owned land within that land and do not direct these to the land of adjoining owners within the plan change area, such as 27 Kath Henry Lane, Drury
17.3	Josephine Kleinsman	Upgrade the 900mm culvert on the western edge of the structure plan area

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
17.6	Josephine Kleinsman	Add provisions to implement the two differing impermeable surface area limitations
20.7	Ngāti Te Ata Waiohua	Apply a minimum of a two-treatment train approach for all stormwater prior to discharge to a waterway
20.8	Ngāti Te Ata Waiohua	Require roof capture for reuse and groundwater recharge
21.3	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: <u>Require subdivision and development to be assessed for consistency with any approved network discharge consent and supporting stormwater management plan including the application of water sensitive design to achieve water quality and hydrology mitigation.</u> 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. Any other rules necessary to give specific effect to the SMP during development.
21.4	Auckland Council	Retain application of SMAF 1 to the plan change area.
21.6	Auckland Council	Add a new policy to the following effect: <u>Provide sufficient floodplain storage within the Waihoehoe 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.</u> Insert rules to give effect to this.
21.7	Auckland Council	Add a new policy to the following effect: <u>Ensure that all impervious services are treated through a treatment train approach to enhance water quality and protect the health of stream and marine environments.</u>
21.8	Auckland Council	Amend standard IX.6.6 (1) Stormwater Quality as follows (including a correction to the precinct reference): "The activity rules and standards in E9 apply to development in the Drury Centre <u>Waihoehoe</u> precinct as if the reference to 'high use roads', was were a reference to ' <u>all existing, new, upgraded or redeveloped roads, accessways and carparks</u> ', or other amendments that would achieve the same environmental outcome. Insert new matters of control and discretion, in addition to those in E9, to the effect of: • <u>How the location and design of stormwater treatment assets reduces their operating costs.</u> • <u>The consolidation and community scale of stormwater treatment assets.</u> • <u>The location of stormwater treatment assets where they will be most effective in reducing contaminants.</u>
21.9	Auckland Council	Include a new standard to the effect that: <u>Buildings cannot have exterior materials with exposed surfaces that are made from contaminants of concern to water quality including zinc, copper and lead.</u>
21.15	Auckland Council	Retain policy IX.3(9) and consider whether additional rules are necessary to give effect to this.
28.2	Drury South Limited	Amend Table IX.4.1 by introducing two new discretionary activities: (a) <u>Development that does not comply with Standard IX.6.5 (Stormwater</u>

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		<u>Quality and Flooding</u>); and (b) <u>Subdivision that does not comply with Standard IX.6.5 (Stormwater Quality and Flooding)</u> .
34.7	Ngāti Tamaoho	Apply a minimum of a two-treatment train approach for all stormwater prior to discharge to a waterway
34.8	Ngāti Tamaoho	Require roof capture for reuse and groundwater recharge

Decision on submissions

421. We have addressed these matters in the decision above. However, we also note that Mr Dodds raised a number of concerns about stormwater and the need for a more comprehensive and integrated approach to stormwater management in the Slippery Creek Catchment. We agree and note this is an issue for the Council (Healthy Waters) and the landowners to address jointly.
422. In approving PC 50 we have provided a set of precinct provisions that, in our view, appropriately address the matters of stormwater and flooding.
423. 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 the Plan Change Boundary and Zoning

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
16.1	Britmat Holdings Ltd	Include the property at 1A East Street Drury (currently zoned Future Urban Zone) within the plan change with a zoning of Business - Local Centre Zone to match that of the land adjoining at 200 - 212 Great South Road. Note: Kāinga Ora withdrew its submission relating to 1 East Street
17.5	Josephine Kleinsman	Clarify conflict between the proposed THAB zone on the zoning plan and some of the technical reporting for the plan change being based on both THAB and MHU zones
21.24	Auckland Council	Amend the legend of the zoning plan to delete the reference to MHU zone.
32.1	Kāinga Ora	Approve the plan change, subject to inclusion of sites at 1 and 1A East Street for rezoning (see Attachment Two to the submission). Zone 1 East Street as THAB and 1A East Street as LCZ
32.2	Kāinga Ora	Approve the plan change, subject to: •application of a 22.5m Height Variation Control across the proposed THAB zone (including 1 East St, Drury) (see Attachment Three to submission);

		•application of a 27m Height Variation Control over the extent of the proposed LCZ (including 1A East St, Drury and 200-212 Great South Rd) (see Attachment Three to submission).
32.8	Kāinga Ora	Retain Standard IX.6 (3) with amendment to delete reference to MHU zone which is not identified within the precinct plans, or amend the proposed zonings to reflect MHU zone.

