

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

Proposal

To rezone approx. 4.64ha of land at lot 1 DP 149776 (which is located at the southern end of Foster Crescent, Snells Beach) from Residential – Large Lot to Residential – Single House Zone.

This plan modification is APPROVED, subject to the modifications as set out in this decision and in the Plan Change 35 document attached. Submissions are accepted and rejected in accordance with the decision.

Plan modification number:	35
Site address:	Foster Crescent, Snells Beach
Applicant:	Prime Property Group Ltd
Hearing commenced:	Monday, 7 December 2020, 9.30 a.m.
Hearing panel:	Robert Scott (Chairperson) Janine Bell William Kapea
Appearances:	<u>For the Applicant:</u> Nick Roberts – Planner Rebecca Sanders - Planner <u>For Council:</u> Peter Vari, Team Leader David Wren, Planner Martin Peake, Traffic Engineer Prasta Rai, Hearings Advisor
Hearing adjourned	Monday 7 December 2020
Commissioners' site visit	Monday 7 December 2020
Hearing Closed:	14 December 2020

Introduction

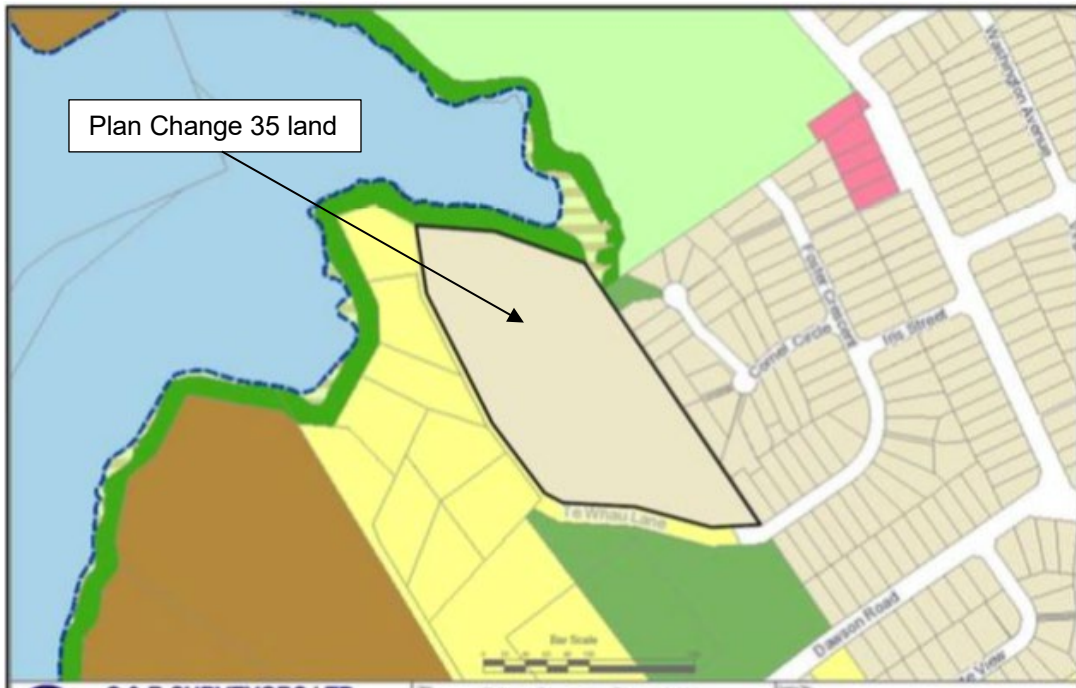
1. This decision is made on behalf of the Auckland Council (**Council**) pursuant to Clause 10 of Schedule 1 of the Resource Management Act 1991 (**RMA**) by Independent Hearing Commissioners Robert Scott (Chairperson), Janine Bell and William Kapea, appointed and acting under delegated authority under sections 34 and 34A of the RMA.
2. The Commissioners have been given delegated authority by the Council to make a decision on Private Plan Change 35 - Foster Crescent, Snells Beach (**PC 35**) to the Auckland Council Unitary Plan Operative in Part (**Unitary Plan**) after

considering all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing and evidence presented during, after the hearing of submissions and having visited the land subject to the plan change.

