

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



Proposed Private Plan Change 103 to the Auckland Unitary Plan

Proposal

To rezone approximately 107ha of land at Silverdale West from the Future Urban Zone to Business - Light Industry Zone and to introduce a new Silverdale West Industrial Precinct.

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

Private Plan Change:	Private Plan Change 103 - Silverdale West Industrial Area
Applicants:	Fletcher Development Limited and Fulton Hogan Land Development (Requestor)
Hearing commenced:	Wednesday 2 April 2025
Hearing panel:	Karyn Kurzeja (Chairperson) Vaughan Smith Rebecca Skidmore
Appearances:	<p><u>For the Applicants:</u></p> <ul style="list-style-type: none"> - Janette Campbell and Elliot Maassen, Legal - Greg Dewe, Corporate - Hamish McLauchlan, Corporate - Tim Heath, Economics - Frank Pierard, Urban Design - Julia Wick, Landscape - Ellen Cameron, Archaeology - Philip Osborne, Infrastructure funding - Trevor Lee-Joe and Don McKenzie, Transport - Sam Blackbourn, Infrastructure - Robert White, Wastewater - Graham Ussher, Ecology - Karl Cook and Ross Cooper, Planning <p><u>For the Rodney Local Board:</u></p> <ul style="list-style-type: none"> - Louise Johnston, Deputy Chairperson

For the Submitters:

Tim Van Ameringen - online

Auckland Council (as Submitter) represented by:

- Michele Perwick - Planner
- Carl Ackroyd - Ecologist

Auckland Transport represented by:

- Matthew Allan and Shamika Pujara, Legal
- Robert Lee, Corporate
- David Smith, Traffic
- Catherine Heppelthwaite, Planning

NZ Transport Agency represented by:

- Nicola de Wit - Legal
- Kathryn King - Corporate
- Graham Norman - Transport
- Greg Akehurst – Economics
- Lesley Hopkins - Planning

Watercare Services Limited represented by:

- Sian Kilgour, Legal
- Andrew Deutschle, Corporate
- Anna Jennings, Corporate
- Jenny Vince, Planning

Mammoth Ventures Limited and DP Boocock No 2 Trustee Limited represented by:

- Burnette O'Connor, Planning

For Council:

- Peter Vari, Team Leader
- Dave Paul, Planner
- Craig Richardson, Traffic Engineer
- July Zhou, Development Engineer
- Gerard McCarten, Parks
- Bridget Gilbert, Landscape Architect
- Kirsty Myron, Ecologist
- Lee Te, Kedan Li and Danny Klimetz, Stormwater
- Rebecca Ramsay, Heritage
- Ian Kloppers, Funding and Finance

On-Call:

- Nicole Li, Geotech
- Cara Francesco, Heritage

	<u>Hearings Advisor:</u> - Chayla Walker
Hearing adjourned	4 April 2025
Commissioners' site visit	21 March 2025
Hearing Closed:	16 April 2025

Introduction

1. The private plan change request by Fletcher Development Limited and Fulton Hogan Land Development (“**the Requestor**”) was made under Clause 21 of Schedule 1 to the Resource Management Act 1991 (“**RMA**”) and, following receipt of all further information, Private Plan Change 103 (“**PC 103**”) was accepted for processing by Auckland Council (“**the Council**”) under Clause 25 of Schedule 1 of the RMA on 13 June 2024.
2. A report in accordance with section 32 and 32AA (in relation to the changes sought) of the RMA was prepared 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 Council by Independent Hearing Commissioners Karyn Kurzeja (Chairperson), Vaughan Smith and Rebecca Skidmore, appointed and acting under delegated authority under sections 34 and 34A of the RMA.
4. The Commissioners have been given delegated authority by the Council to make a decision on PC 103 to the Auckland Council Unitary Plan Operative in Part (“**AUP(OP)**”) after considering all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing and evidence presented during and after the hearing of submissions.
5. PC 103 is a private plan change that has been prepared following the standard RMA Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).
6. The plan change was publicly notified on 12 July 2024 following a feedback process involving Iwi, as required by Clause 4A of Schedule 1. Notification involved a public notice as well as letters to directly affected landowners and occupiers alerting them to the plan change. The latter step was aimed at ensuring that landowners and occupiers of properties affected by potentially significant changes were made aware of the proposed changes.
7. The submission period closed on 9 August 2024. A summary of submissions was notified for further submissions on 13 September 2024. A total of 20 submitters made 124 primary submission points and 6 further submitters made 74 further submission points on the plan change.
8. Nineteen of the 20 submissions were received on time. There was one late submission. This was an amendment to a submission that was lodged on time by

New Zealand Transport Agency Waka Kotahi (“NZTA”), but which the submitter requested be amended. The late submission was accepted under clause 37(a) of the RMA on 21 August 2024 by the Manager Planning - Regional, North, West and Islands, under delegation.

SUMMARY OF THE PLAN CHANGE

9. The proposed plan change is described in detail in the s42A Hearing Report. A summary of key components of the plan change is set out below.
10. PC 103 as notified, sought a change in zone of approximately 107ha of Future Urban zoned land at Silverdale West to Business - Light Industry Zone.
11. In addition to rezoning the land, PC 103 seeks to introduce a new precinct, referenced as the Silverdale West Industrial Precinct, to Chapter I Precincts of the AUP(OP). This precinct would overall rely on the existing provisions of the AUP(OP) but would also introduce several site-specific objectives, policies, activities and standards that reflect the desired outcomes for the area.
12. The primary purpose of the Precinct as notified is:

“to enable light industrial activities proximate to the urban growth in the wider northern areas of Auckland and the state highway transport network. Light industrial land use and subdivision activities are largely enabled through the underlying zoning, however the delivery of these within the precinct is closely aligned with the delivery of transport and other infrastructure upgrades needed to support the development of the precinct. Expected landscape amenity, stormwater and ecological outcomes are also articulated within the precinct and respond to mana whenua values.”
13. PC 103 also proposes to make the following amendments to the AUP(OP):
 - Identifies four trees for inclusion within Chapter 3 Overlays – D13 Notable Tree Overlay Schedule 10: Notable Trees and on the Planning Maps.
 - Adds the area to the Stormwater Management Control Area – Flow 1 on the Planning Maps.
 - Deletes the Macroinvertebrate Community Index – Rural notation from the planning maps across the proposed Silverdale West Precinct and replaces it with the Macroinvertebrate Community Index – Urban notation.
 - Adds an area of native Kānuka shrubland vegetation to the SEA Overlay.
14. The reasons given by the Requestor for the PC 103 Request include the following:

“The purpose of the PPC is to enable the provision of additional light industrial land in Silverdale West. The Applicants are the majority owners of the Plan Change area and intend to develop their landholdings in a manner consistent with the proposed zoning framework, which this PPC request will enable.

The PPC is consistent with the objectives of the Council's planning documents and, in this regard, the reasons for the PPC are justified and consistent with sound resource management practice.”¹

15. In the Requestors' Joint Statement of Evidence (Planning) the plan change is summarised as²:

“The Silverdale West Private Plan Change (PC103) request proposes to rezone land within the Future Urban Zone to Business – Light Industry Zone and to establish the Silverdale West Precinct over the land in order to align future subdivision and development with the provision of the necessary transport wastewater and water supply and infrastructure, as well as landscape, stormwater management and ecological outcomes”

“The overarching approach behind the development of PC 103 has been to adhere to the Structure Plan and rely on the existing operative provisions of the Auckland Unitary Plan – Operative in Part (AUP) to the extent possible”

16. The final version of the proposed precinct provisions was provided along with the reply submissions from the Requestor on 11 April 2025.

THE SITE AND SURROUNDING ENVIRONMENT

17. The Requestor's 32 Analysis Report discussed the plan change area and set out the property details of the land included within PC 103. The s42 Hearing Report included a description of the site and the surrounding area³.
18. The plan change area encompasses approximately 107.35 hectares of Future Urban zoned land just southwest of the Silverdale town centre (Silverdale West). Silverdale West is located in the North of Auckland some 30km (30 minutes drive) from Auckland's City Centre.
19. The plan change area is a physically well-defined area located between SH1 to the east and Dairy Flat Highway to the west. Agricultural land currently borders the south of the site, although that land also has a Future Urban zoning. The plan change area is generally triangular in shape, with individual land parcels creating a geometric pattern of shelterbelts and other farm boundary definitions.
20. A locality plan of the plan change area is included as **Figure 3** below.

¹ Silverdale West Plan Change Section 32 Analysis Report, Section 6.2, page 16

² Joint SoE of Messrs Cook and Cooper, paragraph 17 and 32.

³ S42A Hearing Report, paragraphs 1 -7

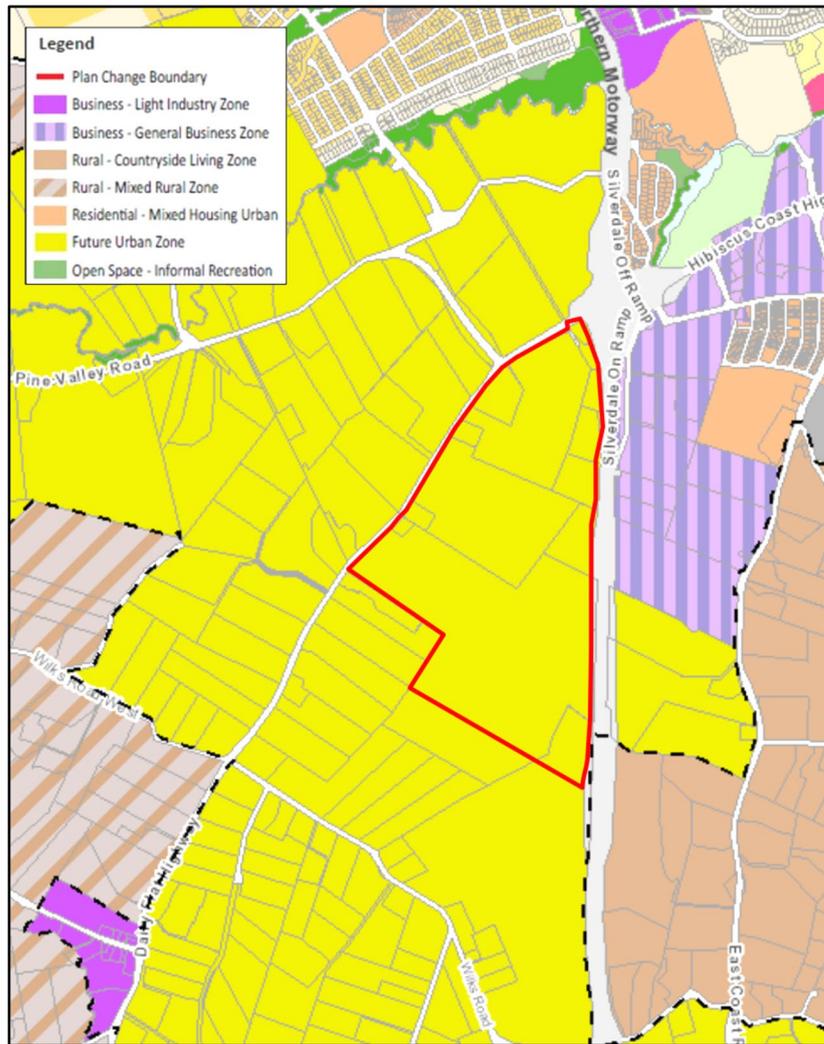


Figure 3 – Zoning Map of the Plan Change area.

21. The current land use within the plan change area is predominantly farming activity and the land is covered in pastoral grasslands, although there are some consented yard activities on smaller sites located in the east, adjoining the SH1 motorway. Various residential and farm buildings are present across the remaining plan change area. Smaller landholdings (especially along Dairy Flat Highway) have been more intensively managed as residential and lifestyle blocks.
22. The landform is a gently sloping valley with a network of watercourses which consists of small headwater streams and four permanent watercourses with the main watercourse, John Creek, being a permanent stream that flows south-north through the site. Two streams flow into this from the east and another stream flows from the southern boundary and joins John Creek at the southern end of the area. John Creek is not fenced, and it is highly degraded. Likewise, the smaller intermittent streams and ephemeral tributaries are in pasture areas, and consequently are highly degraded due to a lack of riparian cover and severe stock damage to stream beds.
23. Agricultural and past farming activities have removed almost all indigenous vegetation, although there are two defined clusters towards the northern extent of the plan change area. There is one area of Kānuka shrubland that is proposed to be identified as a Significant Ecological Area within the PC 103 area.

24. Much of the PC 103 area is viewed from SH1 and the surrounding elevated land east of the motorway.
25. SH1 adjoins the eastern boundary of the plan change area and can be accessed via the Silverdale Interchange. SH1 provides connections to Auckland, Silverdale, Warkworth, Wellsford and the Northland region. Dairy Flat Highway runs along the western boundary of the site and connects to SH1 and the Hibiscus Coast Highway in the north via the Silverdale Interchange.
26. The Hibiscus Coast Station and Park and Ride is located 450m from the northern extent of the site. This provides access to a number of bus routes to locations including Britomart, Waiwera, Gulf Harbour, Albany, Orewa and Millwater. The 986 bus-route connects the Hibiscus Coast Bus Station with the Albany Bus Station via Dairy Flat Highway. A bus route operation connecting the rapidly growing Milldale Precinct with the Hibiscus Coast Bus Station via Argent Lane commenced in November 2022.
27. In the wider context, the plan change area forms part of the extensive growth area in Auckland's North. In particular, the wider Wainui, Silverdale and Dairy Flat Future Urban zoned area is approximately 3,500ha extending from Upper Orewa in the north to Dairy Flat in the south.
28. In terms of land use and built form in the immediate locality, the plan change area is located directly southwest of the Silverdale town centre. There is an existing employment area (industry and general business zoning) and SH1 separating the plan change area from the town centre. The Milldale development, a new urban community, is located 1400m to the north of the plan change area. To the west and south of the plan change area is Future Urban zoned land. The land to the south is identified within Stages 2 and 3 of the Silverdale West Structure Plan. The land to the west is yet to go through a structure planning process however, the Council's draft spatial strategy for the north has indicated that this will be a high-density residential area with a supporting town centre.
29. The land within the plan change area is currently not serviced for reticulated water and wastewater and it does not include stormwater infrastructure. A very small part of the PC 103 area in the west near Pine Valley Road is subject to Designation 1480. The area is also subject to two recently decided Notices of Requirement for new and upgraded urban arterial road corridors with active mode facilities:
 - NoR8: North: Upgrade to Dairy Flat Highway between Silverdale Interchange and Durey Road in Dairy Flat (Auckland Transport). This affects the area immediately east of Dairy Flat Highway.
 - NoR4: State Highway 1 Improvements – Albany to Ōrewa and Alterations to Existing Designations 6751, 6760, 6759, 6761 also affects the PC 103 area immediately west of the existing SH1 motorway (NZTA).
30. At the date of this decision, NoR8 has been confirmed as Designation 1479, but aspects of the decision on NoR4 have been appealed. Three property specific appeals have been received, one related to a property north of the Silverdale Interchange, one at the southern end of Highgate Parkway and the other at Wright

Road, all outside the PC 103 area⁴. None of the appeals are therefore relevant to PC 103.

HEARING PROCESS

31. We directed the pre-circulation of expert evidence to provide all parties involved the opportunity to have read and considered any legal submissions, evidence or statements in advance of the hearing, and to assist the Hearing Panel in understanding the case being presented.
32. The s42A Hearing Report, released on 11 March 2025, recommended that the Hearing Panel approve PC 103, with modifications. The Reporting Officer for the Council, Mr Dave Paul stated⁵:

“Having considered all of the information provided by the Requestor, carried out an assessment of effects, reviewed all relevant statutory and non-statutory documents and made recommendations on all submissions, and subject to further evidence on matters set out in Section 9 above, I recommend that PC103 should be approved with modifications including the various modifications to the precinct provisions (including the precinct plan) that are discussed in this report. I have identified where further information/evidence is needed from the Requestor and submitters, and this may result in further modifications to the precinct provisions (including the precinct plan).

Based on the PC103 Request documentation (including further information and assessment prior to notification) presented by the Requestor and the submissions and further submissions received, and having regard to the following planning instruments, it is my view that PC103 would (subject to the recommended modifications set out in Attachment AR1):

- *assist the council in achieving the purpose of the RMA;*
- *give effect to the NPS-UD, NPS-FM;*
- *give effect to the Auckland Unitary Plan - Regional Policy Statement;*
- *be consistent with the Auckland Unitary Plan - Regional and District provisions;*
- *be consistent with the Auckland Plan and the FDS;*
- *be consistent with the Silverdale West Dairy Flat Industrial Area Structure Plan 2020.”*

33. Mr Paul also provided an Addendum s42A Hearing Report on 10 March 2025 which was prepared to meet Direction 2 and considers the changes proposed to PC 103 as

⁴ Statement of Evidence of Ms Hopkins, paragraph 35

⁵ Section 42A Report at paragraphs 417 - 418

notified by the Requestor and should be read in conjunction with the Primary s42A Hearing Report. In the Addendum s42A Hearing Report Mr Paul stated⁶:

“As a result of my assessment in this Addendum S42A Report my recommendations on the submissions addressed remains the same as that in my Primary s42A Report, except in respect of Watercare submission 19.2 which I now recommend be accepted in full rather than in part as stated in my Primary s42A Report.”

34. Prior to the hearing, the Commissioners undertook a joint site visit on 21 March 2025 to the subject site and the local surroundings. An additional joint site visit was undertaken on 30 April 2025, after the hearing was closed.

TABLED HEARING STATEMENTS

35. We received a tabled Hearing Statement of Evidence from Ms Burnette O’Connor on behalf of Mammoth Ventures Limited and DP Boocock No 2 Trustee Limited on 25 March 2025.

LOCAL BOARD COMMENTS

36. Comments on PC 103 have been received from the Rodney Local Board. Ms Louise Johnston, the Deputy Chair of the Rodney Local Board presented a summary of the Local Board’s feedback to the Hearing Panel from its meeting of 20 November 2024 when the Rodney Local Board resolved as follows:
- a) *whakarite / provide the following local board views on Private Plan Change 103 to rezone approximately 107ha of land at Silverdale West from Future Urban Zone to Business - Light Industry Zone and to introduce a new precinct.*
 - i) *recognise the need for well-planned business and industrial zones within the Rodney Local Board area and acknowledge that large developers have the capacity to deliver well planned developments*
 - ii) *express concern that for the Dairy Flat subdivision there [are] now several unplanned, industrial yards consented in the Future Urban areas at Wilks Road and Postman Road as these have cumulative effects on the rural character of the area*
 - iii) *request that Private Plan Change 103 is declined or amended due to the following views:*
 - A) *is an out of sequence development and does not align with Auckland Council’s Future Development Strategy*
 - B) *impacts on congestion and traffic safety, if Private Plan Change 103 is consented in its current form will impact negatively on the already over capacity motorway network between Silverdale and Albany including the Silverdale interchange*
 - C) *creates congestion on the major transport corridor between State Highway 1 and State Highway 16 which serves inter regional transport as a designated alternative route between Auckland and Northland*

⁶ Section 42A Addendum Report at paragraph 48

when the dome valley is closed. This transport corridor also connects Helensville to the Silverdale interchange, Pine Valley Road, Dairy Flat Highway, Hibiscus Coast Highway and State Highway 1 which will all be impacted by the proposed development

- D) requires developer funded transport infrastructure for an increased public transport service to the proposed industrial area, as the current bus service along Dairy Flat Highway from Hibiscus Coast Station to Albany is not an hourly service and does not operate in the weekends. There is no current funding in Auckland Transport's budget to increase this service, therefore public transport to the proposed industrial area will not be a viable option for employees and this will result in further congestion at the Silverdale interchange and along Dairy Flat Highway*
 - E) Hibiscus Coast Station is within a walkable catchment to the proposed industrial area but there is no pedestrian or safe cycling access across the Silverdale interchange and the developers are not proposing to fund this infrastructure*
 - F) Private Plan Change 103 does not include a contribution towards the future Wilks Road motorway ramps which form part of the supporting growth integrated transport infrastructure and will be served by this industrial area*
 - G) proposed timing of the transport infrastructure to be funded by the developer such as signalling the Pine Valley and Dairy Flat Highway intersection needs to be revised and delivered at the start of the development if Private Plan Change 103 is granted*
 - H) Watercare does not have the capacity to connect the proposed industrial area and therefore the developer and the local board do [not] support temporary waste and water solutions where waste is trucked off site.*
 - I) full integrated storm water catchment planning has not been completed for Dairy Flat including how this development will impact the flood risk for the wider Dairy Flat and Silverdale areas*
 - J) restrictions should be placed on the types of industry allowed so to minimise effects on nearby residential areas and flight paths from North Shore Airport*
 - K) road widths within the light industrial area should be assessed to enable access for larger vehicles and oversized truck movements, for example vehicle testing services that may be located in the area*
 - L) effects on at-risk species (including migratory birds) need to be assessed and mitigated*
- b) kopou / appoint a local board member L Johnston to speak to the local board views at a hearing on Private Plan Change 103*
 - c) tautapa / delegate authority to the chairperson of the Rodney Local Board to make a replacement appointment in the event the local board member appointed in resolution (b) is unable to attend the private plan change hearing."*

37. To the extent we are able, and in the context of submissions to PC 103, we have had regard to the views of the Local Board.

RELEVANT STATUTORY PROVISIONS CONSIDERED

38. 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 s42A Hearing Report⁷.
39. The Requestor, in their plan change request dated 17 May 2024 provided an evaluation pursuant to s32 of the RMA, and the additional information (Clause 23) requested by the Council.
40. We do not need to repeat content of the Requestors' plan change request and s32 assessment report in any detail, as we accept the appropriate requirements for the formulation of a plan change have been comprehensively addressed in the material before us. However, in the evidence and at the hearing, we note that the Requestor proposed several changes to the plan change provisions in response to concerns raised by the Council in the interim s42A Hearing Report and the submissions received. A s32AA assessment was provided as a basis for the additional changes being sought.
41. We noted that the s32 assessment report clarifies that the analysis of the 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 103 has been developed in accordance with the relevant statutory requirements.
42. Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions, while clause 29 (4) requires us to consider the plan change and to give reasons for (in this case) approving it. This decision gives effect to those clauses of the RMA. The decision must also include a further evaluation, in accordance with section 32AA of the RMA, of 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 changes.
43. In our view this decision, which among other things, addresses the modifications we have made to the provisions of PC 103, satisfies our section 32AA obligations.

National Policy Statements

44. Pursuant to Sections 74(1)(ea) and 75 of the RMA the relevant national policy statements ("**NPS**") must be considered in the preparation, and in considering submissions on PC 103. Specifically, this plan change must "give effect" to the relevant NPS. We address this in this decision.

⁷ Section 42A Report at Section 4

45. Consideration has been had by all parties as to whether the following NPS are relevant to the assessment of PC 103.
- The National Policy Statement on Urban Development 2020 – updated May 2022
 - National Policy Statement on Freshwater Management 2020
 - New Zealand Coastal Policy Statement 2010
 - National Policy Statement for Highly Productive Land 2022
 - National Policy Statement for Indigenous Biodiversity 2023.
46. A summary of each NPS is now set out below.

National Policy Statement on Urban Development 2020, updated May 2022

47. The National Policy Statement on Urban Development (“**NPS-UD**”) came into force on 20 August 2020 and replaced the National Policy Statement on Urban Development Capacity 2016. It applies to all local authorities that have all or part of an urban environment within their District. Auckland City is listed as a “Tier 1” local authority. The NPS-UD was a response to the housing crisis in New Zealand and the need to rapidly build more homes.
48. The NPS-UD promotes intensification within urban environments, such as Auckland, as a means of increasing housing supply, supporting competitive land markets by providing sufficient development capacity to meet the different needs of people and communities and improving affordability to create ‘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. All parties agree that the NPS-UD is relevant to PC 103.

National Policy Statement on Freshwater Management 2020

49. The National Policy Statement for Freshwater 2020 (“**NPS-FM**”) provides local authorities with updated direction in the form of objectives and policies for how they should manage freshwater under the RMA. In the case of PC 103, the NPS-FM is of direct relevance, and Ms Myron (Council’s Ecologist) considers that PC 103 needs to address the issue of some streams and wetlands which are proposed to be reclaimed within the PC 103 area in order to show how the provisions of the NPS-FM are being addressed.

New Zealand Coastal Policy Statement 2010

50. The New Zealand Coastal Policy Statement 2010 (“**NZCPS**”) guides councils in their day-to-day management of the coastal environment. The NZCPS is the only compulsory NPS under the RMA.
51. John Creek, which drains the PC 103 area, flows into the Weiti Estuary and then to the Hauraki Gulf. While the PC 103 area is not within the coastal environment, it does

drain to the upper reaches of the Weiti Estuary. We therefore consider that the NZCPS is relevant to PC 103.

National Policy Statement for Highly Productive Land 2022

52. The National Policy Statement for Highly Productive Land 2022 (“**NPS-HPL**”) provides direction to improve the way highly productive land is managed under the RMA. The NPS-HPL provides guidance on how to manage the subdivision, use and development of this non-renewable resource.
53. The NPS-HPL does not apply to existing urban areas and land that Councils have identified as future urban zones in district plans. As the plan change area was zoned Future Urban on 17 October 2022, the provisions of the NPS-HPL do not apply.

National Policy Statement for Indigenous Biodiversity 2023

54. The National Policy Statement for Indigenous Biodiversity 2023 (“**NPSIB**”) provides direction to councils to protect, maintain and restore indigenous biodiversity requiring at least no further reduction nationally. Given the range of watercourses, wetlands and vegetation located within PC 103, the NPSIB has direct relevance to PC 103.

Auckland Unitary Plan Regional Policy Statement

55. This plan change request must also “give effect” to the Auckland Regional Policy Statement (“**RPS**”). The purpose of the 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. We address the RPS further below in our decision.
56. We note that the RPS must give effect to any national policy statement and to the NZCPS. Further, it must not conflict with sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 and treat those provisions as a New Zealand Coastal Policy Statement.

Auckland Unitary Plan

57. The remaining provisions of the Auckland Unitary Plan (the regional (including coastal) and district objectives, policies and rules) must give effect to the RPS. They must also not conflict with sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 and treat those provisions as a New Zealand Coastal Policy Statement.

National Environmental Standards or Regulations

58. Under section 44A of the RMA, local authorities must observe national environmental standards in their district/region. No rule or provision may duplicate or be in conflict with a national environmental standard or regulation.
59. Both the Requestors’ planners and Mr Paul considered that the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 and the National Environmental Standard for Freshwater

Regulations 2020 are relevant to the consideration of PC 103. These are briefly discussed below.

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011

60. The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (“**NESCS**”) is a nationally consistent set of planning controls and soil contaminant values. The standard ensures that land affected by contaminants in soil is appropriately identified and assessed before it is developed - and if necessary, the land is remediated or the contaminants are contained to make the land safe for human use.
61. The Requestor states that the NES-CS will apply at the time of development to manage contaminated land, and that consents under the NES and/or the contaminated land provisions of the AUP(OP) may be required prior to any redevelopment commencing. We are satisfied that this matter can be appropriately addressed by way of future resource consents.

National Environmental Standards for Freshwater Regulations 2020

62. The Freshwater NES set requirements for carrying out certain activities that pose risks to freshwater and freshwater ecosystems. The regulations require activities to comply with the standards which are designed to protect natural inland wetlands, protect urban and rural streams from in-filling, and ensure connectivity of fish habitat (fish passage) amongst other activities.
63. The Requestor considers that the delivery of key structuring elements within the plan change area is unlikely to require resource consent under the NES-FW, however they note that the relevant regulations will apply at the time of future development and this matter will be appropriately assessed through future resource consent processes. Again, we are satisfied that this matter can be appropriately addressed by way of future resource consents.

