

UNITARY PLAN UPDATE REQUEST MEMORANDUM

TO Celia Davison, Manager Planning, Central South Unit

FROM Jimmy Zhang, Planner, Central South Unit

DATE 22 November 2022






SUBJECT **Plan Modification to 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 – Plan Change 61: Waipupuke to be made operative in part	
Chapter	Chapter I Precincts
Section	South – I447 Waipupuke Precinct
Designation only	
Designation #	N/A
Locations:	N/A
Lapse Date	N/A
Purpose	N/A
Changes to text (shown in underline and strikethrough)	<p>Delete the following interim provisions in the Waipupuke Precinct:</p> <ul style="list-style-type: none"> • Introduction text (refer to Attachment 2) • Objective I447.2(9) • Policy I447.3(13) • Table I447.4.1(A3) • Standard I447.6.8 <p>And replace with:</p> <ul style="list-style-type: none"> • Updated Waipupuke Precinct text – refer to Attachment 2. <p>Delete the placeholder '[subject to appeal]' in the Waipupuke Precinct:</p> <ul style="list-style-type: none"> • Objective I447.2(7) • Policie I447.3(12) • Table I447.4.1(A8) • Standard I447.6.7 • Matters of discretion I447.7.1(5) • Assessment Criteria I447.7.2(5) <p>And replace with:</p> <ul style="list-style-type: none"> • Updated Waipupuke Precinct text – refer to Attachment 2.
Changes to diagrams	Delete Precinct Plan 1447.10.1 Waipupuke Precinct Plan 1 Zoning and Stages and replace version shown in Attachment 3.
Changes to spatial data	N/A
Attachments	Attachment 1: PC61 Environment Court Consent Order

	<p>Attachment 2: PC61 text</p> <p>Attachment 3: PC61 Precinct Plan</p>
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<p>Prepared by: Jimmy Zhang Planner</p>	<p>Text Entered by: Harry Barnes Planning Technician</p>
<p>Signature: </p>	<p>Signature: </p>
<p>Maps prepared by: Mitesh Bhula Geospatial Specialist</p>	<p>Reviewed by: Craig Cairncross Team Leader</p>
<p>Signature: </p>	<p>Signature: </p>
<p>Signed off by: Celia Davison Manager Planning – Central South</p>	
<p>Signature: </p>	

**Attachment 1: PC61 Environment
Court Consent Order**

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2022] NZEnvC 178

IN THE MATTER OF an appeal under clause 14 of Schedule 1
the Resource Management Act 1991

BETWEEN LOMAI PROPERTIES LIMITED
(ENV-2022-AKL-000021)

Appellant

AND AUCKLAND COUNCIL

Respondent

Court: Environment Judge J A Smith sitting alone under s 279 of the Act

Date of Order: 27 September 2022

Date of Issue: 27 September 2022

CONSENT DETERMINATION

A: Under section 279(1)(b) and 292 of the Resource Management Act 1991 (**RMA**), the Environment Court, by consent, directs the Council to delete the so called “interim provisions” from 1447. Waipupuke Precinct in the Auckland Unitary Plan (as set out in **Appendix A**) for the purposes of remedying any uncertainty, now that the noise attenuation provisions have been agreed between the parties.



- B: Under section 279(1)(b) of the RMA, the Environment Court, by consent, orders that:
- (1) The Lomai Properties Limited appeal be resolved subject to the modifications to the 1447. Waipupuke Precinct in the Auckland Unitary Plan as set out in **Appendix A**;
 - (2) The appeal is otherwise dismissed.
- C: Under section 285 of the Resource Management Act 1991, there is no order as to costs.
- D: I reserve leave for any party to return to the Court if they consider the making of these orders gives rise to inconsistency or require review in light of the provisions in relation to noise attenuation finalised for outcome of the appeals on Proposed Private Plan Changes 48, 49 and 50.

REASONS

Introduction

[1] This consent order relates to an appeal by Lomai Properties Limited (**Lomai**) against the decision of Auckland Council (**Respondent**) to decline Proposed Private Plan Change 61 (**PC61**) to the Auckland Unitary Plan (**AUP**).

[2] Auckland Council (in its capacity as a submitter), Auckland Transport, Waka Kotahi NZ Transport Agency, Watercare Services Limited, and Kāinga Ora joined the appeal in accordance with s 274 of the RMA. Elly S Pan also joined the appeal pursuant to s 274 but subsequently withdrew her interest on 4 May 2022. The Environment Court noted the withdrawal, with no issue as to costs, on 6 May 2022.

[3] Environment Court Mediation on PC61 was held on 27 April 2022, and the parties continued discussions after the mediation was held. Following those discussions consent documents were filed with the Environment Court on 10 May 2022. Lomai sought an urgent consent order.

[4] On 16 May 2022, the Court directed the parties to file further detail explaining the agreement reached between the parties and providing analysis under s 32AA to justify the agreed changes to the PC61 provisions. Following this request, the parties filed a second joint memorandum dated 1 June 2022, which was supported by an affidavit from a planning consultant.

[5] A Consent Determination (**the Consent Determination**),¹ was issued on 7 June 2022. As recorded in the Consent Determination, the parties to the PC61 appeal reached agreement on all matters, except for the noise attenuation provisions. The Consent Determination confirmed the inclusion of interim provisions, which applied to the parts of the PC61 land that was still the subject of discussion regarding whether noise attenuation provisions should apply. This approach enabled PC61 to become operative in part on 8 July 2022.

[6] Further discussions have occurred and by Joint Memorandum dated 2 September 2022, the parties filed a draft consent order detailing the parties' agreements regarding the noise attenuation provisions, and the proposed deleting of the "interim provisions".

Related appeals before the Court

[7] Five private plan changes have been proposed in the Drury area. In addition to PC61, these are Proposed Private Plan Changes 48 – 51. There are multiple appeals in relation to Plan Changes 48 – 50,² Waka Kotahi is the only appellant in relation to PC51, and Lomai Properties is the only appellant in relation to PC61.

¹ *Lomai Properties Limited v Auckland Council* [2022] NZEnvC 095.

² ENV-2022-AKL-000125: *Kainga Ora - Homes and Communities v Auckland Council* (PC 48); ENV-2022-AKL-000126: *Auckland Council v Auckland Council* (PC 50); ENV-2022-AKL-000127: *Kainga Ora - Homes and Communities v Auckland Council* (PC 49); ENV-2022-AKL-000128: *Auckland Council v Auckland Council* (PC 49); ENV-2022-AKL-000129: *Kainga Ora - Homes and Communities v Auckland Council* (PC 50); ENV-2022-AKL-000130: *Auckland Council v Auckland Council* (PC48); ENV-2022-AKL-000131: *Kleinsman v Auckland Council* (PC 50); ENV-2022-AKL-000132: *Auckland Transport v Auckland Council* (PC 48); ENV-2022-AKL-000133: *KiwiRail Holdings Limited v Auckland Council* (PC 48); ENV-2022-AKL-000134: *Auckland Transport v Auckland Council* (PC 49); ENV-2022-AKL-000136: *KiwiRail Holdings Limited v Auckland Council* (PC 50); ENV-2022-AKL-000137: *Auckland Transport v Auckland Council* (PC 50).

[8] Negotiations for the five plan changes have been separate however, there are multiple parties who are party to multiple appeals across multiple plan changes, such as Auckland Council, Auckland Transport, Kāinga Ora, Waka Kotahi. This introduces a level of artificiality to the separate negotiations and the need for consistency in approach. The Court has suggested a combination of the appeals to expedite outcomes but this has been resisted by various parties.

[9] The appeals on Proposed Private Plan Changes 48, 49 and 50 remain outstanding. Some of those appeals raise appeal points in relation to noise attenuation, among other matters.

[10] At the time the consent determination for PC61 was issued in June 2022, the decision on PC51 had been appealed to the Court by Waka Kotahi. No appeals had been lodged in relation to the decision on Plan Changes 48 – 50. Those appeals were filed on 17 June 2022. The Court noted in the consent determination that it was aware from newspaper articles that the Commissioner decisions for Drury East were to be appealed. The Court observed that it would usually seek further explanation, but was satisfied that the land in the PC61 case was subject to different issues, being on the western side of the motorway and closer to existing housing development.

[11] On 7 April 2022, Waka Kotahi appealed the Council's decision to approve PC51. Karaka and Drury Limited was the applicant for PC51, which sought to rezone a Drury 2 Precinct and rezone 33.65 hectares of land currently zoned Future Urban. The Waka Kotahi appeal is limited to amending noise-related provisions of the Drury 2 Precinct, as approved in accordance with PC51, to ensure appropriate management of traffic noise effects between the PC51 land and SH22. The balance of PC51, excluding the noise-related provisions, was made operative in part on 12 August 2022.

[12] Lomai filed a s 274 notice together with an application for waiver of time to join the Waka Kotahi appeal in relation to PC51. This is discussed in the separate consent determination in relation to the Waka Kotahi appeal.

[13] The noise attenuation provisions now proposed for PC51 and PC61 have been developed alongside each other and take a consistent approach. Consent documents

resolving the PC51 appeal³ have also been received by the Court. The agreements reached for PC51 and PC61 settle both appeals in full.

[14] It can be difficult to ensure that a consistent approach is taken where there are private plan changes within the same area, as is occurring in Drury. The Court must try to avoid conflicts with appeals yet to be decided and maintain consistency. There is potential that Plan Changes 48 – 50 could end up with different wording than that agreed for Plan Changes 51 and 61. The Court cannot, at this time, assess if that would be justified or not.

[15] I indicate, at this time, that I am relatively confident that the agreed provisions for PC61 are appropriate for the area. I note that same/similar provisions may be appropriate for the other plan change areas, unless detail can be provided as to why they should be different.

[16] While there remain outstanding appeals on Plan Changes 48 – 50, there is potential that the provisions approved by this order could be subject to further wording review to ensure consistency with the other plan changes, if required.

[17] I signal that that there is a need to consider and resolve matters in relation to Plan Changes 48 – 50 promptly. I will direct that the Registrar send this determination to the parties to the other appeals on the Drury plan changes, so they can consider whether terms can be agreed.