3. PC 35 is a privately initiated plan change that has been prepared following the standard RMA Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).
4. The plan change was accepted by the Council for notification on 6 August 2019 and publicly notified on 24 October 2019 following a feedback process involving Iwi, as required by Clause 4A of Schedule 1. Notification involved a public notice as well as letters to directly affected landowners and occupiers alerting them to the plan change. The latter step was aimed at ensuring that landowners and occupiers of properties affected by potentially significant changes were made aware of the changes proposed.
5. PC 35 was publicly notified on 24 October 2019 with 5 submissions received by the Council. The summary of submissions was notified by the Council on 5 December 2019 and no further submissions were received.

SUMMARY OF PLAN CHANGE

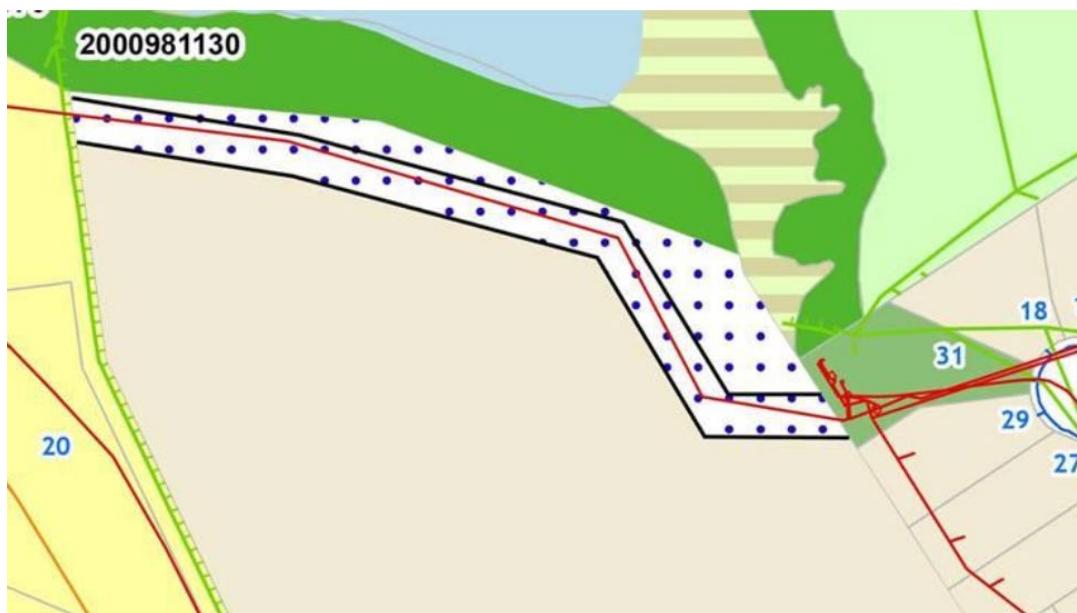
6. The proposed plan change request is described in detail in the description of PC35 by Prime Property Group (**Requester**) and in the hearing report. A summary of key components of the plan change is set out below.
7. The request seeks more intensive residential development on the subject site which is approximately 4.6384 hectares in area and held in one certificate of title. The site is located on the edge of the traditional single house zone style development in Snells Beach and the request seeks that the site be able to be developed at a density similar to that existing to the east. The current zone is Residential - Large Lot Zone which provides for lower residential density (4,000m² per site), but the land is still located within the Rural Urban Boundary (**RUB**). PC35 does not seek to change any of the objectives, policies or rules applying within the zone and it does not seek to change any of the Auckland wide rules that apply to the land.
8. The Plan Change seeks to rezone, from Residential – Large Lot to Residential – Single House as shown below:



9. Additional controls for the PC35 land are proposed to be applied at the subdivision stage to restrict buildings and other activities along the northern fringe of the site where there is a wastewater rising main. The proposed form of that change is to Amend Table E38.8.2.4.1 Subdivision of sites identified in the Subdivision Variation Control by adding a new row as follows:

Area	Minimum net site area
Snells Beach	1000m ²

The following amendment to the planning maps is proposed by inserting the Subdivision Variation Control (Snells Beach) over the land shown dotted in the map below:



10. We note that the Plan Change documentation refers to a subdivision proposal in accordance with the proposed Single House zone provisions. It was confirmed by the Requester that this subdivision scheme plan was indicative only and a subdivision does not form part of the request.

