

UNITARY PLAN UPDATE REQUEST MEMORANDUM

TO Warren Maclennan, Manager Regional, North, West & Islands Unit

FROM Jo Hart, Senior Policy Planner, Regional, North, West & Islands Unit

DATE 25 January 2021

SUBJECT **Plan Change 38 (Private) 522-524 Swanson Road, Ranui to become Operative with modification to GIS Viewer of the Auckland Unitary Plan (AUP) Operative in part (15 November 2016)**



This memorandum requests an update to Auckland Unitary Plan Operative in part

Reason for update – to make Plan Change 38 (Private): 522-524 Swanson Road, Ranui operative	
Chapter	AUP GIS viewer
Section	AUP GIS viewer
Changes to text (shown in underline and strikethrough)	N/A
Changes to diagrams	N/A
Changes to spatial data	Remove hatching for proposed Plan Change 38 and replace with new zoning as highlighted in attachment B
Attachments	Attachment A: PC38 Decision Attachment B: Updated GIS Viewer

Prepared by: Jo Hart Senior Policy Planner, Regional, North, West & Islands Unit	Maps prepared by: Aching Konyak Geospatial Specialist
Signature: 	Signature: 
Reviewed by: Jo Hart Senior Policy Planner, Regional, North, West & Islands Unit	Signed off by: Warren Maclennan Manager Planning, Regional, North West and Islands
Signature: 	Signature: 

Attachment A: PC38 Decision

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



Proposal

To rezone 2.5 hectares of land at 522-524 Swanson Road, Ranui from Business-Light Industry Zone to Residential - Mixed Housing Urban Zone and Residential - Terrace Housing and Apartment Building Zone.

This plan modification is **APPROVED**. The reasons are set out below.

Plan modification number:	PPPC38
Site address:	522-524 Swanson Rd, Ranui
Applicant:	Western Park Village Limited
Hearing commenced:	Thursday 10 September 2020, 9.30am
Hearing panel:	Peter Reaburn (Chairperson)
Appearances:	<p><u>For the Applicant:</u> Russell Bartlett QC Brad Heaven, on behalf of Western Park Village Limited Mark Benjamin, Planner Peter Runcie, Acoustics</p> <p><u>Henderson-Massey Local Board</u> represented by Member Brooke Loader</p> <p><u>For Council:</u> Jo Hart, Planner Rhys Hegley, Noise Consultant</p> <p>Paulette Kenihan, Senior Hearings Advisor</p>
Hearing adjourned	N/A
Commissioners' site visit	7 September 2020
Hearing Closed:	10 September 2020

INTRODUCTION

1. This decision is made on behalf of the Auckland Council ("**the Council**") by Peter Reaburn an Independent Hearing Commissioner ("**the commissioner**"), appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("**the RMA**").
2. The commissioner has been given delegated authority by the Council to make a decision on Private Plan Change 38 ("**PPC38**") to the Auckland Council Unitary Plan Operative in Part ("**the Unitary Plan**") after considering submissions, the section 32 evaluation, the reports prepared by the officers for the hearing and evidence presented at the hearing of submissions.

3. The private plan change request was made on behalf of Western Park Village Limited (“**the Applicant**”) under Clause 21 of Schedule 1 to the RMA and was accepted by the Council, under clause 25(2)(b) of Schedule 1 to the RMA, on 26 November 2019.
4. PPC38 was publicly notified by the council on 5 December 2019 and the closing date for submissions was 23 January 2020. One submission was received. Council’s Summary of Decisions Requested was publicly notified on 27 February 2020 with the period for making further submissions closing on 12 March 2020. One further submission was received.