Decision on submissions

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

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

Submissions on Archaeology and Heritage matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
21.31	Auckland Council	Provide a notable tree assessment and schedule any notable trees identified in that assessment.
26.1	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 process
26.2	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
26.4	Heritage New Zealand Pouhere Taonga	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

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

427. In approving PC 50 we have provided a set of precinct provisions that, in our view, appropriately address the relevant archaeological effects raised by PC 50.

428. 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 other infrastructure and servicing matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
5.1	Wendy Hannah	Approve the plan change conditional on existing access rights to 228 Flanagan Road being maintained and access being provided to services and utilities to develop the property in future (note: property is outside PC50 area)
8.8	Dong Leng	Confirm that the water supply network will be extended up to the Waihoehoe Road frontage of 160 Waihoehoe Road and that the wastewater network will also be extended to service this site
14.1	Spark	Consult Spark and the other telecommunication network providers throughout the plan change process and any resource consents to enable development including infrastructure to ensure that telecommunications are recognised as essential infrastructure and additional infrastructure under the NPSUD
14.2	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
14.3	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
14.4	Spark	Consult with Spark and the other telecommunication network providers to ensure funding is available through the infrastructure funding agreements
14.5	Spark	Include telecommunications infrastructure within the triggers for the staged release of development
17.9	Josephine Kleinsman	Reconsider interim wastewater solution as a single pump station with storage that could be upsized as demand increases with a single riser main following the NIMT Railway alignment
23.1	Counties Power Limited	Retain IX.2 Objective 2
23.2	Counties Power Limited	Retain IX.2 Objective 3
23.3	Counties Power Limited	If the proposed collector road shown in the appendices does not change, and if the existing 110kV line remains in-situ, amend plan provisions (including Policy IX.3(1)) to maintain suitable vehicular access to the line for maintenance purposes. Further, maintain appropriate setback for new buildings at all times in accordance with New Zealand Electrical Code of Practice for Electrical Safe Distances, NZECP 34:2001 and the Electricity (Hazards from Trees) Regulations 2003.
23.4	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
23.5	Counties Power Limited	Retain Policy 5
23.6	Counties Power Limited	Amend Policy 6 to include reference to electrical, telecommunications and other infrastructure.
23.7	Counties Power Limited	Retain Policy 7

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
23.8	Counties Power Limited	Add new policy IX.3(12) as follows: <u>Provide for the inclusion of vehicle recharging areas within parking areas and for the ability to upgrade additional spaces for increased demand when required.</u>
23.9	Counties Power Limited	Add new policy IX.3.(13) as follows: <u>Enable the reduction of CO2 emissions by promoting the use of renewable energy in new subdivisions and development.</u>
23.10	Counties Power Limited	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.
23.11	Counties Power Limited	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 with minimum 800mm allowance for berms to ensure that there is acceptable width for installation of underground electrical reticulation.
23.12	Counties Power Limited	Amend IX.10 Appendix 1 Road Cross Section Details to provide a minimum 800mm berm width if overhead lines are required to be undergrounded in the road
24.1	Ministry of Education	Amend Objective IX.2 (3) as follows: Development is supported by appropriate infrastructure (<u>including education infrastructure</u>).
24.2	Ministry of Education	Amend Policy IX.3 (6) as follows: Ensure that development in Drury East Precinct is coordinated with supporting <u>education infrastructure</u> , stormwater, wastewater and water supply infrastructure, having particular regard to the capacity of the Fitzgerald culvert and culverts under Great South Road.
24.3	Ministry of Education	Amend IX.8.1 Matter of discretion 1)(a) Development of public and private roads as follows: (a) Location and design of the collector streets, local streets and connections with neighbouring sites (<u>including schools</u>) to achieve an integrated street network.
24.4	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 (<u>including provision of schools</u>); and
24.5	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 (<u>including potential future school sites</u>) and support the integrated completion of the network within the precinct over time;
24.6	Ministry of Education	Amend IX.8.2 Assessment criteria 1)(h) for Design of Roads as follows: (h) Whether the layout of the street network provides a good degree of accessibility and supports a walkable street network, <u>including to existing</u>

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		<u>schools or sites designated for this purpose.</u> 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;