STATUTORY MATTERS

Resource Management Act 1991

11. The RMA sets out an extensive set of 'tests' for the formulation of plans and changes to plans. In this case, the plan change request involves a change in zoning, but no changes are proposed to the associated objectives, policies or rules of the Unitary Plan. The main statutory test is therefore whether the amended zoning better implements the relevant, higher order objectives of the Unitary Plan.
12. Section 32 of the RMA requires an assessment of reasonable alternatives when considering how to implement the objectives of the proposed plan change. As stated, a section 32 RMA assessment is included with the request for the proposed plan change.
13. Clause 10 of Schedule 1 refers to decisions on provisions and matters raised in submissions and particularly the need to include the reasons for accepting or rejecting submissions and to provide a further evaluation of any proposed changes to the plan change arising from submissions, with that evaluation to be undertaken in accordance with section 32AA of the RMA.

National Policy Statements

14. Pursuant to Sections 74(1)(ea) and 75 of the RMA the relevant national policy statements (**NPS**) must be given effect to in the preparation of the proposed plan change and in considering submissions. There are 4 NPS of relevance to PC35:
 - a. the National Policy Statement on Urban Development;
 - b. the National Coastal Policy Statement;
 - c. the Hauraki Gulf Marine Park Act (which should be treated as an NPS); and
 - d. the National Policy Statement on Freshwater Management.

National Environmental Standards or Regulations

15. Under section 44A of the RMA, local authorities must observe national environmental standards in its district/ region. No rule or provision may duplicate or in conflict with a national environmental standard or regulation.
16. The applicant has assessed PC35 in general terms against the provisions of:
 - a. the National Environmental Standards for Air Quality (**NES-AQ**);

- b. National Environmental Standard for Sources of Drinking Water (**NES-SDW**);
- c. the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (**NES-CS**); and
- d. The site is also subject to the NES for Freshwater which came into force on 3 September 2020 (**NES-FW**).

Auckland Unitary Plan – Operative in Part

17. There are a number of provisions of the Unitary Plan that are relevant to PC35 and these are listed as:

Regional Policy Statement

18. The aspects of the Regional Policy Statement relevant to PC35 include:
- a. B2. Urban Growth and Form
 - b. B3. Infrastructure, transport and energy
 - c. B7. Natural resources
 - d. B8. Coastal environment
 - e. B10. Environmental risk

Auckland Unitary Plan - District Plan

19. The two district plan zones that are relevant to this plan change request are:
- a. H1. Residential – Large Lot Zone; and
 - b. H3. Residential – Single House Zone

Other Plans and Strategies

20. There are a number of other plans and strategies that are relevant to the consideration of private plan change requests in this instance these have been identified as:
- a. The Auckland Plan 2050;
 - b. The Long-Term Plan 2018-20;
 - c. Sandspit - Snells Beach – Algies Bay Structure Plan 1999;
 - d. Rodney Greenways Paths and Trails Plan: Puhoi to Pakiri 2017; and
 - e. Rodney Local Board Plan 2017

Hearing Process

21. While 5 submissions were received no submitter sought to be heard. A hearing was convened in order to seek clarification from the Requester and the Council reporting officer on a number of matters.
22. Pre-circulated planning evidence was received from Mr Nicolas Roberts for the Requester and following written questions from the Commissioners a further statement from Mr Roberts was presented at the hearing.
23. Following the hearing, all the Commissioners visited Foster Crescent and the local surroundings.