SUMMARY OF THE PLAN CHANGE

5. The proposed plan change is described in detail in the application documentation and the hearing report. In brief, PPC38 seeks to rezone of land at 522 – 524 Swanson Road Ranui (“**the subject site**”) from Business - Light Industry Zone to a combination of Residential – Mixed Housing Urban (“**MHU**”) and Residential - Terrace Housing and Apartment Building Zone (“**THAB**”). There are no proposed text changes to the Unitary Plan.
6. In brief, the subject site is currently used for temporary and permanent accommodation and is known as the Western Park Village. It was originally established as a traditional holiday park/campground in the 1950s and over the course of the last 50 years has evolved to an activity providing short term residential accommodation for those members of the community who cannot find housing elsewhere. The Applicant wishes to formalise the use of the site for residential housing and provide more permanent options for accommodation for the occupants. The site’s location close to the Ranui train station, town centre and the Ranui Domain make the site an appropriate location for more intensive housing. As the existing zoning of the site under the Auckland Unitary Plan (Operative in Part) is Business Light Industry, a private plan change has been determined to be the most appropriate route to achieving more permanent accommodation on the site, rather than a non-complying consent application.
7. The proposed plan change was prepared in accordance with the requirements of the RMA. It included a section 32 assessment and a full range of supporting expert reports.

HEARING PROCESS

8. There was no direction for pre-circulation of evidence.
9. Prior to the hearing, the commissioner visited the site and local surroundings.
10. The Council planning officer’s (“**s42A**”) report was prepared by a Council planner, Ms Jo Hart, and supported by a number of specialist reports. This was circulated prior to the hearing and taken as read.
11. There was no pre-circulated evidence, however the commissioner had the opportunity to read some of the applicant’s evidence after it was provided on the day prior to the hearing. In respect of evidence that did not give rise to any questions, experts were not required to attend the hearing. The only questions were for the Applicant’s planner and acoustic consultant. The Council’s planner and acoustic consultant were also requested to attend the hearing.

12. The one submission received was from KiwiRail Holdings Limited (“**KiwiRail**”). No evidence was received from that submitter and the submitter did not appear at the hearing. The further submitter, Kāinga Ora, tabled a letter from its counsel and a planning statement from a planner and did not appear at the hearing.
13. There were no procedural matters to address at the hearing.

RELEVANT STATUTORY PROVISIONS CONSIDERED

14. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements are set out in detail in the Application material and the s42A report and do not need to be repeated here.
15. Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions. The decision 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.
16. There are a number of provisions of the Unitary Plan that are relevant to PPC38, including:
 - Regional Policy Statement
 - B2. Urban Growth and Form
 - B3. Infrastructure, transport and energy
 - B10. Environmental Risk (Land - contaminated)
 - District Plan
 - Auckland Wide Rules (Chapter E)
 - H5 Residential - Mixed Housing Urban Zone
 - H6 Residential - Terrace Housing and Apartment Buildings Zone

SUMMARY OF EVIDENCE

17. The Council planning officer, Ms Hart, provided a comprehensive s42A report that canvassed the relevant effects and relevant provisions. Ms Hart’s recommendation was that PPC38 should be approved without amendment.
18. The Applicant provided the following written evidence:
 - Adam Thompson (Economic and Property Market)
 - Gregory Maddren (Civil Engineering)
 - Michael Nixon (Traffic)
 - Ian Munro (Urban Design)
 - Peter Runcie, Acoustics
 - Mark Benjamin, Planning
19. Peter Runcie and Mark Benjamin attended the hearing. The remaining evidence was taken as read.