Decision on submissions

429. In approving PC 50 we have provided a set of precinct provisions that, in our view, appropriately address the other infrastructure issues raised by PC 50.
430. 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 Noise and Vibration matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
8.1	Dong Leng	Undertake further consideration in regard to the interface between the land forming PPC50 and the property at 160 Waihoehoe Road to reduce any potential dominance that activities provided for by the PPC50 may have on the property should the zoning not be extended to cover this land. Undertake further assessment as to how to mitigate scale, form and character effects on this property.
22.53	Auckland Transport	Add a new policy as follows: Avoid the establishment of activities sensitive to noise adjacent to arterial roads, unless it can be demonstrated that potential adverse effects from and on the corridor can be appropriately mitigated.
22.54	Auckland Transport	Add a new standard to IX.6 to require that the assessed incident noise level to the façade of any building facing an arterial road that accommodates a noise-sensitive space is limited to a given level (Auckland Transport to confirm appropriate level). As a consequential amendment, add a new rule to Activity table IX4.1 as follows: (X) Development that does not comply with IX.6.X Noise Mitigation - RD
22.55	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.
27.1	Matthew Royston Kerr	Decline the plan change on the basis of reverse sensitivity effects of the THAB zone on adjacent FUZ land; increased traffic effects along Waihoehoe Road with insufficient provisions for the upgrade of the corridor; inefficiency and uncertainty with regard to the rezoning and urban development of the remaining FUZ land in the Opaheke Drury area.
30.1	KiwiRail	Amend IX.1 Precinct Description to add: <u>The North Island Main Trunk railway line, which runs the entire length of the Precinct's western boundary is protected from reverse sensitivity effects by ensuring that new buildings and activities will be designed and located to manage any adverse effects</u>
30.2	KiwiRail	Add new Objective IX.2(5) as follows: <u>(5) The NIMT is protected from adverse effects, including reverse sensitivity effects, of subdivision, use and development by.</u>

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		<p>1. setbacks within which incompatible activities will be managed;</p> <p>2. standards designed to protect noise sensitive receiver's health and amenity.</p>
30.3	KiwiRail	<p>Add new policy IX.3(12) as follows:</p> <p><u>(12) Adverse effects on the operation of the regionally significant NIMT and on the health and safety of adjacent development and noise sensitive receivers are managed through setbacks and performance standards.</u></p>
30.4	KiwiRail	<p>Insert new activity (A5) to Activity table IX.4.1 as set out below and renumber existing (A5) and (A6) to (A6) and (A7).</p> <p>(A5) Development that does not comply with IX6.7 Setback from NIMT and IX6.8 Noise Sensitive Activities within 100m of a Rail Network Boundary - RD</p>
30.5	KiwiRail	<p>Add to IX.6 Standards a new standard IX.6.7 as follows:</p> <p><u>IX.6.7 Setback from NIMT</u></p> <p><u>Buildings must be setback at least 5 metres from any boundary which adjoins the NIMT railway line.</u></p>
30.6	KiwiRail	<p>Add to IX.6 Standards a new standard IX.6.8 to manage potential human health effects from rail noise and vibration where buildings containing noise sensitive activities are located adjacent to (within 100m of) the railway corridor. See submission for full proposed wording.</p>
30.7	KiwiRail	<p>Insert new matters of discretion in IX.8.1 as follows:</p> <p>(4) Setback from NIMT and Noise Sensitive Activities within 100m of a Rail Network Boundary</p> <p>Effects from non-compliance with Standards IX.6.7 and IX.6.8</p>
30.8	KiwiRail	<p>Insert new assessment criteria in IX.8.2 as follows:</p> <p>(4) Setback from NIMT</p> <p>(a) The size, nature and location of the buildings on the site.</p> <p>(b) The extent to which the safety and efficiency of railway operations will be adversely affected.</p> <p>(c) The outcome of any consultation with KiwiRail.</p> <p>(d) Any characteristics of the proposed use that will make compliance unnecessary.</p> <p>(5) Noise Sensitive Activities within 100m of a Rail Network Boundary</p> <p>(a) Whether the activity sensitive to noise could be located further from the railway corridor</p> <p>(b) The extent to which the noise and vibration criteria are achieved and the effects of any non-compliance</p> <p>(c) The character of and degree of amenity provided by the existing environment and proposed activity.</p> <p>(d) The reverse sensitivity effects on the railway corridor and the extent to which mitigation measures can enable their ongoing operation, maintenance and upgrade.</p> <p>(e) Special topographical, building features or ground conditions which will mitigate vibration impacts;</p> <p>(f) The outcome of any consultation with KiwiRail.</p>