[18] Also, I reserve leave for any party to return to the Court if they consider the making of these orders gives rise to inconsistency or require review in light of the outcome of the appeals on Proposed Private Plan Changes 48, 49 and 50.

[19] Finally, the separate determinations for PC51 and PC61 have been developed alongside each other and should be read together.

³ ENV-2022-AKL-000100: Waka Kotahi New Zealand Transport Agency v Auckland Council.

Agreement reached between the parties

[20] As stated above, the parties reached agreement on proposed amendments to PC61 to resolve the outstanding noise attenuation issue. The agreed changes are set out in **Appendix A** and relate to the following provisions:

- (a) Objective I447.2(7) ensures that activities sensitive to noise located within the proximity of State Highway 22 (**SH22**) and Jesmond Road will be protected from adverse health and amenity effects arising from road traffic noise associated with the operation of those roads;
- (b) Policy I447.3(12) requires all buildings in proximity to SH22 and Jesmond Road that contain activities sensitive to noise to be constructed to achieve specified minimum indoor noise levels;
- (c) Amended Rule I447.4.1(A3) provides that any activity that does not comply with the proposed noise attenuation standard I447.6.7 is a restricted discretionary activity;
- (d) Standard I447.6.7 which includes:
 - (i) Standard I447.6.7(1) gives effect to policy I447.3(12), and will apply to all noise sensitive spaces located within 75 metres of SH22 and Jesmond Road and states that they must be designed, constructed and maintained to achieve noise levels not exceeding those set out in Table I447.6.8.1 for the particular indoor space;
 - (ii) Standard I447.6.7(2) sets out ventilation requirements for habitable rooms;
 - (iii) Standard I447.6.7(3) states that the design report can use the current measured or predicted noise plus 3dB, or future predicted noise levels; and
 - (iv) An advice note that future predicted traffic noise levels means those levels recently modelled for the purposes of Waka Kotahi designation D1 – State Highway 22 Upgrade and the Auckland Transport designation D2 – Jesmond to Waihoehoe West FTN

Upgrade. The purpose of this advice note is to provide plan users with access to the latest Waka Kotahi and Auckland Transport traffic noise modelling information for SH22 and Jesmond Road and is explained further below in the section 32AA assessment.

- (e) Connected to the proposed restricted discretionary activity status in rule I447.4.1(A3), I447.7.1(5) will limit the Council's discretion to the following matters when assessing non-compliance with standard I447.6.7 – Noise Attenuation:
 - (i) The effects on people's health and residential amenity;
 - (ii) The location of the building;
 - (iii) Topographical, building design features or other alternative mitigation that will mitigate potential adverse health and amenity effects relevant to noise;
 - (iv) Technical advice from an acoustic expert specialising in operational traffic noise mitigation or the road controlling authority for either SH22 or Jesmond Road (or their successors).

- (f) I447.7.2(5) - Assessment Criteria will include the following criteria, which implement the new matters of discretion:
 - (i) Whether the location of the building or any other existing buildings/structures avoids, remedies or mitigates the adverse noise effects associated with the road traffic noise associated with the operation of SH22 or Jesmond Road;
 - (ii) The extent to which the alternative mitigation measures avoid, remedy or mitigate the effects of non-compliance with the noise standards on the health and amenity of potential building occupants.
 - (iii) Whether any identified topographical or building design features will mitigate any potential adverse health and amenity effects;

- (iv) Any implications arising from any technical advice from an acoustic expert specialising in operational traffic noise mitigation or the road controlling authority for either SH22 or Jesmond Road respectively.

[21] As the noise attenuation provisions for PC61 have now been confirmed, the “interim provisions” that currently provide a framework for managing noise attenuation on the PC61 site can be deleted. The deletion of the interim provisions relates to a paragraph within the introductory text, objective I447.2(9), policy I447.3(13), rule I447.4.1(A3) (which has been amended as described above), activity standard I447.6.8, and replacement of Precinct Plan 1 to remove the notation showing the areas to which the interim provisions applied. These changes are shown as being struck through in **Appendix A**.

Amendments align with the Commissioners’ decision

[22] In relation to noise attenuation, the Commissioners’ decision on PC61 stated:⁴

We would have imposed noise provisions to address the health and amenity effects on those living in dwellings in close proximity to SH 22 and the proposed arterial road. This would have been limited to habitable rooms, but not the outdoor environment. We would not have imposed a vibration control.

[23] In the discussion on this topic at paragraphs [253]-[268] the Commissioners stated that “*Waka Kotahi and ACS/AT have made a good case for controls to be contemplated*”,⁵ but noted that further work was required to justify in section 32 terms some of the proposed provisions, including the use of a noise control area/overlay. The provisions agreed between the parties are considered to appropriately address the concerns of the Commissioners.

⁴ Decision by Auckland Council on Proposed Plan Change 61 to the Auckland Unitary Plan, dated 15 December 2021, at [11].

⁵ Refer to paragraph [265].

Use of s 292 to remove the interim provisions

[24] As detailed above, during earlier mediation the parties were not able to reach agreement on the noise attenuation provisions. To enable PC61 to become operative in part, the parties agreed to interim provisions to apply to the land that was proposed to be subject to the noise attenuation provisions. The interim provisions applied to the development of noise sensitive activities proposed to be located within 75m of the SH22 and Jesmond Road boundaries.

[25] As the noise attenuation provisions have now been agreed, and are to be inserted into the AUP, the interim provisions are no longer required. The parties request the removal of the interim provisions to “tidy up” the AUP. The deletion of the provisions will assist the Council with plan administration (as the superseded provisions will have been removed from the AUP) and to assist future AUP users in applying the PC61 provisions.

[26] As set out at paragraph [83] of the Consent Determination, the parties previously signalled to the Court that they may apply for the Court to exercise its discretion under section 292 of the RMA to direct the Council to amend the AUP to remove the interim provisions when the final noise attenuation provisions have been agreed. In the memorandum of 2 September 2022, the parties formally made that request.

[27] Section 292 provides the Environment Court with a discretion to direct a local authority to amend a district plan in the following circumstances:

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.

[28] The discretion in section 292 is broad. Its use was considered by the Environment Court in *Pan v Auckland Council*,⁶ where the Court stated:

[14] The purpose of s 292 of the Act is to enable a plan to be corrected where a defect becomes apparent in a proceeding before the Court without need to use the process for changing a plan set out in Schedule 1 to the Act. General guidance on the extent of the power and its appropriate use is found in the Court's decision in *Re an application by Thames-Coromandel District Council*.

[15] The power conferred is not restricted to the alteration of information, nor to amendments of minor effect or the correction of minor errors. Under s 292(1)(a), any mistake, defect or uncertainty is potentially within the scope of an order. Nor, on the plain terms of the section, does a defect have to have arisen as the result of an inadvertent mistake by the Council, or anyone else: the ability to remedy it under the section is not dependent on how the defect arose. Under s 292(1)(b) any amendment (not necessarily the correction of an error) required to give full effect to the Plan is within the section's scope. The magnitude and significance of the mistake, defect or uncertainty, or of the amendment required under (1)(b), may be a factor in deciding whether to exercise the Court's discretion to use the section.

[16] Overall, that decision must depend on whether it will be just and reasonable to do so in respect of the interests of the Council as promoter and administrator of the Plan, of those whose interests might be directly affected, and of the users of the Plan generally, bearing in mind that the discretionary power to be exercised is an exception to the clear and strong statutory background of formal processes for amending planning documents, including public notification of and rights of submission on the proposed changes.

[Emphasis added, footnotes omitted]

[29] Given the above, the parties submitted that it was within the scope of the Court's discretion under section 292 to remove the interim provisions from PC61.⁷

⁶ [2019] NZEnvC 188.

⁷ The relevant provisions are the following provisions shown as strike through in **Attachment A**: a paragraph in the introductory text, objective I447.2(9), policy I447.3(13), rule I447.4.1(A3), activities sensitive to noise - interim standard I447.6.8, and the notation on precinct plan I447.10.1 (regarding activities sensitive to noise).

The removal of the interim provisions was considered to remedy any uncertainty as to the operation of noise attenuation provisions in respect of the PC61 site.

[30] It was also submitted that all of the parties whose interests may be directly affected by the deletion of the interim provisions were parties to the PC61 appeal in particular as:

- (a) Lomai is the sole land owner of the land to which the noise attenuation provisions apply;
- (b) Waka Kotahi NZ Transport Agency and Auckland Transport are the road controlling authorities of SH22 and Jesmond Road to which the interim provisions (and the noise attenuation provisions now agreed by the parties) relate.

[31] I consider it is just and reasonable to exercise the Court's discretion under s 292 RMA to direct the Council to amend the AUP to remove the interim provisions. The interim provisions are no longer required. The exercise of s 292 will remove uncertainty. I am satisfied that the interests of those who may be affected are represented by the parties to this appeal. I agree with the parties that deletion of the interim provisions will result in a simpler and more cohesive planning framework.

Analysis of agreement reached under s 32AA of the RMA

[32] Section 32AA of the RMA requires a further evaluation of any changes to a proposed plan change since the initial section 32 evaluation report and the Decision. The details of the amendments are outlined above, and the parties also provided the following analysis of the proposed amendments.

Higher Order Policy Instruments

[33] In reaching this agreement the parties have had regard to the relevant provisions of the Regional Policy Statement (**RPS**) component of the AUP, including Policies B3.2.2(4) and (5) and Policy B3.3.2(5)(f) which state:

Policy B3.2.2

Reverse sensitivity

...

- (4) Avoid where practicable, or otherwise remedy or mitigate, adverse effects of subdivision, use and development on infrastructure.
- (5) Ensure subdivision, use and development do not occur in a location or form that constrains the development, operation, maintenance and upgrading of existing and planned infrastructure.

Policy B3.3.2

- (5) Improve the integration of land use and transport by:

...

- (f) requiring activities adjacent to transport infrastructure to avoid, remedy or mitigate effects which may compromise the efficient and safe operation of such infrastructure.

[34] The agreed amendments to PC61 better give effect to the RPS component of the AUP, and do not compromise the ability of PC61 to give effect to the other higher order policy instruments such as the National Policy Statement on Urban Development or other aspects of the RPS.