20. Mr Russell Bartlett QC gave a verbal submission on behalf of the Applicant. Mr Bartlett confirmed that historical issues relating to temporary accommodation constraints at the subject site had led to the initiative to apply for a rezoning, so that the zoning aligned with the activity undertaken at the site, together with enabling modifications and expansion of that use. Mr Bartlett noted that the issues raised in the one submission had been addressed and observed that the submitter was not attending the hearing.
21. Brad Heaven, on behalf of the applicant, is the current manager of the Western Park Village and responsible for the day to day operation of the village. Mr Heaven described the site and the residential services provided. A number of facilities and services are provided for residents onsite to ensure that an acceptable level of amenity is provided for residents and to assist residents to secure jobs and accommodation (either private rented or through social housing providers). It was the Applicant's intention that any redevelopment of the site would be undertaken in a staged manner, with provision being made for the relocation of existing residents into new accommodation as it become available should they so desire, or accommodation elsewhere - for example through community housing providers.
22. Peter Runcie is a qualified acoustics engineer. Mr Runcie noted that, given a large portion of the site is currently zoned Business – Light Industry, the proposed plan change is likely to result in an improvement in the potential acoustic amenity of surrounding sites (when compared to it being developed for the current zoning) due to the reduction of permitted activity noise levels from activity generated within the site under the proposed zoning.
23. With regard to reverse sensitivity, Mr Runcie did not anticipate the current types of activities undertaken on both sites adjoining the western boundary would exceed the (new) interface noise rules – in part due to the constraints already imposed by the existing interfaces with Residential zoned land to the north. Notwithstanding this, a number of noise mitigation measures could be implemented by the Applicant that would further enhance the likelihood of the neighbouring sites achieving compliance with the new noise standards (following rezoning) without the requirement for either of the neighbouring sites to significantly modify their current operations. These mitigation measures included construction of an acoustically effective, 3m – 4m high, screen along the common boundary with 534 Swanson Road and 28A Airdrie Road and a setback for new multi-storey dwellings of at least 4 m from the western site boundary site (which was also consistent with the requirements of the AUP to provide a set back and minimum outdoor living space).
24. With regard to the land east of the site zoned Open Space - Sport and Active Recreation Mr Runcie's expectation was that noise from sporting activities during the noisiest typical use of the fields would comply with the AUP requirements and not result in adverse reverse sensitivity effects on the use of the park.
25. With regard to effects on rail operations to the south of the site, Mr Runcie addressed KiwiRail's submission. Noting that there is a large amount of residential use land which already borders the railway line throughout Auckland Mr Runcie stated that he was not aware of instances where complaints regarding rail noise and/or vibration have restricted KiwiRail's ability to operate the railway.
26. Mark Benjamin is a qualified and experienced planner. He had co-authored the plan change request, including the s32 report submitted as part of the request.

27. Mr Benjamin noted that the site has developed on an 'ad hoc' basis and currently provides a mix of short- and longer-term residential accommodation. Due to the improvised nature at which the site has grown and developed, the current owners wished to formalise the use of the site for residential housing and provide more permanent options for accommodation for the occupants. The site's location close to the Ranui train station, town centre and the Ranui Domain made the site an appropriate location for more intensive housing. The site's Business - Light Industry zoning was not reflective of the existing and historical use of the site and a plan change was considered the most appropriate method to provide for the current use and for the ongoing operation and redevelopment of the site for residential purposes.
28. Mr Benjamin traversed the relevant statutory framework and in summary concluded that the plan change was consistent with Part 2 of the RMA, the National Policy Statement ("NPS") on Urban Development 2020 and the AUP Regional Policy Statement. The actual and potential effects of the proposed rezoning, particularly as they relate to neighbourhood character, the amenity of neighbouring sites and transport would in his view be effectively managed by the development controls and assessment criteria applying to the sites under the zone and Auckland-wide provisions of the AUP. The proposed rezoning would provide for increase in housing supply and choice close to public transport. No changes had been made to the plan change since it was notified.
29. In relation to the KiwiRail submission, Mr Benjamin did not support the relief sought, being the inclusion of a building setback from the rail corridor and incorporation of noise and vibration attenuation for any noise sensitive development within 100m of the railway corridor. Mr Benjamin considered the matters raised in the submission had been addressed during the formulation of the AUP and there were no changes that would indicate that a different outcome, such as the introduction of a specific standard or precinct, is appropriate in this case.
30. Brooke Loader, a Henderson-Massey Local Board Member, presented verbal comments on behalf of the Local Board. Ms Loader commented that the Board was generally supportive of the plan change as it provided the opportunity for residential development that offers good quality social housing which is affordable. Possible displacement of existing residents was a concern, however the Board supported initiatives for alternative housing options. In response to a commissioner question Ms Loader indicated that the Board would be open to consultation with the Applicant about the possibility for more direct routes through the Ranui Domain between the subject site and towards the Ranui Railway Station.
31. Rhys Hegley is a qualified acoustics engineer and was engaged by the Council to review noise matters. In relation to the issues raised by KiwiRail Mr Hegley agreed with Mr Runcie that no further measures were necessary. In relation to the western boundary interface, Mr Hegley had concerns about the effectiveness of the mitigation measures proposed by the Applicant and questioned the future ability to require the site owners to implement those measures.
32. Jo Hart, a qualified planner and author of the s42A report, confirmed her recommendation that the plan change be approved without change.
33. Mr Bartlett, in closing with the Applicant's right of reply, noted in relation to the Business-Light Industry zoning adjoining the western boundary of the subject site, there had been no complaints and there was no evidence of any issue with current activities conducted on those sites.

