

UNITARY PLAN UPDATE REQUEST MEMORANDUM

TO Warren MacLennan

FROM Lisa Roberts





DATE 07 May 2020

SUBJECT Amendment to the planning maps of the Auckland Unitary Plan (AUP) Operative in part (15 November 2016), as required by a Section 292 decision relating to Plan Modification 12- Hobsonville Corridor Precinct.



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

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|---|---|
| Reason for update – The update is required by a Section 292 decision, dated 30 March 2020. | |
| Chapter | AUP GIS Viewer |
| Section | Zone layer at 174 Brigham Creek Road |
| Changes to text (shown in underline and strikethrough) | N/A |
| Changes to diagrams | N/A |
| Changes to spatial data | Change the zoning at 174 Brigham Creek Road so that it is wholly zoned Business-Mixed Use zone. This involves changing the Strategic Transport Corridor zone on the site to Business-Mixed Use zone. This area is shown in Attachment 2. Refer to Attachment 3 . |
| Attachments | Attachment 1: Section 292 decision, 30 March 2020 Attachment 2: Planning map showing the zoning error Attachment 3: Planning map showing the correct zoning |

| | |
|--|---|
| Prepared by: Lisa Roberts Planner | Maps prepared by: Dean Thompson Senior Geospatial Analyst |
| Signature:  | Signature:  |
| Reviewed by: Lisa Roberts Planner | Signed off by: Warren MacLennan Manager – North, West and Islands |
| Signature:  | Signature:  |

Attachment 1: Section 292 decision,
30 March 2020

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2020] NZEnvC 037

IN THE MATTER of the Resource Management Act 1991 (**the Act**)
AND of an application under s 292 of the Act
BETWEEN AUCKLAND COUNCIL
ENV-2020-AKL-000013
Applicant

Court: Environment Judge M Harland sitting under s 309 of the Act

Date of Decision: 30 March 2020

Date of Issue: 30 March 2020

DETERMINATION OF THE ENVIRONMENT COURT

- A: The application under s 292 of the Act is granted.
- B: The Council is directed to amend the Auckland Unitary Plan in respect of the property at 174 Brigham Creek Road, Hobsonville as follows:
- (a) Remove the Strategic Transport Corridor zone from the property; and
 - (b) Apply the Business - Mixed Use zone to the entire property.



REASONS

Introduction

[1] On 18 February 2020 Auckland Council (**the Council**) filed an application under s 292 of the Act, seeking directions from the Court to amend a zoning map in the Auckland Unitary Plan (**AUP**). In particular, the Council seeks to correct the zoning of the property at 174 Brigham Creek Road, Hobsonville (**the site**) in the AUP maps.¹ An affidavit of Ms L M Roberts was filed in support of the application.²

[2] The site is privately owned by Joyland International Limited (**Joyland**). A strip of land at the northern end of the site is within the New Zealand Transport Agency (**NZTA**) designation 6741 for State Highway 16 and 18 - Westgate to Whenuapai and Hobsonville (**the designation**).

The mistake to be corrected

[3] The mistake relates to the rezoning of the small strip of land at the northern end of the site from Business - Mixed Use zone to Strategic Transport Corridor zone through Plan Change 12 - Hobsonville Corridor Precinct (**Plan Change 12**). Plan Change 12 was made operative on 27 September 2019. Prior to Plan Change 12, the entire site had been zoned Business - Mixed Use Zone.

[4] The Council considers that the rezoning of the small strip of land at the northern end of the site from Business - Mixed Use to Strategic Transport Corridor Zone through Plan Change 12 was a mistake because:

- (a) Plan Change 12 sought to rezone land within the Hobsonville Corridor precinct that was alongside State Highway 18 to reflect ownership and designation boundaries.
- (b) The designation 6741 follows the road and adjacent NZTA property boundaries at all sites in the precinct other than the site at 174 Brigham Creek Road, where the designation covers a small strip of the privately-owned land at the northern end of the site.
- (c) In preparing Plan Change 12, Council staff did not identify that the designation 6741 boundary included a portion of privately-owned land at 174 Brigham Creek Road.

