

Decisions following the hearing of a concurrent application for a variation to the Proposed Auckland Unitary Plan and related subdivision and land use consents under the Housing Accords and Special Housing Areas Act 2013

SUBJECT: Application for a variation to the Proposed Auckland Unitary Plan under section 61, and an application for subdivision and land use consents under section 25, of the Housing Accords and Special Housing Areas Act 2013 by Fletcher Residential Limited for the approved Oruarangi Special Housing Area at 545-561 Oruarangi Road, Mangere. Hearing held on 3 and 4 February 2016 at the Manukau office of the Auckland Council.

PURSUANT TO SECTION 61 OF THE HOUSING ACCORDS AND SPECIAL HOUSING AREAS ACT 2013 PROPOSED PLAN VARIATION 9 TO THE PROPOSED AUCKLAND UNITARY PLAN IS APPROVED SUBJECT TO MODIFICATIONS.

PURSUANT TO SECTION 25 OF THE HOUSING ACCORDS AND SPECIAL HOUSING AREAS ACT 2013 CONSENTS TO THE SUBDIVISION AND LAND USE APPLICATIONS ARE GRANTED.

THE FULL DECISIONS ARE SET OUT BELOW

Accord Territorial Authority:	The applications were heard by the Accord Territorial Authority comprised of the following independent Hearings Commissioners and Local Board member:
	<p>Leigh McGregor (Chair)</p> <p>Robert Scott</p> <p>Shona Myers</p> <p>Basil Morrison</p> <p>Murray Kay (Local Board member)</p>

APPEARANCES:**Council Officers and Consultants**

Alina Wimmer (Principal planner, Housing Projects Office – plan variation)

Evita Key (Reporting planning consultant – subdivision and land use consents)

Evan Keating (Senior Transport Planner, Auckland Transport)

Richard Davison (Lead Masterplanner)

Rob Pryor (Landscape architect)

Dr Matthew Campbell- Archaeology Consultant, CFG Heritage

Mark Iszard (Stormwater engineer)

Katja Huls (Stormwater planner)

Ezra Barwell (Principal Parks and Recreation Policy Analyst)

Tania Utley – (Parks and Open Space Team Leader, Auckland Council)

West Fynn – (Arborist, Auckland Council)

Andrea Aranha (Democracy advisor)

For the Applicant

Sue Simons and Rachael Steller (Legal counsel)

Ken lotu-liga (General Manager, Fletcher Residential Ltd)

Dennis Scott (Landscape architect)

Andrew McCarthy (Planning consultant)

Lauren White (Urban designer)

Dr Rod Clough (Archaeologist)

Adina Brown (Heritage)

Gordon Ikin (Arboriculture)

Gary Bramley (Terrestrial ecology)

Dr Shane Kelly (Coastal ecology)

Richard Montgomerie (Freshwater ecology)

Michael Chapman (Stormwater engineer)

Harry Cepe (Engineer - contamination)

Damir Soric (Geotechnical engineer)

Daniel Reddy (Civil engineer)

David Mitchell (Traffic engineer)

Submitters

Roger Gummer

Delywne Roberts

Brendan Corbett

Te Warena Taua (Te Kawerau Iwi Tribal Authority, Makaurau Marae Maori Trust)

Betty King

Gail Selby-Brown

Pania Newton, law graduate, representing Roger Gummer, Delwyn Roberts, Maurice Wilson, Kathleen Waipouri, Maureen Ewe and Liane & Marc Davis with Dr Michelle Mills, David Veart, Farrell Cleary, Jeremy Treadwell and Ilmars Gravis called to make statements on their behalf and a tabled statement by Peter Crossley.

DECISIONS OF THE COMMISSIONERS

1.0 INTRODUCTION

- 1.1 These decisions follow a public hearing of concurrent applications made on behalf of Fletcher Residential Limited (“Fletchers”) under the Housing Accords and Special Housing Areas Act 2013 (“HASHAA”) for variation 9 to the Proposed Auckland Unitary Plan (“PAUP”) and subsequent subdivision and land use consents to facilitate the first stage of a Special Housing Area (“SHA”) at Oruarangi in South Auckland. Ultimately the development will provide for 480 houses with 140 proposed in the first stage of development. The Oruarangi SHA was approved as part of a tranche of special housing areas and formally established by an Order in Council on 28 July 2014.
- 1.2 The plan variation application seeks to have approximately 33 hectares of land at 5345 Oruarangi Road rezoned in the Proposed Auckland Unitary Plan (“PAUP”) from Future Urban to a combination of Mixed Housing Suburban, Public Open Space, Conservation and Green Infrastructure Corridor. If approved this will be Variation 9 to the PAUP. The land is currently zoned Future Development in the operative Auckland District Plan (Manukau Section). In other words under the provisions of both the operative plan and the proposed plan the site is already earmarked for urban development.
- 1.3 The qualifying development application has been made for concurrent subdivision and land use consents section 25 of the HASHAA and relies on the variation being approved. This is because section 71 of the HASHAA requires that when concurrent plan variation and resource consent applications are heard together, a decision on the variation must be made before any decision on the resource consent can be made (mainly because the zoning of the land and/or classification of some of the proposed activities could change if the variation is approved). In this case, the PAUP presently prohibits subdivision in the Future Urban zone applying to the land but would be recognised by the rezonings sought so the variation decision must logically be made before the decision on the subdivision application can be considered.
- 1.4 Fletcher’s qualifying development proposal is to create 92 vacant residential lots, one lot to retain an historic homestead, six superlots to be developed at a later date, and a jointly owned access lot. Subdivision is also required to create a lot to be vested as a recreation reserve, two local purpose reserves to serve as accessways, roads to be

vested in the Council, and two balance lots. Consents for bulk earthworks and reconstruction of stone walls on the Oruarangi Road frontage are also required.

- 1.5 Ms Simons described the vision for the development in her opening submissions as *“the creation of an affordable residential community that achieves quality environmental outcomes and recognises cultural values and associations with the area. The proposed development will offer its residents access to connected open space and the adjoining Otuaataua Stonefields Historic Reserve (“OSHR”). It will also be connected to a variety of transport options, including pedestrian and cycle networks”*.
- 1.6 These decisions follow a hearing of the applications when the Authority heard from applicant and those submitters who appeared.
- 1.7 After the introductory and descriptive sections which are common to all applications, the decision document is then divided into two parts: first the discussion and decision relating to the plan variation followed by consideration of, and decisions on, the subdivision and land consent applications. As the applications are interconnected, with the consents aspect being wholly reliant on the variation being approved, it is appropriate to issue one comprehensive decision covering both. This format will also avoid duplication.
- 1.9 In the same manner the Council planners’ report prepared by Ms Wimmer of the Council’s Development Project Office (“DPO”) and Ms Key, an independent planning consultant, addressed both applications with, where appropriate, a combined commentary and assessment of certain issues. Ms Wimmer was responsible for the plan variation material in the report and Ms Key for the subdivision and land use consent aspects. For convenience we have referred to their combined document as “the Council’s report”.
- 1.10 The applications along with the reasons for them were described in considerable detail in the application materials and again in some depth in the Council’s report. As a result it is not necessary for much of that detail to be repeated except to the extent that it relates directly to the issues under discussion.
- 1.11 We have made findings on the issues actively in contention in both cases. The statutes do not require us to address each submission on the variation individually so the variation discussion therefore tends to focus on topics rather than on separate

submitters except where a particular submitter raised issues specific to its particular circumstances.

2.0 THE SITE AND SURROUNDING AREA

- 2.1 Prior to the hearing the Authority members inspected the site and the general area including walking on the neighbouring Otataua Stonefields Historic Reserve and driving through the papakainga and Makaurau village established across the road from the site.
- 2.2 The development land is located at the end of the Ihumātao Peninsula on the eastern fringes of the Manukau Harbour and is around 21 kilometers from central Auckland. The general area is known as the 'Western Gateway' with the Peninsula forming part of what is referred to as the Mangere Gateway Heritage Area. The site topography is flat to gently rolling but rises to the north where it is adjacent to the Otataua Stonefields Historic Reserve. It is fringed by a reserve to the north, a papakainga village to the east, Oruarangi Road to the south south-east and the Rennie Block, owned by the Council, and part of the reserve to the west. Ihumātao Quarry Road bisects the site from the south east to the north west. There is a localised knoll at the junction of Oruarangi and Ihumātao Roads. Despite its proximity to the motorway and the city this area is not currently serviced by public transport and there are no schools or shops. People who live in the village told us that there is only one bus a day: this is provided by the school and anyone who misses it has to find another way of travelling the 5 kilometers or so in order to attend.
- 2.3 The site lies within the lower Oruarangi Creek catchment. There is a 462 metre long ephemeral watercourse originating south-west of Ihumātao Quarry Road that drains through the centre of the site. This watercourse has no channel and does not provide any aquatic habitat. The site drainage and hydrology is ephemeral with some ponding occurring in the central swale during periods of heavy rainfall. Mr Scott suggested this is exacerbated by poor road culvert capacity on Ihumātao Road. The drainage patterns extend across to the Oruarangi Creek on the other side of the papakainga village although there is a cut drain which assists the distribution of water. There are several springs in the area and an aquifer in the north west adjacent to the Pukeiti maunga.
- 2.4 The remainder of the site is predominantly pasture and its terrestrial ecological values are limited to occasional trees, rock walls which provide habitat for native

lizards, and nesting and roosting habitats for birds. A Lizard Management Plan has been proposed to address the protection and relocation of any lizards which may be present when works begin.

- 2.5 The Otuataua Stonefields Historic Reserve (“OSHR”) was created in 2001 and adjoins the site to the northwest, with portions of the eastern slope of the reserve extending into the SHA land. The Stonefields reserve is notable for its historical and cultural significance with extensive archaeological sites and identified sites/places of significance to Mana Whenua. The Makaurau Marae and papakainga lie to the north east, while across the road and immediately to the east of the site is land zoned as Mangere Gateway Business (Oruarangi) in the District Plan which is currently being developed for business purposes with a number of small to medium sized business/industrial units. Beyond that new development is the airport precinct.
- 2.6 The wider area is bounded by the south-western motorway (State Highway 20) to the east, George Bolt Drive and the Auckland International Airport terminals, runways and business park to the south, and the Manukau Harbour to the north and west. The airport company’s second runway proposal will bring its operations closer to Oruarangi. Mr Scott’s evidence was the second runway will have a significant effect locally and is the reason why that land has remained under cultivation in the meantime. He said the Auckland International Business Park industrial and commercial development, based on the airport, is rapidly expanding on a continuous basis.

Heritage and Archaeology

- 2.8 The development site is located in a rich archaeological landscape. Immediately to its north-west is the OSHR. A number of archaeological surveys and assessments, mainly associated with the Stonefields, have been carried out in the Ihumatao area and are listed in a bibliography attached to the Assessment of Environmental Effects (“AEE”) that accompanied the application. These surveys and investigations demonstrate the multi-layered nature of historic heritage remains in the area, from the earliest settlement of New Zealand to the era of missionaries and early European settler farmers.
- 2.9 Historically the Department of Conservation, the Manukau City Council and Heritage New Zealand (formerly the Historic Places Trust) have identified several areas in Mangere as having significant cultural heritage status based on various site surveys

and aerial surveys. This work resulted in the Manukau City Council in the 1980s and 1990s purchasing several sites - such as Ambury Park and later the Otuataua Stonefields Historic Reserve - that were considered to be at risk of development. One of the acquisitions involved part of the Wallace land which is the subject of these applications. The strategic purchases of land for parks were made in order to avoid development on those sites during periods of rapid growth in the south. All three archaeologists who appeared at the hearing agreed that the OSHR has high cultural heritage values.

- 2.10 Mr Veart is an archaeologist and historian and was involved in the original assessments on behalf of the (then) Historic Places Trust. He later worked on creation of the OSHR on behalf of the Department of Conservation. He was called by the group of submitters as an expert witness. He said Ihumātao was one of the first places cleared for gardening in New Zealand as the soils were warm and well drained and crops such as kumara grew well while those brought with settlers from Polynesia, such as breadfruit and coconuts, did not survive. He said the Ihumātao area tells the story of our country and represents the last remnant of something that was formerly thousands of hectares of Tamaki Makaurau. He apprehended that despite its cultivated appearance there may be sub-surface items and/or features under the site which may remain to be discovered – as had been his experience when the international airport was developed.
- 2.11 An outline of the Maori history of Oruarangi was presented on behalf of Fletchers in the AEE. This was based on the detailed Maori and European history presented by Mr Graeme Murdoch during the Plan Change 13 and 14 appeal hearings in 2011. We have provided some excerpts from the descriptions in the AEE below but defer to the detailed description of the cultural, heritage and archaeological values of the site and its surrounds as described in the AEE.