Decision on submissions

431. We have comprehensively addressed these matters in the decision above.

432. In approving PC 50 we have provided a set of noise provisions in relation to both rail and road (and not imposed vibration controls) that, in our view, appropriately address the matters of concern to submitters.
433. We are satisfied that, based on the issues and evidence before us, the matters relating to noise and vibration have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address the noise and vibration issues, 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
19.2	The Ministry of Housing and Urban Development	Enable further open space through zoning (primarily refers to the PC49 area)
21.19	Auckland Council	Amend policy IX.3(4) to read as follows: (4) In addition to matters (a)-(c) of Policy E38.3.18, ensure that the location and design of publicly accessible open spaces contributes to a sense of place for Drury East, by incorporating any distinctive site features and integrating with the stream network. <u>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.</u>
21.20	Auckland Council	Include indicative open spaces in the precinct plan as shown in Attachment 1 to the submission.
24.7	Ministry of Education	Amend plan change to ensure there is provision of appropriate public open space to support the surrounding community.
25.1	Leith McFadden	Zone areas for parks and public space

Decision on submissions

434. We have addressed these matters in the decision above.
435. In approving PC 50 we have provided a set of precinct provisions that, in our view, appropriately address the relevant open-space issues raised by PC 50.
436. We are satisfied that, based on the issues and evidence before us, the matters relating to open-space issues have been appropriately addressed. On this basis we **accept** or **accept in part** those submissions which supported or sought changes which we have accepted to address open-space issues, and **reject** those submissions which sought changes to the precinct provisions which we have not made.

Submissions on sub-precincts

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
7.5	Oyster Capital	Insert a precinct plan that shows the boundaries of Sub-Precinct A and Sub-Precinct B. Sub-Precinct B applies to the northern portion of the precinct and applies a lower impervious area to manage the volume of stormwater runoff.
21.23	Auckland Council	Amend the precinct plan to include the sub-precincts referred to in the text of the precinct. This includes any additional changes necessary to respond to the council's other submission points.
29.5	The New Zealand Transport Agency	Consider whether Figure A22 - Stormwater Management Plan for 116 Waihoehoe Road and surrounds, from Appendix A, Tonkin and Taylor report Proposed Stormwater Management Areas Drury East - Waihoehoe Precinct Plan Change Area, needs to be included to indicate the location of stormwater management sub-precincts A and B.
32.6	Kāinga Ora	Retain Policy (9) with amendment if necessary to clarify the reference made to sub-precinct B which is not identified on the precinct plans
32.9	Kāinga Ora	Retain Standard IX.6(4) with amendment if necessary to clarify the reference made to sub-precinct B which is not identified on the precinct plans
32.12	Kāinga Ora	Retain Standard IX.6.5 with amendment if necessary to clarify reference to Sub-precinct B which is not identified on the precinct plans
32.14	Kāinga Ora	Retain Assessment Criteria IX.8.2 (3) with amendment if necessary to clarify reference to Sub-precinct B which is not identified on the precinct plans

Decision on submissions

437. We have addressed the issue of sub-precincts (and zoning) in the decision above.
438. In approving PC 50 we have provided for the sub-precincts (and zoning) as set out in the Applicant's Reply statement.
439. We are satisfied that, based on the issues and evidence before us, that we have provided for the appropriate sub-precincts (and zoning). 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 50 area, and **reject** those submissions which sought changes to the sub-precincts which we have not made.

Submissions on notification provisions

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
17.7	Josephine Kleinsman	Amend the notification provisions so that there is no extension of non-notification presumption, particularly for restricted discretionary activities
21.21	Auckland Council	Amend the IX.5 Notification rules (1) to (3) which require non-notification to apply the normal tests for notification under the relevant sections of the RMA. Also correct the numbering to IX.5.
22.9	Auckland Transport	Amend the IX.5 Notification rules (1) to (3) which require non-notification to require the normal tests for notification under the relevant sections of the RMA.
29.17	NZTA	Either delete notification provision IX.5(3); or amend IX.5(3) to ensure that Activity E11.4.1(A1) (new public or private roads) and infringements

		to standards IX6.2 and 6.3 (transport upgrades and trip generation limits) are subject to normal notification tests.
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Decision on submissions