34. Being satisfied I had sufficient information on which to make a decision on PPC38 the commissioner closed the hearing after all presentations had been made, on Thursday 10 September 2020.

PRINCIPAL ISSUES IN CONTENTION

35. Potential issues that were not issues in contention include:
- Economic and Property Market effects
 - Servicing or other Civil Engineering effects
 - Traffic effects
 - Hydrology and Ecology (including stream) effects
 - Urban Design effects
36. In respect of the above matters it was generally accepted between the Applicant and Council that any potential issues could be addressed through the normal adoption of AUP standards and / or resource consent procedures required for future development. As there were no issues in contention arising from the above, it is not necessary for the commissioner to make a finding on these matters.
37. In relation to the adequacy of the section 32 examination the commissioner raised one matter with Mr Benjamin, concerning the proposed spatial arrangement of residential zonings. The proposal placed the most intensive (THAB) zoning at the point of the site closest to the Ranui Railway Station, however a Mixed Housing Suburban Zone had been retained for that part of the site approximately the same distance away from the Ranui Neighbourhood Centre. The commissioner asked for Mr Benjamin's views on the new NPS on Urban Development 2020 which contains a requirement for local authorities to enable greater intensification in areas of high demand and where there is the greatest evidence of benefit – city centres, metropolitan centres, town centres and near rapid transit stops (Objective 3). Mr Benjamin acknowledged that more intensive zonings could have been proposed for the northern, Swanson Road, part of the site – a matter that was also canvassed by the urban designers Mr Munro (for the Applicant) and Mr Matt Riley (reviewer for the Auckland Council). Mr Benjamin further acknowledged that he may have given further consideration to this matter had the NPS been in place at the time the original plan change request been made. However he remained in support of the zonings as proposed, which reflected the existing residential zonings.
38. Ms Hart confirmed that Auckland Council would be considering what response may be required to the NPS on Urban Development 2020, and this would be on a region-wide basis. This is an appropriate response to revisiting the spatial arrangement of zonings in this area. As there were no issues in contention arising in relation to this matter it is not necessary for the commissioner to make a finding.
39. Having considered the submission and further submission received, the hearing report, the evidence presented at the hearing and the Council officers' response to questions, the remaining issues in contention were:
- Reverse Sensitivity and Noise and Vibration effects – Rail Operations

- Reverse Sensitivity and Constraints on Future Use – Business Light Industry Zone to the west