Situated along the eastern shoreline of the Manukau Harbour, and bordering Mangere, the area of Ihumātao has a long and established history of Maori occupation. Rich volcanic soils suitable for cultivation, extensive marine resources and fresh water supplies made the peninsula a highly desirable location for settlement. Inlets such as the Oruarangi and Pukaki Creeks gave access to inland areas and the nearby portage at Otahuhu (Te To-waka) provided a route across to the Waitemata Harbour.

The landscape of the Ihumatao area is dominated by its former and existing volcanic

cones; the formation of which is associated with the Maori deity Mataaoho, and the tradition of 'Te Riri a Mataaoho' (the wrath of Mataaoho). Many geographic features recall these origins including: Te Pane a Mataaoho (the head of Mataaoho), known as Mangere Mountain; and Te Ihu a Mataaoho (the nose of Mataaoho) an early name for the western-most point of Ihumatao including Maungataketake (Ellett's Mountain). These craters, together with those of the wider Mangere-Otahuhu area are known collectively as Nga Tapuwae a Mataaoho (the footprints of Mataaoho).

The Maori settlement at Ihumātao was large, relatively permanent and successful. Geographically it was close to main trade and travel routes but was out of the way enough not to be a target and enjoyed long periods of peace unlike much of the Auckland region. The Manukau coast provided abundant seafood and shellfish stocks and the fertile volcanic soil rewarded cultivation. The Maori impact on the landscape at Ihumatao is evident at the nationally significant Otuataua Stonefields Historic Reserve. This site preserves an archaeological record of the intensive and sophisticated cultivation of the Auckland landscape by Maori. Originally the Auckland isthmus was dominated by stonefield gardens (covering 8,000 hectares of land); however, the 100 hectares at Otuataua is now one of the last examples of the landscape created by this type of cultivation.

- 2.12 There are several archaeological and historic heritage features on the development site including: pre-European Maori burial caves and middens, historic period drystone walls, a 19th century homestead site and a 1920s house (Kintyre), all associated with the Wallace family who have occupied and farmed the land for nearly 150 years. The western side of the property includes the lower slopes of two volcanic craters Puketepapa (Pukeiti)¹ and Otuataua which are relatively close to the site boundary and located in the adjacent OSHR. These craters have each been quarried to varying degrees but much of their original form is recognisable. Lava tubes, caves and rocks flow out from the craters on the western side.
- 2.13 The opening submissions on behalf of Fletchers, and the AEE, acknowledged that the site and its surroundings have an extensive history of Maori occupation, dating back to at least the middle of the 14th century, and which continues today with the papakainga housing village and marae located close by. Permanent European settlement of the area began in the mid 19th century when a Crown grant for the site was issued to Gavin Struthers Wallace. The Wallace family has farmed the land ever

¹ Also known as Te Puketapapapatanga a Hape

since that time.

- 2.14 In *Gavin H Wallace & Ors v the Auckland Council* in 2012 the Environment Court considered the history of this and nearby land and its suitability for development. The outcome in that case was a decision that it was to be rezoned from Rural to “Future Development Zone” in the Manukau Section of the Auckland District Plan. The Court found that urban development of parts of the site, with other parts being managed as open space and lower density development, would best balance the competing considerations in Part 2 of the RMA. Its decision recorded:

To keep the land outside the MUL (metropolitan urban limit) with a rural zoning would, without further constraints, offer less protection to the characteristics protected by section 6 (e) and (f) of the Act. To lock the land up might indeed provide for Maori and heritage values. But it would not provide for the economic needs and wellbeing of the owners. By allowing sensitive constrained development, heritage and landscape characteristics can be protected ...

- 2.15 Maori heritage elements identified by archaeologist Dr Clough as being associated with the property are:

- (a) Maunga/stonefields. The lower slopes of the volcanic cones are inside the project area, but the main craters and archaeological features associated with those sites are located in the OSHR neighbouring the project area. No archaeological remains associated with the volcanic elements extending into the SHA were identified (with the exception of portions of the recorded burial caves);
- (b) Midden located in the southern corner of the property (R11/2997);
- (c) Burial caves near the craters on the northern side of the property (R11/2999).

- 2.16 As noted earlier, permanent European settlement of the area began in the mid 19th century when the Crown grant for the site was issued to Mr Wallace. The 19th century homestead site and 1920s house (Kintyre), both of which are proposed for protection by the plan variation provisions, are part of the Wallace family’s legacy. During their occupation stones cleared from the land were used to construct stone walls on the site and the surrounding area. A number of these remain on the site today. Ms Simons advised in her legal submissions that while parts of the stone walls may be of pre-1900 origins, subsequent additions and building had made it difficult to identify which parts date from that period. Her advice was that while some

stone walls will be removed as part of the proposed development at least half will be maintained or restored.

- 2.17 Specific early European heritage elements associated with the property were identified by Dr Clough as being:
- (a) The 1867 Wallace homestead site, including some farm buildings and heritage trees (R11/2998, CHI 14156)
 - (b) 1920s 'Kintyre', the second Wallace homestead (CHI 19489) located on the corner of Oruarangi Road and Ihumatao Quarry Road
 - (c) Stone walls comprised of more than 2.5 kilometers of stone walls of varying conditions (R11/3000)
 - (d) Drainage features (part of R11/3000) potentially present at subsurface level
 - (e) Farm features such as water troughs and buildings
 - (f) Trees and other planting associated with the homesteads and the walls.
 - (g) The road alignment which has historical significance as a long-established boundary and through road.
- 2.18 Because the site has been heavily ploughed for more than 150 years Dr Clough does not expect any subsequent discoveries that are made on the land to be sensitive or big, but he nevertheless favours an accidental discovery protocol be applied as well as a requirement to obtain any authorities required from Heritage New Zealand. As such authorities would not cover the Kintyre house so in his view both measures should be required.
- 2.19 By way of a reserve contribution in the form of a buffer area around the OSHR, the proposed variation will protect the burial caves, the lower slopes of the nearby volcanic cone pā, the first Wallace homestead site, a Pohutukawa, and some of the stone walls. The second Wallace house, Kintyre, will be retained in the development area to recognise its heritage values. Other heritage features in the housing development area (a midden, stone walls, drainage elements) would be destroyed, however a range of mitigation measures has been proposed by Fletchers. These involve development of a discovery protocol, a reserve management plan, a protective covenant for Kintyre, restoring and repairing the stonewalls where feasible, archaeological investigations and recording to recover information relating to the history of the area and providing public amenities in the reserve. These measures will effectively bring these important heritage items into public ownership. Ms Simons submitted that incorporating them within the OSHR is a considerable benefit of this

project and likely to contribute to the long-term protection of the items concerned.

- 2.20 Initially it was proposed to protect an Indian cedar as well as the Pohutukawa but it became apparent this would not be possible because of earthworks levels required to be achieved on and adjacent to the Kintyre site to make the intersection of Oruarangi and Ihumātao Quarry Roads work, including for buses.

Cultural Values

- 2.21 The property at 545 Oruarangi Road is included in the Schedule of Sites and Places of Significance to Mana Whenua in the PAUP as number 29 and is recorded there as being of significance to Te Kawerau-a-Maki, Te Āhiwaru, Te Ākitai, Ngati Tamaoho, Ngati Te Āta Waiohua, Ngai Tai Ki Tamaki, Waikato-Tainui, Ngati Paoa, Ngati Maru, Te Patukirikiri, Ngati Whanaunga and Ngati Tamatera. In accordance with its obligations in terms of this and also section 8 of the RMA Fletchers initially consulted with all 13 Iwi groups. Following what Ms Simons described as a “self selection process” this consultation continued with only two of these groups. She said the Cultural Impact Assessments prepared by Te Ākitai Waiohua and Te Kawerau a Maki, along with ongoing consultation, had informed the design response to the unique features and constraints of the site. The Te Kawerau Tribal Authority and the Makaurau Tribal Trust each lodged a submission in support of the applications which in her submission indicated that the proposal had addressed their concerns.
- 2.22 The design response was detailed in Ms White’s evidence and resulted in implementation of the Te Aranga Maori Design principles including the protection of significant views of the maunga, development setbacks from the maunga, an open space buffer or transition zone between the existing papakainga village and future development, and a number of other features.
- 2.23 Ms Simons said that by having consulted with local Iwi rather than Maori design professionals Fletchers was able to consider the views of the people who will actually be impacted by the development, and further that ongoing consultation, rather than only at the time of development, will further promote an ongoing relationship between the applicant and local Iwi. This local and ongoing consultation was envisaged as allowing the insight and relationship contemplated by the principles of Te Aranga Design.

- 2.24 Evidence of the cultural values of the area is summarised in an appendix to the decisions of the Environment Court in *Gavin H Wallace Limited and Others v Auckland Council* (as successor to the Auckland Regional Council and the Manukau City Council), Decision No [2012] NZEnv Ct 120. The decisions followed a combined hearing of three appeals that related to zonings and/or protections to be applied to several properties on the Ihumātao Peninsula and also regarding the extent of the Metropolitan Urban Limit contained in the Auckland Regional Policy Statement. (This is now the 'Rural Urban Boundary' in the PAUP.)
- 2.25 This summary informs us that wahi tapu in the area included sacred mountains, battle sites, burial sites, pā sites and subterranean caverns. The evidence the Court heard was that Te Wāiohua shifted their agricultural activities in a seasonal cycle of gardening and resource gathering, leaving aside the defensive areas of the cone pā, the settlements and sacred burial areas. The volcanic features on the Ihumātao Peninsula are recognised as taonga by local Maori and the Court recorded the evidence given to it that subsequent modifications and destructions of these features have caused immense distress and ongoing grief. Examples of such modifications included creation of the Mangere sewerage ponds and associated water treatment plant on the edge of the Manukau Harbour, quarrying of various maunga, and construction of the second runway for the Auckland international airport. Destructions included laying waste to cultural icons when the wastewater treatment ponds were built.
- 2.26 The Court recorded that when the Tainui waka left Ihumātao and voyaged on to Kawhia two leading ancestors, Rakataura and Poutukeka, remained behind. Poutukeka was the eldest son of Hoturoa who captained the waka. Their direct descendants are the people of Ihumātao who are connected with the Pukaki and Makaurau marae. It said that despite the Crown's confiscation of the 1100 Ihumātao block in 1865 the hapu associated with the Makaurau Marae have maintained an unbroken *ahi ka roa* in the area for more than six centuries. This continued in the post-European period when Maori adapted to the colonial economy and the social changes that European settlement wrought. An observation was made in the evidence presented to the Court by noted historian Graeme Murdoch that the area is rich in human historical and cultural associations that have developed over nearly eight centuries and reflects the full range of Maori and post-European heritage.

2.27 However the Environment Court concluded in its decision that while there is little doubt that Ngati Āhiwaru, the inhabitants of the area in 1853² (when Maori were ordered to leave), were unfairly treated by the Crown, those matters cannot be addressed through RMA processes. We agree with that, and note that in the present case a remedy for historical grievances is not provided by our jurisdiction in terms of the HASHAA either.

3.0 THE PROPOSED VARIATION

3.1 Because of its location and integration with the surrounding area, this SHA is part of the Mangere Gateway area and will be described as sub-precinct E in the PAUP rather than comprising a standalone precinct as other approved SHAs are. While the SHA was described as sub-precinct “D” in the notified materials and the Council’s reporting, in fact sub-precinct D in the Mangere Gateway already exists and includes land to the west of the SHA area at 545-561 Oruarangi Road which will retain its Future Urban zoning. Using the E descriptor for this area distinguishes it from the other components of the Mangere Gateway precinct overall.