¹ The property has an area of 9882m² and is legally described in the title identifier 569513 as SEC 32 SO 444423.



(d) Plan Change 12 would not have sought to rezone any of the site at 174 Brigham Creek Road, if Council staff had correctly identified the site as being owned by Joyland.

[5] The zoning change to the property at 174 Brigham Creek Road was marked incorrectly on the proposed plan change maps and incorrectly labelled as 'Strategic Transport Corridor from Road' when it should have been labelled 'Strategic Transport Corridor from Mixed Use'. As a result, it was not clear from the proposed plan change maps that there was any proposal to rezone the site at 174 Brigham Creek Road (given that the site came within the Business - Mixed Use Zone).

[6] In her affidavit, Ms Roberts set out her opinion that Joyland has been disadvantaged by the mistake made in relation to the proposed plan change maps, and that if the proposed map in Plan Change 12 had been labelled correctly, it is likely that Joyland would have submitted on (and opposed) the proposed rezoning of their site.³

[7] Ms Roberts states that she would have agreed with a submission seeking that the site retain Business - Mixed Use zoning and that she would have recommended (through the hearing process) that the site be retained as zoned wholly Business - Mixed Use Zone.⁴

[8] The mistake in the zoning of 174 Brigham Creek Road was not identified until the preparation of the Operative Zone map for Plan Change 12, following the Council's Planning Committee meeting on 6 August 2019.

[9] Following the identification of the mistake, Joyland and the NZTA were contacted and notified. Both parties responded via email and agreed that the site at 174 Brigham Creek Road should be zoned Business - Mixed Use Zone.⁵

[10] The Council does not consider that the mistake in the zoning for 174 Brigham Creek Road can be corrected by the Council using Clause 20A of Schedule 1 to Act to rezone the entire property to Business - Mixed Use Zone.

[11] Accordingly, the Council requests that the Court correct the mistake in zoning by making a direction under s 292 of the Act requiring the Council to correct the mistake in the AUP maps.

² Affidavit of Lisa Roberts dated 18 February 2020.

³ Above n 2, at [14].

⁴ Above n 2, at [14].

⁵ Exhibit 3 and Exhibit 4 to the Affidavit of Lisa Roberts, dated 18 February 2020.



The positions of Joyland and NZTA

[12] On 19 February 2020 the Court directed Joyland and the NZTA to advise the Court of their views about the application.

[13] On 21 February 2020, Ms Zhang, on behalf of Joyland, confirmed that Joyland has no further comments to make in relation to the application. It's position is that the land should be zoned Mixed-Use, as set out in Ms Zhang's email to the Council dated 26 August 2019.

[14] On 24 February 2020, Mr Keating, on behalf of the NZTA confirmed that the NZTA has no objection to the application by the Council and has no objection to the land being zoned as Mixed-Use with a corresponding precinct boundary.

Section 292 of the Act

[15] Section 292 provides:

292 Remedying defects in plans

- (1) The Environment Court may, in any proceedings before it, direct a local authority to amend a regional plan or district plan to which the proceedings relate for the purpose of
 - (a) remedying any mistake, defect, or uncertainty; or
 - (b) giving full effect to the plan.
- (2) The local authority to whom a direction is made under subsection (1) shall comply with the direction without using the process in Schedule 1.

[16] Directions under s 292 of the Act enable a plan to be corrected where a defect becomes apparent in a proceeding before the Court without the need to use the process for changing a plan set out in Schedule 1 of the Act.

[17] The usual process under Schedule 1 requires public notification, submissions and further submissions, hearing of submissions and rights of appeal. Those matters are not required in the exercise of the power under s 292. As a result, the Court will always be concerned to ensure that the exercise of s 292 is within the limits of correcting mistakes and does not extend into making changes which ought to be dealt with by a change under Schedule 1.⁶

[18] The power is broadly discretionary with no presumption as to whether or how a mistake should be remedied, but it does not extend to determining whether particular plan provisions are adequate or appropriate.⁷

[19] Counsel for the Council referred to a number of cases in support of its

⁶ *35 Limited v Auckland Council* [2018] NZEnvC 215.