SUBMISSIONS

24. A total of five submissions were received and these are summarised in the Council section 42A report (**hearing report**) summarised below:

- a. Ron Goodwin – Support

This submission is in support subject to appropriate land stability remedial works, and the upgrade of the outfall pipe.

- b. Nigel Ross – Oppose

Mr Ross owns and occupies at property 17 Cornel Circle (adjoining the PC35 land) and opposes PC35 on the grounds of: loss of rural amenity and outlook; traffic safety; adverse infrastructure effects and adverse construction effects.

- c. Hayley Gates - Oppose

Ms Gates lives at 25 Cornel Circle (adjoining the PC35 land) and opposes the plan change and this submission is identical to Mr Ross.

- d. Watercare Services Ltd – Support in Part

The submission from Watercare is in support subject to: the wastewater network, in particular the wastewater rising main, is adequately protected; that the scheme plan is updated to provide that Lots 18-23 will vest to Council as public drainage reserve; or that Lots 18-23 are enlarged or otherwise reconfigured so that they are of adequate size to provide for a housing foundation and yard space for each lot that will not compromise the protection of the Watercare network.

- e. Ministry of Education – Oppose

The Ministry of Education's submission opposes PC35 but adds that if the consent authority approves the plan change, that the Ministry of Education and Snells Beach School Board are engaged with and consulted throughout the subdivision application and construction process to ensure that the safety of school students is maintained throughout the construction and establishment of the site.

Submitter Agreement

25. We were advised by the reporting planner and the Requester that Ms Gates and Mr Ross have been in discussion with the applicant since lodging their submissions. It is further understood that an agreement concerning the form of development on any new sites adjacent to their properties has been reached between the parties and that Ms Gates and Mr Ross did not attend the hearing on this basis. We understand this to be in the form of agreed setbacks from the properties and that it will likely be confirmed as a covenant on any titles granted following any subdivision.
26. However, while the submitters did not attend the hearing, the submissions have not been withdrawn.

SUMMARY OF EVIDENCE

27. The hearing report was prepared by Mr Wren and was comprehensive and detailed. The report was circulated prior to the hearing and taken as read. The hearing report concluded that the effect of PC35 will change the amenity on a number of neighbouring sites but that this change will be consistent with that expected in the Residential – Single House Zone. It also concluded that it was in accordance with the RMA and all relevant planning instruments. The report recommended that PC35 be approved subject to the amendments to the Subdivision Variation Control (Snells Beach) as requested.
28. The evidence presented at the hearing by Mr Roberts summarised the site and its context and he outlined the background to the plan change request. The evidence set out the relevant statutory analysis including the provisions of the National Policy Statement on Freshwater Management 2020 which came into effect after the Request was lodged.
29. The evidence addressed each of the matters raised in the submissions and canvassed effects on land stability, effects on wastewater and related infrastructure (including the inclusion of a subdivision variation control for subdivision adjoining the existing Watercare wastewater rising main), effects on pedestrian safety and amenity effects on neighbouring properties.
30. Mr Roberts concluded that the potential effects raised in the submissions could be adequately addressed within the scope of the proposed zoning (and subdivision variation control) and that the proposal overall, would be the most appropriate way to achieve the purpose of the RMA and the provisions of the Unitary Plan. In particular, Mr Roberts stated that the proposed zoning will enable an increase in housing capacity in a locality that has good accessibility to a local centre and other social and community facilities.
31. Prior to the hearing the Commissioners set out a number of matters for the Requester to address and these were:

- a. Comment on the National Environmental Standard on Freshwater 2020 (**NES-FW**);
 - b. Comment on the National Policy Statement on Urban Development 2020 (**NPS-FW**);
 - c. Status on the concurrent subdivision application; and
 - d. Issues raised by iwi
32. At the hearing, Mr Roberts also presented a response to these questions in his summary statement of evidence.
33. At the hearing, Mr Roberts presented a number of photos of the site and these included what appeared to us to be larges sections of PVC (or similar) pipe located on the land just within the current fence line. Mr Roberts speculated that this may be used as additional fencing to keep stock in but offered to confirm with the applicant what it was and what its purpose was.
34. Following the close of evidence, Mr Roberts confirmed in an email:

We can confirm that McConnell Dowel has been granted temporary access to the site to store the pipe work for water treatment infrastructure. We understand that the pipework will be laid offsite between the site and the lifestyle blocks to the west.