3.2 The land is proposed to be rezoned as Mixed Housing Suburban in the PAUP although a number of specific provisions will apply. These will: restrict building heights to protect a viewshaft to the Pukeiti maunga, protect the Kintyre homestead and a notable tree, limit the density of development so that potential effects on the international airport are minimised, provide a buffer setback to the maunga and a buffer for the papakainga village, identify the location and activity status of a future cultural/information centre, and promote residential variety and affordability. Amendments to some of the development controls in the PAUP have been proposed along with specific interface and fencing controls.

3.3 The sub-precinct plan includes roading typologies and cycle-pedestrian connections as well as two 3000m² neighbourhood parks and gateway and threshold features. A specific road typology is proposed for the interface with the OSHR. The internal roads are based on a grid that responds to the existing Oruarangi and Ihumātao Quarry road alignments, with the latter being the main entry to the development and the OSHR although two local roads will also supply access from Oruarangi Road. The internal road network has been designed to encourage pedestrian access to the coast. The roading typologies proposed vary according to whether or not a road will

² Although our understanding is the inhabitants may have been Te Wāiohua instead or as well

also perform a stormwater and treatment function. This particularly applies to a central north-south boulevard to be developed on the stream alignment across the site and a 'swale street', both of which will have stormwater disposal functions. All other roads to be developed will include rain gardens and provide a more passive form of stormwater treatment. The intersection of the central boulevard with Ihumātao Quarry Road is anticipated to be given a form of threshold treatment by using items such as public art, street furniture, specimen planting and/or a contrasting road surface treatment.

- 3.4 The development site is comprised of approximately 32 hectares. The overall housing target is 480 dwellings which are proposed to be completed over four sub-stages over a period of around eight years, with the initial qualifying development supplying 93 residential lots and 6 superlots. A variety of sections, sizes and price points have been proposed to cater for a wide range of housing types. Mr Lotu-liga told the hearing that market feedback had indicated smaller sized sections are sought-after as they can be sold at a more affordable price level when compared with larger sections or lifestyle blocks.
- 3.5 An urban design statement prepared by Ms White and Mr McCarthy as part of the application advised that the residential blocks have been designed to respond to the natural topography and drainage patterns on the land. These are generally arranged in a north-west to south-east orientation to allow for solar gain and sun to private outdoor spaces for at least part of the day. The superlots included in the qualifying development application are expected to be used for more intensive development by way of duplexes or terrace houses and will be located along the central boulevard or swale street or adjacent to public open space. A portion of the SHA land is affected by a density restriction associated with the international airport and no higher density development can take place in that area.
- 3.6 The SHA will be well supplied with reserves as a neighbourhood reserve of 3000m² will be included in the initial stages of development while another will be created during subsequent development and the buffer area will also supply a significant amount of additional open space adjacent to the OSHR. Two pedestrian accessways will also provide for direct access from the development directly into a sizeable Council reserve on the Rennie block immediately to the south west. The interface with the reserve will be subject to a prescribed fencing typology and the existing Rennie homestead on that block will be retained as a visitor centre. Higher

density housing will be provided around each of the parks to allow for passive surveillance due to overlooking.

- 3.7 The three roads that will give access into the development from Oruarangi Road will be open-ended so that long distance views into the OSHR and maunga can be gained. A slip lane will be constructed alongside part of the Oruarangi Road frontage in order to retain the dry stonewalls that remain in that location. Generally the proposed footpaths will be 1.8 metres wide which meets Auckland Transport's standards. Oruarangi Road and Ihumātao Road will be constructed with wider shared path facilities (i.e, able to be shared by both pedestrians and cyclists) that will ultimately tie into the wider cycle networks. A vehicle access restriction ("VAR") will apply to the southern side of the 'swale street' to protect its stormwater function. VARs preclude reverse manoeuvring onto streets for the safety of pedestrians and cyclists and require either that access to the affected properties is from the rear by way of a slip lane or accessway, or sufficient room will be available on a site for turning so that all vehicle movements will be in a forward direction only.
- 3.7 Oruarangi and Ihumātao Roads are components of the Mangere Gateway Heritage Route which runs from the International Airport to the Mangere Mountain and designed to attract visitors and recreational users, whether travelling on foot or by car, bus or cycle. Buildings with frontage to the Heritage Route will be set back from the road reserve. A marker will be constructed on the Ihumātao Quarry Road section of this route to function as a threshold to connect with the OSHR. The national Te Araroa walkway will continue from Oruarangi Road eastwards toward the coast along Ihumātao Quarry Road.
- 3.8 The SHA area is a greenfields site that has been used for a range of farming purposes over many decades. Consequently there is presently little infrastructure servicing in the area. A comprehensive infrastructure servicing report was submitted with the plan variation request and addressed stormwater, wastewater, water supply and other services.
- 3.9 It is proposed to provide a fully reticulated stormwater network in the stage 1 and 2 areas along with a two stage stormwater channel in the northern part of the site to cater for the wider catchment. A new stormwater culvert has been designed to cater for a 1% AEP plus climate change and the reticulated system will cater for the 10% AEP with overland flowpaths for larger storm events.

- 3.10 As there is no wastewater infrastructure available a new reticulated system will be installed in the road reserve on both sides of all roads. The central boulevard in particular will form part of a green infrastructure corridor. A new wastewater pump station has been proposed in consultation with Watercare on land owned by Auckland International Business Park Limited east of the SHA with a rising main to be constructed to serve the SHA. We were advised that an approval from Watercare to use this pump station has been applied for.
- 3.11 A loop line extending from the existing line that services Oruarangi Village is proposed for the potable water supply. Power and telecommunications will be established by extending existing services in the areas.

4.0 NOTIFICATION AND SUBMISSIONS

- 4.1 The HASHAA does not provide for full public notification of applications for either plan variations or qualifying development proposals. Limited notification of proposals is required by each of sections 67 and 29. The plan variation and qualifying development applications were notified on this basis to the same persons and parties on 6 October 2015 with the submission period on each closing on 9 November.
- 4.2 The DPO made several attempts to notify a group of 12 owners who were recorded as owning a vacant Maori freehold site in Waipouri Road. The notification letters sent to these people were returned to the Council unopened and marked as “not known”. Their contact details could not be located after searching databases, online or through the White Pages and the Council’s rates records. An approach was then made to the Makaurau Marae to ascertain whether local people had any address for them but that also drew a blank. Eventually an urgent application was made to the Maori Land Court to appoint an agent on behalf of these owners with the Council agreeing to extend the timeframe for receipt of a submission from them should they wish to become involved. No submission was subsequently received.
- 4.3 At the close of the submission period, a total of 11 submissions were lodged with the Council in respect of the proposed variation with two supporting the application and 9 in opposition. There were 13 submissions lodged in respect of the qualifying development proposal, comprised of two in support, one that was neutral and 10 in opposition.

- 4.4 Following receipt of the submissions, reports on each of the applications were prepared on behalf of the Development Projects Office (“DPO”) at the Council with Ms Wimmer reporting on the proposed variation application and Ms Key addressing the subdivision proposal, with input from other specialists in both cases. We refer to these as “the Council’s report(s)”. Full copies of the submissions were included in the Council’s report.
- 4.5 Six submitters were represented jointly - namely Roger Gummer, Delwyne Roberts, Kathleen Waipouri, Maureen Waiwera Ewe, Liane and Marc Davis, and Maurice Wilson. Rather than repeating their names throughout the discussion we are referring to them as “the group of submitters”.

5.0 ISSUES RAISED BY THE SUBMISSIONS LODGED

- 5.1 Several submissions were concerned with the Special Housing legislation, its affordable housing requirements and public involvement in the SHA formulation processes. As noted by Ms Simons in her legal submissions those are political processes which are beyond the control of the Authority. We have no jurisdiction to comment on, let alone decide, the matters raised, including a number of matters addressed by Mr Gummer in his presentation to the hearing. We were made aware that a claim has been made to the Waitangi Tribunal by persons or parties who object to the SHA legislation process and the announcement of this land as a SHA. Again it would be inappropriate for this Authority to comment on that claim or any steps the Waitangi Tribunal might have taken in relation to it.
- 5.2 Impacts on property values, and potential rate increases, were also raised and are similarly inappropriate as a basis for decisions under the legislative framework that applies to the current applications. There is clear caselaw to the effect that allegations regarding property values do not relate to physical effects on the environment and should not be taken into account as a result. An example of this can be found in *Foot v Wellington City Council*, Environment Court decision W73/98 dated 2 September 1998. In any event, we record that there was no expert valuation evidence presented at, or provided for, the hearing that related to either this or to rates matters.
- 5.3 Other issues raised by the submissions included: the effect of increased traffic in the area, impacts on cultural and/or heritage values, that little or no consultation had taken place, and impacts on the international airport’s transport network and in terms

of potential for reverse sensitivity effects regarding aircraft noise. Where relevant the issues raised are addressed in section 8 of the decision.

- 5.4 The combined submissions of the Te Kawerau Iwi Tribal Authority and the Makaurau Marae Maori Trust supported both the plan variation and the qualifying development application and stated they represent the people who hold Mana Whenua of Ihumātao and who reside at Puketapapa Papakainga (Ihumātao village). There was also a submission in support of both applications lodged by Daniel Nahkle who is a director of several companies including that developing the business land at 533 and 556 Oruarangi Road. This confirmed that the parties he represented had agreed to stormwater and wastewater infrastructure for the development being installed for the qualifying development.
- 5.5 In its submission Auckland International Airport Limited requested that a proportion of the development contributions to be generated by the development be allocated to improving the local road network including roads which it owns around the airport. We have no jurisdiction to consider that request as this is a Local Government Act matter and therefore we have no legal basis on which to make the decision the company sought. It queried trip distribution assumptions made in the Integrated Transport Assessment prepared as part of the application and in particular what the airport company considered to be an over-estimation of the number of trips made to the Airport Oaks/Landing Area close to the airport. However the Council's traffic engineering consultant Ms Dowling considered the methodology applied to be generally appropriate and advised that while further detail had been provided it showed only minor differences in some movements. The overall performance of the road network will not be affected by the development in her view. A memorandum supplied by Auckland Transport as part of the Council's materials reflected that conclusion. It acknowledged that "this development would generate less traffic and therefore less congestion than other developments in the area".
- 5.6 It appeared from AIAL's submission that its reverse sensitivity concerns had been accommodated by Fletchers at the time the submission was written, and the relief sought related solely to its transport network issue.

6.0 ISSUES RAISED BY THE COUNCIL'S REPORTS

6.1 Ms White disagreed with several urban design recommendations made in the Council's reports on the proposed variation. In the order she addressed them these were:

- (a) that any housing development be excluded from a viewshaft to the Pukeiti Maunga. In her opinion allowing for single storey housing in this area would balance the intention to maintain a visual connection for residents of the village to the maunga against the need to utilise the site as efficiently as possible. Allowing some development in it would also result in a transition in building height from areas with two storeyed houses to the adjacent areas of open space. In her report and recommendations on the variation Ms Wimmer also disagreed with keeping this viewshaft completely clear as did the Council's landscape architect consultant Mr Pryor;
- (b) that additional space on the lots and road reserves should be provided in order to allow for large trees to screen the development and preserve the landscape values of the OSHR. This arose from a review of the open space proposals in the variation by Mr Barwell and Ms Tania Utley for the Council. They supported the significant areas of open space being offered as mitigation but had reservations whether sufficient space would be available for large trees. Ms White said views out of the OSHR will be diverse and incorporate the coastal environment, papakainga housing, the business/industrial development on Oruarangi Road and airport activities. Her opinion was the future residential development to be established on the site is not an inherently negative prospect which needs to be screened from view, and in any event tree plantings on individual lots and the road reserves would contribute to the amenity of the development sufficiently. There was no final recommendation on this aspect made in the Council's report for the hearing;
- (c) that the fencing alongside the Rennie reserve should be more visually permeable than proposed. This was opposed on the basis that the fence needed to balance a need for surveillance of the reserve and privacy for the properties established alongside it. Along with that Ms White pointed out that the reserve has frontage to roads on two sides which would supply a contribute to level of exposure and visibility and thus surveillance;
- (d) where future dwellings would interface with any open space they should be required to face that space with the main entranceway to the dwelling. This was

not supported by either Ms White or Ms Wimmer as the variation provisions proposed included specific interface treatments that accorded with the consultation discussions as well as the intended and differing functions of the various open spaces planned. With respect to the Maunga Buffer zone, the variation provisions anticipate that front doors of the adjacent houses will address the space across the maunga edge road which will define the majority of that particular space. In contrast those houses adjacent to the papakainga buffer zone are expected to present their backs to it as that area will have a different function, namely as a stormwater conveyance and treatment area as well as providing a degree of separation between the existing village and the new development;

- (e) that retaining walls within 3 metres of the boundary of any neighbouring lot should be restricted to 1.2m in height and any fencing on a retaining wall must also not exceed the same height. Ms White said it is unlikely that any high retaining walls will be required on this site as it is gently sloping, and if they are they will be provided in conjunction with houses in order to balance amenity considerations with land utilisation and cost. On behalf of the Council Ms Wimmer also did not support the urban designer's recommendation on the basis that the topography of the site is such that high retaining walls are unlikely to be required.