STRATEGIC CONTEXT

64. Section 74(2)(b)(i) of the RMA requires that a territorial authority must have regard to plans and strategies prepared under other Acts when considering a plan change.
65. The Requestor and the Section 42A Hearing Report set out a detailed strategic context to this plan change request and both provided a discussion on ‘non-statutory’ documents including the Auckland Plan 2050, the Auckland Future Development Strategy 2023-2053 and the Silverdale West Dairy Flat Industrial Area Structure Plan 2020. We address these below as they set the strategic context in which this plan change needs to be considered vis-à-vis the statutory planning documents.
66. The relevant recent Notices of Requirement prepared by Auckland Transport and NZTA are also briefly addressed below.

Auckland Plan 2050

67. The Auckland Plan 2050 prepared under section 79 of the Local Government (Auckland Council) Act 2009, is a relevant strategy document that the Council should have regard to when considering PC 103.
68. The Auckland Plan is the Council's key strategic document, setting out the social, economic, environmental and cultural objectives for the city. A key component of the Auckland Plan is the Development Strategy which describes how future growth will be accommodated up to 2050. The Auckland Plan focusses new development in existing urban areas and provides for 'managed expansion' in future urban areas. This managed expansion is with reference to structure planning processes.

Auckland Future Development Strategy 2023-2053 (FDS)

69. The Auckland Future Development Strategy 2023-2053 ("**FDS**") was adopted by Council in November 2023 and replaced the FULSS and the Auckland Plan 2050 – Development Strategy. It was prepared to satisfy the requirements under both the Local Government (Auckland Council) Act 2009 and the NPS-UD. We note that the FDS was not tested through the Schedule 1 process under the RMA.
70. Clause 3.13 of the NPS-UD states that the purpose of the FDS is:
- “to promote long-term strategic planning by setting out how a local authority intends to:*
- (i) achieve well-functioning urban environments in its existing and future urban areas; and*
 - (ii) provide at least sufficient development capacity, as required by clauses 3.2 and 3.3, over the next 30 years to meet expected demand; and*
 - (iii) assist the integration of planning decisions under the Act with infrastructure planning and funding decisions.”*
71. Additionally, clause 3.17 of the NPS-UD states that the Council must have regard to the FDS when preparing or changing RMA planning documents, which includes PC 103.
72. Clause 3.8 relates to unanticipated or out-of-sequence plan changes. This states that the Council must have regard to the development capacity provided by the plan change if that development capacity:
- (a) Would contribute to a well-functioning urban environment; and*
 - (b) Is well connected along transport corridors; and*
 - (c) Meets the criteria set out in the RPS.*
73. The FDS identifies that approximately 1,500 -1,700 hectares of vacant business land is needed over the long-term. Silverdale West is identified in the FDS as a location for future land extensive business, such as manufacturing, logistics and construction, to serve the northern future urban areas and to help address local and sub-regional employment inequities and to contribute to emissions reductions.

74. The timing for Silverdale West (Stage 1) is not before 2030+. Please refer to **Figure 4** below:

Silverdale West (stage 1)	<p>Not before 2030+</p> <p>* some business can take advantage of existing capacity, these are the projects required to support full build out.</p>	<p>Pine Valley Road upgrade SH1 Interchange upgrades and new interchanges including active modes (Wilks Road, Redvale & Silverdale) North Shore Rapid Transit (extension to Milldale) Army Bay Wastewater Treatment Plant Upgrade Silverdale West Centralised WW PS</p>
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Figure 4 – Timing of Development in Future Urban Areas - Silverdale, Dairy Flat, Wainui East, Upper Orewa – Source: FDS

75. The specified key bulk infrastructure prerequisites to support development readiness include the following five projects:

- Pine Valley Road upgrade
- SH1 Interchange upgrades and new interchanges including active modes (Wilks Road, Redvale & Silverdale)
- North Shore Rapid Transit (extension to Milldale)
- Army Bay Wastewater Treatment Plant Upgrade
- Silverdale West Centralised WWPS

76. With respect to the above, the Requester stated⁸:

“The analysis to inform the Silverdale West infrastructure prerequisites is coarse and high level. Both the more detailed Integrated Transport Assessment, prepared by Stantec, and the water and wastewater servicing strategy prepared by Civix have confirmed that capacity, or an infrastructure solution, exists to enable development proposed within the Plan Change area to commence ahead of 2030 sequencing. If development occurs prior to the Council providing the necessary infrastructure upgrades, the Applicants have confirmed that they are capable and willing to cover those costs up front and will seek to enter into agreement(s) with Council to recover some of those costs over time where there is a wider public benefit from the provision of that infrastructure (refer Appendix 22). Further, the proposed precinct provisions including the trigger rules and monitoring requirements ensure that the Council maintains the ability to control further growth if the necessary

⁸ Silverdale West Plan Change Section 32 Analysis Report, Section 9.2, page 32

infrastructure upgrades are not in place and coordinate development capacity with the required transport upgrades to service development.”

77. Of note is that the FDS states⁹:

“In some cases, the prerequisite infrastructure will need to be in place when development commences. In some cases, it will be appropriate for rezoning to occur and development to commence prior to or while the infrastructure prerequisite is in the process of being built and established. In other cases, staged development will be appropriate. Alternate approaches to infrastructure technology that achieve the same or similar outcome will also be considered.

... Whilst this strategy sets infrastructure prerequisites that align with council’s planned investment in future urban areas, it also signals a pathway for the private sector to fund infrastructure ahead of when the council can fund the required infrastructure.”

78. The Hearing Panel further observes that PC 103 does not apply to all of the Stage 1 area identified in the FDS and only covers the southern portion of it. The staging provisions in the precinct also mean that only a portion of the PC 103 area is proposed to be developed initially with the necessary infrastructure provided to achieve that. Subsequent stages of development in the Silverdale West Precinct are dependent on the provision of additional infrastructure.

Silverdale West Dairy Flat Industrial Area Structure Plan (“Structure Plan”)

79. Before any urban development of the FUZ land can occur, the land must first be structure planned. Structure planning has been completed for Silverdale West (Stages 1-3) / Dairy Flat Industrial Area. The Structure Plan was adopted by the Council in April 2020 in response to the Council’s Future Urban Land Supply Strategy 2017 which identified part of the Silverdale West Dairy Flat area specifically for business and sequenced it to be development ready in the period 2018 – 2022.

80. The Silverdale West Dairy Flat area was signalled to become the focus for future light industry growth in the urban north due to the urban growth proposed in the wider area and the imminent exhaustion of light industry zoned land supply in the North Shore, Silverdale and the Highgate Business Park. This will result in the land being the next nearest light industry zone location to urban Auckland.

81. The structure plan shows how the land can be urbanised taking into account constraints and opportunities. It shows the land uses and infrastructure required to service the land. It also shows how the area connects to adjacent existing and future urban areas and wider infrastructure networks. Important cultural values, natural features and heritage values are also addressed.

⁹ FDS, pages 44 and 45

82. The total structure plan area is 603ha gross, however, once floodplains and roads are deducted, the net developable area is 350ha, of which 294ha is proposed for light industry purposes.
83. The key features of the Structure Plan are:
- light industry with a central area of heavy industry
 - existing and an indicative new transport network
 - existing and indicative new water and wastewater infrastructure
 - indicative open space
 - landscape protection measures including landscape buffers and view shafts
 - stream areas and floodplains to be protected
 - a staged approach to land development.
84. The Structure Plan is set out below in **Figure 5**:

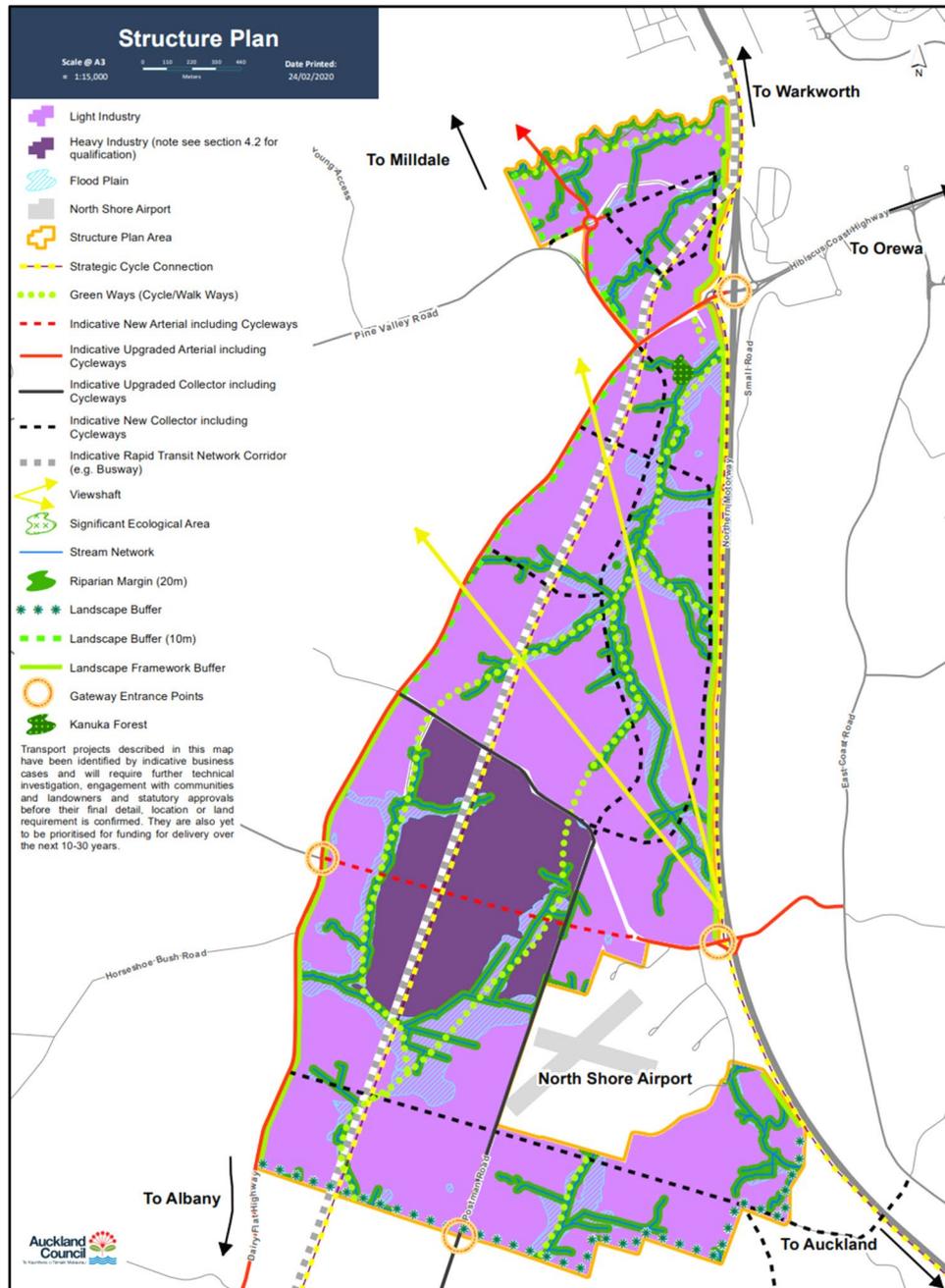


Figure 5 – Silverdale West Dairy Flat Industrial Area Structure Plan.

85. The structure plan includes a staging plan which determines which land is to be rezoned first and sets out a timeline for the rezoning of the remainder of the land. Three stages are proposed to align with the projected demand for land and the provision of infrastructure. The staging plan is set out below in **Figure 6**:

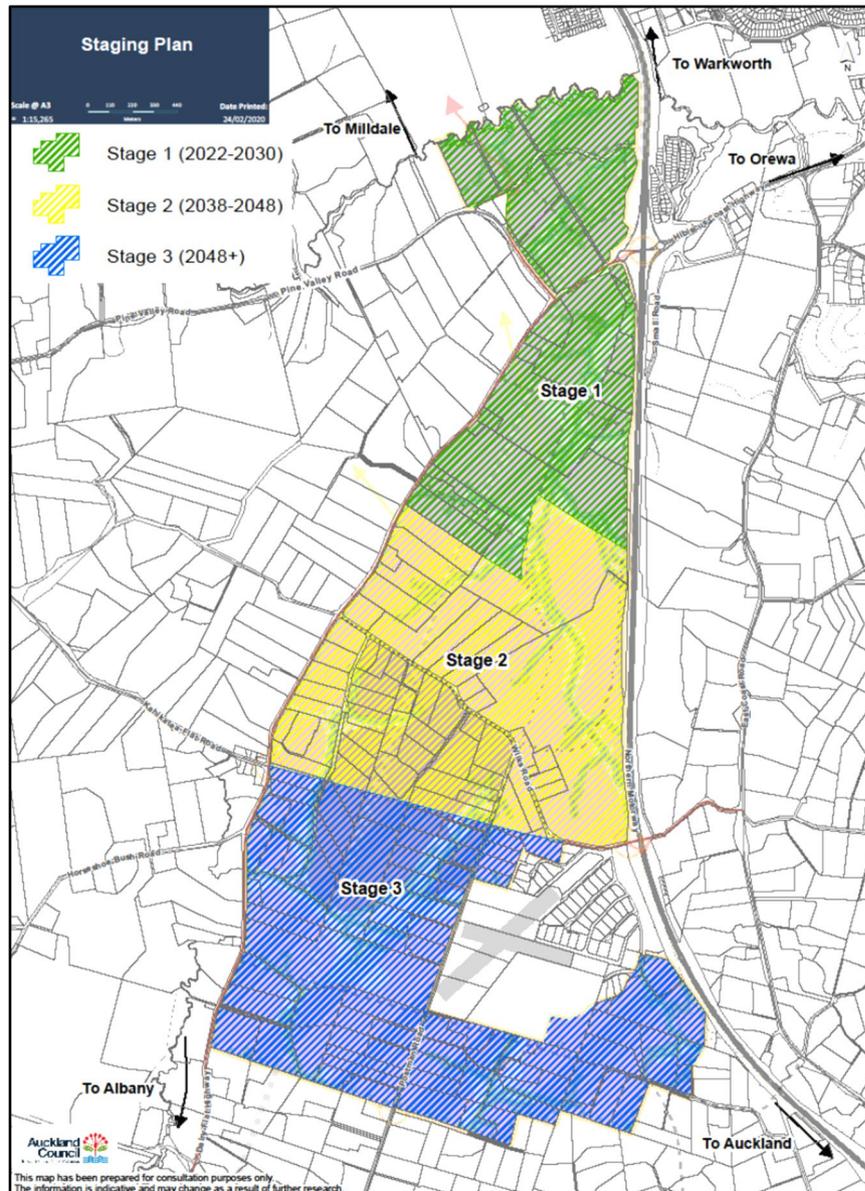


Figure 6 – Staging Plan

86. The structure plan will be implemented through a series of plan changes to rezone the FUZ land in accordance with land uses and staging indicated in the Structure Plan. PC 103 is one of the anticipated plan changes to give effect to the Structure Plan.
87. Of note to this plan change (and will be discussed later in this decision) is that several elements are identified in the structure plan relating to landscape. A view shaft is identified to help protect views from the motorway and landscape buffers are also identified along both Dairy Flat Highway and the SH1 motorway.

Notices of Requirement

88. The Notices of Requirement (“NoR”) for North Auckland for the Supporting Growth corridors project were lodged on 20 October 2023 and Auckland Transport notified its decision on the NoRs on 23 January 2025. The proposed upgrade to Dairy Flat Highway to an urban arterial corridor with active mode facilities between Silverdale

Interchange and Durey Road in Dairy Flat (NoR8) has enabled the future provision of the first prerequisite set out in the FDS.

89. While the NoR8 upgrade was initially subject to a single appeal by Waste Management NZ Limited (which related only to conditions), the Environment Court has subsequently confirmed NoR8 in June 2025 (dismissing the only appeal).¹⁰ Designation 1479 has now been confirmed and inserted into the AUP(OP).
90. NoR4 involves an alteration to the existing SH1 designation for a long-term future transport network for North Auckland. Specifically, it proposes a rapid transit corridor between Albany and Milldale and includes alterations to existing designations 6751, 6760, 6759, 6761. The intent is to provide fast, frequent, reliable and high-capacity public transport services for future communities in Milldale, Silverdale, Ōrewa, Wainui East and Dairy Flat.
91. The above project involves upgrades to the SH1 Interchange, which is another prerequisite set out in the FDS. We note there is currently no funding for detailed design or construction of these projects. NZTA anticipates the project will be delivered sometime within the next 30 years to align with Auckland Council's land use planning. As noted above, the project is currently in the appeal period, but no appeals are relevant to PC 103.

Government Policy Statement on Land Transport 2024

92. The Government released the Government Policy Statement on Land Transport (“**GPSLT**”) in June 2024. It sets out the Government's land transport strategy including:
 - what it expects to be achieved from its investment in land transport through the National Land Transport Fund (NLTF)
 - what it expects to be achieved from its direct investment in land transport
 - how much funding will be provided and how the funding will be raised
 - how it will achieve its outcomes and priorities through investment in certain areas, known as “activity classes” (e.g. the maintenance of state highways or road policing)
 - a statement of the Minister's expectations of how the New Zealand Transport Agency gives effect to this GPS.
93. Each GPSLT sets out the priorities for the following 10-year period and is reviewed and updated every 3 years.
94. The New Zealand Transport Agency (“**NZTA**”) had to give effect to the GPSLT 2024 in developing its 2024 – 2027 National Land Transport Programme.

¹⁰ Decision [2025] NZEnvC 194 Waste Management NZ Limited (ENV-2025-AKL-047) v Auckland Transport

Open Space Provision Policy 2016

95. The Open Space Provision Policy 2016 (“**OSPP**”) informs the Council’s investment decisions to create a high-quality open space network that contributes to Aucklanders’ quality of life. It provides direction on the provision of open space at a network scale (across multiple open spaces rather than an individual site). Provision is considered on the basis of four inter-related factors being: function, distribution, location and configuration.
96. A network of open space is proposed within PC 103, some of which will be acquired at a later stage by the Council utilising this policy direction.

Requestors’ Concept Development Plan

97. As set out in the urban design evidence for the Requestor, a concept development plan was prepared in collaboration with the project team, which sought to ensure that the plan change reflects good urban design practice.
98. Mr Frank Pierard considered that the concept development plan aligns with the Structure Plan and adopts a comprehensive urban design approach. This includes detailed site analysis, identification of opportunities and constraints that shape the site’s development, along with the development of design principles which informed the key moves¹¹.
99. The Development Concept Plan, along with the Structure Plan, informs the precinct provisions and precinct plans IX10.1 and IX10.2. In brief, Mr Pierard said the proposal will¹²:

“(a) include a coordinated road network;

(b) integrate natural features into an open space network;

(c) set strategic landscape buffers to mitigate potential visual impacts and enhance amenity; and

(d) enable 30-metre height variation in low-lying areas.”

FINDINGS AND REASONS FOR APPROVING THE PLAN CHANGE

100. The following sections address our overall findings on PC 103 and why we have approved it; having heard and considered all of the material and evidence before us.
101. We had extensive evidence before us, with parties requesting a considerable number of specific and detailed changes to the precinct provisions. Many of these were addressed by the Requestors’ planners. Where they accepted them, they were incorporated into subsequent iterations of the precinct provisions, with the latest version provided as part of the reply submissions being those the Requestors’

¹¹ Statement of Evidence of Mr Pierard, paragraph 14

¹² Statement of Evidence of Mr Pierard, paragraph 17

planners ultimately supported. Those provisions they did not support were addressed in their evidence.

102. 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.
103. We also address the submissions received on PC 103 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.
104. 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.
105. 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 Requestor, the 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 103 should be made.

Reasons for the Plan Change Proposal

106. We accept the Requestors' rationale for seeking to change the AUP(OP) and rezoning the application site from FUZ to a Business – Light Industry zone with the addition of the Silverdale West Precinct, despite it being a reduced scale to that shown in the Structure Plan. This was detailed in the Application, evidence and the legal submissions.
107. Specifically, it has long been identified in strategic planning documents¹³ that there is a concern over the scarcity of industrial zoned land to meet forecast demand in Auckland. Notably, this plan change will only provide for light industrial land as envisaged in the Structure Plan. As legal counsel for the Requestor submitted, there is no dispute that the land is appropriate for a light industrial zone. Moreover, there is no dispute that Auckland's north is in direct need of light industrial land¹⁴.
108. We further note that the plan change area is largely consistent with the spatial outcomes specified in the Structure Plan adopted by the Council. The key differences being that the land north of Dairy Flat Highway has not been included within the plan

¹³ Auckland Plan 2012, Directive 6.3, page 158

¹⁴ Opening Legal Submissions, paragraph 3

change, and the southern boundary of the plan change area extends slightly further to the south than the Stage 1 boundary, into Stage 2.

109. The Requestor says that the selected plan change area ensures development does not trigger significant traffic infrastructure upgrades. The plan change application is also driven by the practical ability to develop the land without relying on public infrastructure upgrades or other parties. The Requestor, being FDL and FHLD are both experienced developers with established track records in land development. FHLD is also familiar with the area as the developer of nearby residential developments Millwater and Milldale. Together they comprise the majority owners of the plan change area.
110. Legal counsel for the Requestor submitted that PC 103 achieves an appropriate balance of unlocking much needed light industrial land while managing effects on the transport network and environment through staged development¹⁵. We note that the S42A Reporting Officer agrees, subject to some modifications to the precinct provisions.
111. For the reasons that follow, it is our view that the provisions of PC 103 (as we have determined them) are more efficient and appropriate in terms of section 32 and section 32AA of the RMA than those currently in the AUP(OP) and it satisfies the Part 2 provisions of the RMA. We address these matters below.

AREAS IN CONTENTION AND OUR FINDINGS ON THOSE MATTERS

112. Having undertaken a joint site visit, considered the submissions and further submissions received, the hearing report, the evidence presented at the hearing and the responses to our questions, the following principal issues in contention have been identified by the Panel:
 - Whether the plan change should be declined because it is out of sequence with the FDS and the consequences of this on the planned development of the public bulk water and wastewater infrastructure to service this area, as well as on the planned SH1 interchange upgrades;
 - Whether the precinct provisions should be amended to make it harder for development to precede local roading upgrades;
 - Whether there is the ability to impose a financial contribution requirement in favour of NZTA under the RMA;
 - If the above is so, whether it is appropriate to impose financial contributions within the Precinct to fund works on the State Highway network;
 - Whether Watercare should be notified of resource consent applications for interim on-site water and wastewater solutions;

¹⁵ Opening Legal Submissions, paragraph 6

- Whether interim on-site water and wastewater solutions should be in place prior to construction rather than prior to the issue of Section 224(c) certificates or the occupation of buildings;
- Whether the appropriate trigger for transport upgrades to be completed is at the time of occupation or Section 224(c) stage;
- Whether an interim shuttle bus service should be required in the precinct provisions to provide for active mode connections across SH1;
- What the most appropriate activity status is for buildings between 20m – 30m in height in identified areas;
- What the landscape buffer treatment should be adjoining SH1 and Dairy Flat Highway;
- Whether the Special Information Requirements should be strengthened;
- What are the most appropriate precinct provisions for the treatment of yards and riparian margins;
- Whether there should be additional precinct provisions to account for bats and lizards;
- What are the reasons why an identified area of Kānuka shrubland should qualify as an SEA;
- What are the most appropriate stormwater management provisions for the precinct; and
- Whether the request for additional land to be included in PC 103 is within scope of PC 103.

113. We respond to the above points in contention in addressing the key subject matter headings below.

Wastewater and Water Supply

114. Watercare opposes out-of-sequence development. Ms Sian Kilgour, Legal Counsel for Watercare submitted¹⁶:

Because Watercare's planning for its infrastructure is aligned with Council's population forecast and FDS, Watercare does not support out of sequence development. Out of sequence development leads to inefficiencies in the provision of infrastructure, poor technical outcomes and misaligned expectations between developers, tenants and the community. These are poor planning outcomes.

¹⁶ Legal submissions of Ms Sian Kilgour, paragraph 2.2

115. Ms Kilgour went on to state that if out-of-sequence development is to be enabled in the plan change area, it must be subject to planning controls that avoid development in the plan change area occurring ahead of the necessary Watercare infrastructure¹⁷.
116. Dealing first with Watercare's primary relief, that PC 103 should be declined as it is out of sequence with that specified in the FDS. We begin with a summary of the economic evidence we heard in relation to the need for light industrial zoned land.
117. Mr Tim Heath provided economic evidence in support of PC 103 on behalf of the Requestor. Mr Heath is an experienced economic expert. It was his evidence that the population and industrial employment within the PC 103 catchment have been growing significantly faster than projected in the Council's Growth Scenario and the Silverdale Business Land Assessment 2018 (SBLA)¹⁸. He advised that the latter informed the allocation of future industrial land and its staging in the Structure Plan.
118. It was Mr Heath's opinion that failing to respond promptly to the surging demand for industrial land will constrain the growth of the local industrial employment base¹⁹. In addition, it was his view²⁰ that ensuring sufficient industrial land supply is essential to support increased local employment opportunities, foster commensurate growth in the local economy and contribute to a well-functioning urban environment.
119. He advised that based on high-level estimates, and considering recent industrial employment growth in the catchment, there will be a potential short-term shortfall of 86 - 108ha (gross) of light industrial land by 2028²¹. He noted this would be in addition to the existing vacant light industrial land capacity identified in the Housing and Business Development Capacity Assessment for the Auckland Region September 2023 (HBA) 2023.
120. It was Mr Heath's opinion that if PC 103 was declined, the continued growth of the catchment's industrial sector would likely be unnecessarily constrained, leading to significant market and land use inefficiencies, lost development opportunities, and potentially increased employment leakage from the local economy²².
121. In addition to the above, Mr Heath reiterated that the PC 103 site is identified in both the Structure Plan and the FDS as the Stage 1 development for the Silverdale, Dairy Flat, Wainui East, and Upper Orewa urban growth areas.
122. He further added that the PC 103 site is strategically positioned to leverage its direct access to the nearby state highway network, its proximity to established industrial areas in Silverdale, and its convenient access to both existing and future workforces in Silverdale, Milldale, Orewa, Dairy Flat, Whangaparaoa and northern North Shore. It was Mr Heath's opinion that these locational characteristics make it the most

¹⁷ Legal submissions of Ms Sian Kilgour, paragraph 2.3

¹⁸ Statement of Evidence of Mr Tim Heath, paragraph 11

¹⁹ Statement of Evidence of Mr Tim Heath, paragraph 12

²⁰ Ibid

²¹ Statement of Evidence of Mr Tim Heath, paragraph 13

²² Statement of Evidence of Mr Tim Heath, paragraph 14

appropriate and efficient option for live zoning within the structure plan area to meet immediate demand, support market growth, and enhance market efficiency²³.