Objectives and Policies of PC61

[35] Objective I447.2(7), as supported by the parties, articulates the purpose of the proposed noise attenuation provisions. Namely, this is to ensure that activities sensitive to noise located within the proximity of SH22 and Jesmond Road will be protected from adverse health and amenity effects arising from road traffic noise associated with the operation of those roads. This objective is consistent with the acoustic evidence regarding potential effects related to the development of land at Waipupuke and assists to achieve integration of development with the existing and future SH22 and Jesmond Road. The objective applies to all activities sensitive to noise and is considered to meet the higher order policies of the AUP identified above, and section 5 of the RMA.

[36] Policy I447.3(12) will require all buildings in proximity to SH22 and Jesmond Road that contain activities sensitive to noise to be constructed to achieve specified minimum indoor noise levels. Policy 12 is considered to implement Objective 7 by

adequately protecting all activities sensitive to noise within proximity to SH22 and Jesmond Road.

Amended Rules

[37] The parties have agreed an amendment to the activity status of Precinct Rule (A3). Currently the interim activity provides that “any activity sensitive to noise within 75m of the road boundary of SH22 or Jesmond Road” will be a non-complying activity. The parties have agreed that where an activity does not comply with proposed Activity Standard I447.6.7 – Noise Attenuation it will be a restricted discretionary activity. The parties submitted that a restricted discretionary activity that meets specific standards that have been developed to ensure appropriate noise levels, is a more appropriate planning response.

[38] Precinct Rule (A3) will apply to any noise sensitive space (including any indoor spaces in Table I447.6.7.1) in a new building or alteration to an existing building that contains an activity sensitive to noise located within 75 metres of the road boundary frontage to either SH22 or Jesmond Road. The 75 metre setback, within which the noise attenuation provisions will apply, is consistent with the distance agreed in the context of Plan Change 51 (**PC51**). At the Council level hearing, Waka Kotahi and Auckland Transport sought use of an overlay / contour to manage noise attenuation issues. This was not supported by the Commissioners, and the parties have accepted that use of the setback is an acceptable planning response (as well as aligning with the PC51 approach).

[39] The parties noted that the standards proposed in I447.6.7 are based on the expert acoustic evidence of Dr Chiles and Ms Drewery, as presented at the Council hearing, and submitted that proposed standard I447.6.7:

- (a) Better implements Objective I447.2(7) and Policy I447.3(12) as it includes appropriate internal noise levels for all activities sensitive to noise;
- (b) Is more effective and efficient than the alternatives of not providing any internal noise standards;

- (c) Requires a high level of internal thermal comfort in order to provide adequate respite from, and less exposure to, road traffic noise;
- (d) Requires a design report to be submitted by a suitably qualified person demonstrating compliance with the internal noise standards. This provides a clear process for a developer to demonstrate how they are complying with the standards and a clear process for the consent authority to assess that compliance.

[40] The costs and benefits of standard I447.6.7 were identified and assessed (albeit as part of a suite of provisions) in the planning evidence of Ms Sukhi Singh on behalf of Waka Kotahi, presented at the Council hearing for PC51 and adopted by Mr Brendan Clarke in his planning evidence for Waka Kotahi at the PC61 Council hearing.

[41] The agreed amendments take into account the approval of the Waka Kotahi designation for future upgrades to SH22; and the approval of the Auckland Transport designation for the future upgrades to Jesmond Road which include requirements for low road noise surfacing to mitigate road noise.

[42] The assessments for the notices of requirement for the Waka Kotahi and Auckland Transport's designations modelled the future noise levels from the operation of SH22 and Jesmond Road over time. These assessments predict the noise level from road traffic noise on SH22 will, with certain assumptions, reduce over time as a result of the upgrades to SH22 and reduced speed environment. For Jesmond Road, the assessments predict that the existing and mitigated noise levels will be similar. The designation for the SH22 and Jesmond Road upgrades also contains a condition requiring the installation of a low noise road surface.

[43] This information provides greater certainty to future landowners about the future noise environment and therefore the potential measures needed to meet the internal noise standards in PC61.

[44] The amendments to PC61 include a new Advice Note which provides a cross reference to the project websites for the SH22 and Jesmond Road upgrade project

where plan users will be able to source the relevant noise assessment work undertaken to establish the future predicted noise levels as part of that project, in the event that they wish to use the future predicted noise levels for the design report required in Standard I447.6.7(3). This information is considered to assist developers to identify the future environment and design and locate noise sensitive spaces in order to meet the relevant internal noise levels.

Matters of Discretion and Assessment Criteria

[45] The proposed matters of discretion and assessment criteria address appropriate matters that are available to manage noise effects on activities that are sensitive to noise. This includes matters such as building design, topography and building layout that can be relevant to determining the effects from road traffic noise on a particular proposal and potential mitigation measures to reduce those effects.

[46] The provisions make it clear that these aspects of a proposal can be considered by a decision maker through a consent process in determining the appropriate mitigation package for road noise mitigation in building design or site design. This enables the land use response to road traffic noise to be developed most efficiently and effectively i.e., buildings or activities can be sited or located to manage or minimise effects rather than just insulated.

[47] The agreed provisions refer to technical advice from acoustic experts specialising in operational traffic noise mitigation, or the relevant road controlling authority, with significant expertise and knowledge about the current and future road traffic noise levels and ways to mitigate effects from that road traffic noise that assist a developer and a decision maker. The reference to technical advice is consistent with the provisions in the AUP relating to the National Grid,⁸ which is similar large-scale infrastructure to the state highway network and arterial roading network.

⁸ For example, D26.8 Assessment – restricted discretionary activities, Matter of Discretion D26.8.1(1)(g) *technical advice from an Electrical Engineer specialising in transmission or the National Grid operator.*

Deletion of interim provisions

[48] The deletion of the interim provisions from PC61 is considered to better achieve the objectives and policies of the AUP, than would result if they remained in the AUP, as their deletion will result in a simpler and more cohesive planning framework.

Certain and sufficient information

[49] The parties agreed that this is not a situation where there is uncertain or insufficient information.

Consideration

[50] In making this order the Court has read and considered the appeal, and the third joint memorandum of parties dated 2 September 2022. In making the Consent Determination, the Court had previously also considered the joint memorandum of parties dated 10 May 2022, the second joint memorandum of the parties dated 1 June 2022, and the affidavit of Mr Vijay Lala dated 31 May 2022.⁹

[51] This determination does not represent the outcome of a full hearing by the Court, but rather an agreement reached between parties represented by experienced counsel.

[52] The parties have provided an analysis under s 32AA regarding why the change in position is justified. I am satisfied that the amendments are an appropriate planning response. The amendments ensure a land use response to noise issues will be implemented alongside roading network measures. I consider the agreed amendments will provide certainty for future landowners about the noise environment.

[53] I am satisfied with the parties' assessment that the amendments give effect to the RPS component of the AUP and will not compromise the ability of PC61 to give effect to higher order policy documents. The agreement gives effect to AUP Policies B3.2.2(4) and (5) and B3.3.2(5)(f) which focus on effects, infrastructure and integrated

⁹ *Lomai Properties Limited v Auckland Council* [2022] NZEnvC 095.

management. The objectives and policies of PC61 work together and properly provide for noise sensitive activities.

[54] PC61 is located in close proximity to the PC51 site (which also adjoins SH22), and both PC61 and PC51 have been developed in accordance with the Drury – Opāheke Structure Plan August 2019. As set out in the s 42A report and quoted in the Council decision:

The structure plan is intended to be the foundation to inform future plan changes to rezone the land and is a requirement under the AUP before Future Urban zones areas can be urbanised and ‘live’ zoned.

In the 7 June 2022 consent determination on the Lomai appeal, I concluded that the agreed version of PC61 aligns with the strategic planning approach developed for the broader Drury area. I remain of this view with the further agreement reached. The agreed provisions provide for noise sensitive activities and ensure the urbanised areas are suitable from an acoustic standpoint.

[55] The parties have addressed the matters raised in the Commissioners decision with the focus on health and amenity effects for those in proximity to SH22 and indoor noise levels. The overlay/contour sought by Waka Kotahi and Auckland Transport at Council level was not supported by Commissioners and the parties have appropriately address the Commissioners concerns by agreeing the use of a setback approach to noise attenuation issues.

[56] The matters of discretion and assessment criteria have been expanded to include additional aspects which address the full suite of factors that contribute to exposure to noise and potential mitigation measures. It is proper that the changes are consistent with acoustic evidence and that plan users are given access to recent modelling. The matters of discretion and assessment criteria give guidance and clarity for plan users and decision makers.

[57] I reiterate my concerns about piecemeal plan changes where the Court does not have all of the information. I am of the view however that the agreed provisions are similar to those commonly used and unlikely to be seen as exceptional by parties

to the other Drury Plan Change appeals. I would hope that Plan Changes 48 – 50 will take a more wholistic approach to common issues such as noise attenuation.

[58] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

[59] I conclude the parties have taken a considered approach, and the agreed amendments are the most appropriate way to achieve the purpose of the Act and the objectives in the Plan. Overall, I consider the sustainable management purpose and the other relevant requirements of the Act are broadly met.

Orders

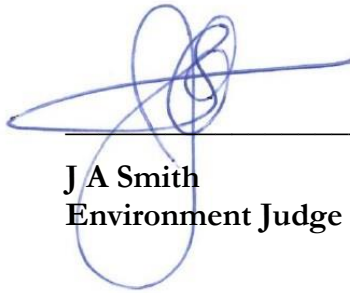
[60] Therefore the Court orders, by consent, that the Lomai appeal be allowed to the extent that the Council is directed to:

- (a) Amend the AUP by deleting the “interim provisions” from 1447. Waipupuke Precinct in the AUP as shown in strike-through in **Appendix A**, and to replace Precinct Plan 1 to remove the notation showing the areas to which the interim provisions applied, to remedy any uncertainty pursuant to s292 of the Act. For the avoidance of doubt, the “interim provisions” include a paragraph within the introductory text, objective I447.2(9), policy I447.3(13), rule I447.4.1(A3), and activity standard I447.6.8;
- (b) Amend the Waipupuke Precinct provisions by including the noise attenuation provisions shown by underlining in **Appendix A**;

- (c) The appeal is otherwise dismissed. This order resolves the appeal in its entirety; and
- (d) There is no order as to costs.