6.2 A recommendation that a shared path on Ihumātao Quarry Road be moved to the northern side of the road and also reduced to 3 metres was agreed with by the applicant because that it would provide for a more convenient crossing over Oruarangi Road for both pedestrians and cyclists.

7.0 STATUTORY REQUIREMENTS FOR THE PROPOSED VARIATION

7.1 Section 61 provides a framework for consideration of a plan variation in the context of the HASHAA. Under sub-section (4) these considerations, in a strict order of priority, are:

- (a) the purpose of the Housing Accords and Special Housing Areas Act;
- (b) Part 2 of the Resource Management Act ("RMA");

(c) the matters in section 74 (2)(a) of the RMA (namely: any proposed regional policy statement (“RPS”), any proposed regional plan with respect to any matter of national significance, any management plans and strategies prepared under other statutes, any relevant entry in the Heritage New Zealand register, and the extent to which the district plan needs to be consistent with plans or proposed plans of adjacent territorial authorities);

(d) other matters set out in sections 74 to 77D of the RMA (with some exceptions);

(e) any other relevant provision or relevant statute.

7.2 The purpose of the HAASHA is stated in section 4 to be to enhance housing affordability by facilitating an increase in land and housing supply in certain regions or districts, listed in Schedule 1, identified as having housing supply and affordability issues. That provision can be taken to have been satisfied by the fact that this SHA has been approved and the application for the variation has been made. The evidence satisfied us that the proposed zonings are appropriate for the location and will provide for a variety of housing forms including higher density development such as the terraced housing. Consequently it is not necessary for us to discuss section 4 further.

7.3 Part 2 of the RMA encompasses the purpose and principles of that statute in sections 5 to 8. Section 5 sets out the Act’s purpose namely sustainable management, as that expression is defined in section 5(2). Section 6 requires that all persons exercising functions and powers under the RMA in relation to managing the use, development and protection of natural and physical resources are to recognise and provide for seven matters of national importance which are listed. In this case the applicable matters of national importance are the protection of historic heritage from inappropriate subdivision, use and development; enhancement of the natural character of the stream on the site and its margins (section 6(a)); and enhancement of public access along the stream (section 6(d)).

7.4 We have found that requirement of the HAASHA is satisfied by the proposed variation (and the consent application) making express provision in the SHA area for protection of the two heritage homesteads and the Pohutukawa tree, and creating the reserve and respecting the OSHR just beyond the site.

- 7.5 In section 7 other matters are to be paid 'particular regard' and these include: the efficient use and development of natural and physical resources; maintenance and enhancement of amenity values; any finite characteristics of natural and physical resources; and the intrinsic values of ecosystems. As will be apparent further on in the decision on the variation, we have paid particular regard to those matters in reaching our decision.
- 7.6 Section 8 requires that the principles of the Treaty of Waitangi are to be taken into account. Iwi Management Plans ("IMPs") are a relevant document for the purposes of section 74 (2A (a)) of the RMA. The Executive Chairman of the Executive Chairman of the Te Kawerau Iwi Tribal Authority, Mr Taua, advised that there is currently no IMP although one is under preparation.
- 7.7 Cultural Impact Assessments ("CIA"s) prepared by Te Ākitai Waiohua and Te Kawerau a Maki were provided with the application materials. The Te Ākitai Waiohua assessment provided a summary of their genealogy and a timeline and history of their association with Tamaki Makaurau and the site in particular. This CIA recommended ongoing consultation and participation in the management of the cultural landscape, the development stages of the project and an on-going role in monitoring especially with respect to the accidental discovery of koiwi and other remains, design and water quality. The Te Kawerau a Maki CIA outlined the cultural history of the locality and their association with the land. The CIA lists the sites of significance to Te Kawerau a Maki in the locality and the importance of the cultural landscape to them. It supports the Te Aranga Maori Design Principles in the Auckland design manual and recommended that these be incorporated into the SHA and the qualifying development design. The CIA requested ongoing participation and consultation in the design, development and monitoring process. Overall, no issues were raised in either of the CIAs that would preclude consideration of the applications or result in a finding that they should be declined.
- 7.8 The Council's report informed us with respect to the Regional Policy Statement incorporated in the PAUP that quality urban growth is identified as a key regional outcome in Part 1, Chapter B sections 2.1 and 2.2. The Future Urban zone that now appears in the PAUP evolved from the decisions of the Environment Court in *Gavin Wallace Ltd & Ors v Auckland Council*. The Court held that a Future Development (now Future Urban) zoning was to be applied to the parcels of land concerned, including the Wallace land, subject to certain safeguards that align with urban design

principles. Those safeguards included a requirement to amend the zone rules in the District Plan to restrict activities which might compromise the features and values of significance in the area, including limiting earthworks, land cultivation and large buildings such as glasshouses. The proposed Oruarangi sub-precinct that has been sought by the variation proposal is consistent with those expectations.

- 7.9 For the avoidance of any doubt, under section 61(4) of the HASHAA the variation is not required to give effect to the operative Auckland Regional Policy Statement or to the operative regional plans to the extent that the proposed RPS and regional plans in the PAUP are more consistent with the purpose of the Act. We accept that the relevant provisions of the PAUP are more consistent and that the PAUP is the primary document to be considered. We record further that there was no challenge to this position. There is no power to amend the RPS in the PAUP as part of the current process.
- 7.10 Turning to district matters for the purpose of section 74 (2) of the RMA, the land forms an important part of the Council's strategy for the area and the development includes protections for the heritage area and route that are components of that.
- 7.11 Consideration of the operative District Plan (Manukau Section) before reaching our decision on the variation is technically required by section 74 of the RMA but that consideration is actually precluded by the HASHAA provisions.
- 7.12 Sections 74 to 77D of the RMA are effectively procedural provisions which set out various matters to which a local authority is to have regard whenever formulating and finalising the provisions of a district plan, including proposed changes to such a plan. We have borne those provisions in mind when considering the variation application and finalising the provisions to be included in the PAUP. The text to be inserted in the PAUP is attached at the end of this decision document as Attachment 1.

8.0 PRINCIPAL ISSUES IN CONTENTION AT THE HEARING

- 8.1 As summarised in the final comments provided by the HPO, in terms of the plan variation six key issues were raised:
- Archaeology – the three archaeologists (Dr Clough, Dr Campbell and Mr Veart) agreed on the hierarchy of archaeological significance of the site in comparison with the Otuaataua Stonefields and discussed the prospect of finding further

evidence of human habitation should the plan variation and qualifying development be approved;

- Cultural heritage – local tangata whenua residents discussed the cultural and spiritual value of Oruarangi, the urupa, the Otuaataua Historic Stonefields Reserve, awa (springs), and their use of the land for food gathering (watercress and kaimoana) and cultural practices;
- Whether the landscape effects of the proposal had been adequately assessed and the acceptable techniques to be applied to assess those values;
- Whether the proposal provided for a sufficient density of development;
- Various queries regarding the infrastructure arrangements including whether there would be any conflict between stormwater and wastewater discharges and protection for the coastal outfall;
- Minor modifications to the stormwater, affordability, road cross section, and sub-precinct provisions.

Heritage and Archaeological Effects

- 8.2 The applicant prepared a cultural heritage assessment of the site in terms of built heritage, archaeology and also commissioned two Cultural Impact Assessments which were prepared on behalf of Te Kawerau a Maki and Te Akitai Waiohau. Evidence was presented by the three expert archaeologists Dr Rod Clough (on behalf of Fletcher Residential Limited), Mr David Veart (on behalf of a group of submitters) and Dr Matthew Campbell (on behalf of the Council). They agreed that the SHA development will significantly alter the nature of the property and its heritage landscape, and that it will have more than minor effects on historic heritage. The issues directly in contention were the extent of archaeology and heritage values that would remain on the site, the significance of the heritage values, and whether the adverse effects could be mitigated. They further agreed that Fletchers should seek an authority from Heritage NZ prior to undertaking any earthworks (which we were advised is its intention).
- 8.3 The archaeologists all agreed that the SHA site has different values to the OSHR. It was described by one as being analogous to comparing a Ferrari (the OSHR) with a bicycle (the SHA site).

- 8.4 Dr Clough's opinion was there will be some archaeology present on the land but it would be neither extensive nor significant and that any effects could be mitigated. Mr Veart considered the site to be of national, and possibly international, significance and as a result it should be left untouched for the purposes of further research. Dr Campbell considered that there is a strong likelihood that further archaeological sites will be uncovered through the earthworks stage and his view was the applicant should reduce the scope of the overall earthworks.
- 8.5 Mr Veart addressed values of the SHA site that distinguish it from the OSHR. He described SHA62 as the only stone free volcanic landscape remaining in Auckland, lying adjacent to the significant remaining example of an archaeologically modified stonefield lava flow (i.e., the historic reserve). He said "*... while we are beginning to understand how the rocky stonefields were used prehistorically very little study has been done on how this activity related to the adjacent stone free areas. Ihumatao is one of the first places cleared for gardening in New Zealand. This means the record of the actions of the first people on the last piece of the planet to be settled is held in this site*".
- 8.6 He also described creation of the OSHR and how "*it was assumed that at some later date the area which is now subject to SHA 62 would be incorporated into the reserve both as an integral part of the landscape and also to act as a buffer to the less archaeologically robust stonefield area. This never occurred*".
- 8.7 Dr Clough's said the project would actually protect a number of significant features and also add a valuable buffer to the OSHR that will assist in protecting its values over the long term. He advised that the adverse effects on historic heritage would require mitigation through a range of measures which include development of a reserve management plan, establishing a protective covenant for Kintyre, repair and restoration of stone walls where feasible, archaeological investigation and recording to recover information relating to the history of the area, and providing public amenities in the reserve area, including information on the history of occupation (including the association of the Wallace family with this land).
- 8.8 In essence then all three archaeologists agreed that there will be archaeology present on the site and that the effects of the development will be more than minor, but disagreed on its potential extent and its value.
- 8.9 The statements made by or on behalf of submitters focused primarily on cultural

heritage and archaeology. Several mentions were made of grievances over the past history of the area, with Ms Roberts describing the application site as being “steeped in conflict, confiscation and compensation” and Ms Newton’s submission being that promises had been made to preserve the area as open space. That was the intent of the notice of requirement issued by the Manukau City Council in 2007 which was the subject of one of the appeals considered in the *Wallace* case. The outcome there was Environment Court cancelling the requirement and ordering that the land be rezoned as Future Urban instead.