123. It was Mr Heath's conclusion that PC 103 would deliver significantly more economic benefits than costs to the local and regional industrial economy, businesses, and communities, offering greater certainty for the future growth of the local industrial sector²⁴. He verbally summarised the plan change proposal as being "an economic no-brainer".
124. While the demand for industrial land and the economic benefits that PC 103 would create were not in contention between the economic experts, we did note that Mr Akehurst disagreed with Mr Osborne's conclusion (based on Mr Heath's evidence) that the PC 103 land will have a significant positive or even any positive impact on industrial workforce commuting patterns. Mr Akehurst specifically did not agree that there would be any significant reduction in the number of commuters travelling out of the catchment²⁵. We return to this matter later on in the decision.
125. We rely on the (generally uncontested) evidence of Mr Heath. It is therefore our findings that approval of PC 103 will provide vacant business land to meet the demand for local industrial zoned land.
126. With respect to bringing forward this portion of Stage 1 (together with a minor portion of Stage 2), ahead of the indicated timing in the FDS, it is our finding that this is appropriate. We note that the FDS identifies Silverdale as a location for business zoned land to provide for land extensive business to serve the northern future urban areas, given its past shortages.
127. The timing for the live zoning of the future urban areas, like Silverdale is associated with several infrastructure prerequisites identified respectively in the FDS. The growth is spread across 30 years to enable the Council time to fund and deliver the required bulk infrastructure to be able to produce quality urban outcomes in the identified future urban areas.
128. Silverdale was identified in the FDS with a timing of not before 2030+. This was subject to the following key bulk infrastructure provisions:
 - Pine Valley Road upgrade
 - SH1 Interchange upgrades and new interchanges including active modes (Wilks Road, Redvale & Silverdale)
 - North Shore Rapid Transit (extension to Milldale)
 - Army Bay Wastewater Treatment Plant Upgrade
 - Silverdale West Centralised WWPS

²³ Statement of Evidence of Mr Tim Heath, paragraph 15

²⁴ Statement of Evidence of Mr Tim Heath, paragraph 16

²⁵ Statement of Evidence of Mr Akehurst, paragraphs 52 - 60

129. The evidence before us is that the transport infrastructure prerequisites listed above have now either been designated (with the SH1 decision still being subject to appeal as discussed earlier in this decision) and that the necessary suite of transport and bulk water supply and wastewater infrastructure requirements to support development within the plan change area have been identified through supporting expert technical analysis as discussed in the evidence. PC 103 includes all the necessary infrastructure upgrades as prerequisites to development and the delivery of this infrastructure can be met privately.
130. We also note that while out-of-sequence development has been generally discouraged, the NPS-UD now requires responsive planning²⁶, particularly where a plan change will provide for significant development capacity that is not otherwise enabled in a plan or is not in sequence with planned land release. We consider that PC 103 is one of these scenarios.
131. We note that the final servicing decisions in relation to water supply and wastewater are subject to further discussions with Watercare, but most importantly, there are a range of both temporary and permanent water and wastewater servicing solutions available, as was agreed by Watercare.

Whether the precinct provisions require development within the plan change area to be coordinated and aligned with the required bulk wastewater and water infrastructure upgrades?

132. As set out in the legal submissions and corporate evidence (and discussed above) Watercare's foundational position is that PC 103 is out-of-sequence and cannot be supported on the basis proposed by the Requestor. However, if PC 103 is approved, Watercare seek amendments to the precinct provisions to ensure that subdivision and development within the precinct is appropriately staged and coordinated with the provision of infrastructure to service the plan change area.
133. As we understand it, there are two remaining matters in contention between the Requestor and Watercare. In particular, Watercare considers two remaining essential amendments are required. These are:

“(a) construction of buildings that require water and wastewater servicing cannot commence until the bulk water supply and wastewater infrastructure is completed and commissioned (IX.11(1)(b)); and

(b) applications that do not comply with the water supply and wastewater standard (IX.11) must, at a minimum, be limited notified to Watercare (IX.5(1A)).”

134. Mr Andrew Deutschle, Head of Wastewater Planning at Watercare confirmed in his corporate evidence that the plan change area is not currently serviced by bulk water and wastewater infrastructure²⁷. He advised that the infrastructure required for development of the plan change area includes upgrades to the wastewater network,

²⁶ NPS-UD, Subpart 2 – Responsive Planning Section 3.8 Unanticipated or out-of-sequence developments, page 16

²⁷ Statement of Evidence of Andrew Deutschle, paragraph 1.4

which are not planned to be completed before 2031. The Panel notes that this timing aligns with the "not before 2030+" timing under the FDS.

135. In terms of the water supply network, Mr Deutschle advised that the plan change area can be serviced by the metropolitan bulk water network which has sufficient capacity, however connections to service development in the plan change area are not in place²⁸.
136. Mr Deutschle confirmed that the long-term bulk servicing plan for the Silverdale West Stage 1 and 2 future urban areas is for connection to the Orewa 3 Watermain. This is currently anticipated to be completed in 2038. In the meantime, he advised²⁹ the plan change area could be serviced for bulk water supply following the delivery of a new bulk supply point ("BSP") to be located to the east of Argent Lane, south of the Wēiti Bridge and the completion of a section of the Orewa 3 watermain at Waterloo Road (Orewa Watermains Cross Connection). Delivery of both the new BSP and the Orewa Watermains Cross Connection is a prerequisite for the plan change area to connect to the public water supply network. Mr Deutschle stated that connections to the existing bulk water supply network, prior to these upgrades, will not be supported by Watercare³⁰.
137. The corporate evidence of Ms Anna Jennings, Manager of Major Developments at Watercare provided an update on the status of the commercial agreements between Watercare and the Requestor. She summarised the watermain upgrades required and the funding allocations in place in order to service the plan change area.
138. The evidence of Mr Robert White acknowledged that there is no public wastewater network capacity ahead of the Army Bay Wastewater Treatment Plant (WWTP) upgrade which is anticipated to be completed by 2031³¹. He also identified potential interim wastewater options³² ahead of the Army Bay WWTP upgrade, which included tankering flows to a Watercare or privately owned/operated wastewater treatment plant, as well as on-site or off-site treatment and disposal to land, noting Watercare's acceptance of an interim wastewater solution.
139. Although Watercare's strong preference is for there to be bulk water and wastewater servicing completed and commissioned prior to subdivision and development of the plan change area, Mr Deutschle confirmed³³ that Watercare is not opposed in principle to the potential for temporary interim solutions being agreed upon to service the development. This is provided there are provisions requiring decommissioning of these interim servicing solutions when the bulk network has capacity. Mr Deutschle made it clear to the Hearing Panel that specific interim options, such as the inverted siphon rising main and tankering, are not acceptable to Watercare in any form.
140. Helpfully, discussions have also been held between Watercare and the Requestor in relation to the amendments being sought to the precinct provisions. Ms Jenny Vince

²⁸ Statement of Evidence of Andrew Deutschle, paragraph 6.12

²⁹ Statement of Evidence of Andrew Deutschle, paragraph 6.13

³⁰ Statement of Evidence of Andrew Deutschle, paragraph 6.15

³¹ Statement of Evidence of Mr White, paragraph 14

³² Statement of Evidence of Mr White, paragraphs 18 - 47

³³ Statement of Evidence of Andrew Deutschle, paragraph 1.7

prepared planning evidence on behalf of Watercare. She noted that both the plan change Requestor (in their evidence) and the Council Reporting Planner (in the Section 42A Hearing Report and Section 42A Addendum Report) have generally agreed to the provisions Watercare is seeking, including the proposed amendments to the objectives and policies of PC 103 as they relate to water and wastewater.

141. Ms Kilgour also advised at the hearing that the Requestor has largely agreed to the drafting of the water supply and wastewater standard proposed by Watercare, except that the Requestor considers the appropriate trigger should be "occupation" rather than "construction". We put questions to both parties to understand the rationale for their positions more fully.
142. Mr McLaughlan explained to the Hearing Panel that construction of all bulk pipework occurs over an 18-30 month period while bulk earthworks are completed³⁴. However, he stated that connecting those pipes to wastewater disposal facilities or water supplies would happen ideally as buildings were finished, ready for occupation. He said that the construction period takes another 18-30 months. This requires disposal or water supply connections to occur before construction commences which pulls forward sizeable expenditure by 18-30 months, but given the anticipated delivery of a bulk water supply point in 2027 and additional wastewater capacity in 2031, he considered that this risks construction of facilities that are never needed.
143. Mr Deuschle stated in evidence that the key issue with enabling buildings to be constructed but not occupied prior to capacity being available, is that by the time the development is ready to be occupied, significant time and money will have been spent by both the developer and (he assumes), the intended occupiers of the relevant industrial buildings. Further, where subdivided lots have been presold to future occupiers, those future occupiers will then have an expectation of connecting to Watercare's water and wastewater networks once construction is complete³⁵. He advised that this results in a reputational and political risk to Watercare. Upon further questioning he elaborated that this outcome puts pressure on Watercare to tanker waste.
144. It was Ms Vince's view that the water supply and wastewater standard should refer to "construction" to prevent the construction of buildings ahead of the bulk water supply and wastewater infrastructure being in place, as bulk water and wastewater are critical infrastructure that provide for people and communities health and safety³⁶.
145. Ms Vince considered this would give effect to the policy direction in the AUP (i.e. E38.2(4)) which requires infrastructure supporting subdivision and development to be planned and provided for in an integrated and comprehensive manner and provided for it to be in place at the time of the subdivision or development³⁷.
146. She also considered it was best practice to have appropriate bulk water and wastewater infrastructure available prior to construction to avoid developers being unable to obtain certificates of title or obtain building consent until the bulk

³⁴ Statement of Evidence of Mr McLaughlan, paragraph 4.8

³⁵ Statement of Evidence of Andrew Deuschle, paragraph 7.7

³⁶ Statement of Evidence of Jennifer Vince, paragraph 6.6

³⁷ Statement of Evidence of Jennifer Vince, paragraph 6.6(b)

infrastructure necessary to service the proposed development is commissioned and operational³⁸. We note that the s42A Reporting Officer supported the drafting of the standard as sought by Watercare.

147. In relation to the notification provision, the Requestor was opposed to the wording sought by Watercare in its original submission. Messrs Cook and Cooper did not agree with provision being made for notification only being made to Watercare³⁹. Firstly, they say, any application for an interim solution will be made under the Auckland-wide provisions which sets out expectations around notification. Secondly, there are potentially broader environmental impacts than simply on Watercare, so they considered that the ability for Council to notify such an application more broadly should be maintained.
148. The Reporting Planner also did not agree with Watercare on this matter. It was Mr Paul's view⁴⁰ that notification of resource consent applications not meeting the bulk water supply and wastewater standard should not be limited to just Watercare, as others may also have an interest.
149. Ms Vince held the opinion that it is critical that Watercare is notified of any non-compliance of the standard and the proposed interim measures that might be proposed, given that this could have implications on future connection to the bulk system.
150. In response to the concerns raised by the Reporting Planner and the Requestor around Watercare's proposed drafting of this provision, Ms Vince provided alternative wording which provides that the normal notification test would apply and also expressly references limited notification to Watercare for non-compliance with the water supply and wastewater standard⁴¹.
151. Ms Kilgour explained that Watercare's concerns relate to non-compliance with the standard. She submitted this would likely mean that the Requestor would be seeking to construct buildings ahead of bulk infrastructure being available, and that the Requestor would then presumably seek to rely on interim servicing solutions⁴².
152. Watercare considers they should be involved in the process where the developer is seeking to rely on interim self-servicing. Mr Deutsche confirmed this in his evidence, stating that Watercare has an interest, where interim solutions are proposed, to understand how the private facilities will operate, how any risk to Watercare will be mitigated, and how the plan change area will ultimately connect to the public wastewater network.⁴³
153. Turning now to our findings, we agree that a robust infrastructure 'trigger' mechanism is required such that development can only proceed if capacity (by way of a public or private interim system) is available. This is in the context of the following precinct

³⁸ Statement of Evidence of Jennifer Vince, paragraph 6.6(c)

³⁹ Statement of Evidence of Messrs Cook and Cooper, paragraph 168

⁴⁰ S42A report, paragraph 308.

⁴¹ Statement of Evidence of Jennifer Vince, paragraph 6.11

⁴² Legal submissions of Sian Kilgour, paragraph 4.14

⁴³ Statement of Evidence of Andrew Deutsche, paragraph 1.7

objectives and policies, on which we note there is substantial agreement between the Requestor and Watercare:

“Objective (4): Subdivision and development are coordinated with the supply of sufficient transport, water supply, stormwater, wastewater, energy and communications infrastructure.

Objective (4A): Subdivision and development does not occur in advance of the availability and capacity of bulk water supply and bulk wastewater infrastructure, except where an interim solution and associated decommissioning for water and / or wastewater servicing is proposed.

Policy (5A): Ensure that subdivision and development in the precinct is coordinated with the provision of sufficient transport, stormwater, wastewater, water supply, energy and telecommunications infrastructure.

Policy (8): Avoid subdivision and development that is in advance of the provision of functioning bulk water supply and wastewater infrastructure with sufficient capacity to service subdivision and development within the precinct area, except where an interim solution and associated decommissioning for water and / or wastewater self-servicing is proposed.”

154. We find that the above objectives and policies are consistent with the RPS and the Unitary Plan and are therefore the most appropriate way to achieve the purpose the Act.
155. We agree with the Requestor’s planners that PC 103 includes provisions that specifically address the issues raised by Watercare, Auckland Council as submitter as well as the Council’s Reporting Officer. The issues are identified in the precinct description and in Objectives (4) and (4A) and Policies (5A) and (8). A strong “avoid” approach to subdivision and development ahead of the availability and capacity of bulk water supply and bulk wastewater infrastructure is imposed, except where an interim solution and associated decommissioning for water and / or wastewater servicing is proposed. That policy direction within PC 103 is implemented by standard (IX6.11) requiring bulk water supply and wastewater infrastructure with sufficient capacity for servicing subdivision and development to be completed, commissioned and functioning prior to use / development and subdivision. Corresponding non-complying activity status applies under (A8) and (A9) in Table IX.4.1 Activity table where bulk infrastructure is not available at the time of use / development and subdivision respectively.
156. Notably, this approach is consistent with that taken in other recent precincts, noting the particular circumstances of that part of Silverdale West that PC 103 applies to.
157. Standard IX6.11 Bulk water supply and wastewater infrastructure is the trigger mechanism referred to above. We are satisfied that the following trigger sought by the Requestor is sufficiently robust to ensure that subdivision and development is adequately serviced with bulk water supply and wastewater infrastructure:

(1) Bulk water supply and wastewater infrastructure with sufficient capacity for servicing the proposed development must be completed, commissioned and

functioning:

(a) In the case of subdivision, prior to issuing of a certificate pursuant to section 224(c) of the Resource Management Act 1991; or

(b) In the case of land use only, prior to a passed final inspection under the Building Act or occupation (whichever is the sooner) of any buildings for activities that would require water and / or wastewater servicing.

(2) [Deleted]

158. The above version of the standard was provided with the Requestor's closing submissions⁴⁴. It includes further amendments in response to Mr Paul's closing remarks that he supported the PC 93 Warkworth South trigger which referenced a final inspection under the Building Act. Counsel for the Requestor submitted in the unlikely event that development occurs before any type of subdivision, this standard requires infrastructure to be in place before occupation; noting that Watercare seeks that infrastructure be in place before construction⁴⁵.
159. We note that the decision for Warkworth South (PC 93) was issued in May this year (and that the decision received no appeals). The final version of the wastewater and potable water servicing standard in that plan change decision reads as follows:

...

(3) All subdivision and development (excluding that in the Residential – Large Lot and Open Space – Conservation zones), shall be connected to a functioning and consented potable water and wastewater system (including treatment and associated discharge) with sufficient capacity to service that subdivision or development prior to:

(a) In the case of subdivision, the issue of s224(c);

(b) In the case of development only, the passed final inspection under the Building Act of any buildings (excluding those buildings not required to have a water or wastewater service).

160. We find in relation to Standard (3)(b), in the case of land use only, that it is also appropriate for the Silverdale West precinct standard to relate to the passed final inspection under the Building Act for any buildings that are required to have a water or wastewater service.
161. We further note it is also likely that any building consent applications lodged to undertake the construction of a new industrial building (a development only scenario), will require that the underlying land has already been prepared and certified before any building consent applications are able to be granted and that the timeframe advantages of 18-30 months that a later 'occupation' trigger would 'pick up' as suggested by Mr McLauchlan would be minimal.
162. The above wording very clearly sets out the triggers for both a subdivision and a land use only scenario. It provides a distinct point in time that is able to be monitored and

⁴⁴ Closing legal submissions, Appendix A, dated 11 April 2025

⁴⁵ Closing legal submissions, paragraph 59(b)

easily determined. We also find that the amended provision will ensure a robust standard which provides for subdivision and development that can only proceed if capacity (by way of a public or private system) is available. It will better give effect to the objectives and policies, as amended above.

163. Turning to the matter of notification, we prefer the evidence of Messrs Cook and Cooper, Mr White and the position of Mr Paul. Put simply, the matter of notification should be left to be assessed against the Act's usual tests.
164. Watercare does not need an express notification provision in the precinct provisions to be involved in or to prevent tankering to its own facilities. It is not obliged to take tankerloads of wastewater that arrive at its facility⁴⁶. As Legal Counsel for the Requestor submitted, a specific notification provision, as sought by Watercare based on its concern for its reputation, would not serve any statutory purpose. The approach required by the statute is to determine notification based on effects⁴⁷. Plainly, Ms Campbell submitted, the potential for trucking to generate bad publicity for Watercare is not an effect on the environment. She added that if there is the potential however for adverse odour effects on the public on the road, as Mr Deutsche suggested, it might warrant notification and if that were the case, Watercare could then participate⁴⁸.
165. We would add here, based on our own experience, that any Non-complying activity resource consent application for an interim servicing solution would likely be referred to Watercare for comment, as a minimum.
166. Overall, we find that the amended PC 103 provisions will implement the relevant RPS provisions. Further, they are the most efficient and effective method to enable the provision of much-needed industrial land while addressing the provision of bulk wastewater and water supply.

Transport

167. Mr Matthew Allan, Legal Counsel for Auckland Transport ("AT") succinctly summarised AT's case is broadly as follows:

*(a) **With** the precinct amendments recommended by AT's experts, PPC 103 can be made to "give effect to" the higher-order directives about integrated planning, and can appropriately avoid or mitigate traffic effects from the industrial development.*

*(b) On the other hand, **without** those amendments, AT maintains that PPC 103:*

(i) would not give effect to higher-order directives;

⁴⁶ Water Supply and Wastewater Bylaw 2015 at section 15: "No person may discharge to the wastewater network except through an authorised connection to the network or otherwise as approved by Watercare."

⁴⁷ Closing legal submissions, paragraph 57

⁴⁸ Closing legal submissions, paragraph 56

(ii) *could enable development that outpaces infrastructure, leading to adverse effects on the wider network; and*

(iii) *could not be supported.*

(c) Therefore, AT's support for PPC 103 is conditional on the precinct provisions being strengthened so that development is sequenced with the delivery of transport upgrades.

168. The Panel will now address the specific issues that remain in contention in relation to transport matters. Before we begin however, we want to acknowledge the number of changes that have been made to the transport-related provisions proposed by the Requestor following discussions with the submitter parties, which has assisted to narrow the matters in contention.

169. Mr David Smith provided traffic evidence for AT. He identified two issues requiring further assessment, which we will address first before turning to the precinct provisions.

(a) Active Mode Connectivity Across the SH1 Silverdale Interchange

(b) Feasibility of SH1 Northbound Slip Lane Upgrade

Lack of a direct and safe active mode connection across SH1 Silverdale Interchange

170. Turning to the first matter, the lack of a direct and safe active mode connection across the SH1 Silverdale Interchange is unresolved between the experts. AT has requested a safe, active mode connection to the Hibiscus Coast bus station while NZTA sought new provisions requiring a safe connection for pedestrians and cyclists across SH1. Mr Richards has also recommended that the Requestor undertakes an assessment to determine the demand, benefits and cost to ascertain the appropriate time to provide an active mode connection across SH1⁴⁹.

171. The s42A Reporting Officer's view was that:

"...it is important that provision is made for active modes within the Precinct and where upgrades are required to the existing road network. I think it is unnecessary to require active modes beyond these from day one. In my view the benefits of providing additional land for industry, and enabling access to employment and services, provides more benefits, including transportation benefits, than not providing the industrial land because active modes are not immediately available from the Hibiscus Coast Bus Station."

"The cost of upgrading the Silverdale Interchange to accommodate walking and cycling will be considerable. Also, in the initial stages of the development, it would likely be used by very few people. The early development within the industrial area will likely be relatively small employers so the numbers seeking to access the PC103 area will be small and even smaller for those wanting to use active modes. The provision of active modes will be addressed as the

⁴⁹ S42A Specialist Report – Transport, prepared by Craig Richards dated 13 February 2025 page 2.

area develops and the traffic and active mode demands increase necessitating upgrades to the Silverdale Interchange. In my view, not providing for the industrial land now because active modes are not available initially, is inappropriate and short sighted. As long as the precinct provisions have facility to accommodate active modes in the future, in my view, this is a pragmatic and acceptable approach.”

172. We note that Messrs Cook and Cooper were in agreement with Mr Paul. It was their view that NZTA and Auckland Transport have provided no beneficiary analysis to support requests for active mode connectivity across the interchange and no assessment of costs associated with those works. It is unclear to them how these requests relate to an identified infrastructure need that is appropriately designed and supported by requisite demand⁵⁰.
173. It was Mr Trevor Lee-Joe’s opinion that an active mode connection does not need to be a prerequisite of development within the plan change area because⁵¹:
- (a) Full active mode connectivity is already provided to the north, with the recent establishment of the Highgate Bridge connection. Notwithstanding this, it is likely that experienced cyclists would simply ride along the Hibiscus Coast Highway and over the interchange to access Dairy Flat Highway.
 - (b) The PC 103 demand for pedestrians from the east across the Silverdale Interchange is likely to be low, in the order of 15 pedestrians⁵² and will not justify the requirement for constructing a special pedestrian route across the Silverdale interchange.
 - (c) It is likely that with the new dwellings being constructed in Milldale, many of the employees within the plan change area could be coming from that direction in any case.
 - (d) There is a preference for people to work close to their place of residence. PC 103 enables future residents in Milldale and also those further north an opportunity to take advantage of shorter commutes; and
 - (e) AT’s future Rapid Transit Network (RTN) will establish a bus terminus off Pine Valley Road, which will tie in with the active mode connections along the southern end of Pine Valley Road which are proposed as part of the mitigation packages for PC 103. It is acknowledged that timing of the RTN is uncertain.
174. Mr Lee-Joe told us that the distance from the Hibiscus Coast bus station to the southern access of the plan change area is approximately 1.7km. He further advised the walkable distance to a significant transport stop is typically 800m to 1.2km, the equivalent of a 10–15 minute walk⁵³.

⁵⁰ Statement of Evidence of Messrs Cook and Cooper, paragraph 135

⁵¹ Statement of Evidence of Mr Lee-Joe, paragraphs 67-69

⁵² Statement of Supplementary Evidence by Mr Lee-Joe, paragraph 18

⁵³ Statement of Evidence of Mr Lee-Joe, paragraph 88

175. Notwithstanding all of the above, Mr Lee-Joe has investigated the potential for establishing a safe active mode connection between the plan change site and the Hibiscus Coast bus station. He concluded that the layout of the interchange, with roundabouts at both ends of the overbridge and the presence of on/off ramp connections, is not conducive for a safe and amenable active mode connection⁵⁴. At our request Mr Lee-Joe provided us with a subsequent memo⁵⁵ indicating a potential walking route in the existing situation across SH1 from Pine Valley Road intersection to the Hibiscus Coast Bus Station.
176. Given all of the above factors, Mr Lee-Joe considered that an interim on-demand shuttle service would provide a more convenient means of connecting the two sites, until a permanent solution can be found. However, Ms Heppelthwaite has signalled some concern with such provisions in a precinct, although we note they are not without precedent (i.e. Highbrook Precinct of the AUP(OP)). Mr Allan commented that any precinct provisions would need to be drafted with care and should reflect the measure's interim nature.
177. We have carefully considered how the precinct provisions might incorporate an interim shuttle service requirement within PC 103, and we have reviewed the Highbrook Precinct example, as suggested to us by Mr Allan. Unfortunately, no party provided us with any suggested wording to consider in relation to this plan change application and we did not consider that it would be the best use of resources to direct the experts to conference on this matter.
178. The Hearing Panel has also undertaken a thorough site visit ourselves, and travelled by car through the SH1 intersection many times from several different directions. We especially noted the lack of formal footpaths and/or formal crossing facilities in existence. The Panel finds itself in agreement with Mr Lee-Joe that a safe and convenient active mode connection cannot be made within the existing SH1 intersection arrangements.
179. We do note however, as pointed out by Mr Lee-Joe, that the recent NoRs for the northern region indicate future plans for a full upgrade of the Silverdale interchange with comprehensive active mode connections albeit we acknowledge the evidence provided by NZTA indicated the timing of the SGA interchange upgrade which includes pedestrian/cycle crossings currently sits within the 2031-2041 decade.
180. It is our finding that there has not been a demonstrated demand to warrant mitigation of this matter in the form of a provision or a special information requirement within the precinct. We agree with Mr McKenzie (and Messrs Cook and Cooper) that this matter is best addressed either as part of NZTA's intended upgrading of the Silverdale interchange, or as part of Auckland Transport's ongoing management and delivery of transport services within the Dairy Flat Highway corridor. Undoubtedly, as the surrounding area develops, bus routes will be added which will provide an option for access across the interchange. In the meantime, we find that an interim shuttle service is an appropriate way forward, once demand has been demonstrated for such a service. We acknowledge, given the timing of the interchange upgrade, this

⁵⁴ Statement of Evidence of Mr Lee-Joe, paragraph 86

⁵⁵ Memo from Mr Lee-Joe, dated 4 April 2025

will mean the shuttle bus service may need to operate for a number of years until such an upgrade is complete. The responsibility for providing this service is yet to be understood, it could potentially be offered by a business establishing within the precinct.

Feasibility of SH1 Northbound Slip Lane Upgrade

181. The feasibility of a Northbound slip lane upgrade on SH1 was explored by the parties in conjunction with the above active mode discussions after the proposed slip lane on the western approach to the Silverdale Interchange was initially identified by NZTA as being a safety concern.
182. NZTA also made it clear in their evidence that they have not agreed to the mitigation proposed by the Requestor on their network, in particular the proposed northbound on-ramp because it does not accord with NZTA's planned upgrade works. The upgrades need to be in line with their long-term plans and not be incompatible with their interim works. Ms King provided the example of the interim bus priority lane through the intersection. She advised this has been designed and has funding within this 3-year period, but she is not sure on its delivery timeframe.
183. Mr Smith noted that the proposed northbound slip lane, which overlaps the SH1 designation as amended by NoR4, intends to provide a walk/cycle connection at the SH1 Silverdale interchange. It was his view that this meant that any future slip lane will be less direct, will require third party land and may have additional challenges with respect to ground levels. He recommended that more assessment be undertaken to confirm the feasibility and constructability of this proposed upgrade.⁵⁶
184. The traffic evidence of Mr Graham Norman on behalf of NZTA advised that⁵⁷ he had considered the upgrades proposed by the Requestor in the context of the future interchange upgrades. He did not consider the Requestor's proposed upgrade to be well aligned with the planned NZTA future upgrade and therefore he did not consider they are likely to reduce the cost of this future project.
185. It was his opinion that the proposed interim upgrades proposed by the Requestor fail to address the gap in the walking and cycling network and that a contribution towards the provision for a grade separated shared path across the Silverdale interchange is more appropriate⁵⁸.
186. It was Mr McKenzie's opinion that NZTA's opposition to the proposed design suggests that it wants its "end solution" but cannot currently fund it or even commit to its delivery⁵⁹.
187. He stated that the Requestor is proposing an interim solution to enable growth within the Silverdale West area, and Mr Norman indicates that NZTA does not want to accept this proposal because it will potentially impact their uncommitted "end solution". Mr McKenzie could not support this strategic approach to addressing the

⁵⁶ Statement of Evidence of Mr Smith, paragraph 1.3(e)

⁵⁷ Statement of Evidence of Mr Norman, paragraph 56

⁵⁸ Ibid

⁵⁹ Statement of Supplementary Evidence of Mr McKenzie, paragraph 18

emerging transport demands associated with the Silverdale West area from a traffic perspective⁶⁰.