[61] I direct the Registrar to send this determination to the parties to the other appeals on the Drury plan changes, so they can consider whether terms can be agreed.

[62] I reserve leave for any party to return to the Court if they consider the making of these orders gives rise to inconsistency or require review in light of the provisions in relation to noise attenuation finalised for appeals on Proposed Private Plan Changes 48, 49 and 50.



J A Smith
Environment Judge



APPENDIX A

AMENDMENTS TO I447 WAIPUPEKE PRECINCT IN THE AUCKLAND UNITARY PLAN

I447 Waipupuke

I447.1 Precinct description

**WAIPUPEKE
PEOPLE - NATURE - LIFE
TANGATA - TAIAO - MAURI**

Waipupuke – where the streams meet, is the name given to the Precinct by mana whenua. In conjunction with the name, a tohu symbol (logo) has been developed for Waipupuke to represent its spiritual significance. The Waipupuke symbol represents a connection between the tributaries of the Oira and the Ngakaroa streams. Both streams feed into the Drury Creek and then into the Pahurehure Inlet which feeds into the Manukau Harbour. Therefore, what happens on Waipupuke affects the hauora (health) of the Manukau and therefore the health of the people.

The centre of the site can also be interpreted as the ‘pupuke’ (to swell up). This is the part of the site where flooding historically occurred (‘swelled up’). Water, which is symbolised in the 3 branching kowhai patterns, sustained our tupuna (ancestors), fed our streams, and provided an abundance of mahinga kai (food) for harvesting. The mauri (life force) of the water in those days was strong and tikanga (customs, practices and ritual) ensured this continued. A key objective for this development is to revitalise the mauri in the waterways and to regenerate (as the mauri upholds creation) the land, through binding physical and spiritual elements of all things together. It was also the mode of transport via waka for trade to navigate through a cultural landscape where the waterways were like the modern roading networks.

In a modern context, the tohu symbol also represents a sustainable 3 waters strategy, while seeking to achieve better outcomes than the minimum standards, and best practice for water supply, wastewater and stormwater management.

The Waipupuke Precinct comprises approximately 56 hectares of undulating land bound by State Highway 22 (SH22) (south), Jesmond Road (East) and Oira Road (west). All references to SH22 in the Precinct are also to Karaka Road should the state highway gazette no longer exist. The Ngakaroa and Oira tributaries reach into the site. A 3-hectare suburban park supported by a neighbourhood park in addition to an integrated network of stormwater control areas (identified on Precinct Plan 2) form the open space and stormwater network within Waipupuke.

Urbanisation of the land will provide for housing diversity and choice based around a neighbourhood centre. Higher density residential zoning is located closer to Jesmond Road within walking distance of planned or future public transport routes. This will enable greater efficiency and integration of land use and transport networks.

An east-west collector road between Jesmond Road and Oira Road will provide a key connection through the Precinct. The collector road network extends through the Precinct, enabling access for all transport modes, and provides a future connection to the adjacent land to the east as identified on Precinct Plan 3.

The Precinct provisions ensure the implementation of the roading pattern shown in Precinct Plan 3 and that associated infrastructure upgrades/measures are undertaken in a planned and coordinated manner to support development enabled within the Precinct. These infrastructure upgrades also enable connections to wider planned transport network infrastructure projects including the Drury West rail station, the Jesmond Road Frequent Transit Network and SH22 upgrade. In particular, these provisions include:

- Temporary construction traffic management for the implementation of the SH22 / Oira Road intersection upgrade and Oira Road frontage upgrade approved by Auckland

Transport and Waka Kotahi to enable up to 95 dwellings and prior to any activity, development and/or subdivision in the Business Neighbourhood Centre Zone.

- The upgrade of the Oira Road/SH22 intersection to a 3 leg dual laned roundabout and approaches.
- The upgrade of Oira Road between SH22 and the northern boundary of the Precinct to a Collector Road Standard, including walking and cycling facilities along the eastern side and the road pavement.
- A pedestrian and cycle connection on the northern side of SH22 between Oira Road and Jesmond Road.
- The upgrade of the Jesmond Road/SH22 intersection with walking and cycling connections.
- The construction of the East-West Collector from Oira Road to Jesmond Road, and its intersection with Jesmond Road with either signals or roundabout.
- The upgrade of Jesmond Road between SH22 and the northern boundary of the Precinct, including walking and cycling facilities along the western side and the road pavement.
- A temporary pedestrian and cycle connection along the western side of Jesmond Road from the northern boundary of the Waipupuke Precinct to the Drury Secondary School (if the school is operational).

Further detail of the transport upgrades is provided in Table IX.6.6.1 and relevant requirements are also set out in Appendix 1 Road Function and Required Design Elements Table.

Acoustic attenuation provisions are proposed within the Precinct to protect activities sensitive to noise from adverse effects arising from the arterial road traffic noise associated with the operation of SH22 and Jesmond Road. ~~but remain subject to appeal. Interim provisions are accordingly included in the Precinct in order to prevent noise sensitive activities within 75m of the road boundary of SH22 and Jesmond Road as identified on Precinct Plan 1 until that appeal is resolved or determined. The interim provisions are objective IXXX.2(9), Policy IXXX.3(13), Activity IXXX.4.1(A3) and Standard IXXX.6.8. The interim provisions remain in force until the proposed acoustic attenuation provisions are resolved by consent order or a Court decision that is beyond challenge and will cease to have effect thereafter.~~

The zoning of the land within the Waipupuke Precinct is Business – Neighbourhood Centre, Open Space – Informal Recreation, Residential - Terrace Housing and Apartment Buildings and Residential – Mixed Housing Urban. All relevant overlay, Auckland-wide and zone provisions apply in this precinct unless otherwise specified below.

I447.2 Objectives

- (1) Mana whenua values are recognised and positive environmental outcomes are achieved for the health and well-being of the land, waterways and people.
- (2) The Precinct is developed for urban activities in a comprehensive and integrated way which recognises the importance of the Neighbourhood Centre zone and 3-hectare suburban park as the focal point for the precinct.
- (3) An accessible, safe and well-connected transport network is established for all modes within the Precinct and to the surrounding transport network which enables travel choice including public transport services, pedestrian, cycle, vehicle access and egress.
- (4) Stormwater discharge from the Precinct avoids or mitigates adverse effects on receiving environments.
- (5) A road network servicing access to and within the Precinct enabling connections to roads and land adjacent to the Precinct.
- (6) Infrastructure necessary to service any activity, development and/or subdivision within the Precinct (including transport, wastewater and water supply) is established in a coordinated and timely way; either prior to or at the same time as development and/or subdivision.
- (7) ~~[subject to appeal]~~ Activities sensitive to noise are protected from adverse health and amenity effects arising from road traffic noise associated with the operation of SH22 and Jesmond Road.

- (8) Adverse effects on the safe and efficient operation of the existing and future SH22 and arterial road network are avoided or mitigated, including restricted vehicle access to Jesmond Road and the avoidance of vehicle access to SH22.
- ~~(9) Interim objective: All activities sensitive to noise within 75m of the road boundary of SH22 or Jesmond Road are avoided and shall not occur until the acoustic attenuation provisions within the Precinct are resolved by consent order or a Court decision that is beyond challenge.~~

All relevant overlay, Auckland-wide and zone objectives apply in this Precinct in addition to those specified above. The Precinct objectives prevail where there is a conflict between objectives in the Precinct and the Auckland-wide and zone objectives.

I447.3 Policies

- (1) Reflect a strong cultural narrative within the Precinct through cultural identity markers and artwork and provide high quality public open spaces, revegetated riparian margins and effective stormwater management to achieve positive Mana whenua outcomes.
- (2) Support the local community through the provision of local commercial and recreation opportunities.
- (3) Provide a variety of residential dwelling types that will enable housing choices that meet community needs.
- (4) Retain the protected streams identified on Precinct Plan 2 and enhance their 10m wide riparian margins through;
 - a. the removal of harmful species and vegetation;
 - b. replacement planting with predominantly native vegetation;
 - c. the requirement for a riparian planting plan that achieves positive ecological outcomes; and
 - d. ongoing maintenance.
- (5) Implement the transport network connections and elements as shown on the Precinct Plans and Appendix 1 Road Function and Required Design Elements Table, including the following:
 - a. The layout, function and hierarchy of roads;
 - b. Separated pedestrian and cycle facilities and linkages within the Precinct and to adjacent land;
 - c. Connections to the surrounding transport network, including public transport facilities and services and connections to schools;
 - d. Connections within the Precinct and to land/roads adjacent to the Precinct;
 - e. Upgrade the frontages of existing rural standard roads to an urban standard;
 - f. Key intersections; and
 - g. Open space areas.
- (6) Ensure that any activity, development and/or subdivision:
 - a. does not precede the required transport upgrades, including intersections, connections and upgrade of rural standard roads to an urban standard; and
 - b. is undertaken in a manner that promotes the safe and efficient operation of the existing and future surrounding transport network to the Precinct for all modes and avoids or mitigates adverse effects on the network.
- (7) Require subdivision and development to enhance water quality and protect the health of stream environments including by:
 - a. Being consistent with any stormwater management plan approved by the network utility operator;
 - b. Applying water sensitive design approach including treatment train measures within the Precinct to achieve water quality and hydrology mitigation; and
 - c. Incorporating biodiversity enhancement planting of riparian margins of protected streams identified on Precinct Plan 2.
- (8) Avoid any activity, development and/or subdivision that is not in compliance with the activity, development and/or subdivision thresholds in Table IX.6.6.1.
- (9) Restrict vehicle access to Jesmond Road and avoid vehicle access to SH22 to support the effective, efficient and safe operation of the arterial road network.