- 8.10 Mr Te Warena Taua, who is Chairman of the local Makaurau Marae Trust and a kaumatua of Te Kawerau ā Maki as well as Executive Chairman of the Te Kawerau Iwi Tribal Authority, spoke of the patterns of settlement in the area and the history of the land and its settlement. He said in this area there are “*places of extreme importance to us ... we know where the taonga are*” and later that “*no one has fought the Crown or the Government as much as I have*”.
- 8.11 He described the confiscations and military activity in and around Ihumātao during the 19th century including how Maori had been ordered to leave the area when the English soldiers arrived in 1863. Subsequent to this, when Maori people finally began returning, there was nowhere for them to live. At the time the Crown grant was made to Mr Wallace some nearby land had been ‘gifted’ to Iwi, although they did not gain title to it until 1911. Land was taken back from the Wallace family and divided between 14 kaumatua of several related Iwi groups. He said more and more houses were built and gradually more of his people started to return. Mr Taua said Ihumātao has changed immensely since that time. There are now 67 houses in the village, around two-thirds of which are owned by those who live there. The population is now around 210 people.
- 8.12 Mr Taua referred to the Environment Court cases which had considered the extent of the metropolitan urban limit and an attempt to re-zone 545-561 Oruarangi Road as Public Open Space. Mr Taua was involved in these cases and clearly disappointed by the outcome. He explained that since that time his focus had shifted from opposing growth to negotiating with Fletchers to achieve better outcomes for tangata whenua through the provision of affordable housing for those who return to the area, creating an ongoing relationship with the developer, and ensuring that the future housing would be set back from the papakainga and urupa. He said in the course of these discussions “*Fletchers came to realise how much this land means to us. The proposal was 520 houses which came down to 480 ... then it agreed to move a fence*

back by 80 metres which is a sizeable area and that land will come back to us in fee simple. This is the first time since the confiscations that land, including the toe of the maunga, will come back to us”.

- 8.13 In the course of the discussions that were held with Fletchers a number of changes, described by Mr Taua as ‘big changes which had impacted on the balance of the development’, had been made to the original concept in order to accommodate Iwi concerns. As a result a strong relationship had been formed and had influenced what is now being proposed for the development. He pointed out that the design parameters for the setbacks, a reduction in the overall yield, and lower building heights had been negotiated with Fletchers by Iwi and not by the Council. A garden area was now incorporated in the development proposal and will be used for cultural harvesting of species used for medicines and for growing flax. This area would effectively provide an extension to the existing village and represent more land coming back to the hapu.
- 8.14 He said “*there are at least 200 families who could come back and live in the village. We’ve had children who could not be brought up here because there’s no room. That’s nothing to do with Fletchers but there are many who want to come back and they have a right to do so. It’s up to us. If our people are able to return to these houses then we have done something*”. He added that those who were opposed to the development had not taken any account of the people who are not there and who want to return. He acknowledged there could be no guarantee that descendants of the original settlers will actually own all of the new houses although that aspect was also being negotiated.
- 8.15 Local Iwi who live in the Makaurau village described the lava caves (urupa) and the way in which their lives are connected to the land and its resources for food gathering and spiritual purposes. They explained that the ‘mauri’ or life-force of the resource had been diminished through previous dumping of carcasses, cow hides, offal and other waste into the lava caves, and dye spills into the Oruarangi Creek. Mrs Betty King described playing with others in the caves during her childhood, despite the local children all having been warned not to do so. She said much of the history of the lava caves has never been disclosed because it is tapu tapu to go there although to this she added “*the kids seem to anyway*”. She told us the local farms such as that of the Wallace family were the means for people in the village obtaining fern root, watercress and mushrooms (along with an occasional illicit turnip).

- 8.16 It became apparent from her description of these activities, combined with her life-long knowledge of the site, that the full extent of the cave formations under the SHA land was not known. When the hearing concluded the Council's staff requested the applicant's archaeologist to survey the extent of the lava caves through a non-intrusive method (ground penetrating radar) in order to assist the Authority in considering whether the area of land proposed to be set aside for Open Space Conservation purposes would protect that cultural resource sufficiently. The survey was required to identify any underground voids or anomalies and the extent of the survey was determined by the topography of the land surrounding the known lava cave burial sites.
- 8.17 Three voids were identified during the subsequent survey. The applicant's consultant archaeologist, Dr Clough, identified the following:
- The largest area ("void 1"), adjacent to Pukeiti, corresponded to an existing surface breach which is covered with metal grates. Void 1 is a large lava cave that has been known to be used as a burial cave (urupā);
 - Two smaller voids (voids 2 and 3) were located to the south east and did not have any surface openings and therefore would not have been used for burials;
 - There are several other 'open' lava tubes located across the Otuaataua Stonefields Historic Reserve which have also been used for burials; and
 - The overlay demonstrated that the full extent of the known burial caves and the two smaller lava voids are located within the proposed reserve area and will not be affected by the development. The applicant's report and a response from the Council's archaeologist confirmed that the caves are within the proposed Open Space Conservation zone and will therefore not be affected by the development works.
- 8.18 We have concluded that the heritage, cultural and archaeological effects of the development will be more than minor. In this context however it must also be borne in mind that in respect of this particular land the Environment Court has already decided that appropriate development can occur on the site and that it should not be retained as a wholly open space area. While there may have been previous intentions by various agencies to purchase all or some of the land as reserve, the fact is it has never happened and the advice we received at the end of the hearing was the Auckland Council has no intention to acquire it.

- 8.19 We are satisfied that the proposal will set back any development from sites of cultural, heritage and archaeological significance, and that the design has included a reduction in the overall yield, and a buffer and building height restriction between the existing papakainga and the development. The ground penetrating radar survey has confirmed that the full extent of the known burial caves and the two smaller lava voids are located within the proposed reserve area and will not be affected by the development.
- 8.20 In accordance with section 44(a) of the Heritage New Zealand Pouhere Taonga Act 2014, an authority from Heritage New Zealand will be needed prior to any earthworks activity taking place to modify or destroy recorded and unrecorded archaeological features within the specified development area. Known archaeological and heritage sites have been identified but it nevertheless remains unknown what else may lie under the land and, as noted by Dr Campbell, there is strong possibility that heritage values and archaeology might be discovered through the earthworks and construction phases of the project.
- 8.21 In the applicant's Reply to the evidence Ms Simons pointed out that an authority to modify under section 44 of the Heritage New Zealand Pouhere Taonga Act must take account of effects on an archaeological site and not a wider cultural landscape. We note also that the Environment Court in *Greymouth Petroleum Ltd v Heritage New Zealand*, Decision No 2016 NZEnc 11 considered that "... the sections of the Act under consideration are directed at the protection of archaeological sites themselves and not wider areas beyond them".

Visual and Landscape Effects

- 8.22 Mr Scott gave expert landscape and visual effects evidence on behalf of the applicant. He has more than 40 years experience in this profession and appears as an expert witness in the Environment Court several times a year and was also involved in the Environment Court appeals regarding the Wallace and other lands in this area. His evidence for the current hearing covered the landscape context, the background, the site and the proposal. He advised that when the development is completed 63% of the site will remain as some form of open space. Initially, however, despite what he described as the "relatively ordinary" landscape values and limited visual catchment landscape, visual effects of some significance will be generated but "*these however are inevitable as the process of urban development succeeds predominantly rural areas*". In the longer term his opinion was the proposal

is consistent with the regional growth strategies for the area and will result in a quality urban development with a range of positive landscape and environmental outcomes.

- 8.23 He spent some time covering the volcanic origins and features of the area. In summary his evidence was the area has an unique landscape with a large proportion relating to its volcanic origins and the most significant heritage and archaeological feature being the OSHR. In the past both pastoral and horticultural activities have predominated with quarrying having had a strong influence on the character of the area. In his opinion a lack of recent economic and productive viability means this area is now in transition. Fertiliser application and associated water quality matters in the Mangere-Puhinui districts are closely monitored and the soil structure is exhibiting productive return limitations. He said that apart from the Renton Road horticultural area the majority of the land parcels do not lend themselves to viable full-time income holdings generated from pastoral or horticultural activities with grazing now being undertaken predominantly as a land management and maintenance regime. He described the landscape character of the Ihumātao Peninsula as now *“inherently residing within a construct of landscape change”*.
- 8.24 Mr Scott said the general area has been undergoing significant land use change for some time. The presence of the international airport has exerted a significant impact on the local and extended contextual landscape character. When questioned he explained this further saying the airport involves significant infrastructure with its industrial and commercial elements busily expanding. He said this, along with the developing business centre across Oruarangi Road, underlies the reality of this area and that the second runway will have a significant effect quite locally. His opinion was these long term proposals now secure a certain future for this landscape.
- 8.25 At a pragmatic level Mr Scott’s evidence was there are localised areas of Ihumātao which retain a relatively high level of rural amenity. However in his opinion *“apart from sections of the coastline and Manukau Harbour, the landscape character of the wider area can be considered to be relatively ordinary. It is a highly modified rural environment, and while the remaining pastoral areas are well kept, little indigenous vegetation remains ... the landscape value at scale is more steeped in the obvious heritage, spiritual, physical and visual significance of the interactive elements of the Otataua Stonefields, the quarried cones, Puketepa as an area and the Manukau Harbour together with other landscape features that are subtle in expression and remain of localised value.*

- 8.26 Mr Treadwell, who lectures on architectural technology and design at Auckland University, spoke on behalf of the combined group of submitters and queried the methodology used by Mr Scott to assess the visual impact of the proposal. He argued that the visual assessment had ‘significantly misrepresented and understated’ the visual impact of the proposed development in relation to the OSHR. For instance, he considered information about the height and number of storeys intended for the higher density areas of the development had been deliberately withheld “*very possibly because its full visual impact will be so extreme*”.
- 8.27 The Council’s final comments noted that in the course of delivering his statement Mr Treadwell had not referred to the maximum height controls in the Precinct provisions nor to the height restriction provisions. The Council’s consultant landscape architect, Mr Pryor, had reviewed Mr Treadwell’s material and did not agree with the conclusions reached. Mr Pryor considered that the landscape and visual effects of the proposal had been adequately assessed and, further, that an acceptable methodology had been applied to assess those values in general accordance with the New Zealand Institute of Landscape Architect’s Best Practice Note (*Landscape Assessment and Sustainable Management 10.1, 2010*).
- 8.28 With respect to urban design, Ms White’s evidence was that had been an integral part of preparing both the proposed variation and the qualifying development. She said this SHA is unusual in respect of the extent of the detail that has been provided, including down to fence styles. She said the site location, single ownership, and development context had allowed for a high level of certainty and design detail to be incorporated into the Sub-Precinct plan map and associated provisions which would drive the qualifying development application and subsequent development. Her evidence was the design-led process had been informed by consultation with a wide range of technical experts and notably with Iwi stakeholders who had identified a number of specific constraints and opportunities which, together with the more general Te Aranga Maori Design values, principles and outcomes, had informed or enabled development of a statutory planning framework which responds to the site context and provides for residential development in line with the intentions of the HASHAA.
- 8.29 In the applicant’s Reply to the evidence Ms Simons pointed out that the proposed urban design measures and the landscape design and visual assessment are integrated concepts and therefore a selective critique of only limited aspects was a limited approach. She said further that it was essential to understand the purpose of

photomontages prepared for a hearing which is another matter Mr Treadwell had critiqued. In this case, a photomontage that was prepared by Mr Scott had been specifically developed to assist in assessing the effect of single and double storey buildings on the visibility of the Pukeiti maunga (which is one of the urban design issues in the Council's report alluded to earlier in the decision). The photograph had concerned been taken from the perspective of the southern corner of the papakainga on Oruarangi Road as that portion of the village is likely to experience the most significant visual effects of the proposed development. Consideration of the photomontage once it was prepared resulted in reducing the permitted height of buildings that may be developed in this viewshaft to a single storey.

- 8.30 Ms Simons submitted that a 'photorealistic' montage - complete with full colouration, building materials and landscaping, as was urged by Mr Treadwell - would not have been an honest representation because the detailed design of the houses to be developed has yet to be undertaken and when that does occur it will be undertaken in consultation with Iwi. She said if that kind of representation had appeared in the photomontage at this stage, it would have set up unrealistic expectations and would also have undermined confidence in the ongoing Iwi consultation process.
- 8.31 While the applicant was questioned regarding whether it was appropriate to include any housing in this viewshaft, we were satisfied by the response that doing so will balance the need for affordable housing, being the dominant purpose of the HASHAA, with maintaining a visual connection across to the Pukeiti maunga for residents of the papakainga. While this issue reflects Part 2 RMA matters, sections 34 and 61 the HASHAA require the Authority to give greater weight to its purpose, namely to facilitate an increase in land and housing supply. Ms Simons said allowing housing in the viewshaft would also give effect to the Environment Court's decision in the *Wallace* case where it considered that selective development would be required for some parts of the land likely to be developed for urban activities with other parts being managed as open space and used for lower intensity development. She reminded us that the Court in that case had found that appropriate development, rather than a development exclusion approach, would properly balance all the Part 2 factors.
- 8.32 Mr Treadwell was also critical that the Te Aranga Design principles embodied in the PAUP appeared not to have been taken into account in the applicant's visual materials, or at least had been applied only marginally. Dr Mills also commented on visual and landscape matters including application of the Te Aranga principles,

saying three dimensional representations should have been required. As she is an environmental and marine scientist who was called by the combined group of submitters as an expert witness and has no relevant qualifications in this field, we can place very little weight on statements she made in this regard. Dr Mills had also not been supplied with any materials subsequent to those which were available up to June 2015 which limited the matters she was able to address. Omissions from her briefing included the Council's reports and recommendations and the pre-circulated evidence for the hearing which included numerous visual representations.