FINDINGS ON THE PRINCIPAL ISSUES IN CONTENTION

Reverse Sensitivity and Noise and Vibration Effects – Rail Operations

40. The KiwiRail submission expressed concern about the safe and efficient operation of the rail network where physical setbacks are not provided. The submission further stated that sound and vibration from rail networks have the potential to cause adverse health and amenity effects on people living nearby and that the Plan Change documentation had not adequately assessed the noise and vibration effects from the corridor on future development. The submission sought relief that the plan change be amended by:
- adding a concept plan providing that development is required to comply with a setback of 5m along the southern boundary and southeast part of the site
 - the inclusion of a new provision to manage potential health effects from rail noise and vibration where buildings containing noise sensitive activities are located adjacent to the railway corridor.
41. Mr Benjamin noted that there are numerous examples where buildings are built adjacent to the railway corridor and there are no current AUP provisions that require any specific setback to the rail corridor. The commissioner noted on his site visit a very local example of this – there is substantial terraced housing development above and facing out over the railway corridor immediately to the south of the railway and subject site. Mr Benjamin gave other examples of similar zoning patterns in Appendix 1 to his evidence.
42. In their further submission, and tabled counsel’s letter and evidence for this hearing, Kainga Ora made number of points, including that the relief sought by KiwiRail:
- *Places an overly restrictive burden on landowners – without a corresponding burden on infrastructure providers to manage effects to adjacent land uses generated by the operation of infrastructure.*
 - *Unnecessarily constrains the future use of private land to achieve an intensive and compact urban form*
 - *Places additional restrictions on private property and constitutes a de-facto extension of the infrastructure provider designation, without corresponding restrictions on KiwiRail.*
43. Mr Benjamin and Ms Hart identified that these same issues had been raised by the AUP’s Independent Hearing Panel which had recommended against imposition of an originally-proposed High Land Transport Noise Overlay or an alternative (supported by KiwiRail) of a 2.25 metre buffer on either side of the rail corridor. The Panel was concerned that additional controls on either the location or the cost of construction of residential and education activities would significantly affect the ability to locate those activities close to public transport to a degree that would be contrary to the Unitary Plan’s objectives. The Panel was also concerned that there had not been a rigorous cost benefit assessment of the proposed overlay. Auckland Council accepted the Panel’s recommendation and deleted the overlay.

44. Both Mr Benjamin and Ms Hart were of the view that there are no local differences on this site that need to be recognised by a place-based provision. The commissioner agrees and find that this plan change appropriately adopts the consistent approach the AUP takes to addressing the interface between residential zonings and the rail corridor, with there being no circumstances here that would justify additional controls.
45. An issue that was the subject of some difference of opinion between, respectively, the acoustic experts for the applicant and for the Council related to adverse effects on development of the Business - Light Industry land to the west of the subject site. In his review for the Council, Mr Hegley noted that the onus of providing a suitable internal noise level within the proposed residential units had been placed upon the existing light industrial neighbour (through the proposed rezoning) as opposed to the developer. In that respect Mr Hegley noted that the potential mitigation measures proposed by Mr Runcie could not be required, at least without site-specific standards being introduced on the subject site. Based on the current Light Industrial zoning, the neighbours to the west were permitted to generate a level of 65dB LAeq at all times within the boundary of 522 – 524 Swanson Road. By rezoning the proposal to Residential, this level could reduce to 55dB LAeq daytime and 45dB LAeq night-time, a reduction Mr Hegley considered to be significant. Mr Hegley considered that the effects that the proposed zone interface rules on the current activities of the Light Industrial zone would likely range from negligible to manageable. However he was concerned that the acoustic assessment made in support of the plan change assessment appeared limited to the current activity on the neighbouring sites. In his view the reduction in noise levels could result in limitations on activities that could otherwise occur on the neighbouring Business - Light Industrial zone to the west, and that constituted an adverse effect.
46. On the matter of potential mitigation, Mr Benjamin confirmed that site-specific standards were not proposed. He considered that it would be a prudent approach for the subject-site owners, or a future developer, to incorporate noise mitigation regardless of there being a requirement. In that respect, and in response to in response to Mr Hegley's concern questioning the appropriateness, within a residential zone, of the proposed mitigation measure of a 3-4 metre high boundary fence on the common boundary Mr Benjamin noted this was not a concern for the Applicant.
47. Mr Runcie acknowledged that the reduction in permissible noise levels for the adjoining land could be regarded as significant at a point along the western boundary where noise levels were less controlled by existing residential zone interfaces. However where that point was, and what the impact may be could not be ascertained in a speculative manner without knowing what activity was proposed, how a future development was laid out and how an activity was managed.
48. Mr Bartlett noted that the Applicant accepted there may be an extra burden, in relation to the noise mitigation that may be required, on property owners bordering the subject site's western boundary. However he submitted this impact would likely be of minor significance when considering the wide range of activities that are permitted in the Business-Light Industry Zone.
49. In the absence of site-specific controls the commissioner finds that reliance cannot be placed on what may be considered prudent mitigation on the part of the owners or future developers of the subject site. Any mitigation that may be required to achieve the revised