- (10) Coordinate subdivision and development with the provision of sufficient wastewater and water supply networks.
- (11) Assess the operational performance of the SH22/Oira Road and SH22/Jesmond Road intersections for any residential dwelling resource consent application after 2,000 dwellings have been consented within the Precinct to ensure the safe and efficient operation of the transport network.
- (12) ~~Subject to appeal~~ Require buildings that contain activities sensitive to noise in proximity to SH22 and Jesmond Road to be designed and constructed to achieve specified minimum indoor design noise levels to provide for people's health and residential amenity.
- (13) ~~Interim policy: Avoid and prevent the occurrence of all activities sensitive to noise within 75m of the road boundary of SH22 or Jesmond Road.~~

All relevant overlay, Auckland-wide and zone policies apply in the Precinct in addition to those specified above. The Precinct policies prevail where there is a conflict between policies in the Precinct and the Auckland-wide and zone policies.

I447.4 Activity table

All relevant overlay, Auckland-wide, and zone activity tables apply unless the activity is listed in Activity table I447.4.1 below.

Table I447.4.1 specifies the activity status of land use and subdivision activities in the Waipupuke Precinct pursuant to sections 9(3) and section 11 of the Resource Management Act 1991.

Table I447.4.1 Activity table

Activity		Activity status
Community		
(A1)	Mana Whenua Cultural Identity Marker	P
Development		
(A2)	The construction of stormwater management structures within the Stormwater Control Areas identified on Precinct Plan 2	RD
(A3)	Interim activity: Any activity sensitive to noise within 75m of the road boundary of SH22 or Jesmond Road (as indicated on Precinct Plan 1) that does not comply with Standard I447.6.7 – Noise Attenuation	NC RD
Transport		
(A4)	Any activity, development and/or subdivision that does not comply with Standard I447.6.4 – Arterial Road Access	NC
(A5)	Any activity, development and/or subdivision that does not comply with Standard I447.6.6 (1) Development Staging & Transport Network Infrastructure Requirements and Table I447.6.6.1	NC
(A6)	Any land use and/or subdivision consent application enabling dwellings, after 2,000 dwellings have been consented within the Precinct	RD

Activity		Activity status
(A7)	Any activity, development and/or subdivision that does not comply with Standard I447.6.2 Road Function and Required Design Elements Table and Precinct Plan 3	D
(A8) <u>[subject to appeal]</u>		

...

I447.6.7 [subject to appeal]

I447.6.7 Noise Attenuation

Purpose:

- To protect activities sensitive to noise from adverse health and amenity effects arising from road traffic noise associated with the operation of SH22 and Jesmond Road.

- (1) Any noise sensitive space (including any indoor spaces in Table I447.6.7.1) in a new building or alteration to an existing building that contains an activity sensitive to noise located within 75m of the road boundary frontage to either SH22 or Jesmond Rd shall be designed, constructed and maintained to achieve indoor design noise levels not exceeding the maximum values set out in Table I447.6.7.1 below.

Table I447.6.7.1: Indoor noise levels

Indoor space	Indoor noise level $L_{Aeq(24h)}$
<u>Residential (excluding home occupation and camping grounds)</u>	<u>40 dB</u>
<i><u>Educational Facilities or Tertiary Educational Facilities</u></i>	
<u>Lecture rooms/theatres, music studios, assembly halls</u>	<u>35 dB</u>
<u>Teaching areas, conference rooms, drama studios</u>	<u>40 dB</u>
<u>Libraries</u>	<u>45 dB</u>
<i><u>Health</u></i>	
<u>Overnight medical care, wards, sleeping areas</u>	<u>40 dB</u>
<u>Clinics, consulting rooms, theatres, nurses' stations</u>	<u>45 dB</u>
<i><u>Community facilities</u></i>	
<u>Marae (excluding any area that is not a noise sensitive space)</u>	<u>35 dB</u>
<u>Places of worship</u>	<u>35 dB</u>

<u>Indoor space</u>	<u>Indoor noise level L_{Aeq(24h)}</u>
<u>All other Activities sensitive to noise</u>	
<u>All other noise sensitive spaces</u>	<u>40 dB</u>

(2) If windows must be closed to achieve the design noise levels in Rule I447.6.7(1), the building must be designed, constructed and maintained with a mechanical ventilation system that:

- a. For habitable rooms for a residential activity, must achieve the following requirements:
 - i. provides mechanical ventilation to satisfy clause G4 of the New Zealand Building Code; and
 - ii. is adjustable by the occupant to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour; and
 - iii. provides relief for equivalent volumes of spill air; and
 - iv. provides cooling and heating that is controllable by the occupant and can maintain the inside temperature between 18°C and 25°C; and
 - v. does not generate more than 35 dB LAeq (30s) when measured 1 metre away from any grille or diffuser.
- b. For other spaces, is as determined by a suitably qualified and experienced person.

(3) A design report must be submitted by a suitably qualified and experienced person to the council demonstrating compliance with Rule I447.6.7(1) and (2) prior to the construction or alteration of any building containing an activity sensitive to noise. In the design, road noise is based on current measured or predicted noise levels plus 3 dB, or future predicted noise levels.

Advice Note

For the purposes of this rule, future predicted noise levels on SH22 means those levels modelled as part of the Waka Kotahi designation XXXX – State Highway 22 Upgrade and is based on an assumed posted speed limit of 50km/h, the use of a low-noise road surface and a traffic design year of 2048. Should future predicted noise levels be used for the purposes of this rule, this information and the associated assumptions and parameters is available on request from Waka Kotahi New Zealand Transport Agency (or their successors as the road controlling authority for Karaka Road / SH22) and on the project website for State Highway 22 Upgrade.

For the purposes of this rule, future predicted noise levels on Jesmond Road means those levels modelled as part of the Auckland Transport designation XXXX – Jesmond to Waihoehoe West FTN Upgrade and is based on an assumed posted speed limit of 50km/h, the use of a low-noise road surface and a traffic design year of 2048. Should future predicted noise levels be used for the purposes of this rule, this information and the associated assumptions and parameters is available on request from Auckland Transport (or their successors as the road controlling authority for Jesmond Road) and on the project website for Jesmond to Waihoehoe West FTN Upgrade Project.

~~I447.6.8 Activities Sensitive To Noise – Interim Standard~~

~~Activities sensitive to noise shall not occur or be located within 75m of the road boundary of SH22 or Jesmond Road (as indicated on Precinct Plan 1) until the acoustic attenuation provisions within the Precinct are resolved by consent order or a Court decision that is beyond challenge.~~

I447.7 Assessment – Restricted Discretionary Activities

I447.7.1 Matters of discretion

The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary activity resource consent application, in addition to the matters specified for the relevant restricted discretionary activities in the zone, overlay and Auckland wide provisions:

- (1) Stormwater Management Structures in a Stormwater Control Area
 - a. Stormwater management
 - i. Function
 - ii. Capacity
 - iii. Design
 - iv. Operation and maintenance, including safe access.
 - b. Landscaping and planting.
 - c. Effects on the use of proposed open space.
 - d. Effects on health and safety.
 - f. Potential downstream flood effects.
- (2) Protected Streams and Margins
 - a. Stream ecology.
 - b. Base flow.
 - c. Management of water flow.
 - d. Offset mitigation.
 - e. Stream bed level.
 - f. Riparian planting.
 - g. Overland flow.
 - h. Providing for growth and development.
- (3) High Contaminant Yielding Materials
 - i. Stormwater quality.
- (4) Any land use and/or subdivision consent application enabling dwellings, after 2,000 dwellings have been consented within the Precinct
 - a. Transport effects and the safe and efficient operation of the existing and future surrounding transport network for all modes including public transport and active modes.
 - b. Traffic network design, safety, efficiency and functionality.
 - c. Trip generation and traffic volumes.
 - d. Road and intersection performance.
 - e. Alternative Travel Modes.
 - f. Travel Demand management measures.
 - g. Accessibility and connectivity to public transport services and facilities.

- h. Transport connections to adjacent land.
 - i. Other transport or roading improvements.
- (5) [subject to appeal] Non-Compliance with standard I447.6.7 - Noise attenuation
- a. The effects on people's health and residential amenity.
 - b. The location of the building.
 - c. Topographical, building design features or other alternative mitigation that will mitigate potential adverse health and amenity effects relevant to noise.
 - d. Technical advice from an acoustic expert specialising in operational traffic noise mitigation or the road controlling authority for either SH22 or Jesmond Road respectively, or their successors.

I447.7.2 Assessment criteria

The Council will consider the relevant assessment criteria identified below for restricted discretionary activities, in addition to the assessment criteria specified for assessment of the relevant restricted discretionary activities in the zone, Auckland wide or overlay provisions.

- (1) Stormwater Management Structures in a Stormwater Control Area
- a. The design and efficacy of stormwater infrastructure devices.
 - b. Stormwater management calculations that confirm the design and capacity of the stormwater management structure is fit for purpose and satisfies the requirements of the any SMP.
 - c. A Landscape Plan that identifies the landscaping proposed, a planting plan and maintenance plan to ensure quality visual amenity outcomes.
 - d. An Operation and Maintenance Plan for the design of the structure proposed.
 - e. The extent to which interference with public use and enjoyment of proposed open space is minimised where stormwater detention and retention ponds and wetlands are proposed to be located in or adjacent to public open space.
 - f. Whether safe and direct access can be provided to enable the maintenance of stormwater detention and retention ponds and wetlands.
 - g. Whether there will be health and safety effects associated with stormwater detention and retention ponds and wetlands and the extent to which these can be mitigated through measures such as fencing.
 - h. An assessment of storm events from 10 year – 100 year ARI to determine any attenuation measures required within the Precinct.

- (2) Protected Streams and Margins

The extent to which:

- a. Streams can be retained through re-alignment and raising of stream beds to integrate with land contouring;
- b. Ten metre riparian native planting will be provided along each side of any re-aligned stream;
- c. Where streams are proposed to be reclaimed with no vertical or horizontal re-alignment, the degree and extent of off-setting, and compensation;
- d. Management of water flow is achieved to prevent flooding of residential sites;
- e. Base flows to the head of retained streams affected by any reclamation of a permanent stream are maintained;
- f. Reclamation achieves the minimum road grade requirements.
- g. Development potential will be lost without reclamation works, balanced against the ecological value of the stream to be reclaimed.
- h. The ecological classification of the underlying stream is maintained.