- 8.33 The applicant's response to these criticisms was reflecting the Te Aranga principles had already been considered as part of the 'big picture' analysis and this would continue to occur. Examples of their application were the substantial buffer zones showing on the proposed sub-precinct plan along with protection of the viewshaft to the maunga. Application of the Te Aranga design approach had also been illustrated on the urban design concept produced by Ms White and included with the application materials (for instance at pages 19, 41-43) and was also addressed at length in her evidence.
- 8.34 Comments were also made by Mr Treadwell in respect of the landscaping proposed for the site and by Mr Gravis in terms of visual effects. As they were being offered as expert witnesses and claimed no professional qualifications or experience in the relevant fields, we place no weight on their statements made or opinions given in this regard. (This was confirmed in Mr Treadwell's case by his advice that he had contacted qualified landscape architects for advice when preparing his statement. Refer also to section 25 of the Evidence Act 2006, and to the *Code of Conduct for Expert Witnesses*, contained in the Environment Court's Consolidated Practice Note 2014.)
- 8.35 Having considered the evidence for all parties, our finding is that the landscape and visual effects of the development that will follow the variation will be appropriately avoided, remedied or mitigated. We appreciate that the urbanisation process will result in a significant change to the landscape and that this will have an adverse effect on existing landscape and visual values. That was acknowledged by the applicant, and the evidence of Mr Scott in particular. However, change to the landscape and visual environment is an inevitable consequence of the process of urban development which has been enabled through the Environment Court's decision to rezone the land Future Urban and the HASHAA process having identified it as an SHA. Notwithstanding this, we find that the applicant has recognised the

special cultural, heritage and landscape characteristics of the site and its adjoining catchment and adequately provided for them within the visual and landscape context of the SHA. This includes creating buffer areas for the OSHR and existing papakainga areas, provision of neighbourhood parks, commitment to the Te Aranga Maori Design principles, re-use and retention of existing dry stone walls as a heritage artefact, and sensitive/low impact stormwater design. With these components being incorporated as an integral part of the proposed variation the adverse effects on visual and landscape values will be appropriately remedied or mitigated.

Ecology

- 8.36 Ecological evidence was presented on behalf of the applicant by Dr Garry Bramley (terrestrial ecology), Mr Richard Montgomerie (freshwater ecology) and Dr Shane Kelly (coastal ecology). The terrestrial ecological values were described by Dr Bramley as limited with the site being primarily pasture with groupings of mature trees in association with house sites and farm buildings, fencelines and road reserves. The rock walls are a refuge for native lizards.
- 8.37 There are no permanent or intermittent streams on the site. The only watercourse present is a 462 metre long overland flow path/ephemeral watercourse that drains through a shallow depression in the centre of the site and holds water during wet weather in winter. The proposed papakainga buffer zone is to be a flood attenuation and stormwater treatment area which will include a network of swales, a two-stage channel and an ephemeral wetland. As described by Mr Montgomerie this buffer zone provides an opportunity to improve the ecological values in the area through creation of ephemeral aquatic habitat.
- 8.38 Dr Michelle Mills addressed ecological effects for the group of submitters. She raised concerns that no detailed flora and fauna surveys had been undertaken and was concerned about the extent to which the recommendations in the lizard reports had been carried through to the site management plans. She was also concerned about the levels of contaminants (heavy metals) likely to be in stormwater discharged into the Oruarangi Creek and considered further that there had been no assessment of impacts on marine ecology impacts associated with the proposed coastal stormwater discharge outlet. Her evidence raised a number of questions however when questioned by the Commissioners during the hearing Dr Mills confirmed that she had not read all of the technical reports included in the AEE for the project.

- 8.39 The proposed stormwater outfall will discharge into the Waitomokia tributary of Oruarangi Creek. In his evidence Dr Kelly described how the stormwater outfall and associated flow dissipater will be designed to prevent scour from occurring so any ecological effects that do occur should be localised and minor. He concluded that overall the outfall may lead to mobilisation of a limited amount of sediment and thus associated contaminants but given the small quantities involved, the ecological effects of this are likely to be minor.
- 8.40 In a statement of rebuttal evidence Dr Bramley provided a response to Dr Mills' evidence and concluded that in view of the nature and history of the site, the terrestrial ecological surveys which had been undertaken were appropriate and sufficiently thorough. These surveys had included both a literature review and a site visit, and more detailed lizard trapping and observational surveys were also undertaken. Dr Bramley did not consider that nearby coastal birds would be materially affected by the proposed development. He drew attention to a proposed requirement in the provisions to apply to the SHA that will require pest control in the lizard habitats being proposed.
- 8.41 We have been satisfied that the ecological surveys and reports that were undertaken as part of the AEE by Dr Bramley, Mr Montgomerie and Dr Kelly were thorough. After considering the evidence for all parties we have concluded that any ecological effects of the project will be appropriately avoided, remedied and mitigated, and that the ecological effects of the proposed development are likely to be minor.

Density of Development

- 8.42 The proposed variation seeks to enable residential development by applying a Mixed Housing Suburban zone to the development areas in the SHA. This zone provides for a density of one dwelling per 400m² and an ability to provide terraced housing subject to consent and the minimum site area being proposed. The Sub-Precinct E plan will articulate the roading layout, building typologies and open space areas as well as enabling a restaurant/café and community facilities to be established at Kintyre House. With regard to density, the Sub-Precinct plan will impose no density limits where four or more dwellings are proposed (subject to assessment criteria) while applying a strict one dwelling per 400m² limit on the part of the site that is covered by the PAUP Aircraft Noise Overlay and a single storey limitation on dwellings in proximity to the Pukeiti Maunga as well as those in the viewshaft.

- 8.43 When addressing density Mr Corbett did not believe that the proposal would provide an efficient use of land when it is compared with other SHAs. He said that 480 dwellings on 32 hectares of land at Oruarangi equated to a density of 15 houses per hectare, while SHA59 at Walmsley Road in Mangere will yield 1500 dwellings from the same land area and have a density of 100 houses per hectare, and SHA 93 at Kirkbride Road will yield 53 from 1.7 hectares, being a density of 31. A number of other examples from throughout Auckland were provided in his statement. His view based on the examples provided was the densities being proposed at Oruarangi were too low. He construed the lower density proposed for Oruarangi as a marketing strategy designed to pitch the houses to the high price/elite end of the market. However Mr Corbett's preference was for this site to be purchased for reserve purposes, with no development to take place on it at all as "losing the land to housing had never been conceived of as possible". Mr Farrell had the same view. Mr Gravis spoke on behalf of a group of submitters (described by Mr Farrell as "the SOUL cousins") and viewed the proposed densities as being too high.
- 8.44 Mr Gummer said the HASHAA did not provide for the required sizes for dwellings to meet its affordability criteria: it simply sets a price and therefore the "*obvious and easy way to achieve the set price is to make smaller dwellings*". The plan provisions set controls for the size (and amenity) of residences which may be built, anywhere, and accordingly we find that argument lacks a credible basis. Both the PAUP and the District Plan also define "household" which was a further matter of concern for this submitter. Mr Gummer considered it possible when houses are constructed during the subsequent development stages for the developer to use the RMA in order to circumvent the affordability criteria of the HASHAA. In fact that will not be possible because the affordability requirements are embedded in the variation text (including that text as notified) and those have been designed to continue long after the HASHAA has ceased to have any legal effect. The Order in Council authorising the Oruarangi SHA also dictates the number of affordable homes that must be provided in the development by stating a minimum percentage and the proposed development complies with that requirement.
- 8.45 The Council's final comments pointed out that each SHA area is subject to the Order in Council which sets a maximum height for that area, in this case six storeys. The Council's hearing report outlined the design parameters that had informed the applicant's proposal and the proposed sub-precinct provisions. It confirmed that the Council does not intend to purchase the land for reserve purposes and also recorded

its view that the proposal will achieve a suitable density that satisfies the purpose of the HASHAA and respects the surrounding environment.

- 8.46 It was apparent to those reporting for the Council that Mr Corbett's density calculations had been based on the entire site without taking into account any areas to be set aside for stormwater, roads, reserves, and the buffer to the west.

Infrastructure

- 8.47 We are required by section 34 of the HASHAA to be satisfied that there will be sufficient infrastructure to service the proposed development. Mr Lotu-liga, who is General Manager of Fletcher Residential Limited, advised that appropriate sign-offs had been obtained from all infrastructure providers including Watercare Services Ltd and Auckland Transport.
- 8.48 Mr Gummer claimed in his statement that the Oruarangi SHA will rely on infrastructure in the wider area that is "cobbled together from what is readily achieved". However it was apparent from the content of emails attached to Mr Gummer's statement that stormwater and wastewater works are already occurring in the immediate area as part of development of the Mangere Gateway Business zone land.
- 8.49 The applicant's materials detailed the measures that will be taken to ensure that appropriate infrastructure will be in place to service the SHA when it is developed and these have been described earlier. Dr Michelle Mills is qualified to comment on these measures. However her evidence was essentially a scoping study and while it questioned matters such as whether a stormwater management plan had been prepared (although she did address the detail of the draft SMP later in her evidence), whether erosion and sediment control measures had been identified around the point of the coastal stormwater discharge outlet, whether effects on the Oruarangi Creek of stormwater discharges had been assessed, and what the proposed wastewater reticulation is. These were all described in the applicant's evidence and the Council's reports and are covered by the notified sub-precinct provisions and/or the conditions being imposed on the qualifying development consent.
- 8.50 The proposed variation allows a variety of residential dwelling typologies and will enable café/restaurant and community activities at Kintyre House. However, there appeared to be lack of other community infrastructure to support the proposed residential development. In response to questions from the Authority, Mr McCarthy

confirmed that the business zoning that has enabled the business subdivision and development on the opposite side of Oruarangi Road recognises convenience shops, food outlets and other small-scale retailing that would support the residential development.

- 8.51 With respect to public transport, the applicant's traffic engineering consultant Mr Mitchell confirmed there is no bus route that currently services the area and said that none was currently planned by Auckland Transport ("AT"). However, he added that bus stops were able to be formed on Oruarangi Road near the entrance to the site should these services ever be introduced. Unfortunately, no one from AT was present at the hearing to advise whether or when regular bus services would be introduced to the locality. However its memorandum of December 2015, which was part of the Council's materials, suggests the geometry of the local roads at present may be the cause of the absence of any public bus service so far. It continued by advising that provided that there is a sufficiently wide kerb-to-kerb distance at the intersection of Ihumātao Quarry and Oruarangi Roads, and no pedestrian safety issues would be created, then a bus route can be considered. AT advised that the qualifying development proposal will provide sufficient road reserve to allow for it.
- 8.52 When questioned local residents lamented the lack of public transport servicing this area, save for a school bus service provided by the local primary school twice a day during term times. From this evidence, a frequent and reliable bus service is clearly something that the residents are keen to have. While we are satisfied that regular bus services could be introduced and they could ultimately provide an integrated service linking the proposed residential development, the village, the new business development on Oruarangi Road, and the International Airport and its supporting business areas, we were disappointed that this has not been anticipated or planned in an integrated manner. However, despite the lack of planning in this regard, we accept that in the meantime such services are both feasible and likely.
- 8.53 As stated earlier, we have been satisfied with regard to the stormwater, wastewater and water supply infrastructure to be provided for to cater for the expected needs of the subdivision and development and that the operation of this infrastructure will result in acceptable effects on the receiving environment, including the sensitive nature of the Coastal Marine Area nearby.