noise standards will be the responsibility of the owners / developers of the adjoining Business – Light Industry zoned land.

50. In that respect the view of both acoustic experts was that there was unlikely to be any significant adverse effect on current uses of the adjoining land.
51. In relation to possible future uses, it was acknowledged there may be an impact, however this was difficult to ascertain with any certainty. Mr Benjamin noted that attempts to consult with owners of the adjoining land had been unsuccessful, and no submission was received from them.
52. The commissioner finds on balance that the revised noise standards applying on the common boundary with the Business – Light Industry zoned land to the west will not have a significant adverse effect on existing uses or the ability to accommodate a reasonable range of future uses on that land.

STATUTORY PROVISIONS

53. The RMA sets out a range of matters that must be addressed when considering a plan change, as identified in the section 32 report accompanying the notified plan change. The section 32 contains an analysis of efficiency and effectiveness 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.
54. Having considered the evidence and relevant background documents, the commissioner is satisfied, overall, that PPC38 has been developed in accordance with relevant statutory and policy matters and that the plan change will assist the Council in its effective administration of the Unitary Plan.
55. PPC38 as proposed, the recommendations made in the Section 42A Report and the underpinning Section 32 Evaluation Report are not changed by this decision, so there is no need to undertake a Section 32AA Further Evaluation.

CONCLUSIONS

56. Having considered the proposed private plan change request including the supporting Assessment of Environmental Effects and Section 32 Analysis report, the Council's section 42A report, and the submissions and further submission the commissioner finds that the current zoning of the subject land (Business – Light Industry Zone) is appropriately rezoned to the residential zones proposed by the plan change - Residential Terraced Housing and Apartment Buildings Zone and Residential – Mixed Housing Urban Zone.
57. The residential zones proposed align with the Auckland Unitary Plan's regional policy statement objectives and policies and with sound resource management practice. Alternative zonings and precinct and zone provisions have been considered and the proposal is the most appropriate for achieving the purpose of the Act, and the objectives of the National Policy Statement on Urban Development 2020, the AUP(OP) and the Auckland Plan.

DECISION

58. That pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, that Proposed Private Plan Change 38 to the Auckland Unitary Plan (Operative in Part) be approved.
59. Submissions on the plan change are accepted and rejected in accordance with this decision. In general, these decisions follow the recommendations set out in the Councils section 42A report.
60. The reasons for the decision are that Plan Change 38:
 - a. will assist the Council in achieving the purpose of the RMA;
 - b. is consistent with the Auckland Regional Policy Statement;
 - c. is consistent with the provisions of Part 2 of the RMA;
 - d. is consistent with the National Policy Statement on Urban Development 2020
 - e. is supported by necessary evaluation in accordance with section 32; and
 - f. will help with the effective implementation of the plan.