- i. The 'effects management hierarchy' (avoidance, remediation, mitigation, offset) has been applied.
 - j. The degree of mitigation or offset where changes to the vertical and horizontal alignment are proposed.
- (3) High Contaminant Yielding Materials
- a. Proposed water quality treatment measures.
 - b. The extent to which runoff from buildings and additions to buildings is mitigated through a treatment approach.
- (4) Any land use and/or subdivision consent application enabling dwellings, after 2,000 dwellings have been consented within the Precinct
- a. The extent to which the proposal avoids or mitigates transport effects and ensures the safe and efficient operation of the existing and future surrounding transport network for all modes including public transport and active modes.
 - b. The extent to which the following affect the operation and capacity of the transport network:
 - i. Trip Generation and traffic volumes of the existing and future surrounding transport network including additional traffic numbers and directional movements along Jesmond Road and SH22.
 - ii. Traffic network design, safety, efficiency and functionality, including the extent to which the delay in providing the upgrades and transport improvements compromises the safety and efficiency of the transport network.
 - iii. Road and Intersection Performance.
 - iv. Travel Demand Management measures.
 - v. Accessibility and connections to public transport facilities and services.
 - vi. Travel modes choice including public transport and active modes, provision of cycle and pedestrian networks.
 - vii. Connections with adjacent land.
 - viii. Other transport or roading improvements in addition to those required in this Precinct.
- (5) [subject to appeal] Non-compliance with Standard IX.6.7 Noise attenuation
- a. Whether the location of the building or any other existing buildings/structures avoids, remedies or mitigates the adverse noise effects associated with the road traffic noise relating to the operation of SH22 or Jesmond Road.
 - b. The extent to which the alternative mitigation measures avoid, remedy or mitigate the effects of non-compliance with the noise standards on the health and amenity of potential building occupants.
 - c. Whether any identified topographical or building design features will mitigate any potential adverse health and amenity effects.
 - d. Any implications arising from any technical advice from an acoustic expert specialising in operational traffic noise mitigation or the road controlling authority for either SH22 or Jesmond Road respectively.

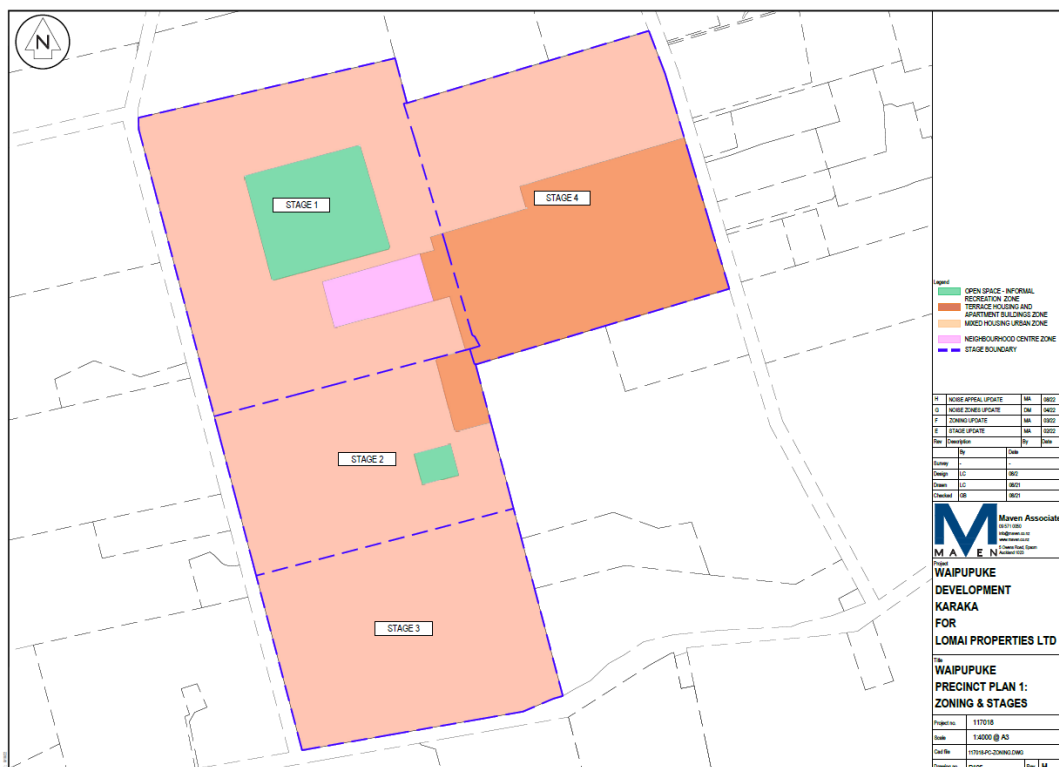
I447.10 Precinct Plans

I447.10.1 Waipupuke Precinct Plan 1- Zoning and Stages

Delete the following plan:



Replace the deleted plan with the following version which removes the setback and annotations:



Attachment 2: PC61 text

I447 Waipupuke

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I447 Waipupuke Precinct

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- The upgrade of Oira Road between SH22 and the northern boundary of the Precinct to a Collector Road Standard, including walking and cycling facilities along the eastern side and the road pavement.
- A pedestrian and cycle connection on the northern side of SH22 between Oira Road and Jesmond Road.
- The upgrade of the Jesmond Road/SH22 intersection with walking and cycling connections.
- The construction of the East-West Collector from Oira Road to Jesmond Road, and its intersection with Jesmond Road with either signals or roundabout.
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- (2) The Precinct is developed for urban activities in a comprehensive and integrated way which recognises the importance of the Neighbourhood Centre zone and 3-hectare suburban park as the focal point for the precinct.
- (3) An accessible, safe and well-connected transport network is established for all modes within the Precinct and to the surrounding transport network which enables travel choice including public transport services, pedestrian, cycle, vehicle access and egress.
- (4) Stormwater discharge from the Precinct avoids or mitigates adverse effects on receiving environments.
- (5) A road network servicing access to and within the Precinct enabling connections to roads and land adjacent to the Precinct.
- (6) Infrastructure necessary to service any activity, development and/or subdivision within the Precinct (including transport, wastewater and water supply) is established in a coordinated and timely way; either prior to or at the same time as development and/or subdivision.
- (7) Activities sensitive to noise are protected from adverse health and amenity effects arising from road traffic noise associated with the operation of SH22 and Jesmond Road.
- (8) Adverse effects on the safe and efficient operation of the existing and future SH22 and arterial road network are avoided or mitigated, including restricted vehicle access to Jesmond Road and the avoidance of vehicle access to SH22.

All relevant overlay, Auckland-wide and zone objectives apply in this Precinct in addition to those specified above. The Precinct objectives prevail where there is a conflict between objectives in the Precinct and the Auckland-wide and zone objectives.

I447.3 Policies

- (1) Reflect a strong cultural narrative within the Precinct through cultural identity markers and artwork and provide high quality public open spaces, revegetated riparian margins and effective stormwater management to achieve positive Mana whenua outcomes.
- (2) Support the local community through the provision of local commercial and recreation opportunities.
- (3) Provide a variety of residential dwelling types that will enable housing choices that meet community needs.
- (4) Retain the protected streams identified on Precinct Plan 2 and enhance their 10m wide riparian margins through;
 - a. the removal of harmful species and vegetation;
 - b. replacement planting with predominantly native vegetation;
 - c. the requirement for a riparian planting plan that achieves positive ecological outcomes; and
 - d. ongoing maintenance.
- (5) Implement the transport network connections and elements as shown on the Precinct Plans and Appendix 1 Road Function and Required Design Elements Table, including the following:
 - a. The layout, function and hierarchy of roads;
 - b. Separated pedestrian and cycle facilities and linkages within the Precinct and to adjacent land;
 - c. Connections to the surrounding transport network, including public transport facilities and services and connections to schools;
 - d. Connections within the Precinct and to land/roads adjacent to the Precinct;
 - e. Upgrade the frontages of existing rural standard roads to an urban standard;
 - f. Key intersections; and
 - g. Open space areas.
- (6) Ensure that any activity, development and/or subdivision:
 - a. does not precede the required transport upgrades, including intersections, connections and upgrade of rural standard roads to an urban standard; and
 - b. is undertaken in a manner that promotes the safe and efficient operation of the existing and future surrounding transport network to the Precinct for all modes and avoids or mitigates adverse effects on the network.
- (7) Require subdivision and development to enhance water quality and protect the health of stream environments including by:
 - a. Being consistent with any stormwater management plan approved by the network utility operator;
 - b. Applying water sensitive design approach including treatment train measures within the Precinct to achieve water quality and hydrology mitigation; and
 - c. Incorporating biodiversity enhancement planting of riparian margins of protected streams identified on Precinct Plan 2.
- (8) Avoid any activity, development and/or subdivision that is not in compliance with the activity, development and/or subdivision thresholds in Table I447.6.6.1.
- (9) Restrict vehicle access to Jesmond Road and avoid vehicle access to SH22 to support the effective, efficient and safe operation of the arterial road network.
- (10) Coordinate subdivision and development with the provision of sufficient wastewater and water supply networks.
- (11) Assess the operational performance of the SH22/Oira Road and SH22/Jesmond Road intersections for any residential dwelling resource consent application after 2,000 dwellings have been consented within the Precinct to ensure the safe and efficient operation of the transport network.
- (12) Require buildings that contain activities sensitive to noise in proximity to SH22 and Jesmond Road to be designed and constructed to achieve specified minimum indoor design noise levels to provide for people's health and residential amenity.

All relevant overlay, Auckland-wide and zone policies apply in the Precinct in addition to those specified above. The Precinct policies prevail where there is a conflict between policies in the Precinct and the Auckland-wide and zone policies.

I447.4 Activity table

All relevant overlay, Auckland-wide, and zone activity tables apply unless the activity is listed in Activity table I447.4.1 below.

Table I447.4.1 specifies the activity status of land use and subdivision activities in the Waipupuke Precinct pursuant to sections 9(3) and section 11 of the Resource Management Act 1991.