Cluster of Affordable Houses

- 8.54 Between the applicant and the Council there was only one variation provision that remained in dispute by the time the application was set down for hearing. This related to the recommended rule 4.13 which at that time required that no more than six affordable dwellings or sites were to be provided in a single cluster. Fletchers requested that the figure be increased to nine dwellings so that terraced housing could be developed as that typology would provide an economic option for affordable housing.
- 8.55 This issue had been discussed between the applicant and the Council before the hearing commenced. The outcome of those discussions was agreement that a cluster of nine dwellings could be provided on this land. The reason for that, with which we agree, was the measure would allow for terrace housing and duplexes to be constructed economically. We find that to be consistent with the purpose of the HASHAA and the approved variation reflects the agreed outcome.

9.0 PURPOSE OF THE HASHAA AND PART 2 OF THE RESOURCE MANAGEMENT ACT

- 9.1 We have concluded that the purpose of the HASHAA is satisfied by the variation as modified in that a supply of affordable housing, which will be serviced by adequate and appropriate infrastructure, will be facilitated by the proposed development of the Oruarangi sub-precinct. The affordability provisions of the HASHAA will be implemented through the variation provisions and as a result the benefits of affordable housing will apply into the future.
- 9.2 We have taken account of Part 2 of the RMA in the course of reaching our decision. Overall we have found that the variation, as modified, meets the purpose of the RMA in section 5 as well as the matters to which regard must be paid, or may be paid, in sections 6 to 8 of the Act.
- 9.3 The proposed Oruarangi sub-precinct development will provide for the sustainable use of the land concerned and at the same time enable an environmental benefit in terms of the built in protections for the archaeological and heritage items on the land. Along with those, the heritage houses and their curtilage will be protected and a notable tree will be scheduled for protection. Open space areas have been planned as an integral part of the development and will benefit the health and wellbeing of the new community. Walking, cycling and recreation are promoted by the provisions and public access to the coast is provided for. The views of tangata whenua have been

incorporated, particularly in the project design and the stormwater management and water design provisions (but not limited to those).

- 9.4 We have borne in mind the Environment Court's statement in the *Wallace* decision that "*the strong directions contained in section 6 relating to Maori and historic heritage are not a total veto on development. They are directions to decision makers to recognise and provide for protection from inappropriate development*". For the reasons just given the Authority has concluded that the development anticipated by plan variation 9 is appropriate. We have been satisfied that the special characteristics of this area will be maintained in that the PAUP provisions for the Oruarangi Road sub-precinct do not provide for tall buildings that would otherwise intrude on views of the maunga or the stonefields; they will maintain public access to the coast, the stonefields area and the OSHR; they will require an appropriate buffer area between the development and the OSHR along with other heritage protection measures, and will maintain and enhance linkages with, and for the customs of, the adjacent papakainga and the Makaurau Marae.

10.0 DECISION ON THE VARIATION APPLICATION

- 10.1 The application to vary the Proposed Auckland Unitary Plan by Fletcher Residential Ltd for the Oruarangi SHA made under section 61 of the Housing Accords and Special Housing Areas Act 2013 is **ACCEPTED WITH MODIFICATIONS** pursuant to section 71. The following Plan provisions shall be deemed operative on the date of public notice of this decision (section 73 HASHAA) for the land identified as follows:

545-561 Oruarangi Road, Mangere, legally described as Allotment 175 Parish of Manurewa and Allotment 176 Parish of Manurewa.

The modified variation text accompanies this decision as Attachment 1 (with modifications made since the variation was notified included in the text) and is not repeated here.

- 10.2 The submissions lodged on the variation are accepted, rejected or accepted in part as indicated throughout the decision text.
- 10.3 The reasons for this decision are:
- (a) Overall the proposed plan variation supports an efficient use of land inside the Rural Urban Boundary and the structure planning undertaken for this Special

Housing Area indicates that if the site is re-zoned it will then enable an appropriate mix of housing, including affordable housing, to be developed. The proposed rezoning fulfils the purpose of HASHAA to enhance housing affordability by facilitating an increase in land and housing supply for the Auckland region;

- (b) The effects on cultural heritage (Part 2 of the RMA) will be more than minor but are outweighed by the purpose of HASHAA and the measures to be employed to recognise and provide for Iwi values including implementation of the Te Aranga Maori Design principles;
- (c) While there will be a noticeable change to the local landscape in visual terms this will be confined to the site and is in any event an inevitable consequence of the urbanisation process;
- (d) The proposal is generally consistent with the PAUP and the remaining Mangere Gateway Precinct provisions and reflects the outcomes envisaged by the Environment Court in its decision on the appeals in *Gavin Wallace Ltd & Ors v Auckland Council*;
- (e) The existing and future demands for stormwater, wastewater and water supply infrastructure will be met while ensuring that adverse effects on heritage values, cultural values, water quality and the sensitivities of the receiving environment are avoided, remedied or mitigated. Other services such as public transport and local convenience shopping can be provided to service the new residential community adequately;
- (f) Relevant section 74(2)(a) RMA matters have been taken into account in reaching this decision, as have relevant matters set out in sections 74 to 77D.

10.4 The variation incorporates only those matters considered necessary or appropriate to tailor solutions for this area such as objectives, policies, rules and assessment criteria, and changes to aid interpretation.

10.5 To the extent that a particular issue may not have been mentioned in the text above we expressly adopt the discussion set out in the Council's report.

10.6 The Auckland Council is directed to insert approved variation 9 into the Proposed Auckland Unitary Plan.

11.0 THE SUBDIVISION AND RESOURCE CONSENT APPLICATIONS

- 11.1 As set out earlier, the qualifying development proposal is to create 93 vacant residential lots, one lot to retain an historic homestead, six superlots to be developed at a later date with attached housing typologies, and a jointly owned access lot. Each of the 93 new lots will be more than 400m². Subdivision is also required to create a lot to be vested as a recreation reserve, two local purpose reserves to serve as accessways, roads to be vested in the Council, and two balance lots. Consents for bulk earthworks and reconstruction of stone walls on the Oruarangi Road frontage are also required.
- 11.2 Qualifying developments are defined in section 14 of the HASHAA and are required to be predominantly for residential purposes, meet the height restrictions in the relevant Order in Council, and contain a prescribed minimum number of dwellings, including not less than the specified percentage of affordable homes. We are satisfied that this proposal meets the section 14 requirements. The consent applications are to be considered as prescribed by section 24, with the purpose of the HASHAA being the primary factor followed by the provisions of the RMA and relevant proposed plan matters. The key urban design qualities in the New Zealand Urban Design Protocol published by the Ministry for the Environment and whether there will be sufficient supporting infrastructure are among the matters required to be taken into account when making the decision. In the present case the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (“NES: Soil”) is also relevant because of the historical agricultural activities undertaken on the land.
- 11.3 A separate Assessment of Environmental Effects (“AEE”) was prepared pursuant to section 27 of the HASHAA and submitted with the application for the qualifying development consents. This explains that the PAUP zoning the land as Future Urban prohibits any subdivision of this site and variation 9 was required in order to rezone it so the subdivision can occur. As we have approved the variation with modifications (as reflected in that decision and the attached PAUP variation text) we have jurisdiction to consider the subdivision application in terms of the new zoning now applied.
- 11.4 The qualifying development consents have been sought to enable a portion of the site to be developed in accordance with the sub-precinct plan approved as part of the plan variation. A total of 8.1598ha, being around 25% of the total sub-precinct area,

is to be developed by stages 1 and 2 of the subdivision. As a result of our decision on the plan variation provisions the proposal is to be considered as a restricted discretionary activity. What this activity classification means is the specific criteria in the PAUP, as modified or added to by the decision on Plan Variation 9, must be taken into account. The final decision is subject to meeting the purpose of the HASHAA and then purpose and principles of sustainable management set out in Part 2 of the RMA.

- 11.5 The bulk of the development site sits between Ihumātao Quarry Road and the Council reserve on the Rennie block although four lots are to be developed on the northern side of Ihumātao Quarry Road during stage 1 and development on the Ihumātao Quarry Road face will be only two lots deep at this stage. Two 240m² pedestrian access lots are among the lots to be created alongside the reserve boundary to the south. The subdivision will accommodate approximately 140 dwellings including 15 affordable homes which will be built on the proposed superlots and have frontage to the “swale street” (shown as “road 7” on the plans). The 3000m² neighbourhood park to be developed during stage 2 will be surrounded by more intensive development on the superlots and will be directly accessed from three of the internal roads.
- 11.6 Access into the subdivision will be gained from Oruarangi Road through either Ihumātao Quarry Road or by way of a local road to be formed as part of the project (shown as “road 1” on the application plans). Along with six other internal roads both will include shared pedestrian/cycle paths. A slip lane (joint access lot) will be created outside 10 lots that have frontage to Oruarangi Road in order to preserve the stone walls in that location. The Ihumātao Quarry Road intersection is to be given a gateway treatment. Kintyre House and a protected Pohutukawa sit on a separate section on its southern side. “Road 6” on the subdivision plan will eventually comprise a section of the central boulevard traversing the centre of the SHA area from north to south. The roads, including those parts that will connect to later development and the pedestrian access lots will all be vested in the Council when the subdivision is completed.

12.0 NOTIFICATION AND SUBMISSIONS ON THE SUBDIVISION AND CONSENT APPLICATIONS

- 12.1 As required by the HASHAA these applications were notified on a limited basis simultaneously with the plan variation proposal and notice was served on the same

parties as the variation application. A total of thirteen submissions was lodged, with two of these in support of the qualifying development application, 10 opposed to it and one submission was neutral.

- 12.2 The issues raised by many of the submissions harked back to whether the SHA area should be developed at all with claims made that the proposed subdivision was inappropriate for the area. It was also alleged that the site is isolated from facilities (and therefore could not be serviced) and that there would be negative effects for the papakainga village across the road. In respect of the site's physical isolation Mr McCarthy's planning evidence noted it is positioned close to motorway connections to the north and the south, is 15 kilometres from the Central Business District, 10 kilometres north-east of the Manukau City centre and around three kilometres from the airport and its retail and commercial businesses. The next section of the decision covers most of the issues raised, although many aspects have been discussed in the plan variation decision and are not necessarily repeated here.

13.0 PRINCIPAL ISSUES FOR THE SUBDIVISION AND CONSENT APPLICATIONS

Archaeological and heritage values

- 13.1 In common with the statements made in respect of the plan variation, those submitters who appeared at the hearing tended to focus on archaeological and heritage issues and their evidence was directed to the variation rather than the qualifying development.
- 13.2 The applicant's evidence satisfied us that the proposed development design has responded to directions from Te Kawerau as to the important parts of the site that are to be avoided and those to be protected. While most known features will be protected and avoided, there is always a risk that heritage values and archaeology might be discovered through the earthworks and construction phases of the project and an authority from Heritage New Zealand will be needed prior to any earthworks activity taking place.
- 13.3 Known archaeological and heritage sites have been identified and there were none on the qualifying development site. But it nevertheless remains unknown what else may lie under the land and, as noted by Dr Campbell, there is strong possibility that more items might be discovered during construction.

- 13.4 Ms Key was satisfied after hearing the submissions and evidence that the proposed methodology and approach which was outlined originally by Clough and Associates remained an appropriate development response subject to a precautionary approach being taken in regard to earthworks, as required by the conditions of consent that are being imposed.
- 13.5 The exact nature of the earthworks to be conducted around Kintyre House is unknown until detailed design has been completed and consequently a condition addressing this was agreed between the Council and the applicant and advised to the Authority in the final comments provided after the hearing finished. This envisages that detailed design of the proposed retaining, batters and landscaping adjacent to the 'extent of place' for Kintyre House will be submitted to the Development Projects Office for approval, and the design of these items is as far as possible to minimise the amount of retaining required and to provide screening with vegetation and/or stone walls.

Contamination

- 13.6 The qualifying development proposal is required to be considered under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health ("NES: Soil") because of its historical use for farming. It is possible that during site preparation works some contaminated soil may be disturbed. Sampling was undertaken by Soil & Rock Consultants with the results from some of the sampling sites showing levels above the permitted criteria in the PAUP.
- 13.7 Mr Cepe, an engineer with Soil & Rock Consultants, described the Environmental Site Assessment ("Preliminary Site Investigation") that was undertaken and said the potential areas of concern were inside the existing sheds, the former milking shed, the existing houses, and the northern site boundary. These were apprehended to have potential for chemical storage or use and/or the presence of asbestos. The targeted field sampling results were assessed against the Soil Acceptance Criteria for both the PAUP and the NES: Soil. Three samples had exceeded these criteria but this effect was limited to the area of existing sheds beside the western boundary where elevated levels of contaminants were found and asbestos containing materials fibres were found on the exterior cladding of these sheds. Mr Cepe said the remainder of the sampling returned results which were minor and below a level considered to be a human health or environmental concern. Furthermore because

the area is volcanic some heavy metals can naturally occur at higher concentrations because of that.