188. It was Mr McKenzie's view⁶¹, that it is more appropriate to accept an interim upgrade when it is offered, work with the land-owner/developer to adjust the interim solution to fit within the "ultimate" solution especially as it is most likely that the "ultimate" design will differ from what has been included in the Notice of Requirement as the detailed design process proceeds over coming years. We agree with Mr McKenzie, noting that this particular upgrade would not be required until Stage 2 of the plan change area is developed.
189. With regards to the timing of the Requestors' proposed upgrades and the suitability of the design, plans prepared by Civix Ltd appended to Mr Lee-Joe's Supplementary Evidence⁶² demonstrate that the slip lane can be built within the existing road corridor. It was Ms Campbell's submission that because it can be demonstrably built, NZTA's opposition is not a reason to decline the plan change⁶³. We further note that the proposed upgrades and works within the NZTA's designation cannot occur without their approval, as the Requiring Authority.
190. We also note that all of the traffic experts agreed, including Mr Norman, from a safety perspective that it would not be an appropriate outcome to put at-grade active mode crossings as an interim measure through the Silverdale interchange.
191. We will return to the matter of financial contributions later on in this decision.

Objectives and Policies

192. AT has sought targeted changes to clarify and strengthen the wording of the relevant objective / policy provisions, and to provide policy guidance to ensure PC 103 aligns with integrated planning principles.
193. Ms Heppelthwaite has sought inclusion of a new or amended objective clearly requiring that subdivision and development must not occur until necessary transport infrastructure is operational. She considered the notified wording, requiring development to be "coordinated with" infrastructure, was insufficiently robust. Instead, Ms Heppelthwaite proposes explicit language, like that used in Objective 4B or similar, stating that development must not proceed ahead of the required infrastructure being operational. Specifically:

Either:

(4B) Subdivision and development does not occur in advance of the availability of operational transport (including regional and local transport infrastructure).

Or alternatively replace (4) and (4B) with:

⁶⁰ Ibid

⁶¹ Ibid

⁶² Supplementary Statement of Mr Lee-Joe's, paragraphs 28 and 39

⁶³ Closing Submissions for the Requestor, paragraph 49

(4AA) Subdivision and development does not occur in advance of the availability of operational transport (including regional and local transport infrastructure) water supply, stormwater, wastewater, energy and communications infrastructure.

194. Mr Allan submitted⁶⁴ that this stronger wording better reflects the directive nature of RPS Policy B3.3.2(5)(a) and NPS-UD Objective 6, which require genuine integration and sequencing of urban development with infrastructure.

195. To complement this, Ms Heppelthwaite seeks a new Policy 5B to explicitly require subdivision and development not to proceed ahead of operational transport infrastructure identified in precinct standards. Her recommended wording for Policy 5B is:

(5B) Require that subdivision and development in the Precinct does not occur in advance of the availability of operational transport infrastructure identified in the Precinct standards.

196. Mr Allan submitted⁶⁵ that such a policy is important to provide a clear sequential threshold, offering stronger guidance at consent stage, and ensuring that transport infrastructure requirements are clear and effective.

197. Messrs Cook and Cooper explained that the approach that is taken to transport matters in the precinct involves all infrastructure first being addressed together (Objective (4) and Policy (5A)) then separately for specific direction as applicable to its availability⁶⁶.

198. The planning witnesses said there are clear reasons why failure to deliver wastewater servicing to the plan change area includes an 'avoid' policy (Policy IX.3(8)) which results in a non-complying activity status at the associated rules. Failure to deliver sufficient capacity within the water supply and wastewater networks serving the development raises public and environmental health concerns that warrant the more onerous requirements of the non-complying activity status⁶⁷.

199. It was the view of Messrs Cook and Cooper that the transport rules do not warrant the same response. They stated that failure to deliver the upgrades referenced in Columns 2 and 3 of Table IX.6.7.1 will result in traffic effects on an already busy network, not any broader or more urgent impacts, and the relevant assessment matters are readily able to be defined. They also considered that transport network matters involve complex interactions, and that change in the network arises from many wider factors, not just those arising from the development of the Plan Change area⁶⁸.

⁶⁴ Legal submissions of AT, paragraph 3.8(b)

⁶⁵ Legal submissions of AT, paragraph 3.8(c)

⁶⁶ Supplementary Evidence of Messrs Cook and Cooper, paragraph 34

⁶⁷ Supplementary Evidence of Messrs Cook and Cooper, paragraph 142

⁶⁸ Supplementary Evidence of Messrs Cook and Cooper, paragraph 143

200. However, it was Ms Heppelthwaite's opinion that a distinct policy is necessary because Policy 5A's requirement that development "is coordinated with" infrastructure only establishes a timing relationship, whereas Policy 5B's direction that development "does not occur in advance of" operational infrastructure creates a clear sequential requirement and threshold⁶⁹.
201. Ms Heppelthwaite considered this distinction is important for effective implementation through the precinct standards. It was her view⁷⁰ that this approach is required to ensure that traffic effects are properly mitigated from the outset of development. Without this clear policy direction, she considered there is potential for development to proceed with transportation effects that have not been adequately addressed. She consequently recommended retaining Policy 5B as a separate policy with an amendment to be more explicit regarding the specific infrastructure required.
202. Ms Michelle Perwick, who presented planning evidence on behalf of Auckland Council as Submitter, considered it was essential that Policy IX.3(5B) seeks to "avoid" subdivision and development that does not integrate with transport upgrades. The recommended amendment would then emulate Policy IX.3(8) which applies to bulk water supply and wastewater infrastructure⁷¹. She recommended that Policy IX.3(5B) be amended as follows:

~~Require that Avoid~~ subdivision and development in the ~~p~~Precinct ~~does not occurring~~ in advance of the availability of operational transport infrastructure identified in the precinct standards.

203. Ms Perwick considered that the amended objectives and policy wording above would provide the most appropriate way to achieve the purpose of the RMA and ensure that the transport network upgrades are integrated with subdivision and development. She also considered that the amended provisions would be consistent with the NPS-UD and RPS, particularly Objective 6 and RPS B2.2.1(5), B3.2.1(5) and B3.3.1(1)(b)⁷². Notably, Ms Perwick did however advise at the beginning of the presentation of her evidence that she was also comfortable with the wording proposed by AT of "require that".
204. Having considered the evidence of Messrs Cook and Cooper, Ms Perwick and Ms Heppelthwaite, the Reporting Planner advised in his closing comments that he now agreed with the amendment proposed by Ms Heppelthwaite in her summary statement⁷³ of 2 April 2025 (Objective 4AA) which he considered would be a new Objective 4 as follows:

(4) Subdivision and development does not occur in advance of the availability of operational transport (including regional and local transport infrastructure) water supply, stormwater, wastewater, energy and communications infrastructure.

⁶⁹ Statement of Evidence of Ms Heppelthwaite, paragraph 9.19

⁷⁰ Statement of Evidence of Ms Heppelthwaite, paragraph 9.19

⁷¹ Statement of Evidence of Ms Perwick, paragraph 30

⁷² Statement of Evidence of Ms Perwick, paragraphs 32 and 33

⁷³ S42A Closing Planning Comments from Mr Paul, dated 8 April 2025, page 7

205. Mr Paul considered that this simplifies the objectives and rationalises the matter previously raised into one objective. Notably, this revised objective does not refer to the interim wastewater solution and its decommissioning, but he considered that these are better dealt with in the policy⁷⁴.
206. Further, having considered Ms Perwick’s evidence and her recommendation that the policy should refer to “avoid” he now agreed with this. It appears that Mr Paul did not take into account Ms Perwick’s expressed support for “require that” during her hearing presentation. He held the view that given his recommendation that non-compliance with the related transport standards should be non-complying, the avoid policy is more appropriate to support this activity status. He therefore recommended that the policy should read:

“(4B) ~~Require that~~ Avoid subdivision and development in the Precinct does not occurring in advance of the availability of operational transport infrastructure identified in the precinct standards”.

207. Having weighed up all of the evidence, we have landed on a combination of the above, with the introduction of a new objective and a consequential new policy, as follows:

Objectives

...

(4) Subdivision and development are coordinated with the supply of sufficient transport, water supply, stormwater, wastewater, energy and communications infrastructure.

(4B) Subdivision and development does not occur in advance of the availability of operational transport (including regional and local transport) infrastructure.

Policies

...

(5A) Ensure that subdivision and development in the precinct is coordinated with the provision of sufficient transport, stormwater, wastewater, water supply, energy and telecommunications infrastructure.

(5B) Require that subdivision and development in the precinct does not occur in advance of the availability of operational transport infrastructure identified in the precinct standards.

...

208. Firstly, it is our finding that both forms of infrastructure have equal importance in this precinct.

⁷⁴ S42A Closing Planning Comments from Mr Paul, dated 8 April 2025, page 7

209. We have retained the existing wording of Objective 4 as we agree with the evidence of Messrs Cook and Cooper and their overall approach to the provisions that all infrastructure should first be addressed together (Objective (4) and Policy (5A)). This is then followed by separate objectives and policies for specific direction.
210. We have adopted new Objective 4B as recommended to us by Ms Heppelthwaite. This results in an equivalent objective to Objective 4A for transport only which states that development must not proceed ahead of the required infrastructure being operational.
211. We do not agree that the objectives should be combined as Mr Paul has recommended to us, as this would remove the particular agreed wording relating to an interim solution and associated decommissioning for water and / or wastewater servicing proposed at the objective stage, and we disagree that the place to introduce this is at the policy stage.
212. With regards to the policies, we have retained the wording of Policy 5A for the reasons set out above. We have however introduced new Policy 5B based upon Ms Heppelthwaite's evidence, which we note Ms Perwick also supported.
213. Importantly, the Panel also notes that the Auckland Transport witnesses all preferred the wording of "require that", as opposed to the use of the word "avoid". The witnesses considered this wording would provide a clear, sequential threshold by explicitly requiring that subdivision and development did not proceed ahead of the identified operational transport infrastructure occurring. We agree and find that new Policy 5B will give effect to the higher order directives about integrated planning and will appropriately avoid and mitigate traffic effects from the industrial development of this land.

Activity Table - Wording of A3

214. Ms Heppelthwaite considers (A3) requires amendment to ensure that it gives effect to the overall structure of the precinct, better matches its purpose and to avoid situations where the 'first' application includes no or limited roading (e.g. a boundary adjustment or super lot) and subsequently (A3) falls aside without there being an overall assessment of the transport network (as would be provided for under the matters of discretion and assessment criteria)⁷⁵.
215. Mr Cook and Mr Cooper's initial proposed amendment to delete the word 'implement' in response to the matters raised above did not address her concerns. Ms Heppelthwaite sought changes to ensure that:
- (a) Each 'stage' of subdivision or development is subject to (A3);
 - (b) Transport infrastructure is specifically included;
 - (c) The Special Information Requirement IX.9(1) is reflected; and
 - (d) Once the infrastructure for a stage is operational, further applications within that stage revert to the Auckland-wide and zone rules.

⁷⁵ Statement of evidence of Ms Heppelthwaite, paragraph 9.25

216. Messrs Cook and Cooper confirmed that the key role of the precinct is to ensure that core infrastructure is in place to support development. That (A3) only applies to the first resource consent to 'enable' land is an important part of the overall structure of the precinct, with the intention being that subsequent development is managed principally by the underlying LIZ provisions. It was their view that the changes Ms Heppelthwaite is recommending would have the effect of all subsequent development triggering assessment under (A3) as a default.
217. We understand that Rules (A3), (A5) and (A6) work collectively to ensure that the transport infrastructure needed to support development is in place at the appropriate time. However, we agree with Ms Heppelthwaite that (A3) was not sufficiently robust to fulfil its purpose of implementing precinct structure and ensuring that transport infrastructure (excluding those in IX.6.7 which are addressed by (A5) and (A6)) is provided in a manner consistent with the Precinct Plan (or otherwise consented where it is not).
218. We agree that structural changes to the A3 rule are not needed, however we consider that the wording of A3 requires further clarification, to ensure that it is meeting its purpose, under both an entire precinct application, as well as a staged consenting approach, the latter of which was a concern of Ms Heppelthwaite.
219. We note that Messrs Cook and Cooper have since made further amendments to the wording of A3 in response to Ms Heppelthwaite's concerns. They now accept that the explanation within this rule and the note were leading to confusion, so they have deleted those. Messrs Cook and Cooper also acknowledged that reference to the 'first resource consent' is picked up in IX.6.7 and remains relevant to the transport upgrades and development thresholds and so it does not need to be duplicated in A3.
220. We agree with the amendments made by Messrs Cook and Cooper. The amendments make (A3) clearer and as a result the rule is more efficient and effective. We find that amendment will address the main concern of Ms Heppelthwaite which was this provision should apply to all subdivision, or all new buildings prior to subdivision, which will ensure that the overall structure of the precinct will be considered each time an application of this nature is made. This will also ensure that a highly connected street layout that integrates with the surrounding transport network is achieved. The special information requirement regarding the need for a transport assessment addendum will be required as set out in IX.9(2). Lastly, we find that there is no need for consequential changes to assessment criteria IX.8.2(1) as a result of the change made to (A3), as we consider that all of the relevant matters of assessment are already included.

Activity Table - Activity status for Non-compliance (A5) and (A6) and Transport Upgrade Standards

221. The rationale provided by Messrs Cook and Cooper for differentiating the activity statuses for IX.4.1(A5) and (A6) is that those upgrade elements set out in Column 2 of Table IX.6.7.1 are essential to support development within the precinct from its commencement and include the requirements to provide access into the precinct by

way of new intersections to Dairy Flat Highway⁷⁶. It was their view that not providing those upgrades could result in transport safety impacts, and accordingly, the more onerous discretionary activity status has been applied to Rule IX.4.1(A6).

222. Mr Smith has reviewed the upgrades required in Columns 2 and 3 in the context of Mr Cook's and Mr Cooper's reasoning and it is his opinion that they are both equally important in terms of transport safety. He considers there is no transport reason why the Column 2 and 3 items should be separated⁷⁷.
223. Ms Heppelthwaite accepted Mr Smith's view on this and as part of her overall recommendations in relation to IX.6.7, she recommend amalgamation of Columns 2 and 3 and consequential deletion of IX.4.1 Table Rule (A6) as well as amendments to (A5)⁷⁸.
224. It was also Ms Heppelthwaite's opinion that non-compliance with the transport infrastructure requirements should be treated as a non-complying activity rather than retaining a split activity status with restricted discretionary for (A5) and discretionary for (A6) as proposed by Messrs Cook and Cooper⁷⁹. We note that both Mr Paul and Ms Perwick supported Ms Heppelthwaite's approach⁸⁰. She considered that this appropriately signals the importance of transport infrastructure provisions for the development, and the need for greater scrutiny of any proposed departures from the transport infrastructure requirements⁸¹.
225. This would be consistent with the approach the Panel has taken for water/wastewater infrastructure requirements in the precinct (in relation to the objectives and policies), reflecting that both transportation and water/wastewater infrastructure are fundamental enabling components without which the development cannot function effectively or sustainably. We note that the Requestors' technical and planning assessments identify the transport upgrades as necessary for development to proceed without adverse effects on the surrounding network.
226. We also note that this would be consistent with A1.7 of the AUP(OP) regarding activity status. Section A1.7.3 describes restricted discretionary status as suitable where activities (bold added):

*[...] 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 appropriate⁸².*

227. Ms Heppelthwaite did not consider that failing to provide required transport infrastructure (which has been identified by the Requestors' own technical assessments as necessary to support the proposal) should be signalled as generally

⁷⁶ Joint Evidence in Chief for Messrs Cook and Cooper, paragraph 144

⁷⁷ Mr Smith's Statement of Evidence, paragraphs 8.1-8.5

⁷⁸ Statement of Evidence of Ms Heppelthwaite, paragraph 9.34

⁷⁹ Summary Statement of Evidence of Ms Heppelthwaite, paragraph 2.2(f)

⁸⁰ S42A Report, paragraph 326 and Statement of Evidence of Ms Perwick, paragraphs 36 to 40

⁸¹ Summary Statement of Evidence of Ms Heppelthwaite, paragraph 2.2(f)

⁸² Section A1.7.3 of the AUP(OP), page 9

anticipated in the existing environment, and therefore she did not support a restricted discretionary activity status for (A5) or (A6)⁸³.

228. Section A1.7.4 of the AUP(OP) addresses discretionary activities which are noted as “not generally anticipated to occur” as “effects are so variable that it is not possible to prescribe standards to control them in advance”⁸⁴.
229. Section A1.7.5 of the AUP(OP) sets out the circumstances when a non-complying activity status is justified (bold added):⁸⁵

“A1.7.5 Non-complying activities

[...]

*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.”*

230. On the basis of the above, Ms Heppelthwaite considered that non-complying activity status is most appropriate. She observed that the list of bullet points in A1.7.5 is not exclusive or exhaustive but that it does provide guidance. It was her opinion that the first bullet point above would be met by this proposal⁸⁶.
231. Ms Heppelthwaite further noted⁸⁷ the mitigation works in IX.6.7 are mostly agreed between experts and therefore provide a clear outcome. However, in a scenario where the mitigation agreed to be provided was not proposed she considered that would be an outcome which is not “anticipated to occur” due to the comprehensive technical assessments that have already been provided to support the necessity of those works.
232. It was Ms Heppelthwaite’s view that subdivision and development occurring without the required transport infrastructure upgrades could have potentially significant adverse effects on the transport network, which she notes is referenced in the second bullet point in A1.7.5⁸⁸.
233. Lastly, Ms Heppelthwaite also considered that “greater scrutiny” should be applied to proposals not meeting Standard IX.6.7 because provision of the identified transport

⁸³ Statement of Evidence of Ms Heppelthwaite, paragraph 9.36

⁸⁴ Section A1.7.4 of the AUP(OP), page 9

⁸⁵ Section A1.7.5 of the AUP(OP), page 10

⁸⁶ Statement of Evidence of Ms Heppelthwaite, paragraph 9.39

⁸⁷ Statement of Evidence of Ms Heppelthwaite, paragraph 9.39

⁸⁸ Statement of Evidence of Ms Heppelthwaite, paragraph 9.40

infrastructure is critical to support development of the precinct⁸⁹. She noted that the Requestors' Integrated Transportation Assessment has specifically identified the various upgrades as "necessary" and "required"⁹⁰.

234. Ms Heppelthwaite further noted that departure from water and wastewater infrastructure requirements, also critical for the precinct, had been agreed as requiring a non-complying activity consent (along with specific Objective 4A and Policy 8)⁹¹.
235. Messrs Cook and Cooper do not accept that Rules (A5) and (A6) meet that threshold and note the following:

“(a) The potential adverse effects are easily definable and relate to transport matters, and specifically to the safety and efficiency of the transport network;

(b) There can be no significant adverse effects because a resource consent is triggered under (A5) or (A6). Adverse effects need to be appropriately avoided, remedied or mitigated; resource consent will not be granted if adverse effects are significant; and

(c) The detailed information and requisite level of scrutiny are available via RDA and DA pathways, particularly noting the requirements of IX.9(2) – Transport Assessment Addendum.”

236. Related to the above matters, Ms Heppelthwaite has noticed that there is no rule in IX.4.1 to allow for variations from the designs specified in Appendix 1: Road function and design elements table or IX.11.2 Appendix 2: Road function and design elements table – external roads to the precinct. She therefore recommended⁹² that a new activity be included in the Activity Table which allows for this to be assessed as a restricted discretionary activity, which would ‘dovetail’ with the Requestors’ existing proposed matters of discretion and assessment criteria at IX.8.1(8) and IX.8.2(9). She considered this would be of assistance where detailed design results in minor variations. Ms Heppelthwaite has proposed new (5A) for the Activity Table to address this.
237. Mr Paul advised in his closing comments⁹³ that it was still his opinion that non-complying status is appropriate given the implications of the upgrade standards not being met. He added that Messrs Cook and Cooper have stressed the importance of the infrastructure upgrades required for each stage being in place before development could proceed. In his view, it should therefore follow that not providing the necessary infrastructure, should be treated as a non-complying activity. He added that he agreed with the reasoning provided by Ms Heppelthwaite and Ms Perwick.

⁸⁹ Statement of Evidence of Ms Heppelthwaite, paragraph 9.41

⁹⁰ Evidence of Mr Lee-Joe, 18 March 2025, paragraphs 18, 29(f).

⁹¹ Statement of Evidence of Ms Heppelthwaite, paragraph 9.41

⁹² Statement of Evidence of Ms Heppelthwaite, paragraph 9.43

⁹³ S42A Closing Planning Comments, page 4

238. Ms Campbell submitted, drawing on *Royal Forest and Bird*⁹⁴ and *Wakatipu Environmental Society*⁹⁵ that the correct presumption is to adopt the least restrictive regime that adequately addresses the effects of the activities⁹⁶, in this case the effects on the roading network. She said that no witness suggests that safety issues arise. If development were to proceed in advance of the upgrades anticipated, the effect would be on the level of service, i.e. the efficiency of the roading network might be decreased. Ms Campbell considered that it is possible that those effects might be for only a short period of time, for example, where the specified works are in train but not yet complete. She added that there remains the ability with either a restricted discretionary or discretionary activity status to enable an inappropriate application to be declined, should that be required⁹⁷.
239. Ms Campbell opined that a clear distinction had been drawn between a failure to provide wastewater infrastructure, which could have significant adverse effects both in terms of human health and environmental outcomes, and effects on the roading network, which could be substantially less severe and for only short periods of time⁹⁸.
240. The Hearing Panel prefers AT's case and agrees that non-complying activity status for such non-compliance is justified for the following reasons submitted by Mr Allan in his legal submissions for AT⁹⁹:
- (a) *The identified transport upgrades are essential to prevent potentially significant adverse traffic effects and maintain safety and efficiency on the road network.*²⁰ *It is Mr Smith's evidence that, in the absence of the identified upgrades, PPC 103 will have "potentially significant adverse traffic effects on the road network".*²¹
 - (b) *The application of non-complying activity status sends a clear and appropriately strong signal regarding the fundamental importance of these infrastructure upgrades, and ensures greater scrutiny is applied to departures from clearly specified infrastructure requirements.*²²
 - (c) *This status is consistent with the AUP's criteria for non-complying activities under section A1.7 of the AUP. Section A1.7.5 expressly identifies non-complying status as appropriate where "greater scrutiny is required".*
 - (d) *In Auckland Council v Cabra Rural Developments Ltd, the High Court held that the Environment Court had misapplied the provisions of the RMA and failed to have regard to the AUP in relation to activity status.*²³ *The High Court stated that:*²⁴

... by adopting a restricted discretionary activity status for applications that might have warranted careful scrutiny and detailed evidence (as the Court itself anticipated), the Court applied an activity status that

⁹⁴ *Royal Forest and Bird Protection Soc of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51

⁹⁵ *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* [1997] NZRMA 132

⁹⁶ Opening legal submissions, paragraph 116

⁹⁷ Legal Submissions, paragraph 116

⁹⁸ Legal Submissions, paragraph 117

⁹⁹ AT's legal submissions, paragraph 3.15(a) – (h).

does not anticipate close scrutiny at the resource consent stage. If an application requires greater scrutiny, a more onerous activity status should apply.

- (e) *The Court stated that the activity statuses in section A1.7 of the AUP reflect the hierarchy of activities in the RMA.²⁵*
- (f) *Since Cabra was decided, the Supreme Court has endorsed the AUP's articulation of non-complying activity status in this regard in Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency:²⁶*

... As the AUP usefully explains, activities are accorded non-complying activity status where greater scrutiny of the proposed activity is required. This may be because, for example, the activity is not anticipated in the place proposed, it is likely to have significant adverse effects on the existing environment, the environment is particularly vulnerable or, more generally, the activity is less likely to be considered appropriate in that place.²⁰

- (g) *Non-complying status aligns logically with the precinct's treatment of water and wastewater infrastructure. Both transport and water/wastewater infrastructure constitute fundamental enabling components without which the precinct cannot function sustainably...*
- (h) *While resource consent for RDA applications can be declined, RDA status would, in terms of A1.7.3 of the AUP, signal that non-provision of critical infrastructure upgrades is "anticipated", potentially undermining certainty around transport outcomes.²⁸*

- 241. The Hearing Panel also notes that a non-complying activity status has been employed in a number of other recent precincts (e.g. Waipupuke, Drury 2 and Spedding Block) to address the non-provision of essential transport infrastructure.
- 242. With regards to columns 2 and 3, we agree with the Requestor that it is clearer to keep the two items separated. However, we have made one amendment to Table IX.6.7.1 as the current wording of (a) in column 1 as proposed by the Requestor could be interpreted as only applying to row (a), when it is intended to apply to all the subsequent rows as well. To make this clearer, and to be efficient, we have added a separate row (as opposed to repeating the same sentence at the start of each row), before the Stage 1 part of the table so that this requirement now applies to all rows (a) – (e), inclusive.
- 243. We agree with Ms Heppelthwaite and Mr Paul, that it is appropriate for the insertion of an activity in the table that allows for minor variations from the detailed designs specified in Appendix 1: Road function and design elements table or IX.11.2 Appendix 2: Road function and design elements table – External roads to the Precinct, to be assessed as a restricted discretionary activity. We agree that this would 'dovetail' with the Requestors' existing proposed matters of discretion and assessment criteria at IX.8.1(8) and IX.8.2(9).

244. With regard to the remaining transport provisions, we have made consequential amendments to IX.8.2 Assessment criteria to reflect the change in activity status for (A5) and (A6) from restricted discretionary and discretionary respectively, to a non-complying activity, and to incorporate consideration of new policy 5B.

Trip Generation

245. For the sake of completeness, we briefly address the matter of trip generation. For the reasons explained by Mr Smith¹⁰⁰ being that the trip generation used within the transport model may change and a higher trip generation may result, Ms Heppelthwaite recommended that Standard E27.6.1 (Trip generation) should continue to apply within the precinct in the usual way to ensure appropriate assessments are conducted, if the actual development generates more trips than modelled¹⁰¹.
246. Mr Paul recommended acceptance of AT's submission point 14.32¹⁰² that the trip generation standard should be applied in the precinct which involved a deletion of the reference to E27.6.1 from IX.6(2)(a)) although we note that this was not reflected in his recommended precinct provisions.
247. Mr Cook and Mr Cooper did not agree, given that a detailed ITA had been prepared by Stantec on the basis of what they understood to be conservative activity mix assumptions, and there were specific transport mitigations within the precinct provisions that will need to be delivered in order to enable the progressive development of the plan change area¹⁰³.
248. However, in the closing legal submissions, Ms Campbell advised¹⁰⁴:

“The Applicants consider that their staging approach is effective and appropriate. However, to provide additional confidence that traffic effects will be managed by PC103, the Applicants have deleted “E27.6.1 Trip generation” from Standard IX.6(2)(a). An industrial activity that exceeds a trigger in E27.6.1 Trip generation will require resource consent.”

249. We further note that consequential amendments have been made by the Requestor to the precinct provisions to incorporate references to the E27.6.1 Trip generation standard in the matters of discretion and assessment criteria. We accept these amendments to the precinct provisions and note that this will address the concerns raised by Mr Smith and Ms Heppelthwaite.