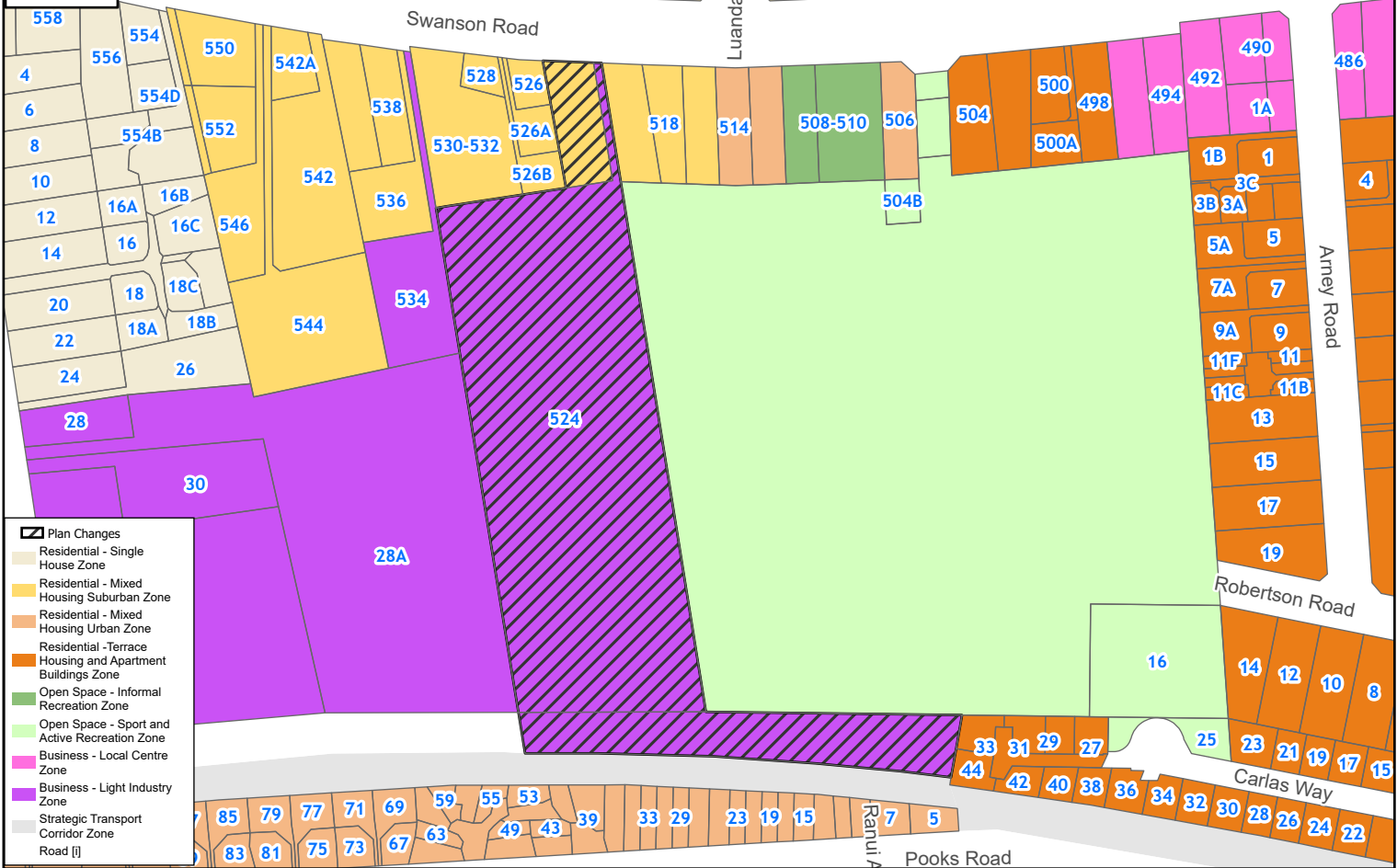
Peter Reaburn
Independent Planning Commissioner