⁷ *Moriarty v North Shore City Council* [1994] NZRMA 433 (HC).



application.⁸ One case was *Re Kapiti Coast District Council*,⁹ where the Court said the following about the application of s 292 of the Act:¹⁰

Section 292 is a “slip rule” and should only be exercised in cases of mistake, defect or uncertainty to give full effect to the plan. It should not be used to make amendments to a plan change where those changes are significant and might affect the rights of third parties without giving them a chance to be heard (See *Re Queenstown Lakes District Council C78/2000 and Catholic Archdiocese of Wellington v Friends of Mount Street Cemetery C125/99*).

[20] In *Re Kapiti Coast District Council* all of the landowners affected by the incorrect zoning had been notified by the Council and none of them indicated that they opposed the application or had any desire to be heard.¹¹ The Court directed the Council to correct the errors in the planning maps.

[21] Another case counsel referred to was *35 Limited v Auckland Council*,¹² where a landowner of a property applied under s 292 of the Act seeking directions from the Court that the Council be required to correct plan maps. The Council agreed that the errors that had been identified should be corrected and confirmed to the Court that the matter could be resolved by consent. The Court found that the corrections sought would not affect any third party¹³ and concluded that there was no reason not to direct the Council to correct the errors in accordance with s 292 of the Act.¹⁴

Determination

[22] In this case, the rezoning of a portion of the site at 174 Brigham Creek Road to Strategic Transport Corridor Zone through Plan Change 12 was a mistake, which occurred due to a mistaken understanding about the ownership of the site. Also relevant is that the zoning change to the property at 174 Brigham Creek Road was marked incorrectly on the proposed Plan Change 12 maps and incorrectly labelled as ‘Strategic Transport Corridor from Road’ when it should have been labelled ‘Strategic Transport Corridor from Mixed Use’.

[23] Rezoning the entire site to Business - Mixed Use Zone, which was the zoning

⁸ See *35 Limited v Auckland Council* [2018] NZEnvC 215, *Catholic Archdiocese of Wellington v Friends of Mount Street Cemetery* EnvC Wellington, C125/99, 19 July 1999, *Re Kapiti Coast District Council*, EnvC Wellington, W57/2000, 13 September 2000, *Re Rodney District Council*, PT Auckland, A86/94, 23 November 1994 and *Re Queenstown Lakes District Council*, EnvC Christchurch, C78/2000, 18 April 2000.

⁹ *Re Kapiti Coast District Council*, EnvC Wellington, W57/2000, 13 September 2000.

¹⁰ Above n 9, at page 3.

¹¹ Above n 9, at page 3.

¹² Above n 6.

¹³ Above n 6, at [11].

¹⁴ Above n 6, at [13].



of the site prior to Plan Change 12, is not a significant change to the AUP.

[24] Both Joyland and the NZTA agree with the Council that the site should be zoned Business - Mixed Use. There are no other affected parties that need to be heard in relation to the application to correct the mistake.

[25] On this basis, I conclude that there is no good reason why the error should not be corrected under s 292 of the Act.

[26] Accordingly, the application under s 292 is granted. I direct the Council to amend the Auckland Unitary Plan in respect of the property at 174 Brigham Creek Road, Hobsonville as follows:

- (a) Remove the Strategic Transport Corridor zone from the property; and
- (b) Apply the Business - Mixed Use zone to the entire property.