¹⁰⁰ Statement of Evidence of Mr Smith, paragraphs 6.3 to 6.11 and 7.9

¹⁰¹ Statement of Evidence of Ms Heppelthwaite, paragraph 1.3(i).

¹⁰² S42A Hearing Report, page 76

¹⁰³ Joint Statement of Supplementary Evidence, paragraph 32

¹⁰⁴ Closing Legal Submissions, paragraph 47

Wilks Road/Dairy Flat intersection

250. PC 103 is proposing to upgrade the Wilks Road / Dairy Flat intersection with the introduction of traffic light signals. This is proposed upgrade number three in IX.11.3 of Appendix 3.
251. Mr Tim van Ameringen expressed his concerns¹⁰⁵ about safety to the Hearing Panel in relation to the Wilks Road / Dairy Flat intersection. We note that Mr van Ameringen's family have lived in Wilks Road West for approximately 26 years and during that time they have experienced the growth of their area and with it the increase of traffic, particularly along Dairy Flat Highway.
252. He said that the intersection had seen numerous high impact and deadly accidents over the years. He would prefer to see a roundabout upgrade, similar in style and size to that of the Dairy Flat Highway / Coatesville roundabout occur at this intersection. It was his experience that the Coatesville roundabout has proved very successful in the management of traffic behaviour, improving safety and diminishing the risks of accidents. Whereas he considered if traffic lights were installed instead, drivers (under pressure) could run the lights and still take risky manoeuvres.
253. Mr van Ameringen acknowledged that the speed limit along this section of road has been reduced in the recent year. It was his opinion however that this had not mitigated the intensity of traffic and the willingness of drivers to engage in risky manoeuvres at the Wilks Road/Dairy Flat intersection.
254. In response to Mr van Ameringen's concerns, Mr Lee-Joe advised¹⁰⁶ that roundabouts require significantly more land, whereas signals can be constructed within the existing road corridor. He said the signals will tie in with the signals at the PC 103 site accesses and the signals at the Dairy Flat Highway / Pine Valley Road intersection. It was Mr Lee Joe's opinion that signals are safer for active mode users. Further, he stated that signals operate better in situations of unbalanced flows. Overall, it was Mr Lee Joe's view that the signals will effectively manage the likely traffic effects.
255. It was Mr Smith's opinion¹⁰⁷ that a roundabout can be safer than signals due to the ability of a roundabout to reduce vehicle speeds. He noted that Designation 1487 for Dairy Flat Highway includes four-laning plans for the corridor and a dual-lane roundabout. Mr Smith supported including flexibility within the precinct provisions for either a roundabout or signals to be considered, noting that there will be several subsequent design stages including safety audits that require approval by AT.
256. Mr Smith also considered that reducing the speed limit along Dairy Flat Highway from 80 km/h to 60 km/h will result in a safer environment. He considered this to be of paramount importance should this intersection be signalised. He added that if the environment were to remain at the current 80 km/h, he would not support signals and instead would recommend a roundabout to be a safer treatment. Irrespective of the

¹⁰⁵ Speaking Notes of Mr van Ameringen

¹⁰⁶ Statement of Evidence of Mr Lee Joe, paragraph 80.

¹⁰⁷ Statement of Evidence of Mr Smith, paragraph 7.10

final form of the upgrade, he would expect the design to include provision for safe pedestrian and cycle movements and noted this would be subject to AT approvals¹⁰⁸.

257. In his supplementary statement, Mr Smith advised that he had one of his colleagues extract outputs from NZTA's Crash Analysis System for his interpretation. His assessment of that data was that the extracted key crash factors recorded included a failure to give way, loss of control and the rear ending of a slower vehicle when approaching road works. He advised there were no clear themes that strongly suggested there is an inherent road safety hazard at this intersection.¹⁰⁹
258. In his concluding comments Mr Richards agreed with Mr Lee Joe and Mr Smith¹¹⁰. He maintained his opinion that roundabouts are safer for vehicles, and can be designed to be safe for walking and cycling. He acknowledged that traffic signals can also be safe in lower speed environments. Mr Richards also acknowledged that Designation 1487 has identified a roundabout at the intersection of the Wilks Road and Dairy Flat Highway. Therefore, he remains of the view that there should be flexibility in the provisions for either outcome to occur. It was his opinion that the wording proposed by AT in the provisions enables this. We agree with this outcome, as it provides flexibility when there is uncertainty around timing for the implementation of Designation 1487. We have consequently added AT's proposed wording to the road upgrade for Wilks Road / Dairy Flat intersection in Appendix 3.

Financial Contributions

259. The legal submissions for NZTA prepared by Ms De Wit advised that the outstanding matters from their submission are¹¹¹:
- (a) *"The need for a financial contribution rule requiring developers in the PC103 area to contribute to transport works (Silverdale Interchange upgrades and Wilks Road Interchange) which will enable the effects of PC103 on SH1 to be appropriately managed;*
 - (b) *Amendments to provisions relating to the landscape buffer to be provided between SH1 and the PC103 area; and*
 - (c) *Amendments to ensure that transport upgrades proposed by the Applicant must be implemented with the necessary road controlling authority approval and without broad discretion for alternative designs to be implemented."*
260. This section of our decision will concentrate on the first matter being financial contributions and whether there is the ability to impose a financial contribution requirement within the precinct provisions, in favour of NZTA, under the RMA. The remaining two matters are dealt with under other topic headings in this decision.
261. The focus of NZTA's suite of evidence was on the proposed financial contribution as a possible funding mechanism to ensure that the Requestor of PC 103 pays their fair

¹⁰⁸ Statement of Evidence of Mr Smith, paragraph 7.11

¹⁰⁹ Supplementary Statement of Mr Smith, paragraph 2.2

¹¹⁰ Closing Comments of Mr Richards (Transport), page 1

¹¹¹ Legal Submissions for NZTA, paragraph 7.1

and equitable share towards the envisaged costs of the upgrade to the Silverdale West interchange, as well as the new Wilks Road interchange (south facing).

262. With respect to NZTA's legal submissions seeking a financial contributions rule, Ms de Wit submitted that¹¹²:

“(a) The Council has jurisdiction to include a financial contribution rule in the AUP;

(b) The financial contribution rule meets the statutory tests and should be recommended by the Hearings Commissioners because:

(i) PC103 will have adverse effects on the transport network;

(ii) The Appellant's proposed mitigation will not appropriately manage the adverse transport effects of PC103;

(iii) NZTA's proposed financial contribution rule is appropriate to mitigate those transport effects;

(iv) The financial contributions rule will give effect to the National Policy Statement on Urban Development 2020 (NPSUD) and Regional Policy Statement (RPS), and implement the relevant AUP objectives and policies; and

(v) The financial contributions rule is the most appropriate method to mitigate the effects of PC103.

(c) The financial contributions amount proposed by NZTA is appropriate:

(i) It is fair and reasonable; and

(ii) It has been determined using a methodology that ensures the contributions are proportionate to PC103 impacts, and is applied proportionately to development in the PC103 area.

(d) The drafting of the financial contributions rule meets the requirements of the RMA”.

263. The s42A Reporting Officer's report said¹¹³:

“The issue of how the funding of infrastructure that services a wider catchment is provided is not something that the District Plan and the Precinct can address. This needs to be addressed through separate funding agreements outside of the district plan.”

264. Ms de Wit submitted that the Council has jurisdiction to insert a financial contribution rule into the AUP(OP) to address the adverse effects of PC 103 on SH1. Ms de Wit

¹¹² Legal submissions for NZTA, paragraph 7.1

¹¹³ S42A Hearing Report, paragraph 359.

opined¹¹⁴ that this position was supported by her submission that the RMA provisions relevant to financial contributions “do not bar” Council from inserting a financial contributions rule into the AUP(OP) to address the adverse effects of PC 103 on SH1.

265. Despite the fact that Ms de Wit agreed that the RMA does not “touch on” the issue of collecting financial contributions for a third party, it was her submission that silence means that the RMA does not limit the purpose for which financial contributions may be required for an RMA purpose and that the Panel should not read that limitation into the statute.
266. While Ms de Wit also agreed with Ms Campbell that no court has directly addressed the equivalent issue in a binding manner, she advised there is case law that supports jurisdiction. Ms de Wit referred us to two cases¹¹⁵ where the Environment Court has endorsed district plan rules that require payment of a financial contribution towards the upgrade of NZTA infrastructure to manage the effects of development on that infrastructure¹¹⁶. She advised that *Findlay* endorsed similar rules without discussing them and the *Transit NZ* case, which made statements on the issue but were not determinative to the matter, not being district plan provisions, would allow financial contributions to be set.
267. Ms de Wit also referred us to the *Central Otago District Council v Otago Regional Council* case which stated that financial contributions must be paid to the consent authority, and cannot be directed to be paid straight to another party¹¹⁷. However, she advised the decision acknowledges that an ‘exception’ might apply if only another party can carry out the works that will be funded by the financial contribution and noted that only NZTA can authorise works on SH1 so she submitted the ‘exception’ identified by the Court would apply¹¹⁸ and that the *Central Otago* decision is in support of jurisdiction in these circumstances in this case.
268. Ms de Wit considered this was not a novel approach and that there are examples of similar district plan rules that enable the collection of financial contributions to support the delivery of NZTA infrastructure¹¹⁹:
- The first example was the New Plymouth District Plan which previously contained a rule requiring a financial contribution towards State Highway upgrades associated with traffic generated by development within a Structure Plan Area. Ms de Wit noted that the rule is not in the Proposed District Plan as the financial contribution was paid at the time the area was developed.
 - The second example provided was the Waipā District Plan, which she stated also includes a rule that enables the Council to require payment of a financial contribution where transport infrastructure requires construction, upgrading or

¹¹⁴ Legal submissions for NZTA, paragraph 13

¹¹⁵ *Findlay v Waipa District Council* [2017] NZEnvC 96 and *Transit New Zealand v Southland District Council* ENC Christchurch C42/06, 12 April 2006, at [51].

¹¹⁶ Legal submissions for NZTA, paragraph 14

¹¹⁷ Legal submissions for NZTA, paragraph 15

¹¹⁸ Legal submissions for NZTA, paragraph 15

¹¹⁹ Legal submissions for NZTA, paragraph 16

improving – including “existing or proposed public roads managed by a road controlling authority other than Council”.

269. Ms de Wit advised that NZTA acknowledges that seeking the imposition of a financial contribution has not been a common approach in the past, but the intention is to plan for growth better which requires a change in approach now. She added that the GPSLT also requires NZTA to seek funding contributions from beneficiaries and users of its infrastructure.
270. In terms of ‘fairness’, it was her submission that anyone with an interest in a future plan change will have the opportunity to participate in that process. The outcome of PC 103 will not be binding on a future plan change and the purpose and quantum of any financial contribution would need to be set in a manner that reflects the particular development that is the focus of that plan change, it was her submission that there is no procedural unfairness issue here.
271. In further support of her submission, Ms de Wit added¹²⁰ that the AUP(OP) already contains financial contributions rules, such that the relief would not be unique within Auckland’s planning framework.
272. Notably, NZTA expressed their preference for the Council to enforce financial contributions in Council’s capacity as the regulatory authority.
273. During the hearing, Mr Peter Vari tabled a legal opinion from DLA Piper¹²¹. The legal advice requested by Mr Vari related to the following questions:
- (a) *“Does the Council’s current Contributions Policy 2022 Variation A dated 1 June 2023 (Contributions Policy) provide for the taking of financial contributions? Or is it limited to the specific precincts in the Auckland Unitary Plan Operative in part (AUP) referred to in Schedule 6 of the Contributions Policy?”*
 - (b) *Can financial contributions provisions be included in PC103?*
 - (c) *If financial contributions provisions were included in PC103, can the Council legal impose conditions on consents for financial contributions when the Council’s Contributions Policy does not provide for this?*
 - (d) *Can the Council take financial contributions for a third party (i.e. for the New Zealand Transport Agency Waka Kotahi (NZTA).”*
274. In summary, DLA Piper responded as follows¹²²:
- (a) *“The Council’s current Contributions Policy does not generally provide for the taking of financial contributions and the taking of financial contributions is currently limited to three specific AUP precincts referred to in Schedule 6 of the Contributions Policy.*

¹²⁰ Legal submissions for NZTA, paragraph 18

¹²¹ Advice on financial contributions – Plan Change 103 (Private): Silverdale West Industrial Area, dated 4 April 2025.

¹²² Advice on financial contributions – Plan Change 103 (Private): Silverdale West Industrial Area, dated 4 April 2025, paragraph 3.

- (b) *While theoretically financial contribution provisions could be included in PC103, in light of the relevant provisions of the Local Government Act 2002 (LGA02), any amendments to precinct provisions would also necessitate a change to the Council's Contributions Policy. Without such a change to the Contributions Policy, which would involve a separate process to the plan change process, the taking of financial contributions under the Precinct would not be in compliance with the requirements of the LGA02 and open to challenge.*
- (c) *There is little caselaw dealing with the issue of financial contributions for third parties. However, on balance in this case, we do not consider that it is anticipated that the Council could take financial contributions for NZTA. In any event, even if they were anticipated, the Contributions Policy would need to be amended to summarise this approach.”*

275. With respect to the final point above, we note that DLA Piper advised¹²³:

“As noted by the Court in the Central Otago District Council case, the RMA is silent on financial contributions for third parties. Potentially there might be an argument that there could be a greater rationale for financial contributions for third parties with specific functions like NZTA. However, if this was the case, we would have anticipated that this would be made clear in the legislation. Alternatively, to support an argument that the taking of the type of financial contributions being proposed was appropriate, we consider that functions, duties and powers relating to certain third party assets would ideally have been delegated to the Council.”

276. Mr Kloppers confirmed in his closing comments that the legal advice provided by DLA Piper is the view of the Infrastructure Funding and Development Strategy team.¹²⁴

277. The Hearing Panel provided NZTA with an opportunity to respond to the Council's legal opinion. Ms de Wit filed supplementary legal submissions¹²⁵ on behalf of NZTA. In summary, Ms de Wit submitted that¹²⁶:

“Decision-making on PC103 is governed by the RMA. The LGA and Contributions Policy do not limit the inclusion of a financial contributions provision in PC103 or constrain the Hearing Commissioners' consideration of NZTA's submission seeking a financial contributions provision for impacts of development on the State Highway network. The Commissioners should make their recommendations on PC103 within the RMA framework and any update to the Contributions Policy (if required) can be left to the separate LGA process; and

¹²³ Advice on financial contributions – Plan Change 103 (Private): Silverdale West Industrial Area, dated 4 April 2025, paragraph 19.

¹²⁴ Closing Financial Contributions comments from Mr Kloppers, dated 8 April 2025

¹²⁵ Supplementary Legal Submissions for NZTA dated 8 April 2025

¹²⁶ Supplementary Legal Submissions for NZTA, paragraphs 3.1 – 3.2

As set out in the legal submissions on behalf of NZTA, the case law does not bar, and in fact supports, the inclusion of a financial contributions provision in PC103 for State Highway infrastructure.”

278. The Requestor opposes NZTA’s financial contribution provisions on the grounds that they are inequitable (in the timing of their collection and in their fair recovery against all beneficiaries), they are not triggered by the effects of the proposal, and they have not been demonstrated as the most appropriate way to achieve the objectives of the plan change¹²⁷.
279. Ms Campbell agrees with NZTA’s submissions that the power to impose financial contributions is found in the RMA, not the Council’s development contributions policy. However, Ms Campbell submitted that there is a difference between a power to impose financial contributions and a power to impose financial contributions to fund a third-party asset. In this respect, she stated the LGA supports an interpretation of the “silent” RMA provisions that financial contributions are to be collected by the Council for the Council, not the Council for a third party for payment towards its infrastructure.
280. The Hearing Panel notes that NZTA’s supplementary submissions recognise, “it is not clear that [ss 102, 103 and 106 of the LGA] capture financial contributions relating to NZTA infrastructure”.¹²⁸
281. Ms Campbell observed that NZTA’s case “rests on the absence of a prohibition rather than an express power”. It was her submission¹²⁹, a ‘mechanism that is in the nature of a tax cannot be authorised by silence’. In addition, the fact that the LGA requires the Council to hold a policy suggests that financial contributions should only be used for Council assets. Further, she submitted that Council would have no ability to have a policy under the LGA as to its approach to financial contributions for third parties about which it had no knowledge. In summary, the Requestor maintains that payment of financial contributions for a third-party asset is not lawful.
282. The Hearing Panel has closely reviewed the Council’s policy on financial contributions in the AUP(OP). Notably, Chapter I1. Financial contributions is a very brief chapter located within the Precincts section of the plan. It states by way of background¹³⁰:

“Section 108 of the Resource Management Act 1991 provides that when the Council grants a resource consent it may impose a condition of consent requiring that a financial contribution be made.

In certain precincts, financial contributions will be taken in accordance with the precinct rules in order to avoid, remedy or mitigate adverse effects of an activity on the environment. The precinct rules set out the purpose for which land may be required as a financial contribution, and the manner in which the level of contribution (i.e. the amount of land required) is determined.

¹²⁷ Closing Legal Submissions for the Requestor, paragraph 5

¹²⁸ Supplementary Legal Submissions for NZTA, paragraph 18

¹²⁹ Closing Legal Submissions for the Requestor, paragraph 79

¹³⁰ Chapter I1 Financial Contributions

....

11.2. Objective

(1) Financial contributions of land are required in accordance with in the precinct rules in order to avoid, remedy or mitigate adverse effects of the proposed activity on the environment.

11.3. Policies

(1) Require financial contributions of land for the purpose specified in the precinct rules.

(2) Determine the amount of financial contributions of land in accordance with the precinct rules and on a case by case basis.

283. We have also reviewed the three precincts in the AUP(OP) that currently contain financial contribution provisions¹³¹. We note that neither the financial contributions provisions nor any of the three precincts enable the collection of financial contributions to support the delivery of NZTA infrastructure. Further, the policy within Chapter I1 appears to focus on “financial contributions of land”.
284. The evidence in support of NZTA’s case is summarised below. Ms Kathryn King provided corporate evidence for NZTA. She addressed NZTA’s statutory functions, as well as the funding and investment options available for NZTA infrastructure. Ms King advised that NZTA’s position on PC 103 is that it does not ensure the safe and efficient operation of transport infrastructure in and surrounding the PC 103 area¹³². It was her view that as the Silverdale and Wilks Road interchange projects are needed to support development in the PC 103 area, there should be provisions within PC 103 requiring a fair and proportionate financial contribution towards the funding of those projects¹³³. She concluded that financial contributions are preferable to the other options available to NZTA.
285. Mr Graham Norman provided transport evidence. He considered there are several gaps in the Requestor’s assessment of the transport effects, including limited assessment of active mode demand and travel patterns, the assessment of vehicle demand which is not consistent with New Zealand data, (which he considered has more of a local context), as well as reliance on a model that was developed for a different purpose (Milldale).
286. He addressed the effects of PC 103 on the transport network, and the appropriateness of the mitigation proposed by the Requestor compared to the SGA upgrades. He considered the Requestor’s assessment likely ‘understates’ the transport effects of PC 103¹³⁴.
287. Notably, Mr Norman did not undertake his own modelling of the transport effects of PC 103, however he considered the Requestor’s assessment likely understated the

¹³¹ 1214 Wynyard Precinct, 1330 Saint Lukes Precinct, and 1336 Sylvia Park Precinct

¹³² Supplementary Statement of Evidence of Ms King, paragraph 2

¹³³ Supplementary Statement of Evidence of Ms King, paragraph 2

¹³⁴ Supplementary Statement of Mr Norman, paragraph 5

transport effects of PC 103 due to the gaps in their transport assessment¹³⁵. It was Mr Norman's opinion that the mitigation measures proposed by the Requestor were not appropriate, as it was uncertain they could be achieved and they did not align well with the SGA upgrade, given the anticipated timing is similar. He considered the upgrades proposed by the SGA are the more appropriate measure, occurring in one single upgrade¹³⁶.

288. Mr Norman considered the effects of PC 103 to, cumulatively with other development, contribute to the need for the Silverdale interchange upgrade and the new Wilks Road interchange. Due to this direct link he considered it appropriate for PC 103 to make financial contributions towards these infrastructure upgrades that are proportionate to the demand it will create for those upgrades¹³⁷.
289. Mr Norman has assessed the proportion of cost of the relevant upgrades attributable to the impacts of PC 103, and he commented on the method for attributing financial contributions to development within the PC 103 area. He considered the traffic demand from a full build-out scenario to be the most proportionate method as it compares the demand associated with the PC 103 area with total users¹³⁸. It was his view that this method ensures that impacts created by other growth and existing users are not attributed to PC 103. He has calculated¹³⁹ that PC 103 will contribute:
- 8.8% of demand for the Silverdale interchange upgrade; and
 - 3.2% of demand for the new Wilks Road interchange.
290. Mr Norman determined that the total financial contribution toward the two projects from the PC 103 area should be \$18.4M.¹⁴⁰
291. Mr Gregory Akehurst provided economic evidence. He addressed economic principles relevant to financial contributions and assessed whether the proposed financial contributions rule is fair and proportionate. It was Mr Akehurst's opinion that the most important principle when determining financial contributions is fairness, which means (in this case) that those who create the effects that require infrastructure investment pay a proportional share of the costs of that investment¹⁴¹. It was his view that early developers need to pay their share of future infrastructure to ensure that the full cost is not attributed to later arrivals¹⁴².
292. He considered a key principle is that there is no distinguishing factor between local roads and state highways that means developers should contribute to one and not the other (where there is a clear link). It was his view that NZTA as a provider of infrastructure that helps facilitate and cater for growth should be able to collect financial contributions from those who benefit from that investment in much the same way that Council is able to collect development contributions to provide for local

¹³⁵ Supplementary Statement of Mr Norman, paragraph 5

¹³⁶ Supplementary Statement of Mr Norman, paragraph 6

¹³⁷ Supplementary Statement of Mr Norman, paragraphs 10 -11

¹³⁸ Supplementary Statement of Mr Norman, paragraphs 13

¹³⁹ Supplementary Statement of Mr Norman, paragraph 14

¹⁴⁰ Supplementary Statement of Mr Norman, paragraph 16

¹⁴¹ Supplementary Statement of Mr Akehurst, paragraph 3

¹⁴² Supplementary Statement of Mr Akehurst, paragraph 4

roads that achieve the same aim (to facilitate the development). If not, he considered there would be an inequity in funding for infrastructure that is very similar¹⁴³.

293. Mr Akehurst concluded¹⁴⁴ that Mr Norman's approach is appropriate as it is based on a robust assessment of load / demand and results in a fair and equitable distribution of costs based on the benefits received. He explained that Mr Norman's model has divided the costs of the infrastructure, by those that are generating the need once fully operational. He considered this is the only fair and equitable way to assess benefits received¹⁴⁵. Mr Akehurst also observed that if the future costs of the upgrades increase there is a mechanism to adjust the financial contributions accordingly.
294. Lastly, Ms Lesley Hopkins provided planning evidence. She addressed the effects of PC 103 on the transport network and the need to mitigate those effects, and the consistency of the proposed relief with the planning framework. Ms Hopkins also provided a section 32AA analysis. It was Ms Hopkins' view that the policy framework supports an integrated approach to the planning and funding of infrastructure and managing the effects of growth on the transport network¹⁴⁶. Ms Hopkins confirmed that she supports the use of triggers to control the release of land.¹⁴⁷ She considered the inclusion of a financial contribution provision is consistent with the policy framework and is an appropriate mechanism to address the adverse transport effects of PC 103.¹⁴⁸
295. Upon further questioning, Ms Hopkins advised that the provisions within the I1 Financial Contributions chapter were very specific to land, so she did not consider they were applicable to the proposed financial contribution provision for PC 103. It was her view that she did not need to rely on that objective and those policies.
296. Messrs Cook and Cooper held the view that there is no effects basis on which to include a financial contribution provision within the precinct, as the transport network effects of PC 103 are being avoided by utilising existing capacity and are being mitigated by identified network upgrades¹⁴⁹.
297. They expressed a concern that the financial contribution mechanism proposed by NZTA does not address the growth from elsewhere in the Structure Plan area or from other users – current and future – of those interchanges¹⁵⁰. They considered that NZTA's indicative approach has the potential to be highly inequitable over time and seems like a 'kneejerk reaction' to PC 103 on the basis that the opportunity to charge developers of the plan change area will be lost¹⁵¹.
298. It was Mr Philip Osborne's view that Mr Akehurst was seeking to avoid one of the most significant differences between the two sets of roading infrastructure.

¹⁴³ Statement of Evidence for Mr Akehurst, paragraph 29

¹⁴⁴ Supplementary Statement of Mr Akehurst, paragraph 6

¹⁴⁵ Supplementary Statement of Mr Akehurst, paragraph 12

¹⁴⁶ Supplementary Statement of Ms Hopkins, paragraph 13

¹⁴⁷ Supplementary Statement of Ms Hopkins, paragraph 15

¹⁴⁸ Supplementary Statement of Ms Hopkins, paragraphs 13 and 17

¹⁴⁹ Joint Statement of Supplementary Evidence of Messrs Cook and Cooper, paragraph 16

¹⁵⁰ Joint Statement of Supplementary Evidence of Messrs Cook and Cooper, paragraph 16

¹⁵¹ Joint Statement of Supplementary Evidence of Messrs Cook and Cooper, paragraph 17

Historically, he reflected, state roading has been funded centrally due to the very fact that it is very difficult to accurately identify the individual beneficiaries of improvements to a network where improvements at one point benefit users further through the system.¹⁵²

299. Mr Osborne identified a number of other factors¹⁵³ that gave him cause for concern, which relate not only to the distribution of benefits but to the equity of the method of financing. These included the timing of the infrastructure provision, the uncertainty of timing and provision, and the ability for the Requestor to 'benefit'. He reiterated that the key underlying issue relates to the fairness and appropriateness of the provisions sought and the method of funding¹⁵⁴.
300. It was Mr Osborne's opinion¹⁵⁵ that the economic cost benefit assessment provided by NZTA through the planning evidence highlights, at the very least, the lack of consideration for potential inequities and economic costs that have the potential to impact upon the market's ability to effectively and efficiently provide business land to meet demand and in themselves contribute to a more efficient transport network through improving local employment opportunities.
301. In addition to the above, Messrs Cook and Cooper considered that the section 32AA analysis provided by Ms Hopkins overstated the benefits of the financial contribution method and understated the costs¹⁵⁶. In their view, inserting a financial contribution mechanism in PC 103 is not the most appropriate method for addressing the issue of future funding of long-term infrastructure projects. They consider it attributes the costs of that infrastructure far too narrowly, incorrectly assuming that it is only the developers of land that are benefiting from that infrastructure and that they should not be burdened with the associated costs. They consider it is also inefficient as it relates to unfunded projects within a designation that has been given effect to and therefore has no lapse date¹⁵⁷.
302. We turn now to our findings on this matter. It has not been sufficiently demonstrated to us that it is lawful for the Council to collect financial contributions for a third party, in this case NZTA. We agree with Ms Campbell's submission, that there is a difference between a power to impose financial contributions and a power to impose financial contributions to fund a third-party asset for payment towards its infrastructure¹⁵⁸. No one has provided us with clear evidence that the RMA contains provisions that enables the taking of financial contributions relating to NZTA infrastructure.
303. The financial contribution provisions within the AUP(OP) did not provide us any further assistance in this regard.