- 13.8 A Site Management Plan (“SMP”) was then prepared which outlines the plan of action required during the earthworks and soil disturbances. Because the earthworks involve cut to fill operations the presence of elevated levels of contaminants in the western shed area precludes those soils from being regarded as cleanfill and they will be transported off site. The affected areas will then be remediated before the general earthworks start. Soils in other parts of the site are generally suitable for use as backfill. Specific sections in the SMP address remediating the areas of concern, removing and disposing the impacted soils, tracking and validation through submission of a Site Validation Report (“SVR”).
- 13.9 An experienced and certified contractor will be employed to demolish and remove the exterior walls of the shed containing asbestos. That material will be disposed of at a site which has the relevant acceptance criteria.
- 13.10 Although none of the submissions on the qualifying development had raised potential contamination as an issue, Dr Mills queried related aspects such as how removal and disturbance of any contaminated soils would be managed, whether there was a specific management plan, what monitoring and reporting would be undertaken, and whether a site remediation plan had been prepared. These matters were all addressed in the Council’s report and also by the applicant’s pre-circulated evidence (being materials that were not provided to her prior to the hearing) and are covered by the Site Management Plan and SVR required by the conditions of consent.
- 13.11 Based on the advice received from Mr Cepe as well as the Council’s specialists, Mr Graham and Ms Tang, together with the requirements of the relevant conditions of consent, we are satisfied that the proposed mitigation and remediation measures will appropriately manage any effects of soil disturbance on the site.
- 13.12 Mr Soric’s geotechnical engineering evidence described the underlying geology of the site. This evidence demonstrated that any risk of liquefaction or settlement as a result of the development works is minor. An assessment of groundwater drawdown following the stormwater swale excavations had shown that any such effect that might occur would be negligible and no more than 320mm as a worst case scenario. Mr Soric said this is much less than the observed seasonal groundwater fluctuations that naturally occur on the land. This evidence was not challenged.

Infrastructure

- 13.13 Section 34(2) of the HASHAA requires that the Authority must be satisfied that sufficient and appropriate infrastructure will be provided for the proposed qualifying development. This was addressed in evidence given by each of Mr McCarthy and Mr Reddy. Mr Reddy's advice was all services infrastructure such as stormwater, wastewater, water supply and utilities services will be constructed as part of the civil construction process to provide the required level of service to each lot or dwelling.
- 13.14 There are currently no significant public stormwater assets adjacent to the site. An existing floodplain and overland flowpath to the north flow into the papakainga while a smaller flowpath discharges to a culvert that crosses Oruarangi Road and from there this currently discharges into the estuary nearby. Mr Reddy said the proposed underground drainage network will capture and convey stormwater flows from 10% Annual Exceedance Probability ("AEP") rainfall events to a conveyance channel adjacent to the northern boundary of the site. The drainage network will capture stormwater discharges from the road surfaces through raingardens and/or tree pits along with overflows from onsite devices.
- 13.15 Major flows above the 10% AEP events will be conveyed along the road corridor toward a large two stage channel in the northern part of the site. This will then divert flows to a new culvert crossing under Oruarangi Road and a new pipe to an outfall on the bank of the estuary that will include an energy dissipater, such as rip-rap and rock gabions, to prevent erosion and scour at the discharge point. The Council's Coastal Consents and Compliance Advisor, Dr Sivaguru, had no objection to the stormwater outfall structures and associated rip-rap being installed in the Oruarangi Creek tributary. Mr Reddy said the new outfall drainage system is expected to alleviate the existing flooding issues experienced in the papakainga area immediately to the north of the site and pointed out that the ecological effects of the outfall and associated discharges have been evaluated as likely to be minor.
- 13.16 In terms of stormwater quality, the Stormwater Management Plan prepared as part of the application supplies details of the stormwater treatment options that have been considered.
- 13.17 There is also no significant wastewater infrastructure in this area yet. As the project involves a medium to high density of development which will maximise each building site Mr Reddy said there will be limited opportunities to reticulate wastewater on the

lots. Instead a new wastewater system will be installed in either the footpath or the road berm on each side of the new roads. A new Watercare standard transmission line will convey these flows to a new pump station being built at 562 Oruarangi Road. It has been designed to receive flows from this SHA as well as from other properties including the village.

- 13.18 A potable water main will have to be extended to service the development. Two options for this were being examined at the time of the hearing, namely a connection to a main on George Bolt Drive or a pipe bridge, with the final option to be agreed with Watercare. Mr Reddy confirmed that there will be sufficient capacity to service the development in terms of both potable water and also the flows required for firefighting purposes.
- 13.19 Vector has confirmed that the development will be serviced with electricity and telecommunications will be available by way of either hard-wired or microwave technology. Watercare and the Council's Stormwater Unit agreed with the stormwater, wastewater and potable water proposals subject to the detailed and refined designs being provided.
- 13.20 Our finding after considering the evidence, the reports and the Civil Infrastructure Report provided with the applications is that sufficient and appropriate infrastructure will be provided for the proposed qualifying development.

Traffic

- 13.21 No issues were raised to suggest that the qualifying development would adversely impact on the safety and efficiency of the surrounding road network and we have also been satisfied in that regard.

Kintyre House

- 13.22 In his built heritage evaluation on behalf of the Council Dr Pooley had reservations as to whether the earthworks proposed paid due respect to the heritage context or aesthetics of the architecture of Kintyre House and wondered about the potential effects on drainage on the Kintyre site. Mr Reddy explained that the existing ground levels in the grounds of the homestead are lower than the surrounding roads. Because the roads cannot be significantly altered due to the need to maintain gradients and the falls required for conveying stormwater, the road boundaries of the

property will be retained with walls of less than a metre although batters and grade manipulations could produce a lower height than this. The retaining structures may be finished with a stone wall look to blend with the surrounding area. The existing driveway will be removed and a new driveway entrance will be formed within the subdivision.

- 13.23 As to drainage on the Kintyre site Mr Reddy's evidence was the existing levels there will not be altered and this would also allow for the existing landscape features on the site to be retained, with the exception of an Indian Cedar which needs to be removed so the intersection of Ihumātao Quarry and Oruarangi Roads can be configured to the required standard. Mr McCarthy noted in his evidence that this tree was not recognised as being worthy of protection in the arboricultural report lodged as part of the application and although considerable work had gone into trying to retain it the engineering works will be such that retention is not possible. Mr Reddy said due to its high position relative to the balance of the area, and that pre-development surface conditions will be largely maintained upstream of the house, the potential for excessive overland or major flows on the Kintyre site is "significantly low". Further to that the dwelling's floor level is relatively elevated and there is more than sufficient freeboard which will protect the habitable floors from the effects of any overland or surface flows.

Conditions of consent

- 13.24 In his evidence Mr McCarthy covered the conditions which had been of concern to the applicant. However by the time the hearing commenced Fletchers and the Council had agreed on all the conditions of consent being recommended to the Authority. Specific controls were introduced for Kintyre House and works around the protected Pohutukawa, including a requirement for a consent notice, and various matters of fine technical detail had been attended to.

14.0 RELEVANT PLANNING INSTRUMENTS

- 14.1 Section 74(2)(a) of the RMA requires that regard is to be paid to any proposed regional policy statement or any proposed regional plan when considering a decision. In addition sections 75(3) and (4) require that consideration must be given to the following:

- A district plan must at all times give effect to any national policy statement including the New Zealand Coastal Policy Statement, or regional policy statement; and
- A district plan also must not be inconsistent with any water conservation order or any regional plan for any matter specified in section 30(1) of the RMA.

14.2 The relevant plans and policy statements to be taken into account for this matter are:

- The New Zealand Coastal Policy Statement 2010 (“NZCPS”)
- The National Policy Statement on Freshwater Management 2011 (“NPSFM”)
- The regional level objectives and policies in the PAUP; and
- Iwi Management Plans, which are a relevant document for the purposes of section 74 (2A (a)) of the RMA. However as noted earlier Mr Taua’s advice to the hearing was there is currently no finalised IMP.

14.3 As discussed earlier, the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health is relevant as consent is required to undertake works on a site where contamination investigations have indicated that there is historical contamination on the land.

14.4 All these matters were addressed to us in the evidence and or contained in the application and the section 42A report and these assessments were not challenged. As discussed earlier we have been satisfied that “particular regard” has been paid to each the instruments concerned.

15.0 PART 2 OF THE RMA

15.1 The provision of affordable housing and comprehensive development of a residential community on the qualifying development site will contribute to and enable the social, economic, and cultural wellbeing of the people and community in this area. We have found that any adverse effects of the development will be adequately avoided, remedied, or mitigated. Overall the proposal has been found to be consistent with the purpose of the RMA.

15.2 The relevant matters of national importance provided in section 6 of the RMA as they relate to this application are appropriately provided for, particularly the protection of

outstanding natural features from inappropriate subdivision, use and development (section 6(b)) and the relationship of Maori and their culture and traditions with their ancestral lands, water, sites waahi tapu and other taonga (section 6(e)). Part 2 of the RMA requires us to consider if this application has recognised and provided for the protection of historic heritage from inappropriate subdivision, use and development, a matter of national importance. Our conclusion on section 6 is that the applicant will satisfy section 6(f) because the lava caves /tubes which may contain koiwi (archaeological site R11/2999) will be set aside from development within the Public Open Space Conservation zone, a historic heritage tree will be protected and the precinct plan and zoning pattern provides for suitable buffer areas from the papakainga and other heritage features on Oruarangi Historic Reserve. In addition, Kintyre House will be protected, albeit using a non-statutory method.

15.3 In terms of the relevant 'other matters' set out in section 7 of the RMA have been paid regard and in particular the amenity values of this area will be maintained, the proposal is consistent with the efficient use and development of the site, and no ecosystems will be adversely affected by the proposed subdivision.

15.4 The proposal is consistent with the principles of the Treaty of Waitangi because it has taken account of iwi values and will take active steps to recognise those as part of the development. Consultation with iwi has been undertaken and their views have been integrated into the project design along with the Te Aranga Maori Design principles.

16.0 DECISION ON THE SUBDIVISION AND CONSENT APPLICATIONS

16.1 Pursuant to sections 34 to 38 of the Housing Accords and Special Housing Areas Act 2013 ("HASHAA") and, as referenced by those sections, sections 104, 104A, 104B, 104C, 105, 106, 108 and 220 of the Resource Management Act 1991 (the "RMA"), consent is **granted** to the application by Fletcher Residential Ltd to authorise consent for a subdivision for residential and associated purposes and the associated resource consents required to implement the proposal at 545-561 Oruarangi Road, Mangere, being legally described as Allot 175 Parish of Manurewa & Allot 176 Parish of Manurewa.

16.2 The reasons for this decision are:

- The proposal is consistent with the purpose of HASHAA and also with the intent of Part 2 of the RMA;
- The application is generally consistent with the outcomes sought by the Proposed Auckland Unitary Plan and the Mangere Gateway Sub-Precinct E provisions authorised by the Authority's decision on Variation 9 to the PAUP, and is also consistent with the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health;
- Sufficient and appropriate infrastructure will be provided to service the qualifying development;
- There was no evidence provided such that consent for the associated resource consent applications must be refused.

16.3 The conditions of consent that apply to each of the consents are attached to this decision as Attachment 2.



Leigh A McGregor (Chair, for and on behalf of the Commissioners)

Date: 18 May 2016

Attachment 1

PLAN VARIATION 9 – MANGERE PRECINCT GATEWAY SUB-PRECINCT E PROVISIONS

Attachment 2

CONDITIONS OF CONSENT FOR THE QUALIFYING DEVELOPMENT (SUBDIVISION AND LAND USE CONSENTS: 47541, P47541, 47542, P47542)