We thank Mr Roberts for clarifying this for us.

PRINCIPAL ISSUES IN CONTENTION

35. Having considered the submissions and further submissions received, the hearing report, the evidence presented at the hearing and the Council officers' response to questions, we are generally satisfied that the matters raised in submissions have been addressed by the Requester and in the hearing report. As outlined above the Commissioners identified a number of other potential issues in contention as follows:

National Environmental Standard on Freshwater 2020

36. The primary evidence of Mr Roberts addressed the National Policy Statement on Freshwater 2020 which has the objective (Objective 2.1) to ensure that natural and physical resources are managed in a way that prioritises:
- (a) first, the health and well-being of water bodies and freshwater ecosystems;
 - (b) second, the health needs of people (such as drinking water); and
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

37. The NPS-FW also lists 14 policies related to freshwater management including the protection of natural inland wetlands, their values and that their restoration is promoted (Policy 6).
38. He stated that the zoning sought will not result in the loss of rivers or wetlands and will facilitate the restoration of a wetland and stream as part of the development of the land. He advised us that the mechanism to ensure that was through the Auckland Wide provisions of the Unitary Plan (in particular Chapter E3 - Lakes, rivers, streams and wetlands).
39. Mr Roberts' summary statement addressed the NES-FW which sets out specific standards and activity status for activities that pose risks to the health of freshwater and freshwater ecosystems (including wetlands). He referred to an ecology report prepared for the Requester that identified a permanent watercourse and wetland in the north-east portion of the site. He advised that under the NES-FW it was a prohibited activity to reclaim wetlands and that any future subdivision would need to show consistency with both the NPS-FW and the NES-FW as part of that process. He also identified policy E3.3(13) of the Unitary Plan which requires consideration of alternatives where stream works are proposed.
40. While there clearly are areas on the PC35 land that are subject to the provisions of the NPS-FW and the NES-FW these areas have been quantified and they make up a small area of the total land proposed for rezoning, leaving the vast majority of the land outside of these riparian areas. While the proximity to the identified freshwater stream and wetland will still likely trigger assessment under the NPS-FW and require consent under NES-FW, we are satisfied that there is scope to develop this land for residential housing while also protecting these freshwater resources. We are also satisfied that there is sufficient control and matters of discretion within the NES-FW and the Unitary Plan to address these matters at the subdivision and land use consent stages which the Residential – Single House zone enables.

National Policy Statement on Urban Development 2020 (NPS-UD)

41. The NPS-UD sets out the objectives and policies for planning for well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future. It also has a focus on housing intensification near town centres and housing affordability.
42. In his evidence, Mr Roberts states that the site is accessible to a range of commercial activities and community services including a small neighbourhood centre at 296 – 336 Mahurangi East Road and the primary local centre for Snells Beach further to the north. He also noted that the PC35 land was connected to the Snells Beach commercial centre through the adjoining Goodall Reserve and added that existing pedestrian connections were present and would form part of the connected pedestrian network as part of any subdivision and development of the land. Mr Roberts concluded that the proposed zoning was consistent with the NPS-UD as it would extend the Residential – Single House zone within an existing walkable catchment to the Snells Beach local centre.

43. We asked Mr Wren to comment on this matter and he agreed that land was within a walkable catchment to the local centre. He added that the NPS-UD required an assessment whether a higher intensity zoning was justified and he stated that there was no justification for a higher residential density above the Residential – Single House Zone on the basis that this was the highest intensity zoning already applied to Snells Beach and any greater intensity would need to be supported by an analysis of the entire Snells Beach catchment.
44. We agree with both Mr Roberts and Mr Wren and find that the proposed zoning is consistent with the NPS-UD on the grounds that that it will enable suitable walkable connection to both neighbourhood and local commercial areas of Snells Beach and will facilitate development at an intensity that is commensurate with the highest residential intensity currently occurring in Snells Beach.