Date: 24 September 2020

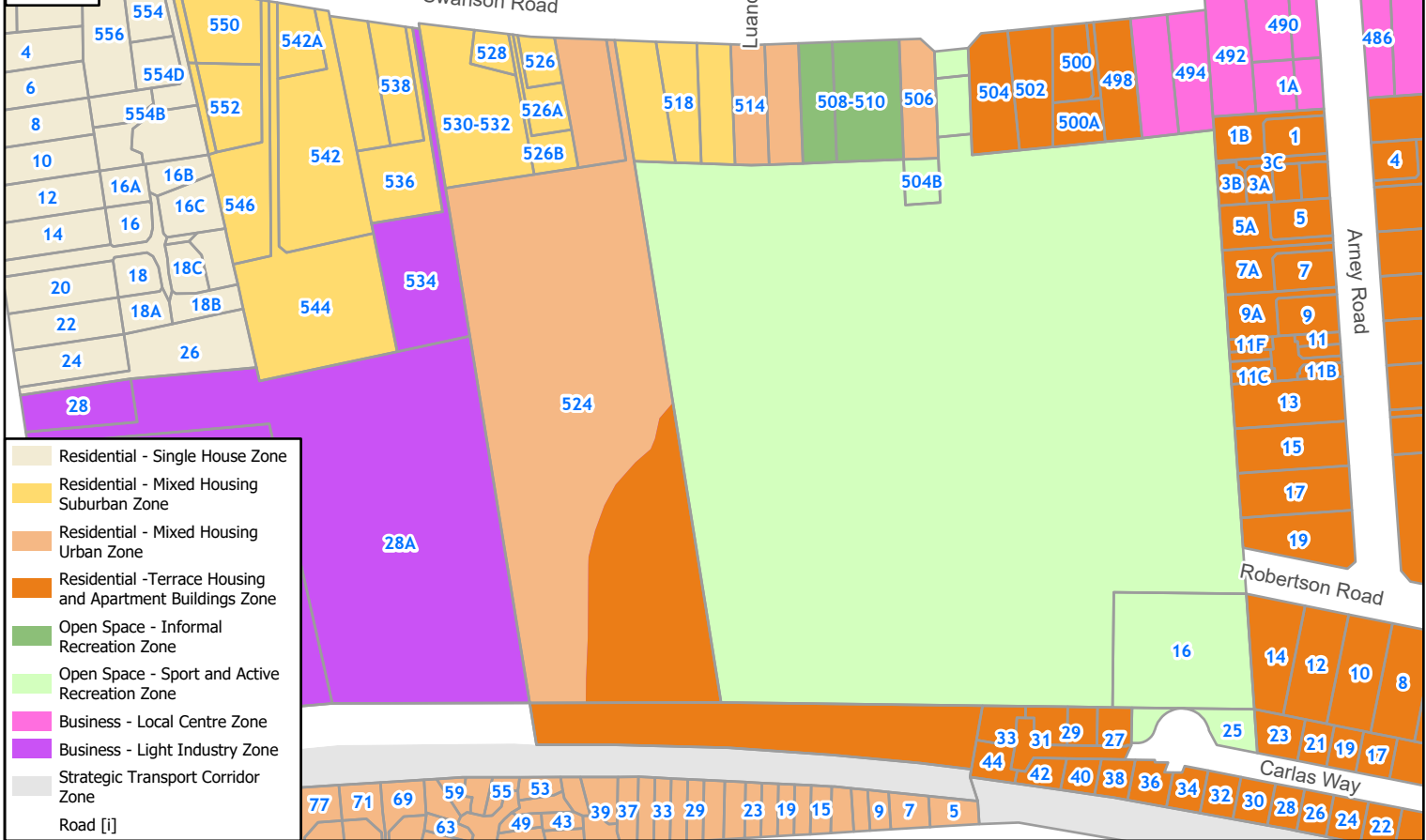
Attachment A – Map Change

Attachment B: Updated GIS Viewer

BEFORE



AFTER



**Private Plan Change 38
Rezone from Light Industry Zone
to
Mixed Housing Urban and THAB**



Whilst due care has been taken, Auckland Council gives no warranty as to the accuracy and completeness of any information on this map/plan and accepts no liability for any error, omission or use of the information.

Date: 10/02/2021