Table I447.4.1 Activity table

Activity		Activity status
Community		
(A1)	Mana Whenua Cultural Identity Marker	P
Development		
(A2)	The construction of stormwater management structures within the Stormwater Control Areas identified on Precinct Plan 2	RD
(A3)	Any activity that does not comply with Standard I447.6.7 – Noise Attenuation	RD
Transport		
(A4)	Any activity, development and/or subdivision that does not comply with Standard I447.6.4 – Arterial Road Access	NC
(A5)	Any activity, development and/or subdivision that does not comply with Standard I447.6.6 (1) Development Staging & Transport Network Infrastructure Requirements and Table I447.6.6.1	NC
(A6)	Any land use and/or subdivision consent application enabling dwellings, after 2,000 dwellings have been consented within the Precinct	RD
(A7)	Any activity, development and/or subdivision that does not comply with Standard I447.6.2 Road Function and Required Design Elements Table and Precinct Plan 3	D

I447.6.7 Noise Attenuation

Purpose:

- To protect activities sensitive to noise from adverse health and amenity effects arising from road traffic noise associated with the operation of SH22 and Jesmond Road.

- (1) Any noise sensitive space (including any indoor spaces in Table I447.6.7.1) in a new building or alteration to an existing building that contains an activity sensitive to noise

located within 75m of the road boundary frontage to either SH22 or Jesmond Rd shall be designed, constructed and maintained to achieve indoor design noise levels not exceeding the maximum values set out in Table I447.6.7.1 below.

Table I447.6.7.1: Indoor noise levels

Indoor space	Indoor noise level $L_{Aeq(24h)}$
Residential (excluding home occupation and camping grounds)	40 dB
<i>Educational Facilities or Tertiary Educational Facilities</i>	
Lecture rooms/theatres, music studios, assembly halls	35 dB
Teaching areas, conference rooms, drama studios	40 dB
Libraries	45 dB
<i>Health</i>	
Overnight medical care, wards, sleeping areas	40 dB
Clinics, consulting rooms, theatres, nurses' stations	45 dB
<i>Community facilities</i>	
Marae (excluding any area that is not a noise sensitive space)	35 dB
Places of worship	35 dB
<i>All other Activities sensitive to noise</i>	
All other noise sensitive spaces	40 dB

- (2) If windows must be closed to achieve the design noise levels in Rule I447.6.7(1), the building must be designed, constructed and maintained with a mechanical ventilation system that:
- a. For habitable rooms for a residential activity, must achieve the following requirements:
 - i. provides mechanical ventilation to satisfy clause G4 of the New Zealand Building Code; and
 - ii. is adjustable by the occupant to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour; and
 - iii. provides relief for equivalent volumes of spill air; and
 - iv. provides cooling and heating that is controllable by the occupant and can maintain the inside temperature between 18°C and 25°C; and
 - v. does not generate more than 35 dB LAeq (30s) when measured 1 metre away from any grille or diffuser.

- b. For other spaces, is as determined by a suitably qualified and experienced person.
- (3) A design report must be submitted by a suitably qualified and experienced person to the council demonstrating compliance with Rule I447.6.7(1) and (2) prior to the construction or alteration of any building containing an activity sensitive to noise. In the design, road noise is based on current measured or predicted noise levels plus 3 dB, or future predicted noise levels.

Advice Note

For the purposes of this rule, future predicted noise levels on SH22 means those levels modelled as part of the Waka Kotahi designation 6707 – State Highway 22 Upgrade and is based on an assumed posted speed limit of 50km/h, the use of a low-noise road surface and a traffic design year of 2048. Should future predicted noise levels be used for the purposes of this rule, this information and the associated assumptions and parameters is available on request from Waka Kotahi New Zealand Transport Agency (or their successors as the road controlling authority for Karaka Road / SH22) and on the project website for State Highway 22 Upgrade.

For the purposes of this rule, future predicted noise levels on Jesmond Road means those levels modelled as part of the Auckland Transport designation 6707 – Jesmond to Waihoehoe West FTN Upgrade and is based on an assumed posted speed limit of 50km/h, the use of a low-noise road surface and a traffic design year of 2048. Should future predicted noise levels be used for the purposes of this rule, this information and the associated assumptions and parameters is available on request from Auckland Transport (or their successors as the road controlling authority for Jesmond Road) and on the project website for Jesmond to Waihoehoe West FTN Upgrade Project.

I447.7 Assessment – Restricted Discretionary Activities

I447.7.1 Matters of discretion

The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary activity resource consent application, in addition to the matters specified for the relevant restricted discretionary activities in the zone, overlay and Auckland wide provisions:

- (1) Stormwater Management Structures in a Stormwater Control Area
 - a. Stormwater management
 - i. Function
 - ii. Capacity
 - iii. Design
 - iv. Operation and maintenance, including safe access.
 - b. Landscaping and planting.
 - c. Effects on the use of proposed open space.
 - d. Effects on health and safety.
 - f. Potential downstream flood effects.
- (2) Protected Streams and Margins
 - a. Stream ecology.
 - b. Base flow.

- c. Management of water flow.
 - d. Offset mitigation.
 - e. Stream bed level.
 - f. Riparian planting.
 - g. Overland flow.
 - h. Providing for growth and development.
- (3) High Contaminant Yielding Materials
- i. Stormwater quality.
- (4) Any land use and/or subdivision consent application enabling dwellings, after 2,000 dwellings have been consented within the Precinct
- a. Transport effects and the safe and efficient operation of the existing and future surrounding transport network for all modes including public transport and active modes.
 - b. Traffic network design, safety, efficiency and functionality.
 - c. Trip generation and traffic volumes.
 - d. Road and intersection performance.
 - e. Alternative Travel Modes.
 - f. Travel Demand management measures.
 - g. Accessibility and connectivity to public transport services and facilities.
 - h. Transport connections to adjacent land.
 - i. Other transport or roading improvements.
- (5) Non-Compliance with standard I447.6.7 - Noise attenuation
- a. The effects on people's health and residential amenity.
 - b. The location of the building.
 - c. Topographical, building design features or other alternative mitigation that will mitigate potential adverse health and amenity effects relevant to noise.
 - d. Technical advice from an acoustic expert specialising in operational traffic noise mitigation or the road controlling authority for either SH22 or Jesmond Road respectively, or their successors.

I447.7.2 Assessment criteria

The Council will consider the relevant assessment criteria identified below for restricted discretionary activities, in addition to the assessment criteria specified for assessment of the relevant restricted discretionary activities in the zone, Auckland wide or overlay provisions.

- (1) Stormwater Management Structures in a Stormwater Control Area
- a. The design and efficacy of stormwater infrastructure devices.
 - b. Stormwater management calculations that confirm the design and capacity of the stormwater management structure is fit for purpose and satisfies the requirements of the any SMP.
 - c. A Landscape Plan that identifies the landscaping proposed, a planting plan and maintenance plan to ensure quality visual amenity outcomes.
 - d. An Operation and Maintenance Plan for the design of the structure proposed.
 - e. The extent to which interference with public use and enjoyment of proposed open space is minimised where stormwater detention and retention ponds and wetlands are proposed to be located in or adjacent to public open space.

- f. Whether safe and direct access can be provided to enable the maintenance of stormwater detention and retention ponds and wetlands.
- g. Whether there will be health and safety effects associated with stormwater detention and retention ponds and wetlands and the extent to which these can be mitigated through measures such as fencing.
- h. An assessment of storm events from 10 year – 100 year ARI to determine any attenuation measures required within the Precinct.

(2) Protected Streams and Margins

The extent to which:

- a. Streams can be retained through re-alignment and raising of stream beds to integrate with land contouring;
- b. Ten metre riparian native planting will be provided along each side of any re-aligned stream;
- c. Where streams are proposed to be reclaimed with no vertical or horizontal re-alignment, the degree and extent of off-setting, and compensation;
- d. Management of water flow is achieved to prevent flooding of residential sites;
- e. Base flows to the head of retained streams affected by any reclamation of a permanent stream are maintained;
- f. Reclamation achieves the minimum road grade requirements.
- g. Development potential will be lost without reclamation works, balanced against the ecological value of the stream to be reclaimed.
- h. The ecological classification of the underlying stream is maintained.
- i. The 'effects management hierarchy' (avoidance, remediation, mitigation, offset) has been applied.
- j. The degree of mitigation or offset where changes to the vertical and horizontal alignment are proposed.

(3) High Contaminant Yielding Materials

- a. Proposed water quality treatment measures.
- b. The extent to which runoff from buildings and additions to buildings is mitigated through a treatment approach.

(4) Any land use and/or subdivision consent application enabling dwellings, after 2,000 dwellings have been consented within the Precinct

- a. The extent to which the proposal avoids or mitigates transport effects and ensures the safe and efficient operation of the existing and future surrounding transport network for all modes including public transport and active modes.
- b. The extent to which the following affect the operation and capacity of the transport network:
 - i. Trip Generation and traffic volumes of the existing and future surrounding transport network including additional traffic numbers and directional movements along Jesmond Road and SH22.
 - ii. Traffic network design, safety, efficiency and functionality, including the extent to which the delay in providing the upgrades and transport improvements compromises the safety and efficiency of the transport network.
 - iii. Road and Intersection Performance.
 - iv. Travel Demand Management measures.
 - v. Accessibility and connections to public transport facilities and services.
 - vi. Travel modes choice including public transport and active modes, provision of cycle and pedestrian networks.

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- vii. Connections with adjacent land.
- viii. Other transport or roading improvements in addition to those required in this Precinct.