Status on the concurrent subdivision application

45. While the plan change documentation included a subdivision scheme plan and stated that a subdivision would be lodged concurrently with the plan change request, both Mr Roberts and Mr Wren confirmed that no subdivision is proposed at this stage and scheme plan lodged was only an “indicative” representation of might follow if the zoning was approved.

Issues raised by iwi

46. Mr Roberts advised that a cultural assessment was provided by Ngati Manuhiri and that it included a number of recommendations relating to the eventual subdivision of the land including:
- a. Having representatives present during ground disturbance;
 - b. Allowing review of the Erosion and Sediment Control Plan;
 - c. Relocation of eels before any dewatering of ponds; and
 - d. Reducing effects on the land containing the rising main and the possibility of archaeological sites within this area.
47. He also advised that Ngai Tai Ki Tamaki responded and would defer to Ngati Manuhiri as did Teruananga o Ngati Whatua.
48. Commissioner Kapea asked a number of questions of both Mr Robert and Mr Wren regarding the adequacy of iwi consultation. In particular, Commissioner Kapea asked whether consultation with Nga Maunga Whakahii had occurred and whether it is included as a mana whenua entity on Council’s list of parties affected or interested in the plan change request. Mr Wren offered to investigate this and advise us of their status.
49. In response Mr Wren advised that Nga Maunga Whakahii were consulted and were notified as part of the plan change process and are on the list of Iwi

groups recognised by Auckland Council. For completeness Mr Wren supplied the list of all mana whenua consulted:

- Te Akitai Waiohua
- Ngai Tai Ki Tamaki
- Ngati Maru
- **Nga Maunga Whakahii o Kaipara**
- Ngati Paoa
- Ngati Paoa Trust Board
- Ngati Rehua
- Ngati Tamaoho
- Te Kawerau a Maki
- Te Ahiwaru
- Te Patukirikiri
- Ngati Te Ata
- Ngati Whatua o Orakei
- Ngati Whanaunga
- Ngati Manuhiri
- Ngati Tamatera
- Ngati Wai
- Teruananga o Ngati Whatua
- Te Uri o Hau

50. On the basis of this information we are satisfied that all relevant mana whenua groups were identified and notified of the proposed plan change request.

ASSESSMENT OF STATUTORY PLANNING DOCUMENTS

51. As discussed above in this decision, the Requester and the Council Officer have identified and assessed all relevant statutory documents. These planning documents are addressed in the application and the hearing report, and we find agreement with these assessments that PC35 sufficiently gives effect to these documents. In particular, we find that the Residential – Single House Zone is the most appropriate residential zone for this land to enable further residential development in Snells Beach which is sufficiently connected to existing commercial, community and social services while also being at an intensity which complements the existing built form and urban character in this locality. We also

find that the specific subdivision variation control, proposed on that land which contains the Watercare rising main, will adequately protect this significant infrastructure while still allowing an efficient use of the land.

52. With regard to existing freshwater streams and wetlands on the land, we find that there is sufficient provisions in the Unitary Plan within the Auckland wide provisions, the subdivision controls for urban development and the specific Residential – Single House Zone to ensure that any adverse effects of development on these resources are avoided, remedied or mitigated. In that regard we find that PC35 will not impose a lesser prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard.
53. Accordingly, we find that PC35 satisfies the requirements of section 32 of the RMA and is the most appropriate way to achieve the purpose of this Act.

MANA WHENUA

54. It is confirmed in the hearing report and subsequent correspondence that consultation by the applicant has taken place with relevant groups and these groups were notified by the Council.

LOCAL BOARD

55. The comments from the Local Board have been taken account of in the process of PC35.

SECTION 32AA FURTHER EVALUATION

56. The recommendations made in the Section 42A Report and the underpinning Section 32 Evaluation Report were not challenged. There is no demonstrated need for the Commissioners to undertake a Section 32AA Further Evaluation.

DECISION

57. That pursuant to Clause 29 (4) and Clause 10 of Schedule 1 of the Resource Management Act 1991, that Proposed Plan Change 35 to the Auckland Unitary Plan (Operative in Part) be **approved subject to modifications**.
58. Submissions on the plan change are accepted and rejected in accordance with this decision. In general, these decisions follow the recommendations set out in the Councils hearing report, response to commissioners' questions and expert planning evidence given on behalf of the Requester.
59. Our decision in relation to submission is:

Submission Number	Submitter	Decision
1	Ron Goodwin	Accept

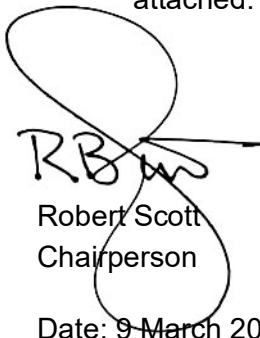
2	Watercare Services Ltd	Accept in part
3	Ministry of Education	Reject
4	Nigel Ross	Reject
5	Hayley Gates	Reject

60. The reasons for the decision are that PC35 will:

- a. give effect to the National Policy Statement on Urban Development 2020 with regard to residential intensification and the National Policy Statement for Freshwater Management 2020 with regard to existing streams and wetlands on the PC35 land;
- b. be consistent with the National Environmental Standard for Freshwater 2020;
- c. provide the opportunity for higher intensity residential development on the site which is consistent with the existing urban form in Snells Beach;
- d. give effect to key objectives and policies in the Regional Policy Statement of relating to providing for a quality compact urban form, for residential activity adjacent or in close proximity to centres, corridors, and social/community facilities and, for an increase in housing capacity and a range of housing choice;
- e. is supported by necessary evaluation in accordance with section 32; and
- f. is consistent with the provisions of Part 2 of the RMA.

AMENDMENTS TO THE DISTRICT PLAN

61. The amended zoning plan and amendments to the subdivision variation control are attached.



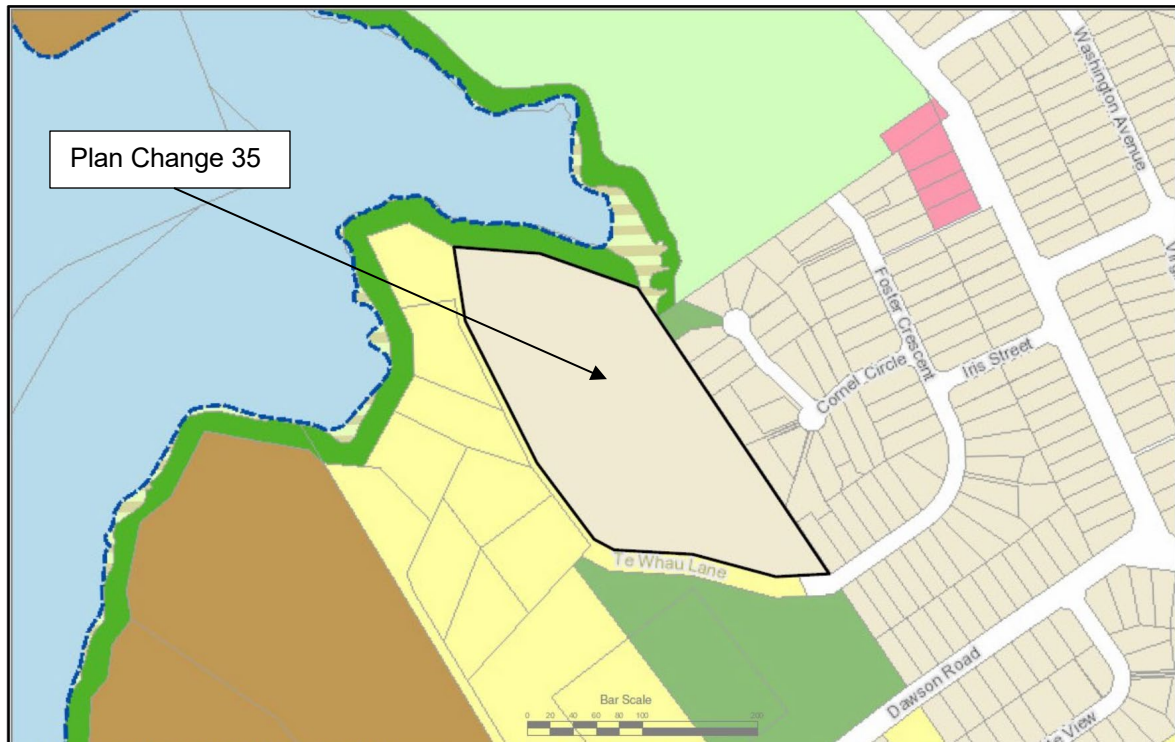
Robert Scott
Chairperson

Date: 9 March 2021

ATTACHMENT 1 - AMENDMENTS TO THE AUCKLAND UNITARY PLAN (OPERATIVE IN PART)

Amendments to the Planning Maps

Rezone Lot 1 DP 149776 at Foster Crescent, Snells Beach (comprising 4.6384ha), from Residential - Large Lot zone to Residential - Single House zone



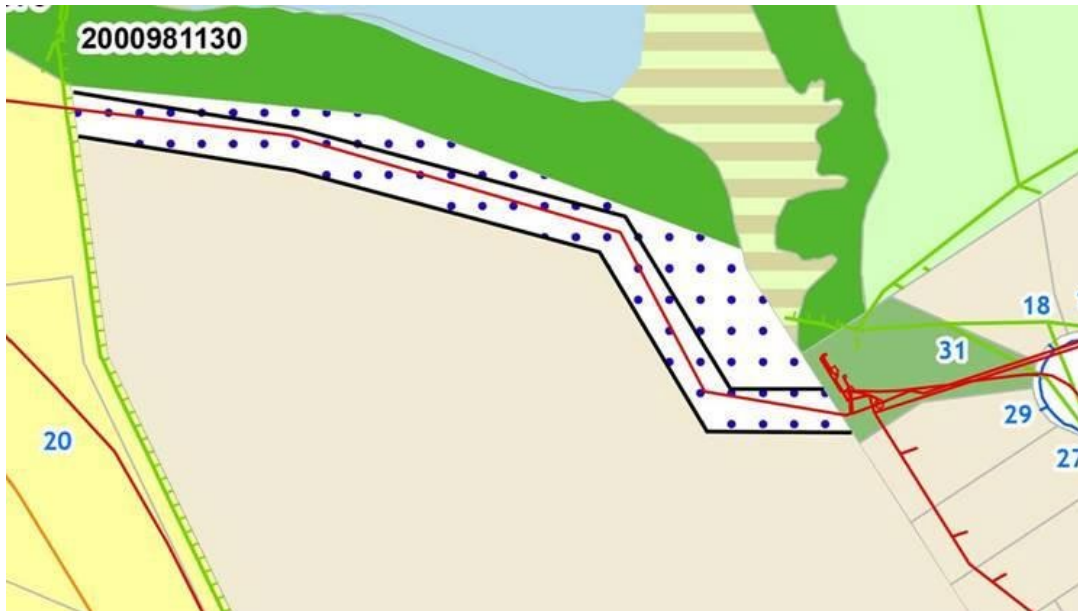
Legend

-  Residential - Large Lot Zone
-  Residential - Single House Zone
-  Open Space - Sport and Active Recreation Zone
-  Open Space - Informal Recreation Zone
-  Open Space - Conservation Zone

Amendment to the Plan Text

Amendments are shown with text to be deleted as struck through and text to be added as underlined.

- a) Amend the planning maps by inserting the Subdivision Variation Control (Snells Beach) over the land shown dotted in the map below.



- b) Amend Table E38.8.2.4.1 Subdivision of sites identified in the Subdivision Variation Control by adding a new row as follows;

Area	Minimum net site area
<u>Snells Beach</u>	1000m ²