440. We have addressed these matters in the decision above.
441. In approving PC 50 we have provided for the 'standard' notification tests as set out in the RMA.
442. 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 Other / General Matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
7.13	Oyster Capital	Amend a number of naming, spelling and other minor errors throughout the proposed Waihoehoe Precinct provisions as shown in track changes in Attachment 1 to the submission
7.14	Oyster Capital	Amend Policies 4 and 6 to replace "Drury East" with "Waihoehoe Precinct"
7.15	Oyster Capital	Amend IX.4 Activity table introduction as follows: <u>Activity Table IX.4.1 specifies the activity status of district land use activities and development in the Drury East Precinct pursuant to section(s) 9(3) of the Resource Management Act 1991 and the activity status for subdivision pursuant to section 11 of the Resource Management Act 1991.</u> Activity Table IX.4.1 specifies the activity status of district land use activities and development in the Waihoehoe Precinct pursuant to section(s) 9(2) / 9(3) / 11 / 12(1) / 12(2) / 12(3) / 13 / 14 / 15 of the Resource Management Act 1991.
20.12	Ngāti Te Ata Waiohua	Reflect sustainable development in the design and outcomes
21.5	Auckland Council	Retain policy IX.3(6), however amend the policy to refer to the Waihoehoe Precinct (rather than Drury East).
21.22	Auckland Council	Ensure that the consent categories in IX4.1 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.
22.3	Auckland Transport	Amend IX.1 Precinct Description as follows: The transport network in <u>the wider Drury East area as defined on Precinct Plan 2</u> will be progressively upgraded over time to support development in the wider area. The precinct includes provisions to ensure that <u>the any subdivision and development of land for business and housing is coordinated with the funding and construction of the transport network upgrades in order to avoid, remedy and mitigate adverse effects on the local and wider transport network necessary to support it.</u>
22.52	Auckland Transport	Make any necessary amendments to PPC 50 as required to achieve a consistency in approach, including in relation to objectives, policies, rules,

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter
		methods and maps, across the private plan changes within the Drury growth area
31.2	Karaka and Drury Limited	Do not amend PPC 50 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.
32.3	Kāinga Ora	Retain the Waihoehoe Precinct description subject to: • clarification of the identified inconsistencies between the precinct plans and provisions; • any consequential changes resulting for Kāinga Ora's submission.
32.7	Kāinga Ora	Amend I1.1(1) Notification as follows: "...development of the indicative collective collector road..."
34.11	Ngāti Tamaoho	Reflect sustainable development in the design and outcomes

Decision on submissions

443. In approving PC 50 we have provided a set of precinct provisions that we think appropriately address the general matters raised by submitters.
444. 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

445. 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.²³⁹ This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes.²⁴⁰
446. In our view this decision report, which among other things addresses the modifications we have made to the provisions of PC 50, satisfies our section 32AA obligations.

PART 2 OF THE RMA

447. 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 50 for the reasons we have set out above, and provide in summary below.

²³⁹ RMA, section 32AA(1)(a)

²⁴⁰ RMA, section 32AA(1)(c)

448. PC 50 enables urban development of a site that:
- (a) Is located adjacent to the existing urban area, and PC 48 (which we have approved), and the consented Drury Central rail station, and forms a logical and desirable connection with Drury South, which is also zoned for urban purposes (mostly employment) and is currently under development; and
 - (b) Is zoned FUZ and hence has been identified by Council for future urban purposes in a manner that:
 - Takes advantage of its strategic location on the transport network;
 - Will contribute, along with the land subject to PC 48 and 49, 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 50 (and PCs 48 and 49).
449. PC 50 provides for the sustainable management of the PC 50 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.
450. We find that PC 50 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 RMA and has had particular regard to the other matters listed in section 7 RMA.
451. Consultation has been undertaken with iwi and we accept Oyster has endeavoured to address concerns expressed in submissions, particularly those with respect to consultation and participation, landscaping, ecology and stormwater issues. We are satisfied that PC 50 does not raise any issues in terms of section 8 RMA.

OVERALL DECISION

452. That pursuant to Schedule 1, Clauses 10 and 29 of the Resource Management Act 1991, that Proposed Plan Change 50 to the Auckland Unitary Plan (Operative in Part) be **approved**, subject to the modifications as set out in this decision.
453. Submissions on the plan change are accepted, accepted in part or refused in accordance with this decision.
454. In addition to the reasons set out above, the overall reasons for the decision are that PC 50:
- is supported by necessary evaluation in accordance with section 32 and s32AA;
 - gives effect to the National Policy Statement on Urban Development;
 - gives effect to the National Policy Statement for Freshwater Management;

- gives effect to the Auckland Regional Policy Statement; and
- satisfies Part 2 of the RMA.

Greg Hill - Chairperson

- for Commissioners Karyn Kurzeja and Mark Farnsworth



29 April 2022

APPENDICES

The Precinct Provisions are attached as Appendix 1