(5) Non-compliance with Standard I447.6.7 Noise attenuation

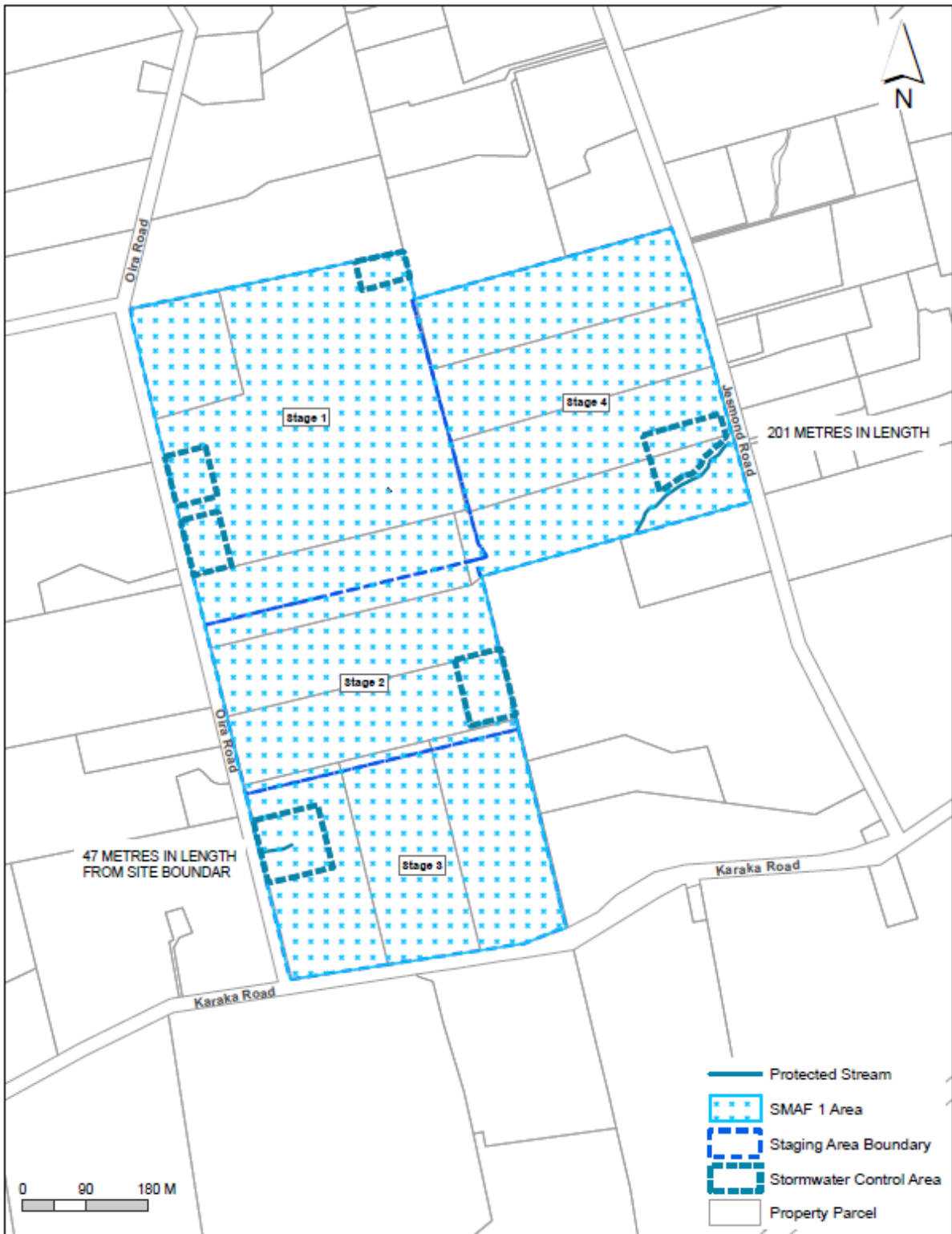
- a. Whether the location of the building or any other existing buildings/structures avoids, remedies or mitigates the adverse noise effects associated with the road traffic noise relating to the operation of SH22 or Jesmond Road.
- b. The extent to which the alternative mitigation measures avoid, remedy or mitigate the effects of non-compliance with the noise standards on the health and amenity of potential building occupants.
- c. Whether any identified topographical or building design features will mitigate any potential adverse health and amenity effects.
- d. Any implications arising from any technical advice from an acoustic expert specialising in operational traffic noise mitigation or the road controlling authority for either SH22 or Jesmond Road respectively.

I447.10 Precinct Plans

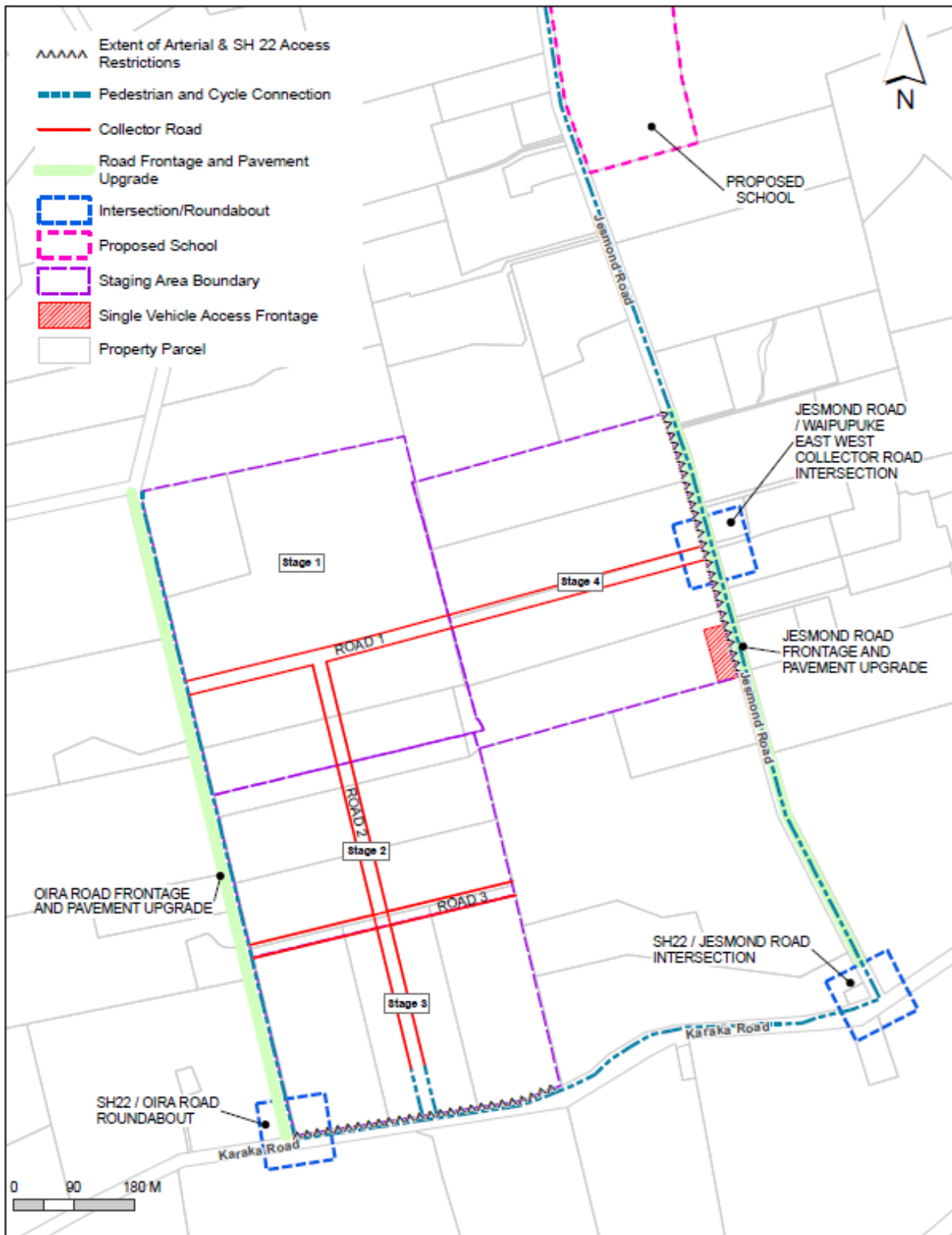
I447.10.1 Waipupuke Precinct Plan 1 Zoning and Stages



I447.10.2 Waipupuke Precinct Plan 2 – Controls



I447.103.3 Waipupuke Precinct Plan 3 Transport



Appendix 1 Road Function and Required Design Elements Table

Road Name (refer to Precinct Plan)	Proposed Role and Function of Road in Precinct Area	Minimum Road Reserve (subject to note 1)	Total number of lanes	Speed Limit (Design)	Access Restrictions	Bus Provision (subject to note 3)	On Street Parking	Cycle provision (subject to note 2)	Pedestrian provision
Jesmond Road - Arterial Road (Interim Profile with separated active transport provisions)	Arterial	30m	2 lanes (2 x 3.5m) Note: 2 additional traffic lanes to be provided at a later time to enable FTN	50 km/hr	Yes	Yes	No	Yes Separated on the western side of Jesmond Road only	Yes On the western side of Jesmond Road
Oira Road - Collector Road with separated active transport provisions	Collector	22m	2 lanes (2 x 3.5m)	40	Yes	Yes	Yes	Yes, Separated on the eastern side of Oira Road only	Yes On the eastern side of Oira Road only

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Road 1: East-West Collector Road with separated active transport provisions	Collector	21m (subject to note 4)	2 lanes (2 x 3.5m)	40	Yes	Yes	Yes	Yes, Separated on both sides	Yes, Both sides
Road 2: North - South Collector Road with separated active transport provision	Collector	21m (subject to note 4)	2 lanes (2 x 3m)	40	Yes	No	Yes	Yes Separated on both sides	Yes Both sides
Road 3: East-West Collector Road with separated active transport provision	Collector	21m (subject to note 4)	2 lanes (2 x 3m)	40	No	No	Yes	Yes, Separated on both sides	Yes Both sides

Note 1: Typical minimum width which may need to be varied in specific locations where required to accommodate batters, structures, stormwater treatment, intersection design, significant constraints or other localised design requirements.

Note 2: Type of Cycle Provision i.e. separated path, to be confirmed at the Engineering Plan Approval stage, based on nature and character of the Road.

Note 3: Carriageway and intersection geometry capable of accommodating buses.

Note 4: Typical minimum cross section must be designed to accommodate the necessary transport elements and network utilities within the road reserve and to be confirmed at Engineering Plan Approval stage.

Attachment 3: PC61 Precinct Plan

I447.10 Precinct Plans

I447.10.1 Waipupuke Precinct Plan 1- Zoning and Stages

Delete the following plan:



Replace the deleted plan with the following version which removes the setback and annotations:

