

Attachment A: PC102 Decision

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



Proposal

To introduce seven Sites and Places of Significance to Mana Whenua to Schedule 12 of the Auckland Unitary Plan (Operative in Part)

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

Plan Change number:	Plan Change 102 - Regionwide
Hearing commenced:	Wednesday 19 February 2025
Hearing panel:	Mark Farnsworth (Chairperson) Nicholas Manukau David Mead
Appearances:	<u>For the Submitters:</u> Foodstuffs North Island Limited represented by Alex Devine, Legal Karaka Harbourside Estates Limited & Pararēkau Island Limited represented by: - Daniel Sadlier, Legal - Andrew Frost, Corporate Winstone Aggregates and Mt Rex Shipping Limited jointly represented by: - Bal Matheson, Legal - Geoff England, Planning - Shane Coutts, Corporate <u>For Council:</u> Craig Cairncross, Team Leader Matthew Gouge, Reporting Officer Nico Donovan-Pereira, Specialist - Māori Heritage Alex Jorgensen, Senior Specialist - Māori Heritage <u>Senior Hearings Advisor:</u> Patrice Baillargeon
Hearing adjourned:	19 February 2025
Commissioners' site visit:	22 & 23 January 2025
Hearing closed:	7 April 2025

Introduction

1. This decision is made on behalf of the Auckland Council (“**the Council**”) by Independent Hearing Commissioners Mark Farnsworth (Chairperson), Nicholas Manukau and David Mead, appointed and acting under delegated authority under section 34 of the Resource Management Act 1991 (“**the RMA**”).
2. The Commissioners have been given delegated authority by the Council to make decisions on Plan Change 102 (“**PC102**”) to the Auckland Council Unitary Plan Operative in Part (“the Unitary Plan”), after considering all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing and evidence presented during and after the hearing of submissions.
3. PC102 is a Council-initiated plan change that has been prepared following the standard RMA Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).
4. The plan change was publicly notified on 23 May with a feedback process involving Iwi, as required by Clause 4A of Schedule 1. Notification involved a public notice as well as letters to directly affected landowners and occupiers alerting them to the plan change. The latter step was aimed at ensuring that landowners and occupiers of properties affected by potentially significant changes were made aware of the changes.
5. The submission period closed 21 June 2024. A Summary of submissions was notified for further submissions on 12 July 2024. A total of 20 submissions were received (including one late submission). The closing date for further submissions was 26 July 2024 and 4 further submissions were made on the plan change.

SUMMARY OF PLAN CHANGE AS NOTIFIED

6. The proposed plan change is described in detail in the Section 42A Report¹. A summary of key components of the plan change, as notified, is set out below.
7. PC102 to the Auckland Unitary Plan (Operative in Part) 2016 (**AUP**) is a Council initiated plan change which seek to recognise and protect the tangible and intangible Māori cultural values of sites and places within Tāmaki Makaurau, to provide for the relationship of mana whenua with their cultural heritage. The genesis of PC102 comes from a 2014 Auckland Council's Heritage Unit initiated Māori Cultural Heritage Programme in collaboration with mana whenua².
8. PC102 proposed to introduce nine Sites and Places of Significance to Mana Whenua (**SSMW**) to Schedule 12 of the AUP. The PC102 documents clearly identify, each of nominated sites by way of maps. The sites are listed below. We note that the landward extents of the sites Komahunga and Korotiti are within the jurisdiction of the Auckland Council District Plan – Hauraki Gulf Islands Section³:

¹ Section 42A Report at section 3

² Ibid at [31 – 35]

³ Refer to Plan Modification 15 to that plan

- Te Wai o Ruarangi / Oruarangi Awa and Waitomokia Creek⁴;
- Whakahuranga Pā⁵
- Pahurehure Islands⁶;
- Manukapua⁷;
- Te Rae o Kawharu⁸;
- Waipapa Awa⁹;
- Karearea Pa¹⁰;
- Komahunga (coastal marine area extent)¹¹; and
- Korotiti (coastal marine area extent)¹².

9. Changes are also proposed to two other schedules in the AUP to recognise the association mana whenua have with scheduled Outstanding Natural Features (**ONF**) and Historic Heritage Places (**HHP**) in Schedules 6 and 14.1. A name change is proposed to one already scheduled HHP site and consequential changes are proposed to the planning maps to reflect the scheduling.
10. The methodology by which this plan change was developed in consultation with mana whenua is outlined in the Section 32 Report¹³. The methodology involved the nomination of sites; the identification of the spatial extent and the identification of cultural values of each of the sites. Council's Māori Heritage Expert, Mr Nico Donovan-Pereira, discussed the identification of sites in his evidence.
11. The Section 42A Report records¹⁴:
 - The plan changes seek to schedule the identified sites in the AUP to provide greater protection and recognition of these significant sites and places. The sites include land, islands, streams, and the coastal marine area. They are located across the Auckland isthmus and surrounding areas.
 - The formal recognition of the nominated sites engages existing objectives, policies, rules and other methods throughout both plans which seek to identify, protect and enhance Māori cultural heritage across the region. These are found within the dedicated Māori cultural heritage sections of the plans and also within other related chapters such as those dealing with land disturbance, temporary activities, infrastructure and the coastal environment.

⁴ Application attachment 2b

⁵ Ibid 2d

⁶ Ibid 2c

⁷ Ibid 2e

⁸ Ibid 2j

⁹ Ibid 2k

¹⁰ Ibid 2l

¹¹ Ibid 2h

¹² Ibid 2i

¹³ Section 42A Report at [14.1]

¹⁴ Ibid at [27 & 29]

PROCEDURAL MATTERS

Late Submission

12. The Council received a late submission from Mr Louis Scott (dated 24 June 2024 – 3 days late). RMA section 37(1)(a) gives a local authority the ability to extend the time period specified in the Act or has the ability to waive a failure to comply with a requirement under this Act, regulations, or a plan for the time or method of service of documents.
13. The Panel resolved to accept the late submission. The panel records:
- “The applicant (the Council) has recommended the late submission of Mr Scott be accepted, pursuant to RMA Section 37A(1)(a & b) after taking into account:
- the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and
 - the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and
 - a duty under Section 21 to avoid unnecessary delay.

The panel accepts the recommendation of the Reporting Officer Mr Gouge, that the late submission of Mr Scott be accepted.

Withdrawal of Sites Te Rae o Kāwharu and Waipapa Awa from PC102

14. In an Addendum to the Section 42A Report dated 3 February 2025 Mr Gouge noted:
- “In response to a request from Ngāti Whātua Ōrākei Trust, Auckland Council has agreed to withdraw the nominated sites of Te Rae o Kāwharu and Waipapa Awa from PC102.”*
15. In providing an explanation for the withdrawal Mr Gouge noted¹⁵:
- “On 28 January 2025, Ngāti Whātua Ōrākei formally requested that Council withdraw both Waipapa Awa and Te Rae o Kāwharu from PC102. They have raised concerns as to how their tangata whenua and ahi kā status is recognised and provided for in the Unitary Plan and related processes. These concerns were raised in their submissions on PC102 and are the subject of further discussion between Council and the hapū.*
- Council has agreed to withdraw both Waipapa Awa and Te Rae o Kāwharu from PC102, and public notification of this withdrawal will occur prior to the plan change hearing on 19 February 2025.*
- This partial withdrawal of PC102 will result in any submission points (and associated further submissions) specifically on those sites no longer being ‘on’ the*

¹⁵ First Addendum to The Section 42A at [3.1]

plan change. This includes the recommended response to the submissions in the Section 42A Report.

The three briefs of submitter evidence address the Waipapa Awa site exclusively. Accordingly, there is no need to address this evidence further in this addendum report.”

16. In our consideration of PC102 we have:

- Set aside the three briefs of planning evidence received from landowners and developers affected by the nominated site of Waipapa Awa. Namely:
 - Domain Gardens Limited;
 - Summerset Villages (Parnell) Limited; and
 - Carlaw Campus Limited Partnership.
- Set aside the submission points and further submissions related to both Waipapa Awa and Te Rae o Kāwharu.

NOTIFICATION PROCESS AND SUBMISSIONS

17. As recorded above PC102 was publicly notified¹⁶ on 23 May 2024, with a submissions closing date of 21 June 2024. Twenty primary submissions were received¹⁷. A summary of the submissions was publicly notified on 12 July 2024, with further submissions closing on the 26 July 2024. Four further submissions were received.
18. The table below sets out submitters and further submitters and indication of the relief sought. Where the submission has been withdrawn no relief is indicated.

Submissions

Organisation / Name	Site	Summary Relief
Edward Ashby for Te Kawerau ā Maki	All	Approve the plan change without any amendment
Qiping Sun	All	Decline the plan change
Geoff England for Mt Rex Shipping Limited	Manukapua,	Seeks amendments to the site boundary
Jo Young for Stevenson Aggregates Limited	Kaarearea Paa	Approve the plan change without any amendment
John Darroch	Waipapa Awa	
Brain McClure for BA Trustees Limited	Te Rae o Kāwharu	
Will Fairbairn for Carlaw Campus Limited	Waipapa Awa	
Andrew Frost for Karaka Harbourside Estates Limited & Pararēkau Island Limited	Pararēkau Island	General support but seeks amendments
S Berry & C Malone for Domain Gardens Limited	Waipapa Awa	
Phil Wihongi for Ngāti Whātua Ōrākei Trust	Te Rae o Kāwharu & Waipapa Awa. Plan Change wide.	General support but seeks amendments
Alex Devine for Foodstuffs North Island Limited	Te Wai o Ruarangi / Oruarangi and Waitomokia Creeks	General support but seeks amendments
Matt Norwell for Gloucester Industrial Park Limited	Te Wai o Ruarangi	Approve the plan change without any amendment
Tyler Sharratt for Winstone Aggregates Limited	Manukapua	Seeks amendments to the site boundary
James Sax for R B Takeoff LP	Te Wai o Ruarangi / Oruarangi and Waitomokia Creeks	Seeks realignment of the site

¹⁶ Direct notification was also served on a number of parties as listed in the Section 42A Report at [172]

¹⁷ Section 42A Report - Section 9

Andrea Marshall for Auckland International Airport Limited	Te Wai o Ruarangi / Oruarangi and Waitomokia Creeks	General support but seeks amendments
Poppy Mitchell-Anyon for Summerset Villages (Parnell) Limited	Waipapa Awa	
Graeme Lundie for Tel Properties Nominees Limited	Te Wai o Ruarangi / Oruarangi and Waitomokia Creek	Decline, if granted amend
Allan Matson	Te Rae o Kāwharu	
Parnell Community Committee Inc	Te Rae o Kāwharu & Waipapa Awa	
Louis Scott	N/A	Repeal the <i>Manukau Harbour Control Act 1911</i>

Further Submissions

Organisation / Name	Site	Summary Relief
S Berry & C Malone for Domain Gardens Limited	Waipapa Awa	Support and opposition to submissions
Geoff England for Mt Rex Shipping Limited	Manukapua	Support and opposition to submissions
Forme Planning for Fort Richard Laboratories Limited	Te Wai o Ruarangi / Oruarangi and Waitomokia Creeks	Support and opposition to submissions
Phil Wihongi and David Badham for Ngāti Whātua Ōrākei Trust	Te Rae o Kāwharu & Waipapa Awa. Plan Change wide	Support and opposition to submissions

PLAN MAKING (MODIFICATION) PROVISIONS

19. The RMA sets out an extensive set of requirements for the formulation of plans and making changes to them. These requirements are set out both in the section 32 assessment and the Section 42A Report¹⁸. We do not need to repeat these requirements.
20. We note the Council's section 32 evaluation clarifies that the analysis of efficiency and effectiveness of the plan change is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal¹⁹. Having considered the application, the submissions and the Section 42A Report we are satisfied that PC102 has been developed in accordance with the relevant statutory requirements.
21. Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions. The decision must include a further evaluation of any proposed changes to the plan modification arising from submission; with that evaluation to be undertaken in accordance with section 32AA.
22. Having considered the submissions and relevant background documents, we are satisfied, overall, that PC102 will clearly assist the Council in its effective administration of the AUP.

STATUTORY FRAMEWORK

23. Section 7 of the hearing report²⁰ provides a comprehensive analysis of the applying statutory framework and how PC102 *gives effect to* or *meets the requirements* of the applying framework. This analysis was not contested. As a result we do not intend to provide a summary of the analysis other than to note the documents that were considered:

¹⁸ Section 42A Report – section 7

¹⁹ Section 7

²⁰ Section 42A Report

- *Resource Management Act 1991*
- *National Policy Statements:*
 - *National Policy Statement for Highly Productive Land 2022 (NPS-HPL),*
 - *National Policy Statement for Freshwater Management 2020 (NPS-FW)*
 - *National Policy Statement on Urban Development 2020 (NPS-UD)*
 - *New Zealand Coastal Policy Statement 2010 (NZCPS)*
 - *National Policy Statement for Indigenous Biodiversity 2024 (NPS-IB)*
- *Auckland Unitary Plan²¹ and Auckland District Plan – Hauraki Gulf Islands Section*
- *Other Relevant Plans and Strategies:*
 - *The Reserves Act 1977*
 - *Treaty of Waitangi Settlement Legislation*
 - *Hauraki Gulf Marine Park Act 2000*
 - *Marine and Coastal Area (Takutia Moana) Act 2011*
 - *Heritage New Zealand Pouhere Taonga Act 2014*
 - *Conservation Act 1987*
 - *Local Government Act 2002*
 - *Local Government Auckland Council Act 2009*
- *Iwi Planning Documents.*

EXISTING PLAN PROVISIONS

24. The Section 42A Report at section 4 provides a summary overview of the applying plan provisions in the AUP which is repeated below:

- *“The AUP currently contains 105 sites within its Schedule 12 – Sites and Places of Significance to Mana Whenua Schedule. There are 254 Outstanding Natural Features identified within Schedule 6 – Outstanding Natural Features Overlay Schedule, and 2,853 Historic Heritage Places contained within Schedule 14.1 – Schedule of Historic Heritage in the plan.*
- *The provisions applying to sites in these three schedules are contained within Chapter D - Overlays of the AUP. Section D21 - Sites and Places of Significance to Mana Whenua Overlay contains a comprehensive set of objectives, policies, rules and other methods applying specifically to scheduled sites. This is similarly the case for Section D10 - Outstanding*

²¹ Auckland Unitary Plan incorporates the Regional Policy Statement and the Regional Coastal Plan

Natural Features Overlay and Outstanding Natural Landscapes Overlay and Section D17 - Historic Heritage Overlay.

- *Throughout the remainder of the AUP there are a variety of provisions which also recognise Māori cultural values and heritage. In some cases they refer more generally to cultural values, and in some cases they refer specifically to SSMW. The provisions vary from introducing permitted activity standards²², to applying specific activity statuses on scheduled sites²³.”*

PROPOSED PLAN CHANGE PROVISIONS

25. PC102 as notified did not introduce any new objectives, policies or methods into the AUP but rather sought to schedule an additional nine nominated sites in Schedule 12 of the AUP. The application material provides a comprehensive set of documents which addresses matters relating to the plan change. Namely:

- The plan change text and maps²⁴;
- A Section 32 Analysis;
- Cultural Values Assessments²⁵
- An Evaluation of Options²⁶;
- Archaeology Assessments²⁷;
- A consideration of nominated v/s recommended sites (where changes are recommended from nominated extent)²⁸; and
- Assessment against the Regional Policy Statement²⁹.

26. Mr Gouge in his Section 42A Report noted that in response to submissions on Waipapa Awa, he recommended the provisions be amended to introduce a ‘*Mana Whenua Responsive Design*’ mechanism for the historical sections of the awa as a Restricted Discretionary Activity. But as already noted above in response to a request from Ngāti Whātua Ōrākei Trust, Auckland Council has agreed to withdraw the nominated sites of Te Rae o Kāwharu and Waipapa Awa from PC102. As a result, we have not provided any commentary on the proposed ‘*Mana Whenua Responsive Design*’ mechanism.

27. Mr Gouge also records³⁰:

- *“As notified, the ‘importance to Mana Whenua’ criterion³¹ is also being applied to two nominated sites which are already scheduled as Outstanding Natural Features under Schedule 6. The ‘Mana Whenua’ criterion³² will also*

²² See Chapter E3 - Lakes, Rivers, Streams and Wetlands

²³ Such as in Chapter E12 – Land Disturbance (District)

²⁴ Proposed Plan Change 102, 23 May 2024

²⁵ Application Material Attachment 3

²⁶ Ibid Attachment 4

²⁷ Ibid Attachment 5

²⁸ Ibid Attachment 8

²⁹ Ibid Attachment 9

³⁰ Section 42A report at [48 -53]

³¹ Refer to RPS Chapter B4, Policy B4.2.2(4)(k)

³² Refer to RPS Chapter B5, Policy B5.2.2(1)(c)

be applied to two nominated sites already listed in Schedule 14.1 as Historic Heritage Sites. The name of one scheduled historic heritage place³³ is proposed to be amended. The planning maps are updated to reflect the scheduling.

- *Scheduling will result in the existing objectives, policies, rules and methods of the AUP Chapter D21 - Sites and Places of Significance to Mana Whenua Overlay applying to the scheduled sites.*
- *The Māori cultural heritage provisions contained within the broader RMA definition of 'Historic Heritage' are provided greater emphasis across the two newly annotated sites in the objectives and policies of the AUP Chapter D17 - Historic Heritage Overlay.*
- *The existing Māori related objectives, policies and methods of the AUP Chapter D10 - Outstanding Natural Features Overlay will apply more explicitly to the two newly annotated sites.*
- *There will also be greater recognition of the Māori cultural significance and values of the nine nominated sites addressed in the provisions of other chapters of the AUP.”.*

28. Mr Gouge addressed:

The effect of the application on the AUP Overlays D10, D17 and D21³⁴

- *The addition of Mana Whenua criteria to the Historic Heritage Overlay and Outstanding Natural Features Overlays apply greater emphasis on the existing Māori cultural heritage provisions to some of the sites, with the most notable change being through the application of the Sites and Places of Significance to Mana Whenua Overlay provisions (Chapter D21).*
- *The inclusion of sites in the Sites and Places of Significance to Mana Whenua Schedule, will mean that the sites will be subject to the existing provisions in Chapter D21.*

The effect of Scheduling on other AUP chapters³⁵

- *The scheduling will bring greater assessment weight on the Māori cultural values of sites and how proposed activities affect these values. Chapters of the AUP focused on the management of water, land, and the coastal environment, place a policy and method emphasis on the protection and enhancement of identified SSMW. These will need to be considered as part of seeking a resource consent, a permit, a designation or plan change. Of particular note, are the district Land Disturbance (E12), Infrastructure (E26), and Lakes Rivers and Streams (E3) provisions.*

³³ Item 693 –Kaarearea Paa is proposed to be added to the existing name, Ballards Cone Pā

³⁴ Section 42a Report at [55 – 57]

³⁵ Ibid at [58]

Land Disturbance³⁶

- *Activity Table E12.4.2 applies to all SSMW and applies more stringent activity statuses for land disturbance of specified activities on those sites. It also removes any permitted level of earthworks for activities not otherwise provided for. Permitted activity standards are more prescriptive for activities on SSMW.*

Infrastructure E26³⁷

- *Section E26.6 – Network Utilities and Electricity Generation – Earthworks Overlays Except Outstanding Natural Features Overlay, and Section E26.10 – Network Utilities and Electricity Generation – Sites and Places of Significance to Mana Whenua contain specific infrastructure provisions applying to SSMW. They include activity tables prescribing more stringent activity statuses (activity tables E26.6.3.1 and E26.10.3.1)...*

Site Exception Rule

- *The ‘site exception’ rule applies to sites indicated with an asterisk within Schedule 12 and it denotes sites where it is acknowledged that while they contain intangible values associated with historic events, occupation and cultural activities they do not contain archaeology due to their highly urbanised state.*
- *Within the infrastructure chapter, the ‘site exception rule’ provides for a lower activity status of earthworks for service connections (Permitted Activity instead of Restricted Discretionary Activity), and network utilities and electricity generation facilities not otherwise provided for (Restricted Discretionary Activity instead of a Discretionary Activity).*

Lakes, Rivers and Streams Chapter E3

- *General permitted standard E3.6.1.1(7) states that: ‘The activity must not destroy, damage or modify any sites scheduled in the Historic Heritage Overlay or the Sites and Places of Significance to Mana Whenua Overlay’. This applies to all Permitted Activities within Activity Table E3.4.1 of this chapter thereby setting an additional regulatory test with respect to identified SSMW*

Net effect of scheduling in the AUP.

- *The net effect of the scheduling is that, while it does not prohibit activities within scheduled sites, it does in some cases raise the consenting threshold for parties seeking to obtain land use consent within the sites, and for those parties seeking new water and coastal permits. In all cases it adds greater weight to objectives and policies addressing Māori cultural heritage for Discretionary and Non-Complying Activities.*

³⁶ Ibid at [59]

³⁷ Ibid at [60 – 62]

OUT OF SCOPE SUBMISSIONS

29. Mr Gouge provided a commentary on the potential out of scope submissions at section 9.4 of the Section 42A Report. We provide a summary overview.

Submission Point 10.2 of Ngāti Whātua Ōrākei Trust

30. Submission Point 10.2 from the Ngāti Whātua Ōrākei Trust (NWOT)³⁸ sought the following relief:

“Include a specific requirement that only the ‘appropriate’ or ‘correct’ hapū which are recognised as ‘tangata whenua’ are engaged with for development proposals within identified Sites of Significance to Mana Whenua (SSMW).”

31. This submission point was supported by Mt Rex Shipping Limited.
32. Mr Gouge proffered the opinion that the relief sought in Submission Point 10.2 proposes a significant alteration to the management regime for Sites of Significance for Mana Whenua (**SSMW**) under the AUP. The relief sought in Submission Point 10.2 goes beyond the scope of the plan change request, in that it is proposing to include new provisions in the AUP that apply to applications for resource consent and other planning processes affecting SSMW. Also, there has been no evaluation under section 32 of the RMA of the new engagement provisions proposed³⁹.
33. In justifying his opinion Mr Gouge noted:

“Seeking to codify the complex relationships mana whenua have within the region, their overlapping interests, and tensions in respect to tikanga makes the relief sought in Submission Point 10.2 a significant alteration to the management regime for SSMW.”⁴⁰

“Submission Point 10.2 fails both limbs of the legal test for plan change scope and is therefore not ‘on’ the plan change.”⁴¹

34. Representatives of NWOT did not attend the hearing so were unable to question them on their submission point. In the light the absence of any evidence which tests Mr Gouge’s recommendation we have accepted his recommendation and find the submission point 10.2 of the NWOT is out of scope for PC102.

Submission Point 8.2 – Karaka Harbourside Estates Limited and Pararēkau Islands Limited (in part)

35. Submission Point 8.2 seeks to amend Schedule 14.1, the Historic Heritage Schedule, in the AUP, to reflect archaeological assessments undertaken by the submitter during previous resource consenting processes for Pararēkau Island.⁴²

³⁸ Section 42A Report at p194]

³⁹ Ibid at [198 & 199]

⁴⁰ Ibid at [209]

⁴¹ Ibid at [212]

⁴² Ibid at [213]

36. The relief being sought through Submission Point 8.2 is to amend what the submitter considers are erroneous entries in Schedule 14.1 through the removal of the relevant sites.
37. With respect to:
- The proposed deletions, it was Mr Gouge's view the subject matter of this submission point is not on PC102, it is out of scope as it is not seeking changes to what has been proposed through PC102 or addressed in the Section 32 Report. Mr Gouge qualified his view, noting should the Panel decide otherwise, the Council's Heritage Unit may support the requested changes, pending engagement with and confirmation from the relevant mana whenua groups where the site is identified as a 'place of Māori interest or significance'. We address this issue later in this decision.
 - Mr Gouge considered the proposed updates to the location and name fields in the schedule to be within scope as they reflect recent subdivision activity, standardise the use of names across the schedule, and are informational only with no likelihood of natural justice issues arising. Mr Gouge recommended the updates are accepted.

Submission 20 – Louis Scott⁴³

38. This submission seeks to remind Auckland Council of the *Manukau Harbour Control Act 1911* and the need to repeal it given the number of applications for customary interests over the Manukau Harbour.
39. Mr Gouge noted PC102 is promulgated under the Resource Management Act 1991 and there is no jurisdiction to repeal legislation through the plan hearing process. We agree with Mr Gouge that the submission of Louis Scott is out of scope.

HEARING PROCESS

40. Prior to the hearing, all the Commissioners undertook site visits in order to gain an understanding of the physical setting of the PC102 sites and their local surroundings. The visits were undertaken on the 22nd and 23rd of February 2025.
41. In accordance with our directions on the pre-circulation of expert evidence we received the following briefs of evidence:
- Ms Joy Morse (planning evidence) Auckland International Airport Limited
 - Mr Andrew Frost (corporate evidence) for Karaka Harbourside Estates Limited & Pararēkau Island Limited;
 - Mr Vance Hodgson (planning evidence) for Karaka Harbourside Estates Limited & Pararēkau Island Limited;
 - Mr Geoffrey England (planning evidence) Mt Rex Shipping Limited; and

⁴³ Section 42A Report at [225]

- Mr Shane Coutts (corporate evidence) for Atlas Resources Limited.
42. The following legal submissions were also pre-circulated
- Mr Daniel Sadler on behalf of Karaka Harbourside Estates Limited & Pararēkau Island Limited;
 - Mr Bal Matherson on behalf of Mt Rex Shipping Limited and Winstone Aggregates Limited, a division of Fletcher Concrete and Infrastructure Ltd.
43. After the pre-circulation of evidence Mr Gouge provided us with two addendums to his Section 42A Report which set out his analysis, and recommendations, on the evidence provided.
44. In the First Addendum to Section 42A Report Mr Gouge noted:
- In respect of Te Wai o Ruarangi / Oruarangi and Waitomokia Creeks – Auckland International Airport Limited (**AIAL**) and Foodstuffs North Island Limited (**FNIL**) are not opposed to the Section 42A recommendations. AIAL supports the mapping recommendations of the Section 42A Report.
 - In respect to Pahurehure Islands – Karaka Harbourside Estates Limited (**KHEL**) & Pararēkau Island Limited (**PIL**) are not opposed to the identification of the sites. They sought further minor changes to the descriptions in the schedule to reflect the now issued titles and maintained their view that eight sites they see as no longer existing be removed from Schedule 14.1 (Historic Heritage Places). Mr Gouge supported the minor changes but not the removal of the sites.
45. In the Second Addendum to the Section 42A Report dated 10 February 2025, Mr Gouge records:
- In respect of Manukapua Island, Mr England for Mt Rex Shipping Limited now seeks an alternative relief in the form an additional text to be added to the description field of the Schedule 12 entry for Manukapua Island. This is intended to recognise the existence of the sand mining operation and highlight what the submitters sees as its importance to the region.
 - The presence of a scheduled site of cultural significance to mana whenua is not a right to veto a proposal. Cultural concerns must still be justified by iwi and hapū in a similar way to the wider economic benefits/costs being substantiated by developers. The purpose of the Sites and Places of Significance to Mana Whenua schedule is to identify, protect and enhance mana whenua cultural heritage. It triggers engagement with affected mana whenua so that iwi and hapū can express their kaitiakitanga and build and maintain partnerships with consent holders.
 - The resource consenting process is the appropriate forum within which to engage in this dialogue, in cognisance of an actual proposal and the suite of balancing objectives and policies of the AUP which are engaged.
 - Accordingly, as robust resource management processes already exist to appropriately consider the management of the sand resource, Mr Gouge

recommended that the relief sought in the submitter's evidence be rejected⁴⁴.

SUMMARY OF EVIDENCE HEARD

46. A notable feature of the hearing was that no expert evidence was tabled that questioned the actual identification of the sites, rather each of the submitters expressed general support for the inclusion of the specified site(s) (which concerned them) within Schedule 12 subject to changes which they had sought.

47. Ms Alex Devine (Legal Counsel), in speaking to the submission of Foodstuffs North Island Limited (**FSNI**) told us FSNI did not oppose the inclusion of Item 109 within Schedule 12⁴⁵.

48. Mr Daniel Sadlier, Legal Counsel, for KHEL & PIL, told us⁴⁶:

"KHEL & PIL supported the inclusion of item 110 "Pahurehure Islands (Kopuahingahinga / Waikirihinau and Orona/Orewa Islands" ("Item 110") within Schedule 12 of the AUP, but sought that the "Location" column be amended to better reflect the item's location".

49. Mr Bal Matherson, Legal Counsel for Mt Rex Shipping Limited and Winstone Aggregates limited noted⁴⁷:

"My clients acknowledge the cultural significance of Manukapua to Te Uri o Hau ".

50. Ms Joy Morse in her evidence⁴⁸ for Auckland International Airport Limited (AIAL) recorded AIAL's primary submission (Submitter #15) supported identification of Site 109 as a SSMW subject to amendments to its geographic extent to exclude areas landward of the indicative coastal marine area.

51. Each of the submitters outlined the relief they sought and whether Mr Gouge, in his two Addendums, had recommended the acceptance of their submission points.

Pahurehure Islands (Kopuahingahinga/Waikirihinau and Orona/Orewa Islands" ("Site 110")

52. Mr Andrew Frost's brief of evidence addressed the submitters relationship with mana whenua and their commitment to continuing to work with mana whenua.

53. One of the aims of seeking a change to Schedule 14.1 was to ensure:

*"The need to avoid imposing onerous consenting requirements on individual lot owners on the future Pararēkau Island community, including individual lot owners and/or the Residents Society responsible for managing and maintaining common areas and infrastructure."*⁴⁹

54. Mr Frost told us that they continued to seek deletion from Schedule 14.1 of those items identified in the submission that have been demonstrated through various archaeological

⁴⁴ Second Addendum to the Section 42A Report at [33]

⁴⁵ Section 42A Report Foodstuffs North Island Limited Submission page 201 at {5}

⁴⁶ EVO3 at [2(a)]

⁴⁷ EVO6 at [1.3]

⁴⁸ EV01 at page 1

⁴⁹ EV12 at [3(b)(iii)]

reports to no longer exist. Doing otherwise potentially creates an unreasonable and unnecessary consenting burden on the purchasers of vacant residential sections on Pararēkau Island when they seek to establish dwellings in accordance with the provisions of the Pararēkau and Kopuahingahinga Island Precinct in the AUP.

55. Planning evidence was provided by Mr Vance Hodgson. He noted KHEL & PIL had three submission points:

- Support for the inclusion of site 110 in Schedule 12;
- Amend Schedule 14.1 to remove eight of the currently schedule Historic Heritage Places and amend four others; and
- The extent of Site 110 be amended to not include the causeways and easement areas.

56. Mr Hodgson clarified that KHEL & PIL were no longer seeking the extent of Site 110 be amended, proffering the view:

“He agreed with Mr Gouge, the existing provisions acknowledge that where driveways/private ways, and network utilities exist, there should be an ability to use, operate, maintain, repair (including resurfacing) and upgrade where necessary of the access and network utilities serving the Pahurehure Islands. Should the activities be significantly expanded, then there is significance of the site or place and with respect to tikanga (correctness).”⁵⁰

Mr Hodgson also noted:

There are errors in Scheule 14.1 and eight currently listed entries relating to Pararēkau Island have been verified as not existing⁵¹. There is an opportunity to make these corrections now, in my opinion that would be better planning practice and would ensure that the provisions of the plan most appropriately achieve the objectives, and the purpose of the RMA.⁵²

57. Mr Hodgson pointed out Mr Gouge raises a concern with plan change scope but goes on to note that if scope is not an issue, then the Auckland Council Heritage Unit may support the requested changes, pending engagement with the relevant mana whenua groups⁵³.

58. In the light of a comment from Mr Gouge that it was not reasonable to expect parties notified of PC102 to have anticipated removal of scheduled Historic Heritage Places as an outcome of the plan change process, Mr Sadlier requested further time to enable his client to engage with tangata whenua on this matter.

Manukapua (Site 192)

59. Mr Geoffrey England noted in his evidence⁵⁴:

⁵⁰ EV05 at [8]

⁵¹ EV05 at [28]

⁵² Ibid at [30]

⁵³ Ibid at [29]

⁵⁴ EV08 at [9.0]

Mt Rex holds a Coastal Permit⁵⁵ to extract sand from the coastal marine area of the Kaipara Harbour over the Taporapora banks, in the area adjacent to Manukapua Island. Sand is a regionally significant mineral resource⁵⁶. The extraction site is adjacent to the Manukapua site introduced by Plan Change 102, Mt Rex recognises the significance of the site to Te Uri O Hau and no longer seeks relief to amend the extent of the cultural overlay.

60. Mt Rex was now seeking relief which gives recognition to the current authorised sand extraction as annotation in Schedule 12, highlighting sand as a significant mineral resource.

61. Mr Shane Coutt's evidence for Atlas Resource Limited (**ARL**) provided background on the existing sand extraction operation of Mt Rex and the significance of the sand resource and the economic investment made. Mr Coutt emphasised the significance of the Kaipara Harbour sand resource proffering the view:

"Mt Rex's operations have a significant positive effect on the economy of the Auckland Region. This impact includes employment, the generation of GDP, and the purchase of goods and services".⁵⁷

62. At the hearing Mr Gouge noted the Council had engaged an expert, Mr. Lawrence McIlrath, a Director of Market Economics Ltd, who confirmed the commercial significance of the sand resource to the region thereby supporting the submitter's view.

63. Mr Matheson in his submissions advocated:

- On the need to ensure that there is a clear record that, despite the sand extraction that has occurred and that is on-going, Manukapua remains "of cultural significance".
- Given the jurisdictional limitations⁵⁸ on the PC102, the only opportunity is to include a contextual element (*regionally significant*) within the description column of Schedule 12. The relief as sought will ensure that Manukapua is seen in the right context.

64. Mr England initially provided the following wording (in red):

Schedule ID	Name	Location	Description
113	Manukapua	Gum Store Road Taporapora 0977	<i>Island mahinga kai <u>The site is located directly adjacent to the authorised sand mining operation within the Kaipara Harbour. The sand from the Kaipara Harbour is a regionally significant resource, and the sand</u></i>

⁵⁵ Ref: No. 41662) (Mt Rex Permit)

⁵⁶ Mr Shane Coutts highlighted the regional significance of the sand resource in his evidence (EV090)

⁵⁷ EV09 at [4.1]

⁵⁸ EV06 at 2.1(a) - There is no scope, as part of this plan change process, for there to be associated changes to associated objectives and policies.

			<u>mining operation may continue adjacent to Manukapua in future.</u>
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65. This position was subsequently modified through the legal submissions of Mr Matheson to the following: 'The site is located directly adjacent to a regionally significant sand resource'.⁵⁹
66. As noted above Mr Gouge continues to recommend that the (amended) submission be rejected.
67. Mr Matheson supported Mr Sadlier's submission for a hearing adjournment so that further consultation can be undertaken. Such an adjournment would allow his clients to engage further with Te Uri o Hau.

Te Wai o Ruarangi / Oruarangi and Waitomokia Creeks ('Site 109')

68. Ms Devine repeated her advocacy that the notations on the GIS Viewer (i.e. planning maps) are necessary so that the "Site Extent" of Item 109 is correctly and appropriately located with respect to the current and actual extent of the water courses on each site, Mean High Water Springs ("**MHWS**") and the title boundaries. She noted that FSNL accepted the recommendations of Mr Gouge in his First Addendum that their submission point be accepted.
69. Ms Joy Morse for AIAL recorded⁶⁰:

"AIAL has reviewed the S42A Report by Mr Gouge for the Council. The S42A Report records that Te Ahiwaru has expressed a level of comfort with AIAL's approach to stormwater management and the amendments sought by AIAL to the mapped extent of Site 109. Mr Gouge recommends that the geographic extent of Site 109 be amended to align with Mean High-Water Springs and to exclude stormwater infrastructure, as shown in Appendix 4 of the S42A Report. AIAL supports this recommendation."

HEARING ADJOURNMENT

70. At the conclusion of presentations, the hearing was adjourned. We noted by way of direction:

"Section 41C of the RMA provides that the Council, at a hearing, may request a submitter provide further information. Accordingly, the Hearing Panel directs, pursuant to section 42C(2), as follows:

- (a) *Karaka Harbourside Estates Limited and Pararēkau Island Limited, regarding Pararēkau Island, provide an update on tangata whenua's approach to the removal of specified items from Schedule 14.1, the historic heritage in the AUP. Information shall be provided to the Council's Hearing Advisor no later than 9am, **Friday 14 March 2025.***

⁵⁹ EV06 para 3.4

⁶⁰ EV01 at page 2

- (b) *Winstone Aggregates and Mt Rex Shipping Limited, regarding Mankapua, provide an update on the nominating iwi's (Te Uri O Hau) approach to the addition of a reference to the adjacent significant mineral resource in the description of the site of cultural significance in the AUP. Information shall be provided to the Council's Hearing Advisor no later than 9am, **Friday 14 March 2025.***"

71. Legal counsel for Mt Rex Shipping Limited and Winstone Aggregates Limited provided their response to the direction on 14 March 2025. Legal counsel for Karaka Harbourside Estates Limited & Pararēkau Island Limited provided their response on 31 March 2025 after being granted an extension of time.
72. The closing comments⁶¹ of the Mr Gouge provided a useful summary of the position of the parties at the close of the hearing he noted:
- Neither of the submitters [Mt Rex Shipping Ltd and Karaka Harbourside Estates Limited & Pararēkau Island Limited] has been able to reach agreement with all of the relevant mana whenua groups.
 - In the case of Pararēkau Island, both Ngāti Te Ata and Te Ākitai Waiohū agree to the removal of the eight scheduled Historic Heritage Places identified in the KHEL and PIL submission.
 - Ngāti Tamaoho, identified that 'the removal or destruction of physical remains does not remove the cultural, historical and traditional significance' and that Schedule 14.1 provides for this. The iwi supports a cultural assessment.
 - For Manukapua the submitters have been unable to obtain the agreement of the nominating mana whenua group, Te Uri o Hau, on a proposed text inclusion into the description field for Manukapua in Schedule 12.
73. For Pararēkau Island Mr Gouge reiterated his initial recommendation, based on the response of Ngāti Tamaoho, of the need for a careful evaluation of these eight sites with scope to consider intangible cultural associations that may remain. Such an evaluation would need to consider the most appropriate planning response for these eight sites. The sites should not be deleted.
74. Mr Sadlier provided us with detailed submissions⁶² on scope and reminded us of the legal tests. He advocated⁶³:

There is no risk that a directly affected person may be disenfranchised as a result of the relief sought by the Submitters being granted.¹⁷

In short there is no basis to conclude that the reasonable interests of another directly affected party could be overridden by the deletion of the items from Schedule 14.1. The deletions sought are effectively "informational only with no likelihood of natural justice issues arising", but for the fact that future private

⁶¹ EV13

⁶² EV03 at [5-15]

⁶³ Ibid at [17]

landowners will not be put to the time and cost of pursuing unnecessary resource consent processes due to avoidable inaccuracies in Schedule 14.1”⁶⁴

75. After a careful consideration of the material before us we came to a different conclusion to Mr Gouge. While we accept Mr Gouge’s opinion that there may be intangible cultural associations there is no reason why these past sites, which no longer exist, could not be recognised by other mechanisms⁶⁵ In this instance we are of the view that a pragmatic, cost effective solution is required. The sites⁶⁶ should be deleted from Schedule 14.1 and the planning maps amended accordingly. Our decision is informed by the following:

- The submitter has actively engaged with tangata whenua.
- The items which the submitters seek be deleted have been demonstrated not to be present through direct archaeological study with several reports prepared confirming this position⁶⁷
- Unless Schedule 14.1 deletions are made there is a risk individual lot owners may be required to apply for (costly) resource consents where proposed works associated with establishing dwellings occurs on or near an item that no longer exists.
- The submitter’s request was not questioned by further submissions.

76. With regard to Manukapua, Mr Gouge noted⁶⁸ the submitters had been unable to obtain the agreement of the nominating mana whenua group, Te Uri o Hau, on the proposed text changes. Mr Gouge reiterated his Section 42A recommendation that the proposed addition is unnecessary.

77. We accept Schedule 12 is the primary AUP mechanism for recognising sites of cultural significance to mana whenua as a matter of national importance under Section 6(e) of the RMA. In this instance the Manukapua site borders an important sand resource for economic development in Auckland. Mr Shane Coutts, in his evidence⁶⁹ emphasised the importance of the sand resource for the Auckland, He noted:

The Mt Rex operations play a significant role in the Auckland economy supplying a reliable and sustained volume of sand to the Auckland construction market⁷⁰.

78. The importance of this sand resource was not contested by Council. Given the importance of the sand resource, we agree with both Mr Coutts and Mr England that a reference to the sand resource should be made in Schedule 12.

79. We were very mindful that Schedule 12 does not normally contain such contextual information in the description column. But in this case the seaward boundary of the scheduled site is based on a nominal line based on water depth (1m deep water) rather

⁶⁴ Ibid at [16]

⁶⁵ Such as an annotation in the Esplanade Reserve Plan

⁶⁶ Historic Heritage Place IDs: 658, 659, 662, 663, 682, 683, 684, 689.

⁶⁷ EV04 at [14]

⁶⁸ EV13 at [21-26]

⁶⁹ EV09

⁷⁰ Ibid at [6.2]

than a detailed site assessment/archaeological survey. To this extent, the presence of the sand resource may be relevant when the Schedule 12 provisions are triggered.

80. The following words are added to the Schedule 12 entry for Manukapua:

“The site is located directly adjacent to a regionally significant sand resource”.

DECISIONS ON SUBMISSION POINTS

81. In section 9.5 of Section 42A Report, Mr Gouge provided a comprehensive evaluation of all of the submission points made on PC102, providing us with his recommendations on whether individual submission points should be rejected or adopted. Mr Gouge's evaluation and recommendations were largely uncontested at the hearing.

Submissions supporting PC102 in its entirety

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
1.1	Te Kawerau ā Maki	Approve the plan change without amendments	Oppose-in-part: Mt Rex Shipping (FS02)
4.1	Stevenson Aggregates Limited	Approve the plan change without amendments	Nil
12.1	Gloucester Industrial Park Limited	Approve the plan change without amendments	Support: Fort Richard Laboratories Limited (FS03)

82. These submissions seek that PC102 be approved without any amendments. Amendments were made. We concur with Gouge's recommended that these submissions be supported, subject to the amendments we have accepted or made.

Submissions supporting PC102 in part (General Relief)

83. The following submission points seek changes to the plan provisions generally rather than with respect to specific sites.

In his evaluation of these submission points Mr Gouge commented⁷¹ on further work which is being undertaken / planned by the Council and that there was a Māori Cultural Heritage Programme to recognise and protect sites of cultural significance to mana whenua. He noted:

Mana whenua have requested that any references to ‘nominating iwi’ be left blank in the schedules and appendices so as to not give an impression to plan users that only the nominating iwi have an interest in any particular site.’

⁷¹ Section 42A Report at [233]

84. Mr Gouge explained⁷²:

- *This reflects an agreed position that was reached in November 2018 by the mana whenua groups participating in the programme and arose out of concerns that the nomination column could be misconstrued as identifying all the mana whenua group(s) with a cultural interest in a site. As with all collective positions recorded within Council projects, this does not prevent individual iwi and hapū from taking an independent view.*
- *While NWO have expressed their desire to be identified in Schedule 12 for the sites they have nominated, no other mana whenua group has expressed such a desire, either through formal submissions on PC102, or through their engagement with the Māori Cultural Heritage Programme*

85. We have accepted submission point 10.1 in part. As discussed in paragraphs 28 – 32 above, in relation to submission point 10.2 the relief sought is considered to be out-of-scope.

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
10.1	Ngāti Whātua Ōrākei Trust	Approve Plan Change 102 with amendments	Support: Mt Rex Shipping Ltd (FS02)
10.2 (part)	Ngāti Whātua Ōrākei Trust	Include a specific requirement that only the 'appropriate' or 'correct' hapū which are recognised as 'tangata whenua' are engaged with for development proposals within identified SSMW	Support: Mt Rex Shipping Limited (FS02)
10.2 (part)	Ngāti Whātua Ōrākei Trust	Identify the nominating iwi or hapū in the 'Nominated by mana whenua' column of Schedule 12	Support: Mt Rex Shipping Limited (FS02)

⁷² Ibid at [234 & 236]

Submission points seeking the decline of PC102

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
2.1	Qiping Sun	Decline the plan change	Oppose: Ngāti Whātua Ōrākei Trust (FS04)
16.1	Tel Properties Nominees Limited	Decline the plan change	Oppose: Ngāti Whātua Ōrākei Trust (FS04)

86. Qiping Sun's submission point 2.1 sought the plan change be declined. The submitter was concerned about the implications of additional regulations on the resale value of their property and their ability to undertake improvements on the site. Mr Gouge recommended the submission point be rejected because, given the location and steep topography of the scheduled extent of the site on the submitter's property, he considered it unlikely that development will occur in the scheduled location. We have accepted Mr Gouge's recommendation.⁷³
87. Submission point 16.1 from Tel Properties seeks the decline of the plan change, pending consultation with a town planner to understand how the submitter's property at 89 Richard Pearse Drive may be affected. The location of the property across a Council reserve from the creek makes it unlikely that the proposed scheduling will affect future activities on the submitter's property. We have accepted Mr Gouge's recommendation. That the submission point be rejected⁷⁴.

Submission points on Manukapua

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
3.1	Mt Rex Shipping Limited	Amend the mapped extent of Manukapua to reduce its coastal marine area extent	Nil
3.2	Mt Rex Shipping Limited	Include a description of Manukapua within the plan change to acknowledge its cultural significance and recognises the adjacent sand extraction activities occurring.	Nil
13.1	Winstone Aggregates Ltd	Amend the extent of Manukapua to avoid the	Support:

⁷³ Section 42A Report at [238 – 245]

⁷⁴ Section 42A Report at [246 – 250]

		consented sand dredging activity area over the Taporapora banks	Mt Rex Shipping Ltd (FS02)
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88. With regard to submission point 3.1, Mr Gouge told us in the Second Addendum to the Section 42A Report that following pre-hearing consultation on 17 September 2024, Mt Rex no longer sought to reduce the extent of the proposed overlay for Manukapua. We have accepted Mr Gouge's recommendation that this submission point be rejected.
89. By rejecting submission point 3.1 we are by implication rejecting submission point 13.1, which effectively asked for a similar relief.
90. We have discussed Mt Rex's submission point 3.2 in paragraphs 59 - 64 above. While we do accept at the time a development proposal is lodged with Council, the AUP provides scope to consider all relevant matters across the plan, including those matters that provide for mineral extraction activities, we are of the view the relief sought by Mt Rex provides a useful reminder of a significant activity that has been consented adjacent to this site. Given the 'regional significance' of the sand resource we have accepted Point 3.2 and the most recent text proposed by the submitter.

Submission points on The Pahurehure Islands

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
8.1	Karaka Harbourside Estates Limited & Pararekau Island Limited	Supports Pahurehure Island scheduling but seeks amended to location reference in the schedule	Nil
8.2	Karaka Harbourside Estates Limited & Pararekau Island Limited	Amend Schedule 14.1 to reflect the most recent archaeological assessments undertaken by KHEL and PIL	Nil
8.3	Karaka Harbourside Estates Limited & Pararekau Island Limited	Amend the mapped extent of Pahurehure Islands to exclude causeways and easement areas that provide for vehicles, active modes of access and network utilities	Nil

91. In the First Addendum to the Section 42A Report Mr Gouge records⁷⁵:

"With respect to Submission Point 8.1, Mr. Hodgson notes that the Section 42A Report supports the relief sought by KHEL and PIL to replace street address

⁷⁵ First Addendum to the Section 42a Report at [27]

references with the land appellations in the location column of Schedule 12. Mr Hodgson supports the changes recommended in the Section 42A Report.”

92. We accept Mr Gouge’s recommendation that submission point be accepted.
93. In submission point 8.2, the submitter seeks to amend Schedule 14.1 to remove eight of the currently scheduled Historic Heritage Places and amend four others. We have discussed our approach to the deletions in paragraphs 72 -74 above. We are of the view that this submission point has merit.
94. For the second part of submission point 8.2 Mr Gouge has recommended that the four amendemnts be supported and we endorse that recommenation.
95. With respect to submission point 8.3, in their submission, KHEL & PIL sought to amend the proposed site extent of the Pahurehure Islands to remove any private ways and causeways. This matter was addressed in the Section 42A Report where it was concluded that existing dispensations exist in the AUP to undertake these activities as Permitted Activities on private ways.
96. Mr Gouge pointed out that Mr. Hodgson has considered this response and agrees that suitable dispensation exists for these activities without modifying the proposed scheduled extent. As a result, we have adopted Mr Gouge’s recommendation, submission point 8.3 is rejected.

Submission points on Te Wai o Ruarangi

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions
11.1	Foodstuffs	Alter the proposed site extent of Te Wai o Ruarangi to align with the most seaward of title boundaries and the current mean high water springs for portions of the site adjoining their Oruarangi Road and Landing Drive properties	Nil
14.1	RB Takeoff LP	Amend the extent of Te Wai o Ruarangi to reflect the surveyed mean high water springs boundary (provided) as it relates to 530 and 546 Oruarangi Road so it does not apply to the private property	Nil

15.1	Auckland International Airport Ltd	Amend the extent of Te Wai o Ruarangi to exclude areas landward of the indicative Coastal Marine Area line as it relates to Auckland Airport land and existing stormwater infrastructure servicing Auckland Airport land.	Nil
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97. Submissions points 11.1, 14.1 & 15.1, from Foodstuffs North Island Limited, RB Takeoff LP, and Auckland International Airport Limited (AIAL), all sought to amend the nominated site extent affecting properties they own or lease.
98. The First Addendum to the Section 42A Report records⁷⁶:
- “AIAL has engaged directly with Foodstuffs North Island and RB Takeoff LP (‘Southpark’) who are other submitters on this site. The submitter has also discussed the Section 42A Report recommendations with the nominating iwi (Te Ahiwaru Waiohau) and Te Kawerau ā Maki. None of these parties have expressed opposition to the Section 42A Report recommendations. AIAL supports the mapping recommendations within the Section 42A Report and seeks that these be adopted by the Hearing Commissioners.”*
99. With respect to submission points 14.1 & 15.1 we have accepted the recommendation of Mr Gouge.
100. With respect to the Foodstuffs Submission Point 11.1, Mr Gouge recommended⁷⁷ that the relief sought be accepted-in-part. This is because while he considered it appropriate to align the site extent with the MHWS along this section, it is not appropriate to align the site with the title boundaries.
101. Mr Gouge explained⁷⁸ through processes of stream accretion, erosion, or historic surveying practices, title boundaries are not accurate in demarcating the extent of the Oruarangi Creek, which is the central feature being recognised as culturally significant. A site visit was undertaken with representatives of the nominating mana whenua group, Te Ahiwaru Waiohau. It was identified that the site mapping had inadvertently covered stormwater devices that were not an original part of the creek, or are now permanent structures near where the MHWS is located.
102. Discussions with the nominating mana whenua has identified a level of comfort with the approach AIAL takes to the management of stormwater and water quality outcomes. From a cultural perspective, the nominating iwi is comfortable to align the site extent with the MHWS along this section, and exclude the three infrastructure facilities indicated in Annexure B of the AIAL submission.

⁷⁶ First Addendum to the Section 42A Report at [24]

⁷⁷ Section 42A Report at [402]

⁷⁸ Ibid at [403 - 410]

103. Mr Gouge recommend that Submission Point 15.1 be accepted and the maps amended. We endorse and adopt that recommendation.

SECTION 32AA EVALUATION

104. Section 32AA of the RMA requires a further evaluation for any changes that are proposed to the notified plan change after the section 32 evaluation was carried out.⁷⁹ This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes.⁸⁰
105. Mr Gouge has recommended amendments to the notified version of PC102, and we have made two changes. It is our view that the two addendums to the Section 42A Report and this decisions report addresses the modifications recommended by Mr Gouge and the changes we have made and satisfies our section 32AA obligations.

PART 2 OF THE RMA

106. Section 32(1)(a) of the RMA requires assessment of whether the objectives of a plan change are the most appropriate way for achieving the purpose of the RMA in Part 2. Section 72 of the Act also states that the purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA. In addition, section 74(1) provides that a territorial authority must prepare and change its district plan in accordance with the provisions of Part 2. This is a Council sponsored plan change which will change the AUP.
107. For all of the reasons set out in this decision, we are satisfied the matters set out in sections 6, 7 and 8 of the RMA have been addressed. PC102 has recognised and provided for, have had particular regard to and taken into account those relevant section 6, 7 and 8 matters.
108. Finally, in terms of section 5 of the RMA, it is our finding that the modifications of PC102 in section 32 and 32AA terms, are consistent with, and the most appropriate way, to achieve the purpose of the Act. PC102 recognises and protects the tangible and intangible Māori cultural values of sites and places within Tāmaki Makaurau, to provide for the relationship of mana whenua with their cultural heritage.

DECISION

109. That pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, that Proposed Plan Change 102 to the Auckland Unitary Plan (Operative in Part) be approved, subject to the amendments we have accepted.
110. The following sites will be added to Schedule 12:
- Te Wai o Ruarangi / Oruarangi Awa and Waitomokia Creek;
 - Whakahuranga Pā;

⁷⁹ RMA, section 32AA(1)(a)

⁸⁰ RMA, section 32AA(1)(c)

- Pahurehure Islands;
- Manukapua;
- Karearea Pa;
- Komahunga (coastal marine area extent); and
- Korotiti (coastal marine area extent).

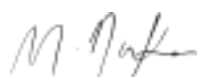
111. Submissions on the plan change are accepted and rejected in accordance with this decision. In general, these decisions follow the recommendations set out in the Council's Section 42A Report, response to commissioners' memo and closing statement, except as identified above in relation to matters in contention.

112. The reasons for our decision are that Plan Change 102:

- a. will recognise and protect the tangible and intangible Māori cultural values of sites and places within Tāmaki Makaurau, to provide for the relationship of mana whenua with their cultural heritage.
- b. will assist the Council in achieving the purpose of the RMA;
- c. are consistent with the Auckland Regional Policy Statement;
- d. are consistent with the provisions of Part 2 of the RMA;
- e. are supported by necessary evaluation in accordance with section 32; and
- f. will help with the effective implementation of the Auckland Unitary Plan.



Mark Farnsworth MNZM
Chairperson



Nicholas Manukau
Panel Member



David Mead
Panel Member

Date: 25 April 2025

Appendices:

- 1. Planning Maps**
- 2. Schedule 6 ONL Overlay Schedule**
- 3. Schedule 12 Sites of Significance to Mana Whenua (SSMW)**
- 4. Schedule 14.1 Schedule of Historic Heritage Places**