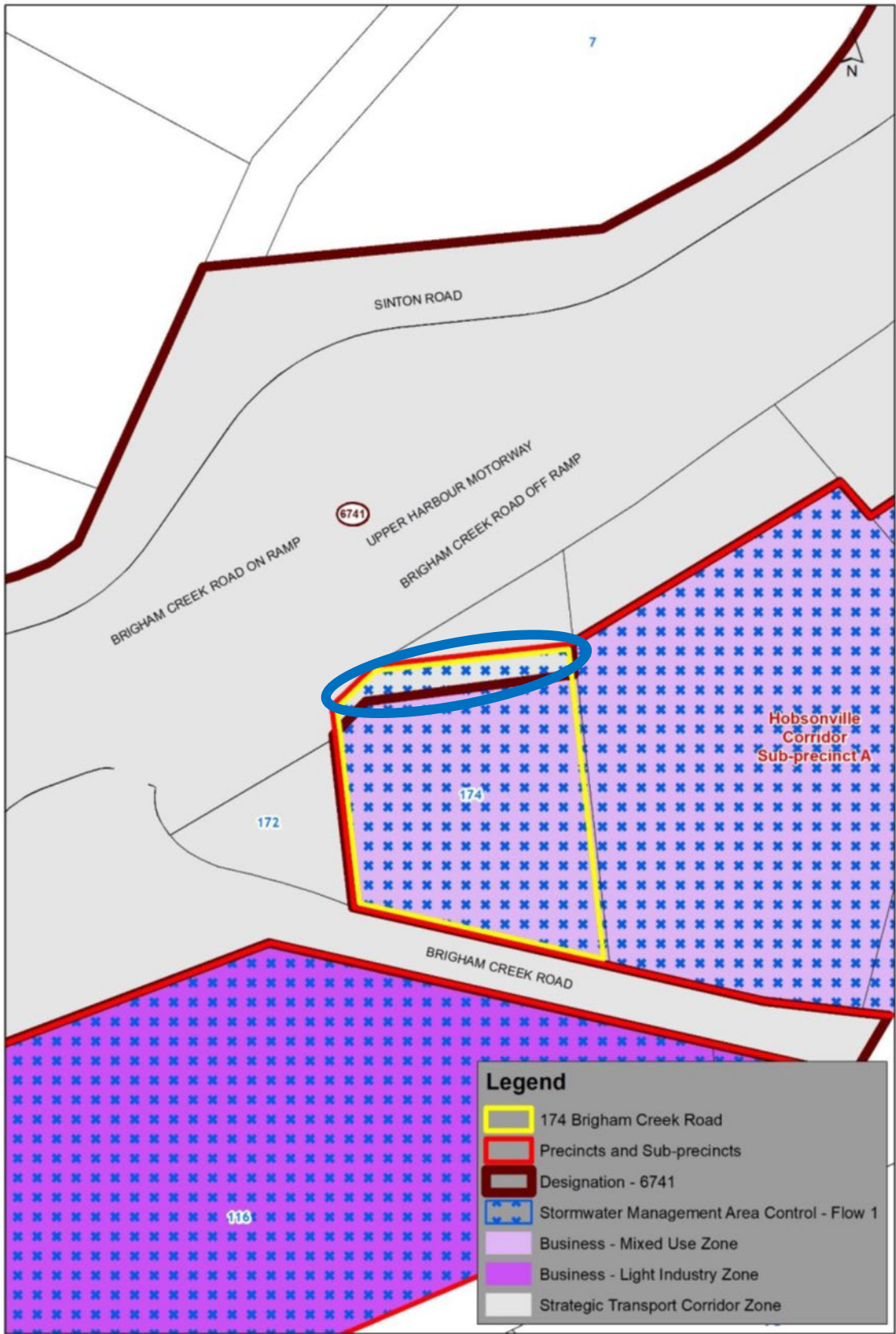
M Harland

M Harland
Environment Judge

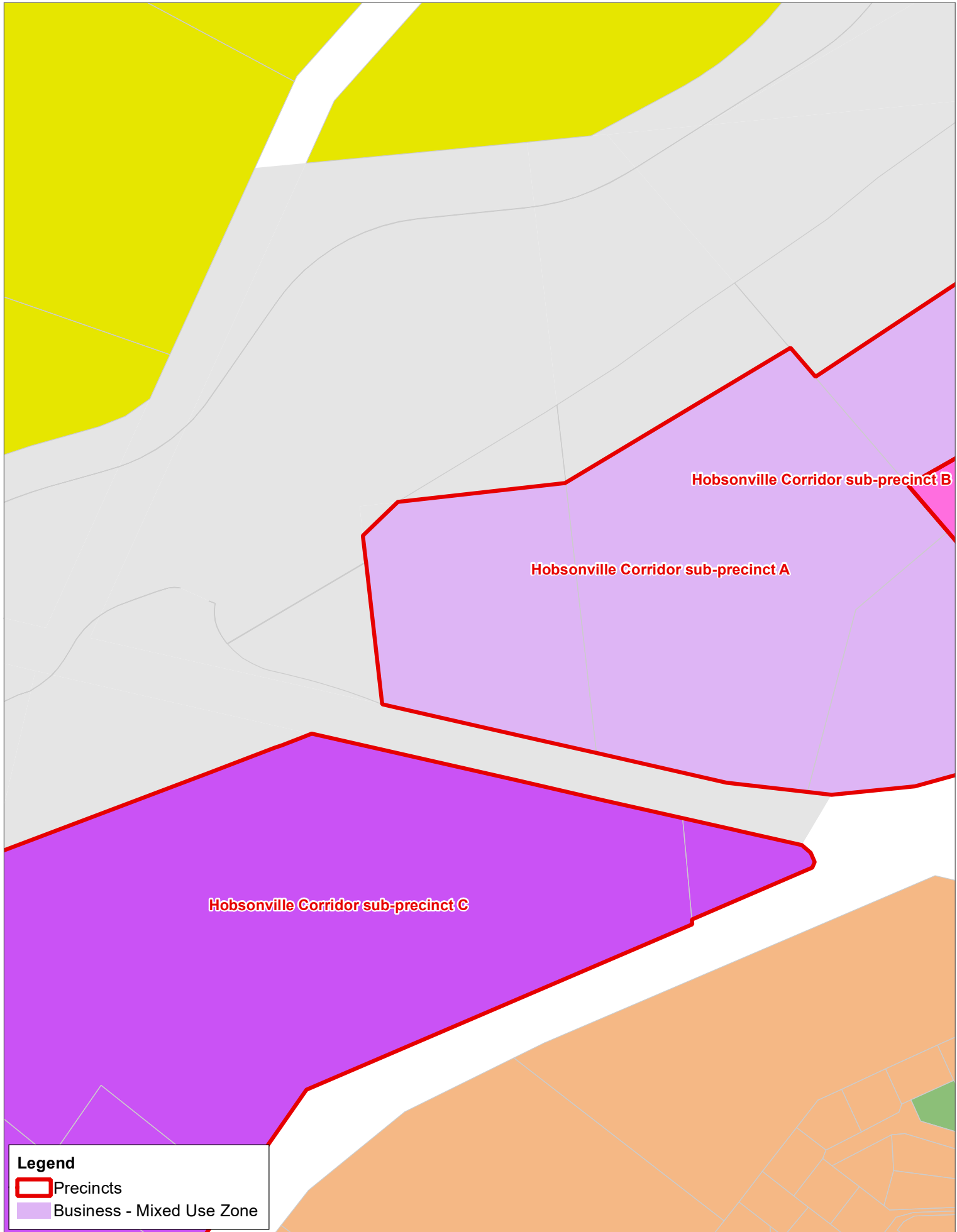


Attachment 2: Planning map
showing the zoning error

Attachment 2: Zoning error (shown with a blue circle)



Attachment 3: Planning map
showing the correct zoning





Hobsonville Corridor sub-precinct C

Hobsonville Corridor sub-precinct A

Hobsonville Corridor sub-precinct B

Legend

-  Precincts
-  Business - Mixed Use Zone



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: 8/06/2020

Plan Change 12 - Check Maps



Plans and Places