¹⁵² Supplementary Evidence of Mr Osborne, paragraph 9

¹⁵³ Supplementary Evidence of Mr Osborne, paragraph 11

¹⁵⁴ Supplementary Evidence of Mr Osborne, paragraph 14

¹⁵⁵ Supplementary Evidence of Mr Osborne, paragraph 18

¹⁵⁶ Joint Statement of Supplementary Evidence of Messrs Cook and Cooper, paragraph 21

¹⁵⁷ Joint Statement of Supplementary Evidence of Messrs Cook and Cooper, paragraph 22

¹⁵⁸ Closing Submissions for the Requestor, paragraph 79

304. The Panel also considered whether NZTA's proposed financial contributions framework was fair, reasonable and equitable? We explored through a series of questions with the NZTA witnesses, the costs and benefits of NZTA's proposed framework, particularly in relation to a timing aspect.
305. In short, we were not convinced that the financial contribution provisions being sought would be fair and reasonable on the Requestor, especially given the level of certainty, that the upgrades will actually be delivered in the anticipated timeframe. The specific NZTA projects identified, being the SH1 interchange upgrades and the Wilks Road upgrades have an indicative 6-year and 14-year timeframe, respectively (being 2031 and 2039). Ms de Wit advised these timeframes may move slightly depending on how growth proceeds. We note there is no lapse date on the designation nor has any source of funding been identified¹⁵⁹, meaning there is no certainty about when, or even if, these upgrades will occur.
306. These long-term and uncertain timeframes do raise equity concerns for us, as PC 103 would need to fund 'its proportion' of costs far in advance of the upgrades being in place and will have to internalise this cost in doing so, while later developments will contribute closer to the time the infrastructure is to be provided, in that same market.
307. Commissioner Skidmore used an analogy to explore the fairness of the proposed financial contributions matter further. The question posed to Mr Akehurst was if someone went into a shop to buy (and pay for) a product, but it wasn't there at the time, and there is no certainty when you would get the product or what that product would be like, is it fair that the shopkeeper still asks for payment for the product at that time? In translating this scenario to PC 103, we asked ourselves if it was fair that the Requestor was being asked to pay the financial contributions now, despite the fact that the intended upgrades are projected to be a minimum of 6 to 14 years into the future, all while there is a level of risk or uncertainty that the upgrades will actually be delivered. In response, Mr Akehurst acknowledged that there is a risk that the infrastructure upgrades do not go ahead and that you have over-collected for them, but he said you can only make a decision based on the best information that is available at the time in order to fund this infrastructure.
308. The Panel further noted that there are large areas of future urban zoned land remaining in the surrounding area. This land will be subject to several plan change processes over time. There is no certainty that the same or similar financial contribution mechanisms will be rolled out via other private plan change processes. Each plan change process is subject to its own process heard by different Hearing Panels. We therefore struggle to understand how a financial contribution process could be rolled out on a fair and equal basis with NZTA submitting on each plan change process. Ms King also confirmed that there is no Auckland-wide plan change proposal that is currently being prepared by NZTA to enable such an outcome to occur.

¹⁵⁹ Ms King advised that no funding has been identified for either of these projects by the National Land Transport Fund nor has it been identified for Crown Funding.

309. Ms de Wit confirmed that no financial contributions have been collected from past developments in this location. It is also not clear to us how other users from existing urban areas or growth from establishing urban areas (occurring outside of Future Urban zoned areas) in proximity to the Silverdale and future Wilks Road interchange would contribute their 'fair share' of any contribution owing to these infrastructure upgrades.
310. The GPSLT is a high-level policy document that Ms de Wit considers should be given consideration to by the Panel, but she acknowledges it is not a RMA policy document to be given effect to and therefore it has no statutory weight. What it does do however, is **direct** NZTA to be looking at alternative funding and financing arrangements, which is what NZTA are doing in seeking financial contributions on the PC 103 process.
311. We also note that despite Ms King advising NZTA will be seeking financial contributions on other larger private plan change applications as directed to by the GPS (both in Auckland and across the country), at the time of this decision, NZTA has not sought to achieve this approach elsewhere in Auckland.
312. We raised our concerns around the mechanisms for how this framework would operate with the Council being responsible for collecting the financial contributions. We consider this could create quite a burden on the Council. The witnesses from NZTA could provide no answers to this.
313. We also note that some development of the PC 103 area is able to be undertaken prior the NoR4 upgrades to the Silverdale interchange and the installation of the Wilks Road interchange being in place. This is an important point, and we do not agree that a financial contribution should be imposed in this situation.
314. We also do not consider that NZTA's proposed framework is fair or reasonable. We find that it would result in inequity across all users and there is no certainty that the infrastructure will be delivered in the timeframes indicated. We agree with Messrs Cook and Cooper that NZTA's financial contributions mechanism does not address growth from elsewhere in the area or from other users of the interchange. The Panel therefore find that the financial contributions framework proposed is not the most appropriate way to achieve the objectives of the plan change in terms of the s32 tests. Further the do-nothing option in relation to financial contributions is the most appropriate approach.
315. Putting the above to one side for the moment, it is our finding that the traffic effects of PC 103 on the Silverdale interchange and the Wilks Road upgrades are appropriately mitigated by the provisions within PC 103. Notably, this includes the required transport upgrades that the Requestor has committed to undertaking, as set out in Appendix 3 of the proposed precinct provisions, as well as the staging of the land development. We disagree with Mr Norman's evidence in that regard. We note that all of the traffic experts, with the exception of Mr Norman, agreed that the traffic model utilised was appropriate, this includes AT.
316. Further, together with the Requestor having agreed, albeit late in the process, to include the ability for the trip generation mix to be revisited, we consider that the matter relating to trip generation is resolved and overall that the traffic effects of PC

103 are in fact, well understood (and mitigated). We therefore agree with Messrs Cook and Cooper who consider that “there is no effects basis on which to include a financial contribution provision within the precinct”¹⁶⁰.

317. During our questioning of the experts, we also explored alternative methods for funding of the infrastructure, such as development agreements or cost sharing agreements in terms of s32 of the Act. Ms Hopkins said she did not consider that supplementary funds were an appropriate tool for PC 103. Nor did she consider that an Auckland-wide plan change to introduce a region-wide financial contributions policy was an appropriate mechanism as the specific projects required to support that land use need to be well defined so that the proportion of demand can be calculated. She considered that a general approach could lead to disproportionate costs being applied. It also was not clear to her where any region-wide provisions would appropriately sit within the AUP(OP). It was Ms Hopkins opinion that the specific provisions sit more comfortably in a precinct¹⁶¹.
318. Lastly, on this matter, we agree with Ms Campbell’s submission about the benefits of cost-sharing agreements, specifically, precincts involve the Council as a third party with no real “skin in the game” - a clearly less efficient and effective approach than the two concerned parties dealing with each other directly¹⁶². We note that this option was not included in Ms Hopkin’s s32AA Assessment.

Landscape Buffers

319. The genesis for the landscape buffers is found in the Structure Plan. The Structure Plan identifies two amenity-related landscape buffers along the SH1 and Dairy Flat Highway interfaces of the precinct. The buffers are to assist with the mitigation of adverse effects on the landscape and visual amenity values of the surrounding area arising from the changing land use to industrial.
320. With regard to the SH1 interface, the Structure Plan advises that an overall goal of a 40m buffer along the motorway is intended to create an attractive gateway from SH1 / Silverdale interchange. It also identifies that there are situations where the landform and existing planting obscure views of the area from the motorway and that it is possible to amend the 40m depth of the buffer along the interface where existing, unmodified landform features will be retained, existing vegetation is protected on private land, or consented landscape planting provides an effective visual screen that mitigates to the same extent adverse visual effects of industrial development from views from the motorway as a 40m landscape buffer would. In terms of the Dairy Flat Highway interface, a 10m landscape buffer is identified.
321. PC 103 takes a more nuanced approach to the SH1 buffer than the Structure Plan. The Requestor made provision for a landscaped buffer along the SH1 and Dairy Flat Highway interface based upon the specific analysis provided by Ms Julia Wick.
322. Following further analysis of the site, a continuous planting buffer of 10m-15m along the SH1 corridor interface and a 5m buffer along the Dairy Flat Highway interface

¹⁶⁰ Joint Supplementary of Messrs Cook and Cooper, paragraph 16.

¹⁶¹ Supplementary Statement of Ms Hopkins - Appendix 1

¹⁶² Closing Submissions for the Requestor, paragraph 92

were recommended by Ms Wick to achieve the visual and amenity objectives of the Structure Plan. It was also recommended that this planting should incorporate a diverse range of plant species and vegetation heights, including low plantings, mid-height shrubs, and taller trees, to create a regular rhythm and reinforce the area as a gateway feature. In addition, Ms Wick recommended¹⁶³ the design emphasise bold forms, textures, and colours to enhance visibility at high speeds (100 km/h). It was her view that larger tree species, reaching at least 20m in height, should be included to provide scale, containment, and visual mitigation of the surrounding built environment.

323. Ms Wick was of the opinion that the gateway effect being sought along the SH1 corridor can be more effectively achieved through thoughtful design, including tree clusters, upright groupings, and a variety of plant species¹⁶⁴.
324. This translated into the proposed PC 103 provisions in the following manner, IX.6.4 Landscape buffer (State Highway 1 interface) and Appendix 4 in the notified provisions which establish a landscape buffer varying between 5m and 15m in depth of continuous buffer planting which accommodates a range of plant species and scales of vegetation to create an effective gateway feature. In recognition of the impact that the change to the designation boundary proposed in NoR 4 would have, provision was made in the rule for Standard IX.6.3 Yards to apply in the event that a NoR is lodged or designation confirmed for transport works within the area of the buffer.
325. Ms Wick recommended the use of landscape design to emphasise bold forms, textures, and colours to enhance visibility at higher speeds (100 km/h). She recommended that larger tree species, reaching at least 20m in height, should be included to provide scale, containment, and visual mitigation of the surrounding built environment¹⁶⁵.
326. With regard to the Dairy Flat Highway buffer, a more conventional approach to the establishment of a visual buffer between industrial activities within the precinct and Dairy Flat Highway (and the future residential areas opposite) has been taken. Ms Wick identified that there is no mention of the need for visual mitigation in this area, consequently, she considered the gateway effect could be achieved through thoughtful design of the planting. This could include tree clusters, upright groupings, and diverse plant species, rather than just adhering to a standard 10-metre width¹⁶⁶.
327. Through notified Standard IX.6.5 Landscape buffer (Dairy Flat Highway interface), a minimum depth 5m landscape buffer was proposed either from the edge of the road widening required under Standard IX.6.6 Road widening setback along Dairy Flat Highway, or from the legal road boundary once the road widening designation is in place.
328. The 5m continuous planting buffer along the interface with the Dairy Flat Highway corridor was proposed to be planted with a mixture of trees, shrubs, or ground cover

¹⁶³ Statement of Evidence of Ms Wick, paragraph 13

¹⁶⁴ Statement of Evidence of Ms Wick, paragraph 37

¹⁶⁵ Supplementary Statement of Ms Wick, paragraph 6

¹⁶⁶ Statement of Evidence of Ms Wick, paragraph 38

plants along the full extent to achieve multi-layered plantings and be arranged to achieve a regular structure and rhythm reinforcing a gateway feature.

329. Ms Wick concluded that the proposed approach to the landscape buffer for both the Dairy Flat Highway and SH1 interfaces will effectively meet the objectives outlined in the Structure Plan. It would provide visual mitigation for the roadway interfaces and create a high-quality amenity and gateway experience at these locations¹⁶⁷.
330. Furthermore, she considered that the broader landscape design, which aims to visually “break up” the industrial buildings, will incorporate interventions within the masterplan, such as 20-metre-wide planted stream corridors, large-scale tree planting in internal streetscapes, and amenity planting throughout the site. It was Ms Wick’s view that these measures will help to minimise the visual impact of the industrial development and soften its dominance, particularly when viewed from elevated residential properties (in the east)¹⁶⁸.
331. Messrs Cook and Cooper agreed with Ms Wick that a different approach was appropriate for the Dairy Flat Highway buffer (to that for SH1) because the land in PC 103 will not be developed until the southern side of Dairy Flat Highway is delivered as required by the transport provisions in PC 103¹⁶⁹.
332. Messrs Cook and Cooper considered this method to be appropriate to achieve the RMA and the AUP(OP) provisions, as there would be a buffer in place to maintain and enhance amenity values, noting these would be enjoyed by people travelling on SH1 or in more distant elevated positions, until such time as the Designation is confirmed for public transport works along the SH1 margin of the PC 103 land¹⁷⁰.
333. They considered however, that upon the designation being confirmed, the implementation of the buffer standard would no longer be an efficient or effective planning mechanism because the notice occupies the whole of the buffer required in standard IX.6.4, meaning development and subdivision of the land and provision of any buffer would be controlled by the notice/designation¹⁷¹.
334. To maintain the provision for amenity, Standard IX.6.4 provided for the rear or side yard requirements of Standard IX.6.3 to apply to the new boundary with SH1. This is on the expectation that any need for an additional amenity buffer would be provided at the time the SH1 improvement works are implemented, and any surplus land is returned, while ensuring that amenity is achieved by the 5m side or rear yard (including 3m landscaping requirement) under Standard IX.6.3.
335. NZTA’s submission sought amendments to provisions relating to the landscape buffer to be provided between SH1 and the PC 103 area. Specifically, NZTA sought to ensure that the proposed landscape buffer is re-aligned or setback from SH1 to prevent overlap between the buffer and NZTA’s NoR4. It was Ms Hopkins’ view that

¹⁶⁷ Statement of Evidence of Ms Wick, paragraph 42

¹⁶⁸ Statement of Evidence of Ms Wick, paragraph 42

¹⁶⁹ Joint Statement of Evidence of Messrs Cook and Cooper, paragraph 184

¹⁷⁰ Joint Statement of Evidence of Messrs Cook and Cooper, paragraph 181(a)

¹⁷¹ Joint Statement of Evidence of Messrs Cook and Cooper, paragraph 181(b)

the landscape planting within NoR4 cannot be relied upon to mitigate the adverse visual effects of PC 103 in the long term¹⁷².

336. The Section 42A Hearing Report recommended rejecting NZTA's submission on the basis that the boundary of the designation is unclear as NoR4 is under appeal¹⁷³. In response, Ms Hopkins noted that the appeals on NoR4 are property specific appeals outside of the PC 103 area, meaning it is highly unlikely the boundary between PC 103 and the SH1 designation boundary (as amended by NoR4) will change as a result of the appeals¹⁷⁴. Ms de Wit also noted that NoR4 has interim effect from the date NZTA gave notice. Accordingly, no person may do anything that would prevent or hinder the work to which the designation relates without the prior written consent of NZTA¹⁷⁵. As such, Ms de Wit stated that no planting within the NoR4 boundary (or designation) required by the PC 103 provisions can be undertaken by the Requestor unless and until agreed with NZTA¹⁷⁶.
337. NZTA proposed an amendment to the relevant landscape buffer provision to enable consideration of engagement with NZTA as the road controlling authority¹⁷⁷.
338. In response to NZTA's evidence, and the uncertainty of this outcome, in light of NoR4, Standard IX.6.4 – Landscape Buffer (SH1 Interface) was updated by the Requestor to address the impact of the proposed change to the designation boundary. The provision was amended to say if a designation for transport works is confirmed within the buffer area, the requirements of Standard IX.6.4 will no longer apply. Instead, the rear or side yard requirements of Standard IX.6.3 will apply to the new boundary (2m +3m landscaping).
339. The Hearing Panel explored this scenario further during the hearing with the relevant experts. We raised concern about the erosion of the landscape buffer width from the original 40m indicated in the Structure Plan to a 3m planted yard and the impact that may have on creating a gateway arrival experience. In response to our questions, Ms Wick confirmed that the Requestor's proposed amendments would mean that the landscape buffer would not be required (as it sits within the designation) and she considered the only way those outcomes can be achieved is by adding those same elements within the yard setback. We also noted the amended provisions included no requirement to actually plant the yard.
340. Mr Cook considered that the situation has changed since the Structure Plan was adopted in 2020, but he acknowledged that was a matter for consideration. However, it was his opinion that the proposed response is an appropriate one. This was in the background that there is no timeframe for the works to take place (as the designation has been given effect to), and this creates a level of uncertainty which requires a different approach be taken as well.

¹⁷² Statement of Evidence of Ms Hopkins, paragraph 37

¹⁷³ S42A Hearing Report, paragraphs 384-387.

¹⁷⁴ Statement of Evidence of Ms Hopkins, paragraph 35

¹⁷⁵ RMA, s178.

¹⁷⁶ Legal submissions for NZTA, paragraph 69

¹⁷⁷ Legal submissions for NZTA, paragraph 70

341. Mr Cooper considered it would be highly inefficient and ineffective to put the buffer in the wrong place. This would have an effect of neutralising land between the buffer and the edge of the future infrastructure. Upon reflection Messrs Cook and Cooper considered given the limited portion of land that would be subject to the buffer, that it would be better deleted. A consequential amendment to that would require that the yard is expressly identified as a requirement along that boundary.
342. We asked the Requestor's planners if the removal of the landscape buffer and its replacement with a 3m yard would achieve the second purpose set out in the Structure Plan which involved provision of an effective visual screen that mitigates visual effects of industrial development from users of the motorway. Mr Cook advised that while that was not a policy, he considered it would achieve that outcome, in the context of the above¹⁷⁸.
343. Our reading of proposed Policy 14 for the precinct is that it requires development to have a landscaped setback to protect the interface with the surrounding land use and to maintain a sense of openness and naturalness. The intention of the proposed policy wording in this setting was not entirely clear to us, given the original intentions of the Structure Plan. We looked to the overarching objective (Objective 8) for some guidance, which only contained a broad reference to managing the interface with surrounding land use. It was our finding that the policy direction proposed lacked clarity about its intentions and how any outcomes sought were to be achieved.
344. In closing remarks, Ms Gilbert advised she remained supportive of the 15m landscape buffer rather than the Requestor's proposed yard control (2m plus 3m landscape strip) and noted that the Requestor's experts supported the 15m width landscape buffer for the majority of the SH1 interface, prior to the confirmation of the NoR4 amended SH1 designation boundary¹⁷⁹.
345. She reiterated¹⁸⁰ that the purpose of the SH1 buffer relates to establishing a screening and filtering effect to achieve an appropriate interface between the highway and industrial zoned land, along with a gateway intention at the northern end. It was Ms Gilbert's opinion, that this is not just a gateway function (as inferred by the Requestor's planning evidence) and she noted that this dual purpose is acknowledged in both Ms Wick's¹⁸¹ and Mr Pierard's evidence¹⁸².
346. Ms Gilbert disagreed with relying on the Landscape and Urban Design Management Plan requirements under NoR4 to augment the SH1 landscape buffer. It was her view the highway is an established landscape element (rather than a new landscape element), plus industrial land-use tends to be considered as having a reasonably high tolerance for highway development (for example, it is not sensitive in the way that a residential audience would be). For these reasons, she considered it is quite unlikely that the highway expansion would necessarily trigger landscape mitigation (via the Landscape and Urban Design Management Plan strategy) of the scale

¹⁷⁸ Day 2, Session 2 at 18.00

¹⁷⁹ Ms Gilbert's Hearing Notes, dated 4 April 2025, paragraph 1

¹⁸⁰ Ms Gilbert's Hearing Notes, dated 4 April 2025, paragraph 2

¹⁸¹ Statement of Evidence of Ms Wick, paragraphs 29 - 42

¹⁸² Statement of Evidence of Mr Pierard, paragraph 65

originally considered appropriate by the Requestor for the majority of the SH1 interface¹⁸³.

347. Further, in relation to the Special Information Requirements, Ms Gilbert explained that the landscape buffers should include trees that can grow to 20m at maturity. It was her view that a 3m landscape strip is of an inadequate scale to support mature trees of this scale. By way of background, she had originally supported relaxation of the 15m buffer width towards the northern end of the SH1 interface due to the benefit afforded by mature plantings on the relevant properties that were protected via resource consent, as the 'new' buffer was going to be building on existing vegetation patterns¹⁸⁴.
348. In response to questions raised by us, Ms Gilbert considered that using buildings to contribute to gateways can be a very successful tool. However, it was her experience that would require buildings to have a restricted discretionary activity status with location specific assessment criteria guiding the appropriate outcome. Ms Gilbert pointed us to an example of this working well which was the development fronting Highbrook Drive (in the Highbrook Light Industry area) which has a RDA activity status¹⁸⁵.
349. Ms Gilbert noted the other gateway ideas mentioned by some of the Requestor's experts include Auckland International Airport. She advised the rocks and planting treatment at the entrance to the airport are approximately 90m in width (on both sides of the road)¹⁸⁶.
350. In his closing remarks, Mr Paul stated given that NZTA indicated that they are comfortable with the location of the NoR4 designation boundary, he recommended that a 15m buffer should apply from the designation boundary¹⁸⁷.
351. Mr Paul agreed with Ms Gilbert that it is not appropriate to rely on the motorway corridor and planting within it, to mitigate the effects of development on the adjoining land. He therefore disagreed with Ms Hopkins and Mr Cook and Mr Cooper's proposed wording in the note to IX.6.4 Landscape buffer defaulting to yard provisions¹⁸⁸.
352. He did not consider that defaulting to the yard provisions from the designation boundary provided the appropriate 15m landscape buffer from the designation boundary as recommended by Ms Gilbert. It was his view that if it is appropriate for a yard to be determined from the designation boundary, that the landscape buffer should also be determined from that location¹⁸⁹.
353. Mr Paul further noted that Mr Cooper, in response to one of our questions, suggested that if the designation boundary was used, the buffer could end up stranded if the extent of the designation was reduced in the future, however, Mr Paul noted the

¹⁸³ Ms Gilbert's Hearing Notes, dated 4 April 2025, paragraph 3

¹⁸⁴ Ms Gilbert's Hearing Notes, dated 4 April 2025, paragraph 4

¹⁸⁵ Ms Gilbert's Hearing Notes, dated 4 April 2025, paragraph 5

¹⁸⁶ Ms Gilbert's Hearing Notes, dated 4 April 2025, paragraph 6

¹⁸⁷ S42A Closing Planning Comments, page 1

¹⁸⁸ S42A Closing Planning Comments, page 1

¹⁸⁹ S42A Closing Planning Comments, page 1

same thing could happen with planting using the yard provisions if development occurred before the designation was reduced¹⁹⁰.

354. We prefer the evidence of Ms Gilbert and Mr Paul. Despite the Structure Plan being a matter to have regard to, we find that the provision of the landscape buffer is a key outcome for Silverdale. We have consequently retained the provision requiring a landscape buffer adjoining SH1 (and Dairy Flat Highway) and adopted the amendments recommended to us by Mr Paul for IX.6.4 Landscape buffer, with the exception of the recommended minimum depth of 15m (which we return to below). The Panel also considers it is imperative that the dual purpose of the visual landscape buffer is stated within this standard and we have included the second purpose being to provide for a gateway experience entering Silverdale.
355. We have also made some consequential amendments to IX.6.5 to make the purpose clearer that the standard is referring to a visual landscape buffer. For consistency between the two buffer standards, we have also deleted the reference to the “legal road” boundary, as we prefer the reference to simply state that the buffer be set back from the boundary (with the road designation). Lastly, we have added the respective designation numbers to each standard so that it is clear which designation boundaries are being referred to.
356. We note that this gateway creation is reinforced in the development of two precincts on the opposite side of PC 103 (on the eastern side of SH1), which are both highly visible from the motorway. The Silverdale 2 Precinct includes objectives, policies and standards to assist in creating a vegetated landscape, helping to frame the entrance to the Hibiscus Coast Highway¹⁹¹. In particular, Policy 6 states:

“Provide a landscape buffer along the boundary of State Highway 1 to assist in screening development within the precinct from the motorway.”

357. We further note that the Silverdale 3 Precinct has responded to its proximity to SH1, with provisions that require careful management of all development within the precinct to assist in creating a high-quality gateway (and strong sense of arrival) to the Hibiscus Coast¹⁹². Of direct relevance is Policies (3) and (5), as set out below:

“(3) Achieve a quality gateway experience through the establishment of sensitively designed prominent buildings located within a vegetated framework.

(5) Create a planted interface with tall trees along the western edge of the precinct adjacent to State Highway 1 (the motorway) providing filtered views to assist in integrating the development into the wider landscape when viewed from the motorway and to complement the high quality built form.”

358. The Panel notes that in the Silverdale 2 Precinct a landscape buffer area with a minimum width of 5m is required, which must be landscape-designed and planted in grass, trees and shrubs. In the Silverdale 3 Precinct, a 5m building yard is required

¹⁹⁰ S4.2A Closing Planning Comments, page 2

¹⁹¹ Silverdale 2 Precinct, I536.1. Precinct Description

¹⁹² Silverdale 3 Precinct, I537.1. Precinct Description

for sites with a Gateway Frontage Control, 50 per cent of which must be planted in shrubs, with a minimum width of 2m. While we acknowledge the different land use activities enabled in these precincts, we find the approach taken helpful to our determination of a suitable response for PC 103.

359. It is our finding that the landscape buffer should have a minimum depth of 10m from the boundary with SH1 Designations 6759 and 6760. We have sought to achieve an appropriate balance between enabling much needed light industrial zoned land in this location while seeking to deliver on the dual-purpose intentions of the Structure Plan in an efficient and effective manner. The minimum 10m depth will enable the desired planting outcomes to be achieved, such as multi-layered native planting (with the inclusion of trees with the ability to grow to a minimum of 20m in height at maturity when adjoining SH1) which will assist to minimise the visual impact of the industrial development and soften its dominance, particularly when viewed from elevated residential properties, whilst also providing sufficient room to create a gateway experience at Silverdale.
360. The landscape buffer standard is as follows:

“IX6.4 Landscape buffer (State Highway 1 interface)

Purpose:

- *To provide a visual landscape buffer between industrial activities within the precinct and State Highway 1.*
 - *To provide for a gateway experience entering Silverdale.*
- (1) *A building or parts of a building within the State Highway 1 Landscape Buffer area shown on IX.10.1 Silverdale West Industrial Precinct: Precinct Plan 1 must be set back from the boundary with State Highway 1 Designations 6759 and 6760 as shown on IX.11.4 Appendix 4 - Landscape Buffer Plan, by the minimum depth of 105m, shown on IX11.4 Appendix 4 – Landscape Buffer Plan.*
- (2) *The setback must be planted in accordance with Special Information Requirement IX.9(4) Landscape Buffer Planting Plan, and Table IX6.4.1*

Landscape buffer (State Highway 1 interface) below.

Table IX6.4.1 Landscape buffer (State Highway 1 interface)

Address (as at 23 August 2023)	Minimum Planting Width Within Setback
1738 Dairy Flat Highway Lot 1 DP 480626	5m
Diary Flat Highway Lot 2 DP 480626	10m
Sec 6 SO 308591, Dairy Flat Highway Silverdale 0931	10m
1744 Dairy Flat Highway, Sec 9 SO 308591, Sec 10 SO 308591	15m
1748 Dairy Flat Highway, Pt Allot 210 Psh Of Okura SO 18072, Sec 19 SO 308591	15m
1748A Dairy Flat Highway	15m
1636 Dairy Flat Highway Lot 1 DP 208687	15m
193 Wilks Road Lot 1 DP 433431	15m

Note:

In the event that a Designation is confirmed for public transport works within the Landscape Buffer (State Highway 1 Interface), the requirements in Standard IX6.4 do not apply. The rear or side yard requirements of Standard IX6.3 apply to the new boundary.

361. We have made consequential amendments to the precinct description and the relevant objective and policy, as well as the matters of discretion and assessment criteria and the special information requirements with respect to the SH1 interface matters, to recognise the dual purpose of this landscape buffer and in the last case, to ensure that the landscaping adjoining SH1 would be effective, as follows:

IX.1 Precinct Description:

...

Landscape Buffers

The precinct provides a landscaped buffer along State Highway 1 and Dairy Flat Highway to achieve a gateway experience entering Silverdale and to mitigate adverse effects on the landscape and visual amenity values of the surrounding area arising from the changing land use to industrial.

...

Objective (8)

The precinct is subdivided and developed in a comprehensively developed and integrated way to establish an industrial environment that responds to natural site features and landform, manages the interface with surrounding land use,

contributes to a strong sense of arrival at Silverdale, supports public and active transport use and respects mana whenua values.

...

Policy 14

Require ~~development a landscape buffer to be established~~ adjacent to Dairy Flat Highway and State Highway 1 to mitigate adverse effects arising from the industrial activities on the visual amenity of the surrounding area and to contribute to the arrival experience at Silverdale. ~~protect the interface with the surrounding land use and maintain a sense of openness and naturalness through a landscaped setback.~~

IX.8.1 Matters of discretion

(4) ~~(5)~~ Development that does not comply with IX6.4 Landscape buffer (State Highway 1 Interface)

(a) Visual amenity effects.

(b) Gateway experience to Silverdale.

IX.8.2. Assessment criteria

(6) Development that does not comply with IX6.4 Landscape buffer (State Highway 1 Interface):

(a) the extent to which planting is designed to achieve a regular structure and rhythm along State Highway 1 reinforcing a buffer; and

(b) the extent to which the integrated site layout, building and landscape design provides a high quality and visually attractive frontage to State Highway 1 and contributes to a gateway experience entering Silverdale.

IX.9 Special information requirements

(4) Landscape Buffer Planting Plan

(a) An application for land modification, development and subdivision which adjoins State Highway 1 or Dairy Flat Highway must be accompanied by a planting plan identifying the location, species, planter bag size and density of the plants.

(b) Plant species should be utilised to create multi-layered native planting consisting of low edge planting, mid-height shrubs/trees as well as taller tree species (with the ability to grow to a minimum of 20m in height at maturity when adjoining State Highway 1). This planting is to be arranged to achieve a regular structure and rhythm reinforcing a gateway feature.

Viewshaft

362. The Structure Plan identified a viewshaft across the south-western portion of the PC 103 area, which looks northwest towards Lloyds Hill.

363. The Panel understands that the location of the viewshaft shown on the Structure Plan map comes from Bridget Gilbert’s Landscape Assessment that supported the Structure Plan (shown in Appendix 10 of the report “Landscape Development Principles Diagram”).
364. Mr Pierard introduced a new “Opportunities and Constraints” diagram in his evidence¹⁹³ noting that it had been updated from the original Urban Design Statement to reflect the removal of the viewshaft to Lloyds Hill, as shown in the Structure Plan, since it does not apply to the site.
365. In response to our request to have this explained further, Mr Pierard advised that the viewshaft as originally shown across the site was in fact a mapping error and that the viewshaft is actually located further to the south of the site.
366. Ms Gilbert confirmed in her closing remarks that she agreed with the comments made by Ms Wick and Mr Pierard in relation to the location of the viewshaft¹⁹⁴.
367. The Panel find that the mapping error occurred back at the Structure Plan stage. In any case, all the experts agree that it should not apply to the site, which is a useful starting point to clarify ahead of our next topic, as the original presence of the viewshaft limited the area that any proposed height increase would apply to.

Activity Status of Buildings 20m – 30m in Height

368. The Requestor is seeking the identification of an area within the precinct to enable additional height of between 20m – 30m as a controlled activity. This is borne out of the need to provide for the evolving functional requirements of industrial development.
369. Ms Campbell observed that there is no disagreement that additional height within the precinct is appropriate. The disagreement is how that additional height should be provided for in the precinct provisions.
370. Ms Perwick for Auckland Council as Submitter considered that buildings within the Additional Height Area should be classed as a restricted discretionary activity, whereas Messrs Cook and Cooper consider that it should be a controlled activity.
371. This is in the context that the underlying zone is Business - Light Industry where new buildings up to 20m in height are a permitted activity. The Panel does note that the Business - Light Industry zone enables greater building height than the standard maximum building height of 20m through a Height Variation Control in the planning maps, as enabled in Policy 5 of the underlying zone. However, the Panel was not provided with any examples of where these areas currently occur within the Auckland region. Buildings higher than 20m (and that do not meet the zone standards) are deemed to be a restricted discretionary activity, and must be considered against the matters set out in H17.8.1(4).

¹⁹³ Statement of Evidence of Mr Pierard, paragraph 39

¹⁹⁴ Hearing notes from Ms Gilbert, paragraph 10

372. Mr Pierard observed that the plan change land area naturally slopes away from the eastern and western boundaries, creating a dip in the landscape. He explained that this has provided an opportunity for greater height to be absorbed into the landscape¹⁹⁵. Consequently, a 30m height variation has been sought to align with the site's topography, facilitating efficient use of lower-elevation areas while minimising visual impacts on the surrounding environment.
373. It was his view that the topographical characteristics of the site combined with the 100m setback from Dairy Flat Highway and the 120m offset from SH1, specifically for the 30m additional height area, provided a transition to potential future land uses and ensured that any additional height can be accommodated without significant adverse visual dominance effects¹⁹⁶.
374. It was also Mr Pierard's opinion that the future buildings will be partially or fully screened by the required buffer planting specified in IX.6.4 and IX.6.5 (Landscape buffer SH1 and Dairy Flat Highway interface), further mitigating potential visual impacts¹⁹⁷.
375. Ms Wick also considered that additional height up to 30m could be accommodated in the areas within the centre and lower lying portions of the site. She considered this additional height to be appropriate from a landscape and visual effects perspective, specifying the same reasons as Mr Pierard¹⁹⁸.
376. Ms Wick made the following recommendations, for new provisions to be included within the precinct provisions¹⁹⁹ in response to the Auckland Council submission requests²⁰⁰, to assist with reducing the visual mass of the taller buildings on this land:
- (a) *Utilising subdued, recessive colours, providing variation in materials and finish of facades (roof colours that have a maximum LRV of 40%);*
 - (b) *Creating variation in roof profiles with consideration given to the overall roofscape when viewed from the elevated position around the site; and*
 - (c) *All rooftop servicing and planting should be designed as an integral part of the roofscape with particular consideration given to the view from the elevated context.*
377. We note that Ms Wick's above recommendations have been incorporated into the now proposed controlled activity²⁰¹ precinct provisions at IX.7. These provisions enable control over materiality, finish, form and colour and will assist to manage any adverse visual amenity effects through the ability to impose resource consent conditions in relation to those matters over which control is reserved.

¹⁹⁵ Statement of Evidence of Mr Pierard, paragraph 61

¹⁹⁶ Statement of Evidence of Mr Pierard, paragraph 62

¹⁹⁷ Statement of Evidence of Mr Pierard, paragraph 62

¹⁹⁸ Statement of Evidence of Ms Wick, paragraph 45

¹⁹⁹ Statement of Evidence of Ms Wick, paragraph 46

²⁰⁰ Auckland Council Submission Point 13.9

²⁰¹ The activity status for buildings up to 30m was also amended from a permitted activity to a controlled activity in response to the Auckland Council submission.

378. Ms Wick concluded that the proposed additional 10m height is considered a more efficient use of land, will provide for variation and interest to the built form of the industrial area, and will not result in visual dominance effects²⁰².
379. Ms Perwick did not support a controlled activity status for the following reasons²⁰³:
- (a) *controlled activities cannot be declined and must be granted by the Council and only conditions placed on a resource consent.*
 - (b) *the range of design matters (such as facades, colour and roof form) that are likely to influence the appropriateness of buildings of this scale can be very difficult to clearly articulate via consent conditions.*
 - (c) *a restricted discretionary activity status is more appropriate for buildings in the Additional Height Area, which would also require location specific assessment matters and matters of discretion.*
380. Ms Perwick considered that the above reasons also align with the AUP(OP) descriptions of different classes of activities in section A1.7 of the AUP²⁰⁴. She considered the additional height activity comfortably falls within the ambit of a restricted discretionary activity²⁰⁵.
381. We discussed the different classes of activities earlier in our decision. In particular, we noted that Section A1.7.3 of the AUP(OP) classes activities as restricted discretionary activities where they are generally anticipated in the existing environment and the range of potential adverse effects is able to be identified in the AUP(OP), so that the restriction on the Council's discretion is appropriate.
382. We further note that controlled activities are discussed in Section A1.7.2 of the AUP(OP). Controlled activities are classed as controlled where the activity is in keeping with the existing environment and the likely effects are well understood and able to be avoided, remedied or mitigated by conditions.
383. Ms Gilbert confirmed that a restricted discretionary activity status remains her preference. From a landscape perspective, she did not support a controlled activity status for buildings that are between 20m and 30m high. This is because of the range of design matters that are likely to influence the appropriateness of buildings of this scale and which, in her experience, can be very difficult to clearly articulate via consent conditions. It was Ms Gilbert's view, that a restricted discretionary activity status with location specific assessment matters and matters of discretion is a preferable planning method to ensure an appropriate outcome from a landscape effects perspective²⁰⁶.
384. Mr Paul agreed with Ms Gilbert's assessment.²⁰⁷ He noted that resource consent applications for controlled activities cannot be declined and must be granted by the

²⁰² Landscape Effects Assessment and Design Advice, dated 20 August 2023, page 8

²⁰³ Statement of Evidence of Ms Perwick, paragraph 45

²⁰⁴ Statement of Evidence of Ms Perwick, paragraph 46

²⁰⁵ Statement of Evidence of Ms Perwick, paragraphs 48 and 49

²⁰⁶ Addendum s4.2A Landscape Memorandum, dated 27 February 2025

²⁰⁷ S4.2 Addendum Hearing Report, paragraph 14

Council and that only conditions can be placed on a resource consent. He agreed with Ms Gilbert that a restricted discretionary activity status is more appropriate for buildings in the Additional Height Area, to account for location specific assessment matters.

385. Ms Campbell questioned in the closing legal submissions why the Council should have the power to decline consent for an industrial building in an industrial zone when the landscape and visual design effects of additional building height have been assessed and provided for in provisions through the plan change process.
386. Messrs Cook and Cooper considered that a controlled activity status is appropriate, and they did not agree with the restricted discretionary activity classification as that activity status means consent can be refused. They considered that status was unnecessary because the location of the area in which buildings could reach 30m is lower-lying land that is separated from the edge of the plan change area and even further from sensitive receivers. Further it was their view that the relevant issues for determining appropriateness of building height beyond the 20m permitted height and up to 30m are design-related and can be addressed by conditions. Accordingly, they considered that a controlled activity status is the most efficient and effective at giving effect to the identified RPS provisions²⁰⁸.
387. It was also their view that because a restricted discretionary activity status already applies for over-height buildings under section C1.9 of the AUP, there is no benefit to having the same status for an activity that has already been assessed as part of the plan change as being appropriate.
388. We asked Ms Perwick if there were any additional matters that should be included if the activity status was a restricted discretionary activity. She noted that the Council's submission recommended a cross-reference back to the policy, but apart from that she considered that all the matters that should be included are included within the proposed provisions.
389. Ms Perwick added that it is the restricted discretionary activity status nuance that you do not get with a controlled activity, which is more controlled in the way it is considered. Certain listed matters are 'ticked off', as opposed to there being a degree of discretion, to which an activity achieves the relevant objectives and policies. A council officer would have to rely on the matters listed, as that is what they are limited to. Further, the officer would not be able to consider the wider effects on the environment with regards to its locational aspect. She also considered that crafting the condition could be more difficult, if an officer were restricted to matters of control in relation to the matter.
390. It is our finding that a controlled activity status is more appropriate than a restricted discretionary activity. The likely effects of buildings between 20m and 30m are well understood as a result of the assessment undertaken by the Requestor's experts and are able to be avoided, remedied or mitigated by conditions in relation to those matters over which control is reserved.

²⁰⁸ Joint Statement of Evidence of Messrs Cook and Cooper, paragraph 178

391. Specifically, the provisions enable control over key building design matters, namely: materiality, finish, form and colour which will assist to manage any adverse visual amenity effects for viewers from elevated vantage points outside the Precinct, through the ability to seek additional information on these matters of control and to impose resource consent conditions, should that be necessary. We therefore prefer the evidence of Messrs Cook and Cooper.
392. Further, exceeding the maximum height limit of 20m is already a restricted discretionary activity in the underlying zone, and is subject to a wider range of matters of discretion; we therefore consider this activity status is a better fit in the overall hierarchy, within the context of the AUP(OP), especially given that greater building height is enabled through a Height Variation Control in the Business - Light Industry zone as a permitted activity (Policy 5) outside of this precinct.
393. The controlled activity status will provide certainty for future resource consent applicants in the identified Additional Height Area, and respond to a growing need to provide for the functional requirements of industry in an efficient manner by enabling taller buildings in a specified location.
394. We also find that the controlled activity status and the specified matters of control will allow for consideration of the locational aspects of the proposed building. We note that proposed Policy 15 states: “Enable additional building height to meet the functional requirements of industry **while responding to the landform**” (Our emphasis added). We conclude that a controlled activity status will be more efficient and effective in achieving the wider objectives sought, in both the precinct itself, as well as the existing Light Industry zone.

Riparian Yards

395. The precinct includes proposed provisions for planting riparian margins and building setbacks from streams and rivers to ‘fill a gap’ in the underlying Auckland-wide provisions. This is consistent with other recent greenfield precincts. The proposed standard requiring revegetation will improve water quality as well as enhance waterways and amenity within the precinct.
396. The concept of public access along streams and wetlands forms one of the key design principles articulated within the Urban Design Statement and was discussed in the evidence of Mr Pierard²⁰⁹. This outcome is supported by Standard IX.6.2(1)(b) Streams and natural inland wetlands which provides for walkways and cycleways to be located within riparian margins (where they are wider than the minimum 10m requirement) outside the first 10m from the top of the stream bank.
397. Dr Graham Ussher recommended a standard minimum 10m wide planted riparian margin for most streams. However, in the case of John Creek he supported a 20m margin width for those parts of the creek over 3m wide. Dr Ussher noted the RMA requires a minimum 20m margin (not necessarily planted) where streams are greater

²⁰⁹ Statement of Evidence of Mr Pierard, paragraphs 57 -58

than 3m wide²¹⁰. Messrs Cook and Cooper considered this will ensure that at the time of subdivision a 20m esplanade reserve can be accommodated.

398. Dr Ussher also recommended²¹¹ a rewording of IX.6.2 (1)(c). He considered the amendment did not make sense in that it referred variously to wetlands, riparian areas, and wetland planting areas. He recommended that this be reframed as a higher-level standard (as a new IX.6.2 (2)). The Requestor's planners relied on Dr Ussher's expertise and subsequently amended the wording accordingly.
399. We note that a further minor change was made by Messrs Cook and Cooper to reformat the building setbacks element of the standard, which they considered was more effective as a sub-clause (2) rather than as a sub-clause (d) to the riparian margins element of the standard.
400. Auckland Council as Submitter requested a 20m riparian margin be required under Standard IX.6.2. We acknowledge that Healthy Waters also requested 20m riparian and wetland yards and planting. In Healthy Waters' closing statement, Mr Danny Klimetz challenged the adequacy of applying the 10m minimum setback requirements without comprehensive assessments of site-specific risks, benefits, and potential effects²¹².
401. It was Mr Klimetz's opinion that the minimum requirements alone do not ensure that the desired environmental and ecological outcomes highlighted by the Requestor will be met.
402. It was Mr Klimetz's view that the 10m minimum margin in the AUP(OP) is intended solely as an absolute minimum, with actual riparian margins and yards expected to exceed this based on site-specific evaluations. Consequently, he recommended a 20m minimum margin if comprehensive site-specific assessments are not currently conducted²¹³.
403. Ms Myron also strongly supported a 20m riparian margin outcome²¹⁴. It was her view that both riparian and wetlands margins are integral elements of the health of those ecosystems. She added that as the margin width increases, the effectiveness of removing sediments, nutrients, and other pollutants from surface water runoff as well as providing habitat provisions increases.
404. Messrs Cook and Cooper did not agree with a 20m riparian margin and considered there to be no effects basis for that requirement²¹⁵. They considered that such a requirement would depart from the standard AUP(OP) approach. They further noted that the precinct has been set up to encourage and enable wider than standard riparian margins, but not to require them without basis.
405. Messrs Cook and Cooper explained that the intention of the above was simply to provide for building setbacks to ensure that, at the time of subdivision, any required

²¹⁰ Statement of Evidence of Dr Ussher, paragraphs 91(b) and (c)

²¹¹ Statement of Evidence of Dr Ussher, paragraphs 91(d)

²¹² Hearing Notes of Healthy Waters, paragraphs 2.2(b) and (c)

²¹³ Hearing Notes of Healthy Waters, paragraph 2.3

²¹⁴ Hearing Notes of Ms Myron dated 8 April 2025

²¹⁵ Joint Statement of Evidence of Messrs Cook and Cooper, paragraph 195

20m esplanade reserve is able to be accommodated²¹⁶. We note that this Auckland Council submission point was later resolved when the Requestor's planners agreed to amend the 20m to state 25m instead. This was to accommodate a combination of the 20m esplanade reserve and a 5m yard.

406. Messrs Cook and Cooper did not consider that an equivalent 20m setback provision was appropriate for wetlands as there is no equivalent provision to the esplanade reserve requirement for wetlands. They noted that the NES-FM includes provisions relating to activities within 10m of natural inland wetlands that will apply to development processes, and they considered that those do not need to be duplicated as part of PC 103²¹⁷.
407. It was Ms Myron's opinion²¹⁸ that not all of the wetlands had been delineated with the pasture exclusion method being correctly applied. She recommended a 10m planted buffer for all natural inland wetlands, noting that no standards had been provided with regard to wetland buffers.
408. Ms Myron was also concerned about the lack of fauna surveys²¹⁹. She considered that the identification of habitats of indigenous fauna did not give effect to AUP(OP) policies or the NPS-IB, notably bats and lizards. She concluded that the lack of identification of these species will not provide for effective direction to species specific habitat restoration and or appropriate lighting standards.
409. Mr Paul agreed with Ms Myron's recommended amendments to the precinct provisions which relate to strengthening the objectives and policies in relation to streams and wetlands, removing the provisions on ecological off setting, introducing provisions regarding lighting and strengthening the provisions about riparian and wetland planting²²⁰.
410. Dr Ussher considered it was unusual to have a requirement such as IX.6.2A when the ecological need is not demonstrated or supported by evidence. He told us that controls on artificial lighting are most frequently applied where there is suspected use of a site by bats, or where High Value Bat Habitat is present and the future possible use of the site by bats is anticipated. He also considered it to be usual to tie a requirement around artificial lighting to the outcome of a bat survey at the resource consent stage, or to a survey that defines locations of High Value Bat Habitat that will be retained through the consent process. He confirmed his support for lighting controls at a site where bats are known, or where a survey of bats and bat habitat could result in bat-related values needing to be protected from uncontrolled artificial lighting. It was his opinion, this matter is more appropriately considered at the resource consent stage.
411. After having reviewed the Reporting Officer's reports, the Requestors' planners' and the ecologists' evidence and other recent AUP(OP) precinct provisions on this

²¹⁶ Joint Statement of Evidence of Messrs Cook and Cooper, paragraph 205(a)

²¹⁷ Joint Statement of Evidence of Messrs Cook and Cooper, paragraph 205(b)

²¹⁸ Ecological Assessment Memo from Kristy Myron, paragraph 6.2

²¹⁹ Ecological Assessment Memo from Kristy Myron, paragraph 6.5

²²⁰ S42A Hearing Report, paragraph 223

matter, Ms Perwick advised²²¹ that she generally accepted the Requestor's view that a 10m riparian yard is sufficient and that requiring a 20m riparian margin would be a departure from the standard AUP(OP) approach and that it generally has not been sufficiently justified by an analysis of the potential effects on the environment. She also recommended some wording amendments for proposed standard IX.6.3²²²

412. Ms Perwick noted that this approach is consistent with the AUP(OP) business zone provisions, including the Light Industry zone, which specifies a 10m riparian margin from the edge of all permanent and intermittent streams²²³.
413. Ms Perwick further noted that the Requestor's approach is consistent with other greenfield precincts which have recently been live zoned and where 20m building setbacks are provided from the banks of rivers and streams measuring 3m or more. We note this is also consistent with the requirements of E38.7.23.2 (Subdivision establishing an esplanade reserve) of the AUP(OP)²²⁴.
414. The Panel also notes that Mr Ackroyd supported²²⁵ the provisions in proposed standard 'IX.6.2 Streams and natural inland wetlands' This extended to the special information requirements for wetlands in IX.9.1(b), (c) and (d), as proposed by the Reporting Officer and the Council's ecological specialist, Ms Myron.
415. Mr Ackroyd has however recommended an additional clause be added²²⁶ as follows:
- “(c) Riparian and wetland planting plans must be prepared by a suitably qualified and experienced person, with regard had to the provisions Appendix 16 Guideline for native revegetation plantings.”*
416. Ms Perwick²²⁷ also supported the addition of the above clause to the Special Information Requirement in IX.9 for riparian planting, which would require planting plans to be prepared by a suitably experienced and qualified person.
417. We also note that Mr Gerard McCarten²²⁸ provided additional recommendations for wording amendments to the precinct provisions in relation to the indicative open space network associated with the stream network, in order to clarify and better explain the approach to open space in the precinct.
418. Messrs Cook and Cooper disagreed with the additional amendments being sought, and in addition to their views above, they noted again that the NES-FW has a comprehensive regime for the management of wetlands. Consequently, they considered the amended provisions were not necessary in the precinct²²⁹.

²²¹ Statement of Evidence of Ms Perwick, paragraph 50

²²² Statement of Evidence of Ms Perwick, paragraph 55

²²³ Statement of Evidence of Ms Perwick, paragraph 51

²²⁴ Statement of Evidence of Ms Perwick, paragraph 52

²²⁵ Statement of Evidence of Mr Ackroyd, paragraphs 5.2 – 5.3

²²⁶ Statement of Evidence of Mr Ackroyd, paragraphs 5.4

²²⁷ Statement of Evidence of Ms Perwick, paragraphs 59-61

²²⁸ Statement of Evidence of Mr McCarten, paragraph 2.1

²²⁹ Supplementary Statement of Messrs Cooks and Cooper, paragraph 70

419. Turing first to the reliability of the ecological assessment work that has been undertaken by Dr Ussher and his team. The Hearing Panel prefers the ecological evidence of Dr Ussher. We note that Ms Myron's ecological assessment appears to be based upon a single site visit organised for the Council during which Dr Ussher has advised she restricted her visit to a thin corridor from Dairy Flat Highway at 1636 Dairy Flat Highway towards SH1 where two of the mapped wetlands were viewed over an approximate time of 1.5 hours²³⁰. Whereas, we note that Dr Ussher and his team have spent at least 250 person hours on the site and they have assessed all accessible parts of it using the full suite of investigative tools which is standard practice for assessing stream and wetland classifications and delineations.²³¹
420. We therefore find that Dr Ussher's ecological values assessment of the site was thorough and proportionate to the degree to which the environment has been modified and degraded. As set out above, considerable time has been spent on site investigations in relation to the identification of watercourses, wetlands and indigenous vegetation. We note that the identification of fish, native lizards and bat presence has relied upon a combination of site observations, assessment of onsite habitat quality, existing database records, and Dr Ussher's knowledge of similar sites around Auckland. We find that the resultant information base can be relied upon to provide a robust basis for both the plan change maps and the precinct provisions.
421. We accept Mr Klimetz's and Ms Myron's position that a greater width of riparian margin will always be better. However, we agree with Ms Perwick that a 20m riparian margin would be a departure from the standard AUP(OP) approach and that a width of 20m has not been sufficiently justified by an analysis of the potential effects on the environment. We therefore agree with Dr Ussher, Messrs Cook and Cooper, Ms Perwick and Mr Ackroyd that a minimum of a 10m wide riparian margin is appropriate.
422. We agree with Messrs Cook and Cooper that it is not appropriate to require an equivalent minimum 10m setback provision for wetlands as there is no equivalent provision to the esplanade reserve requirement for wetlands. We also agree that the NES-FM provisions relating to activities within 10m of natural inland wetlands will apply to development processes, and that those do not need to be duplicated as part of PC 103.
423. There is no ecological evidence before us that demonstrates the need to place controls on artificial lighting. Dr Ussher's evidence was that the likelihood of bats is low, and the most potential for bat habitat is along John Creek or within native forest patch IV1, which is proposed in the plan change maps and provisions to be formally protected²³². We further note that the protection of bats is a matter for the Wildlife Act, and that often bat surveys, controls, and protection, or pre-felling protocols would be matters of consideration for resource consents.
424. We agree with the latest version of Standard IX.6.2 Streams and natural inland wetlands as amended by the Requestor and attached to the closing legal submissions. We have however made one minor amendment to a sub-heading,

²³⁰ Statement of Evidence of Dr Ussher, paragraph 73

²³¹ Statement of Evidence of Dr Ussher, paragraph 74

²³² Statement of Evidence of Dr Ussher, paragraph 35

deleting the sub-heading 'Wetlands' and replacing it with the word 'Vesting' instead, as this standard relates to the vesting of riparian margins of both streams and wetlands.

425. We also agree with the addition of Mr Ackroyd's additional clause (c) to the special information requirement, to ensure this work is undertaken by a suitably qualified and experienced practitioner. This has become standard practice in the AUP(OP) and the addition makes it clear who is able to carry out this required work.

Significant Ecological Area

426. One Significant Ecological Area ("**SEA**") has been identified within the proposed precinct. It comprises an area of approximately 4,800m² which contains naturally regenerating mature Kānuka shrubland. The AUP(OP) enables an area to be considered to have significant ecological value if it meets one or more of the sub-factors 1 to 5 listed in Schedule 3 Significant Ecological Areas – Terrestrial Schedule of the AUP(OP).
427. It was Dr Ussher's opinion that the Kānuka shrubland meets Policy B7.2.1 criteria as a SEA (under the criteria 'representativeness') as well as Criterion B and C of the Ecological Significance Criteria in the NPS-IB.²³³
428. The protection of the Kānuka shrubland as a SEA requires specific consideration of avoidance of effects, legal protection, and restoration when resource consents are applied for.
429. Auckland Council submission point 13.15 sought confirmation of the factors that the proposed area meets to qualify as an SEA and that Schedule 3 Significant Ecological Areas – Terrestrial Schedule be amended, as necessary'. Dr Ussher confirmed during the presentation of his evidence that the only factor met by area IV1 is Factor 1 – 'representativeness'.
430. In response to our questions, Dr Ussher confirmed that there is no practical difference in application between the factors a SEA is listed for. If the Panel accepts the bush as an SEA, then he advised that all the protections of the AUP(OP) will apply, irrespective of the criteria under which it has been assessed.
431. Dr Ussher added that there is an academic point of difference between Mr Ackroyd and himself, which he considered was an unusual position to be in, where both ecologists agree it should be SEA. He considered that is where the matter should end, with the bush being afforded protection.
432. Mr Ackroyd agreed with the brief description Dr Ussher provided for area (IV1). However, he considered that the description stops short of describing the ecosystem type that area is most appropriately classified as. It was Mr Ackroyd's opinion²³⁴ that as this SEA sub-factor is specifically related to indigenous ecosystems, classifying

²³³ Statement of Evidence of Dr Ussher, paragraph 31

²³⁴ Statement of Evidence of Mr Ackroyd, paragraph 4.2

the ecosystem type is essential. It was his view that this area would most appropriately be classified as Regenerating Ecosystem VS2 Kānuka scrub/forest.

433. Given VS2 is the most common ecosystem type in the region, and 10% of the largest, most natural and intact, most geographically spread has already been identified within the SEA overlay, Mr Ackroyd said he was unclear how 4,831m² of isolated VS2 would meet SEA sub-factor (1)(a). It was also his view that further assessments of area IV1 should have been undertaken to determine what other sub-factors it might meet²³⁵.
434. Mr Ackroyd advised in his evidence²³⁶ that Kānuka is identified as a Threatened – Nationally Vulnerable species in the Auckland Region, therefore this area would meet the criteria ‘Threat Status and Rarity’, SEA Factor 2 (b)(i). He added that if copper skinks are found within area IV1 it would also meet SEA Factor 2 (b).
435. However, in response to our questions²³⁷, Mr Ackroyd acknowledged that Kānuka under the Regional Conservation Status for vascular plants is identified as ‘Regionally vulnerable’, and that under the National Conservation Status for vascular plants it had been downgraded to ‘Not threatened’, so there is a disconnect currently between the national and regional statuses.
436. He further added that Kānuka was classified as an ‘at-risk species’ nationally due to the presence of Myrtle Rust, but that after a subsequent review last year it was downgraded to ‘not threatened’. The regional conservation status was completed last year, and Mr Ackroyd advised that in undertaking that survey you cannot have anything less threatened than that at a national status and therefore the Council had to put Kānuka as a regionally vulnerable species in their conservation status. He said it could potentially drop down to ‘not-threatened’ in the future, but at this point in time it is still ‘Regionally vulnerable’.
437. In response to a further question, Mr Ackroyd advised that the evidence to date is that Kānuka is not threatened by Myrtle Rust, certainly not to the extent they thought it would be.
438. It is our finding that both ecologists are in agreement that the Kānuka shrubland should be a SEA, and we accept this outcome.
439. With regards to the criteria, or the rationale for the Kānuka shrubland being listed, we prefer Dr Ussher’s evidence that it meets criteria 1 ‘Representativeness’ only. Based upon the answers provided above by Mr Ackroyd, we were not convinced that it also meets the criteria for ‘Threat Status and Rarity’. Further, there is no evidence before us that copper skinks have been found in the Kānuka shrubland, which would warrant the SEA as also having met criteria 2(b) ‘Threat Status and Rarity’.

²³⁵ Statement of Evidence of Mr Ackroyd, paragraph 4.3

²³⁶ Statement of Evidence of Mr Ackroyd, paragraph 4.4

²³⁷ Hearing Day 2, Session 2 at 1.24.20pm

Stormwater

440. Mr Samuel Blackburn provided stormwater evidence on behalf of the Requestor. He was confident that the PC 103 site can be developed in accordance with the Light Industry zone. Based on his (and his team's) assessment, it was his view that there are solutions to manage the effects of earthworks, stormwater, and flooding, through the future consenting process. He considered that the solutions are conventional engineering measures²³⁸.
441. Mr Blackburn considered that Healthy Water's criticism of the draft SMP was misplaced. It was his view²³⁹ that Healthy Waters had reviewed an old version of the draft SMP, despite having been given an updated version in November 2024. It was Mr Blackburn's opinion²⁴⁰ that the November 2024 SMP resolved the Council's concerns about compliance with the Regionwide Stormwater Network Discharge Consent and that it contains the further modelling that Healthy Waters were now asking for.
442. Having heard all of the evidence during the hearing, the Healthy Waters' experts identified a number of stormwater issues that they considered had still not been adequately addressed by the Requestor²⁴¹. Ms Campbell submitted that these matters were in fact addressed in evidence and earlier reports. She referred us to Appendix C of her closing submissions, where a table identifies where in the evidence the Healthy Waters' concerns are responded to²⁴².
443. We also note that there are AUP(OP) provisions that already deal with stormwater management when subdividing land, namely E12 - Land Disturbance (District), E36 - Natural Hazards and Flooding, and E38 - Subdivision (Urban).
444. Ms Lee Te advised that Healthy Waters cannot rely on the SMP being adopted under the NDC. She added that at this stage, the SMP for the plan change has not fully addressed stormwater and flood effects and it does not currently meet the requirements of the NDC. She considered that Healthy Waters needed to ensure the precinct provisions address stormwater and flood effects specific to the plan change area²⁴³.
445. As a result, the Healthy Waters experts have recommended a suite of amendments to the precinct provisions which relate to stormwater and flooding²⁴⁴. These include recommended provisions that were not accepted during the clause 23 process as well as recommended changes following the evidence presented during the hearing.

²³⁸ Statement of Evidence of Mr Blackburn, paragraph 12

²³⁹ Statement of Evidence of Mr Blackburn, paragraph 13

²⁴⁰ Statement of Evidence of Mr Blackburn, paragraph 13

²⁴¹ Healthy Waters Memo in response to Evidence and Submissions Heard on Stormwater and Flooding during the Hearing for PC 103

²⁴² Closing submissions of Ms Campbell, paragraph 95

²⁴³ Healthy Waters Memo in response to Evidence and Submissions Heard on Stormwater and Flooding during the Hearing for PC 103, paragraph 4.6

²⁴⁴ Healthy Waters Memo in response to Evidence and Submissions Heard on Stormwater and Flooding during the Hearing for PC 103, paragraph 5.1

446. It was Ms Campbell's submission²⁴⁵ that in trying to resolve all stormwater issues now, Healthy Waters is missing the wider context that the precise stormwater controls and mitigations will be determined through detailed design when resource consents are applied for. To appropriately manage stormwater effects when consenting a subdivision or development, an applicant will need to comply with:
- (a) the network discharge consent – compliance with which will be determined by Auckland Council; or
 - (b) obtain their own discharge consent – which will be assessed under the AUP(OP).
447. In combination with the relevant Auckland-wide provisions noted above, Ms Campbell submitted that these methods provide an appropriate level of certainty that stormwater effects will be managed, and the Requestors' draft November SMP shows that it is feasible to manage the stormwater effects.²⁴⁶
448. Ms Te also reiterated her concern that neither the NDC nor the SMP specify building materials. It was her view that building materials are an important factor to consider for the Light Industry zone, as it can be a source of contaminants, given the large roof area of industrial buildings. She considered that treatment should be required at source and by downstream devices to ensure the water quality effect on the receiving environment is managed²⁴⁷.
449. It was Mr Blackbourn's evidence that roof runoff will drain via public networks through the wetlands provided. He advised that the wetlands will provide treatment and removal of any low contaminant loads from these surfaces²⁴⁸. However, at the hearing, Mr Blackbourn agreed in response to our questions that it was appropriate to make provision to ensure that low-contaminant building materials are used. He also supported a provision for stream crossings which he considered is critical in achieving flood mitigation.
450. Messrs Cook and Cooper did not consider additional provisions within the precinct would be efficient or effective. Ms Campbell submitted that a specific provision in the precinct is unnecessary because the Council can require an SMP to encourage the use of inert building materials through Policy 10(d) of Chapter E1, as it could do so for any other industrial area²⁴⁹.
451. We find that solutions to manage the effects of earthworks, stormwater, and flooding can be managed through detailed design and the future consenting process. Further, we consider that the matters that the Healthy Waters experts consider remain outstanding have been satisfactorily addressed for the plan change application in evidence and in earlier reports, as set out in Appendix C to the Requestor's closing legal submissions.

²⁴⁵ Closing submissions of Ms Campbell, paragraph 96

²⁴⁶ Closing submissions of Ms Campbell, paragraph 97

²⁴⁷ Healthy Waters Memo in response to Evidence and Submissions Heard on Stormwater and Flooding during the Hearing for PC 103, paragraph 4.7

²⁴⁸ Statement of Evidence of Mr Blackbourn, paragraph 76

²⁴⁹ Closing submissions of Ms Campbell, paragraph 98

452. It is also our finding that a combination of the proposed precinct provisions as well as the existing AUP(OP) provisions in relation to matters concerning land disturbance, natural hazards and flooding, as well as subdivision will appropriately manage the stormwater and flooding effects of PC 103.

Archaeological Site R10/737

453. The plan change application site includes subsurface archaeological remains associated with recorded archaeological site R10/737 (Maurice Kelly Homestead and associated buildings) located at 1636 Dairy Flat Highway.
454. We note that the built historic heritage evaluation prepared by Archifact for the Requestor concluded that while sites at 1732 and 1744 Dairy Flat Highway had been recognised as places with potential heritage significance, the dwellings were considered to have no historic heritage significance within the locality and region and they did not warrant inclusion in Schedule 14.1²⁵⁰. We further note that Ms Cara Francesco agreed with this assessment, with respect to the built heritage.
455. Ms Ellen Cameron undertook the archaeological investigation work and identified that in terms of the potential archaeological effects from industrial development of the recorded archaeological site, the two issues are²⁵¹:
- (a) Whether provision needs to be included in PC 103 in relation to the Archaeological Site at R10/737 (Maurice Kelly Homestead and associated buildings) located at 1636 Dairy Flat Highway; and
 - (b) How the potential for archaeological discoveries elsewhere at the site are to be managed, bearing in mind the low chance of a discovery.
456. To address the plan change effects on archaeological site R10/737, Ms Cameron recommended²⁵²:
- (a) *that part of the site should be preserved in situ and the remainder of the site investigated under authority to provide information on the use of the site by the Kelly family and the history of the local area.*
 - (b) *further mitigation in the form of interpretative elements, information panels and street names be considered to provide an ongoing connection to the history of the site.*
 - (c) *that the location of R10/737 should be considered during future road widening permitted under precinct provision IX.6.6 – Road widening setback along Dairy Flat Highway. The anticipated width of the future road is 30m for most of the PPC frontage; however, I recommend that consideration should be given outside 1636 Dairy Flat Highway in future design in order to avoid any adverse effects on the surviving site components located closest to the road.*

²⁵⁰ Built Heritage Assessment, by Archifact dated August 2024, page 38

²⁵¹ Statement of Evidence of Ms Cameron, paragraph 8

²⁵² Statement of Evidence of Ms Cameron, paragraph 28

457. Auckland Council, as Submitter sought relief to apply Standard IX.6.5 Landscape buffer (Dairy Flat Highway interface) to provide protection to site R10/73²⁵³.
458. Ms Rebecca Ramsey reviewed the archaeological effects as a part of the Council's s42A reporting, and she supported Auckland Council's relief only in part as it was her view that further protection measures were required. It was her opinion²⁵⁴ that R10/737 meets the threshold for scheduling as a historic heritage place under RPS (Chapter B5) as she considered it had considerable historical and knowledge values to the locality and therefore required protection of the place from subdivision, use and development.
459. She considered that the landscape buffer is one option to offer in situ protection of R10/737. However, she noted as the yard provision is currently drafted, a wider buffer (approximately 30m from the property boundary) would need to be set to fully encompass the area of 'remains worthy of preservation'²⁵⁵.
460. Ms Ramsey did not support the proposed precinct provisions as there is no identification of historic heritage values in the precinct description nor are there corresponding historic heritage provisions. It was her view that²⁵⁶ the current approach also does not give effect to the recommendations from Clough and Associates to avoid, remedy or mitigate adverse effects and therefore the proposed plan change may have more than minor adverse effects on historic heritage values.
461. She therefore supported the plan change with a suite of amendments to include provisions for the protection and interpretation of the Maurice Kelly complex. These amendments relate to the management of land disturbance activities (including planting) which may impact Maurice Kelly's Homestead and Inn (R10/737) and provide for site interpretation as a mechanism for public education and appreciation²⁵⁷.
462. Based on the advice of the specialists, Mr Paul concluded that the effects of PC 103 are able to be avoided, remedied or mitigated through amendments to the plan change as notified, as recommended by Council specialists in response to submissions.²⁵⁸ Mr Paul relied on Ms Ramsey's opinion and it was his view the planning approach is an appropriate method to protect the site²⁵⁹.
463. We note that Ms Perwick did not address submission point 13.20 in her planning evidence for Auckland Council, as Submitter.
464. Ms Cameron agreed that the inclusion of historic heritage values within the precinct provisions would provide additional protection for the archaeological site R10/737. However, she also noted that the entire site is protected under the HNZPTA and that no modifications would be able to occur without an authority in place from Heritage

²⁵³ Auckland Council Submission Point 13.20

²⁵⁴ Section 42A Archaeological Hearing Notes, page 1

²⁵⁵ Section 42A Archaeological Assessment, paragraph 5.6

²⁵⁶ Section 42A Archaeological Assessment, paragraph 6.2

²⁵⁷ Section 42A Archaeological Assessment, paragraph 6.3

²⁵⁸ Section 42A Hearing report, paragraph 270

²⁵⁹ S42A Closing Planning Comments, paragraph 5

New Zealand which would require an assessment of effects at the resource consent stage. She likewise noted that when AT gives effect to Designation 1497 this will involve some works within site R10/737, which will need an authority from Heritage New Zealand²⁶⁰.

465. Ms Cameron considered that whether bespoke precinct provisions should be provided for site R10/737 is ultimately a planning question. However, she was satisfied that the HNZPTA protections mean that effects on R10/737 will be assessed at a consent stage for the part of the site outside Designation 1497 and when AT does work within its designation boundary²⁶¹.
466. It was the opinion²⁶² of Messrs Cook and Cooper, having regard to the evaluation required under section 32 of the RMA, that the most appropriate planning response is reliance on the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014 and the accidental discovery standard in the AUP(OP). The principal reasons for this are:
- (a) In terms of Policy B5.2.2(1) and (3), the archaeological site does not have considerable or outstanding overall significance to the locality or greater geographic area;*
 - (b) The majority of the site is contained within NoR 8 – Dairy Flat Highway, and in terms of section 32 of the RMA, it would be inefficient and ineffective to include it in Schedule 14.1 or as Heritage Management Area within the Precinct; and*
 - (c) Further, to the extent any remains may exist after NoR 8 is implemented, the archaeological site could be managed through the land development process (noting the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014 would apply). In addition, a 5m yard applies to development within the Plan Change area from the new designation boundary, meaning there would be a further opportunity to manage an outcome for the archaeological site under the archaeological authority regime.*
467. Turning to our findings on this matter, firstly, we are aware of the scope creep that has occurred in relation to the relief sought in the Auckland Council submission. We acknowledge that the majority of the recommendations made by the S42 Reporting Officer and Council’s archaeological specialist in regard to archaeological matters sit outside of the narrow relief sought to utilise Standard IX.6.5 Landscape buffer (Dairy Flat Highway interface) to provide protection to site R10/737.
468. Secondly, we note the significant amount of overlap occurring between confirmed Designation 1497 and archaeological site R10/737. Approximately 50 per cent of the archaeological site will be destroyed when Designation 1497 is given effect to. In response to this matter, we note that Condition 26 of the Designation requires a Historic Heritage Management Plan (“HHMP”) be prepared in consultation with Council, HNZPT and Mana Whenua prior to the start of construction for a stage of

²⁶⁰ Statement of Evidence of Ms Cameron, paragraph 35

²⁶¹ Statement of Evidence of Ms Cameron, paragraph 37

²⁶² Joint Statement of Evidence of Messrs Cook and Cooper, paragraph 213

work. Notably, the objective of the HHMP is to protect historic heritage and to remedy and mitigate any residual effects as far as practicable.

469. Given the above findings, we agree with Messrs Cook and Cooper and we are satisfied that no amendments are required to the precinct provisions based upon the recommendations and mitigation measures outlined by Clough and Associates in proximity to the former Kelly Homestead. We also find it is not efficient or effective to extend the width of the yard buffer along Dairy Flat Highway, in order to protect archaeological site R10/737 when approximately half of the archaeological site will be destroyed by the implementation of the roading upgrade designation. If it were not for the confirmation of Designation 1497, our findings on this matter might well have been different.
470. Instead, we find that the recommendations of Clough and Associates should be considered as part of any future development works in order to suitably mitigate any adverse archaeological effects associated with PC 103. We note that the timing of Dairy Flat Highway upgrades within Designation 1497 will have a bearing on any works undertaken in the locality. We also note that the recent designation of the land area itself will also perform as a pseudo method of protection for the archaeological site, again until such time as the designation is implemented.
471. A further aspect of our findings above is that a 5m yard will apply to development within the plan change area from the new designation boundary, meaning there would be a further opportunity to manage an outcome for the archaeological site (or part of the archaeological site) under the archaeological authority regime.
472. We lastly note that the requirements for accidental discoveries of heritage items are set out in Rule E11.6.1 of the AUP(OP) and these can be implemented, if necessary.

Inclusion of Additional Land

473. Three submissions sought to add two portions of land within PC 103. HD Group sought²⁶³ to amend the boundary of PC 103 to include the Stage 1 area i.e. 1596 Dairy Flat Highway. Mark Weingarth also sought to include the same piece of land at 1596 Dairy Flat Highway within the plan change area²⁶⁴. In addition, Seven Oaks Securities Ltd sought to include the rest of the land in Stage 1 in the Silverdale West Dairy Flat Industrial Area Structure Plan²⁶⁵.
474. The s42A Reporting Officer opposed the inclusion of 1596 Dairy Flat Highway as it is not part of the PC 103 land area, and he argued that it is out of scope. This site is located to the south-west of the PC 103 area. The site is also not located immediately adjacent to the PC 103 area and there are in fact two properties located between it and the PC 103 area. Mr Paul held the view that if the sites were to be included, that additional traffic modelling would be required to take account of the additional land and development potential²⁶⁶.

²⁶³ HD Group Submission, Submission Point 2.2

²⁶⁴ Mark Weingarth, Submission Point 11.1

²⁶⁵ Seven Oaks Securities Ltd, Submission Point 18.1

²⁶⁶ S42A Hearing Report, paragraph 408

475. The submission by Seven Oaks Securities Ltd seeks to include the rest of the land in the Stage 1 area identified in the Structure Plan. Mr Paul acknowledged that the land referred to is part of the Stage 1 area identified in the Structure Plan. However, he noted it is not part of PC 103 so it is also considered to be out of scope of PC 103²⁶⁷. The land in question lies to the north of the PC 103 area and extends from Dairy Flat Highway to the Weiti River and is located east of Pine Valley Road. He also noted that none of the investigations carried out by the Requestor included this land. For it to be included within the plan change, he considered that additional investigation would be required, for example, in relation to the traffic, wastewater and stormwater effects.
476. Mr Paul requested that the respective submitters address these additional effects in their evidence and recommended that these submissions be rejected²⁶⁸. We note that Watercare also opposed, by way of a further submission, the inclusion of the additional land area sought to be added to PC 103. Watercare considered all three of these submissions to be out of scope of the original application. Ms Vince agreed with Mr Paul's recommendation to reject all three submissions on this basis²⁶⁹.
477. In the reply submissions for the Requestor, Ms Campbell submitted²⁷⁰ that the case law is clear that a submitter cannot spatially extend a plan change from what was notified. A submission requesting as much is not on the plan change under cl 6 schedule 1 and therefore not a submission within "scope". A decision cannot lawfully be made on a submission under cl 10 that is beyond the scope of the plan change: *Palmerston North City Council v Motor Machinists Ltd*²⁷¹.
478. None of the submitters prepared evidence or presented in support of their respective submissions at the plan change hearing.
479. It is our finding that there is no scope to include the above submitters' land within PC 103 as these submissions are not 'on' the plan change and fail to meet both limbs of the *Motor Machinists* test. We agree with the legal submissions of Ms Campbell and the planning evidence of Mr Paul and Ms Vince.
480. We cannot accept that the addition of approximately 70 hectares of land could have been anticipated when PC 103, which already comprises 107 hectares of land, was notified. We find that this is not an 'incidental or consequential amendment'.
481. There are a large number of property owners whose land would be directly affected by these proposed amendments, who were not directly notified in conjunction with PC 103. The inclusion of the additional land would extend the plan change boundary nearly one kilometre north of Dairy Flat Highway and east of Pine Valley Road to abut the Weiti Stream and the new housing development of Milldale. We find that the submitters' requests also fail on a 'scale and degree' basis.

²⁶⁷ S42A Hearing Report, paragraph 409

²⁶⁸ S42A Hearing Report, paragraphs 408 - 410

²⁶⁹ Statement of Evidence of Ms Vince, paragraph

²⁷⁰ Reply Submissions, paragraph 72

²⁷¹ [2013] NZHC 1290.

482. Based on the above analysis, we conclude that there is a real risk, if not a certainty, that there are landowners who would be affected by the rezoning sought in these submitters' requests that were not directly notified and saw no reason to make a submission on PC 103. This would result in a 'submissional side wind'.
483. We do not consider that the summary of submissions on PC 103 provided a form of notice to these landowners. They could not reasonably have anticipated that submissions would be lodged seeking that a majority of the remaining portion of Stage 1 be incorporated into PC 103, despite being located adjacent to it.
484. We were provided with no evidence of any public consultation that had been undertaken with the affected neighbouring property owners.
485. We observe that the submitters' requests for additional land do not include the entirety of the remaining balance of Stage 1 of the Structure Plan. There would remain a small pocket of FUZ land, being 1602 and 1602A Dairy Flat Highway with a combined total of 5.5568 hectares of land, which would be excluded from being rezoned.
486. We also find that further s32 analysis would be required to inform affected persons of the comparative merits of the amendment to include the additional land within PC 103.

STATUTORY PROVISIONS

487. The RMA sets out a range of matters that must be addressed when considering a plan change, as identified in the s32 report accompanying the notified plan change. We find that the plan change:
- a. Gives effect to the relevant statutory documents including the:
 - i. National Policy Statement on Urban Development 2020 (NPS-UD);
 - ii. National Policy Statement for Freshwater Management 2020 (NPS-FM);
 - iii. NZ Coastal Policy Statement 2010;
 - iv. Hauraki Gulf Marine Park Act 2000; and
 - v. National Policy Statement for Indigenous Biodiversity 2023.
 - b. Gives effect to the RPS, in particular B2.2 – Urban Growth and Form, B2.3 Quality Built Environment, B2.5 Commercial and Industrial Growth, B2.2 Open Space and Recreation Facilities, B3.2 – Infrastructure, B3.3 Transport, as well as Chapter B6 - Mana Whenua, Chapter B7 - Natural Resources and Chapter B10 Environmental Risk; and
 - c. Is consistent with the Auckland Plan 2050 and the Silverdale West Industrial Area Structure Plan; and
 - d. Will provide the necessary infrastructure prerequisites in order to enable PC 103 to be advanced ahead of the timing set out in the FDS.

488. We note that the planners carried out comprehensive assessments against all relevant statutory and non-statutory documents as set out in the s42A Hearing Report and in expert evidence.
489. We generally agree with and rely on the assessment undertaken by Messrs Cook and Cooper in relation to the relevant statutory and non-statutory documents listed above. In doing so, we find that PC 103 will give effect to the relevant higher order policy documents, including the above National Policy Statements in particular the NPS-UD as well as the RPS. PC 103 is generally consistent with the Structure Plan, it will provide for planned industrial growth and it will be serviced by infrastructure including roading and three waters.
490. As discussed earlier, we acknowledge that this request brings forward an out-of-sequence identified growth area. We find that PC 103 will provide for:
- Significant development capacity that will contribute to a well-functioning urban environment, which is well connected along transport corridors (Objective 6 and Policy 8 of the NPS-UD);
 - More business to locate in areas that are near centres, planned public transport and where there is high demand (Objective 3 of the NPS-UD);
 - Improved housing affordability by supporting competitive land and development markets (Objective 2 of the NPS-UD);
 - Robust strategic planning and the need to integrate urban development with infrastructure (Objective 6 of the NPS-UD); and
 - New Zealand's urban environments to support reductions in greenhouse gas emissions and to be resilient to the current and future effects of climate change (Objective 8 and Policy 1(e) of the NPS-UD).
491. In relation to the matters around the timing of transport infrastructure, we preferred and rely on the evidence of Ms Heppelthwaite, Mr Paul and Ms Perwick. It is critical that subdivision and development is required to integrate with the delivery of supporting infrastructure. We found that in the case of subdivision, s224c is the most appropriate trigger to ensure that transport and infrastructure is planned, funded and staged to integrate with urban growth (Objective 6 of the NPS-UD).
492. Similar direction is embodied in the AUP(OP) which identifies (among other matters) the need for a quality compact urban form with resilient, efficient and effective infrastructure (Objective B3.2.1(1)). It also emphasises the need for infrastructure planning and land use planning to be integrated to service growth efficiently (Objective B3.2.1(1)) and recognises the value of investment in planned and built infrastructure (Policy B3.2.2(2)). We find that the PC 103 precinct provisions, as amended, will appropriately address all of the above matters.

SECTION 32AA EVALUATION

493. 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.²⁷² This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes.²⁷³
494. In our view this decision report, which among other things addresses the modifications that have been made to the provisions of PC 103, satisfies our section 32AA obligations and is the most appropriate means of achieving the purpose of the RMA by reference to s32.

PART 2 OF THE RMA

495. Section 32(1)(a) of the RMA requires assessment of whether the objectives of a plan change are the most appropriate way for achieving the purpose of the RMA in Part 2. Section 72 of the Act also states that the purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA. In addition, section 74(1) provides that a territorial authority must prepare and change its district plan in accordance with the provisions of Part 2. While this is a private plan change application, these provisions also apply, as the Council in considering a private plan change, and if it is approved, will need to amend the AUP(OP) accordingly.
496. For all of the reasons set out in this decision, we are satisfied that the matters set out in sections 6, 7 and 8 of the RMA have been addressed. PC 103 and its provisions, as we have modified them, have recognised and provided for, have had particular regard to, and have taken into account, those relevant section 6, 7 and 8 matters.
497. Finally, in terms of section 5 of the RMA, it is our finding that the provisions of PC 103 in s32 and s32AA terms, are consistent with, and are the most appropriate way, to achieve the purpose of the Act. PC 103 will enable the efficient development of the land for industrial development which will enable people and communities to provide for their social, economic, and cultural well-being while avoiding, remedying, or mitigating any adverse effects on the environment.

DECISION

498. That pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, Proposed Plan Change – 103 Silverdale West Industrial Area by Fletcher Development Limited and Fulton Hogan Land Development to the Auckland Unitary Plan (Operative in Part) be **approved**, subject to the modifications as set out in this decision.
499. Submissions on PC 103 are:
- **Accepted** where they supported the plan change, or where we have accepted the modifications to PC 103, as set out in the submission;

²⁷² RMA, section 32AA(1)(a)

²⁷³ RMA, section 32AA(1)(c)

- **Accepted in part** where the submission supported the plan change but we have made modification to it in relation to other submissions, or have only partially agreed to modifications to PC 103 as set out in the submission, or
- **Rejected** where the submission sought to decline the plan change, or we have not modified the plan change as requested by the submission.

500. It is our overall findings that for the reasons set out above, PC 103 together with the application of the precinct provisions is the most appropriate means of achieving the objectives of the AUP(OP) and the purpose of the RMA. The precinct provisions (attached as **Appendix 1** to this decision) are the most effective and efficient when regard is had to the costs and benefits associated with those provisions relative to the alternatives.

501. **Appendix 2** sets out a table with our decision on each submission point.

502. In addition to the reasons set out above, the overall reasons for the decision are that PC 103:

- is supported by necessary evaluation in accordance with section 32 and section 32AA;
- gives effect to the National Policy Statement on Urban Development;
- gives effect to the National Policy Statement for Freshwater Management;
- gives effect to the NZ Coastal Policy Statement 2010;
- gives effect to the Hauraki Gulf Marine Park Act 2000;
- gives effect to the National Policy Statement for Indigenous Biodiversity 2023.
- gives effect to the Auckland Regional Policy Statement; and
- satisfies Part 2 of the RMA.



Karyn Kurzeja
Chairperson

Date: 9th October 2025