

Decision following the hearing of a Private Plan Change under the Resource Management Act 1991

Proposed Private Plan Change 61 to the Auckland Unitary Plan

Proposal in summary.

The Applicant seeks¹ to rezone a 56.05 hectare (ha) block of land bounded by Oira, Jesmond and Karaka (State Highway 22) Road within the Drury-Opāheke Structure Plan (DOSP) area; and apply the Waipupuke Precinct provisions in order to enable the comprehensive and integrated development of the site for residential, commercial and open space purposes.

This plan change is **DECLINED**. An Executive Summary and the full reasons for **DECLINING** the plan change are set out below.

Private Plan Change number:	61
Site addresses and legal descriptions	The Plan Change area (56.05 ha) comprises the following lots: <ul style="list-style-type: none"> • 329 Karaka Road – Lot 6 DP 62229 and PT LOT 5 DP 62229 • 335 Karaka Road – Lot 7 DP 62229 • 89 Oira Road – Lot 8 DP 62229 • 99 Oira Road – Lot 9 DP 62229 • 109 Oira Road – Lot 10 DP 62229 • 125 Oira Road – Lot 2 DP 402711 • 139 Oira Road – Lot 1 DP 402711 • 140 Oira Road – Lot 1 DP 62229 • Jesmond Road Lot 2 DP 62229 • Jesmond Road Lot 3 DP 62229 • Jesmond Road Lot 4 DP 62229
Applicant:	Lomai Properties Limited
Hearing	6, 7, 8, 12 & 13 October (all on-line by Teams)
Hearing panel:	Mr Greg Hill (Chairperson); Ms Karyn Kurzeja; and Mr Mark Farnsworth MNZM

¹ Waipupuke Plan Change Report -Section 32 Analysis & Assessment of Environmental Effects (Plan Change Report) Tattico Limited 22 January 2021 at Section 1

<p>Participants:</p>	<p><u>Applicant:</u> <i>Lomai Properties Limited represented by:</i></p> <p>Mr Bill Loutit, Legal; Mr Ballu Khan, Lomai Properties Limited - Corporate; Dr Mutthuvel Devarajah, Proposed Medical and Specialist Facility; Mr Karl Flavell, Ngāti Te Ata; Mr Peter Fa'afiu, Mana Whenua Engagement and Cultural Effects; Ms Rachel de Lambert, Urban Design; Ms Ben Clark, Open Space; Mr Tom Lines, Landscape and Visual Effects; Ms Charlotte Peyroux, Stormwater Management; Mr Glen Bellingham, Infrastructure; Mr John Brown, Historic Heritage; Mr Fraser Colegrave, Economics; Mr Leo Hills, Transport; and Mr Vijay Lala, Planning.</p> <p><u>Note</u> – the following provided expert evidence, but were excused from appearing at the hearing by the Hearing Panel:</p> <p>Mr Rod Lidgard, Contamination; Mr Shane Lander, Geotechnical; Ms Ellen Cameron, Archaeology; Mr Richard Montgomerie, Ecology; and Mr Kenneth Scarlett, Arboriculture;</p> <p><u>Papakura Local Board</u></p> <p>Mr Brent Catchpole, Chair Ms Jan Robinson, Deputy Chair</p> <p><u>Submitters:</u> <i>Auckland Council (submitter) and Auckland Transport</i></p> <p>Mr Matthew Allan, Legal; Mr Peter Gudsell (AC), Finance; Ms Brigid Duffield (AC), Infrastructure funding; Mr Gert Kloppers (AC), Corporate infrastructure; Mr Kevin Wong-Toi (AT), Corporate; Mr Andrew Prosser (AT), Transport; Mr Ezra Barwell (AC), Open Space Planning; Ms Paula Vincent (AC), Planning (Healthy Waters); Ms Claire Drewery (AT), Acoustics Ms Karyn Sinclair and Lydia Smith (AT), Planning; and</p>
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	<p>Mr Christopher Turbott (AC), Planning</p> <p><i>Elly S Pan</i> Mr Nigel Hosken</p> <p><i>Kāinga Ora</i> Mr Bal Matheson, Legal; Mr Nicholas Rae, Urban Design; Mr Todd Langwell, Transport; and Mr Michael Campbell, Planning.</p> <p><i>Paralypsis NZ</i> Ms Diane So</p> <p><i>Soco Homes</i> Mr John Duan; Ms Joanne Duan; Ms Tingran Duan; and Mr Alex Fang (translator).</p> <p><i>Waka Kotahi</i> Mr Matthew Gribben, Legal; Mr Evan Keating, Corporate; Dr Stephen Chiles, Noise and Vibration; Mr Geoffrey Prince, Transport; and Mr Brendan Clarke, Planning.</p> <p><i>Watercare Services Limited</i> Mr Andre Stuart; and Ms Ilze Gottelli.</p> <p><i>Wing Family Trust</i> Mr Craig Wing.</p> <p>Mr Andrew Daken.</p> <p><i>Harnett Orchard Limited</i> Mr Bruce Harnett.</p> <p><u>For the Council (regulator):</u></p> <p>Mr Craig Cairncross, Team Leader; Mr Jimmy Zhang, Planner; Mr Wes Edwards, Traffic Engineer; Mr David Russell, Development Engineer; Mr Rebecca Skidmore, Urban Designer;</p>
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	<p>Mr Robin Rawson, Open Space; Ms Christina Bloom, Ecologist; Ms Paula Vincent, Stormwater Engineer; Mr James Beaumont, Geotechnical; Mr Tim Heath, Economist; and Mr Robert Brassey, Heritage and Archeology.</p> <p>Hearing Administrator Mr Sam Otter, Senior Hearings Advisor.</p>
Tabled Statements from Submitters	Ministry of Education

EXECUTIVE SUMMARY

1. We have set out at a 'high level' the key matters in this Executive Summary to provide 'context' when reading the substantive part of the decision. Other matters are also addressed that are not included in the Executive Summary.
2. We have declined the Plan Change.
3. The Plan Change would have given effect to the National Policy Statement on Urban Development (NPS-UD) and the Regional Policy Statement in terms of B2 – Urban Growth and Form and B3 – Infrastructure, transport and energy, had the Applicant's proposed Development Staging and Transport provisions been workable and achieved the necessary transport infrastructure related upgrades. We have found that they do not, and would need to be substantially changed to make them workable and robust.
4. With respect to the transportation infrastructure upgrades (those addressed by the Development Staging and Transport provisions) we record that those identified are those necessary to avoid or mitigate the adverse effects that would arise from the PC 61 development.
5. The Plan Change would have given effect to the RPS in terms of B6 – Mana Whenua. We acknowledge the very strong support and endorsement of the Plan Change by Mana Whenua. We also support the permitted activity status for Mana Whenua Cultural Markers and its definition within the precinct provisions.
6. We do not support the THAB zoning distribution as proposed. We generally favour the recommendation in the Section 42A report, including not supporting the southern THAB zone.
7. We do not support the extensive use of the bespoke precinct provisions, and find that many of the provisions sought in PC 61 are appropriately managed by those already in the AUP OP. We agree with the section 42 report recommendation on this matter.

8. We do not support the bespoke provisions for the Medical and Specialist Facility. However, we do not dispute the need for such a facility in South Auckland.
9. We would not have scheduled 140 Jesmond Road as an historic heritage item.
10. For the servicing constraints (wastewater and water supply) which currently prevail, there were solutions available, and this is not a reason to decline PC 61.
11. We would have imposed noise provisions to address the health and amenity effects on those living in dwellings in close proximity to SH 22 and the proposed arterial road. This would have been limited to habitable rooms, but not the outdoor environment. We would not have imposed a vibration control.
12. We would have determined that the standard notification provisions of the RMA would have applied, and not the notification requirements as sought in PC 61.

CONSIDERATION GIVEN TO AN INTERIM DECISION

13. We did contemplate issuing an interim decision so that the matters we have raised concerns about could be addressed, and presented to the Hearing Panel. However, to do so would have required us to provide either a very clear view of the provisions that we thought would be appropriate, or a draft revised set of provisions. It's our view the precinct provisions would need significant re-drafting to be appropriate, and this will likely require a significant amount of work. The reasons for this will become clear in reading this decision.
14. We also do not support, nor fully understand, the Applicant's proposed Development Staging and Transport provisions. This is despite having sought clarification from the Applicant. These are fundamental to ensuring the necessary infrastructure upgrades occur in a timely manner, and to mitigate the adverse transport effects arising from the proposal if the upgrades were not completed.
15. Furthermore, given the above, if the Applicant did decide to re-draft the precinct provisions, we would have needed to invite further evidence from the Applicant and Submitters in light of the amended set of provisions. This would have substantially extended the hearing process. We did not think this was an efficient use of time.
16. Given the above the Hearing Panel determined not to issue an interim decision; but a final one.

INTRODUCTION

17. The private plan change (PC 61), request by Lomai Properties Limited (Applicant or Lomai) was made under Clause 21 of Schedule 1 to the RMA and was accepted by the Council, under clause 25(2)(b) of Schedule 1 to the RMA, on 24 November 2020.

18. A report in accordance with section 32 (and 32AA in relation to the changes sought) of the RMA was prepared² by the Applicant in support of the proposed plan change for the purpose of considering the appropriateness of the proposed plan change and its precinct provisions.
19. This decision is made on behalf of the Auckland Council (the Council) by Independent Hearing Commissioners Greg Hill (Chair), Karyn Kurzeja and Mark Farnsworth (the Hearing Panel) appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (RMA).
20. The Hearing Panel has been delegated the authority by the Council to make a decision on PC 61 to the Auckland Council Unitary Plan Operative in Part (**AUP OP**). In making our decision we have considered all of the material put before us, including: the application, all of the submissions, the section 32 and 32AA evaluations, the Section 42A report, legal submissions, expert and lay evidence, tabled material and closing reply evidence and legal submissions.

EXISTING PLAN PROVISIONS

21. The subject site is zoned Future Urban (**FUZ**) in the AUP OP. The FUZ is a transitional zone applying to greenfield land that has been identified as suitable for urbanisation.
22. The PC 61 land is subject to the following overlays and controls
 - Controls: Macroinvertebrate Community Index – Rural
 - Controls: Arterial Roads (Karaka Road is an arterial road)
 - Overlays: High-Use Stream Management Areas Overlay.

SUMMARY OF PLAN CHANGE AS NOTIFIED AND AS AMENDED BY THE APPLICANT DURING THE COURSE OF THE HEARING.

23. PC 61 seeks to rezone land zoned FUZ to 'live' urban zonings – namely Residential, Business and Open Space. It was also to enable a range of activities as either permitted (**PA**) or Restricted Discretionary (**RDA**) including a Medical and Specialist Facility, Mana Whenua Cultural Markers and a Service Station and Fast-Food Outlets adjacent to SH 22/Karaka Road.
24. PC 61 was described in detail in the applicant's Plan Change Request³ and in the Council's section 42A hearing report⁴. PC 61 seeks to rezone approximately 56ha of FUZ land at Drury west and introduce a new precinct (Waipupuke) over the rezoned land. Specifically, PC 61, as notified, sought to:

² Request for Private Plan Change – Waipupuke – Plan Change Report / Section 32 Analysis / Assessment of Environmental Effects. Tattico Limited 22 January 2021 (*Plan Change Request*)

³ Plan Change Request at section r

⁴ Section 42A at [1.1]

- Rezone 27.52ha of land to Residential - Terraced Housing and Apartment buildings (**THAB**);
- Rezone 21.2ha of land to Residential - Mixed Housing Urban (MHU);
- Rezone 2.02ha of land to Business - Neighbourhood Centre (BNC);
- Rezone 4.6ha of land to Open Space – Informal Recreation and Civic Spaces;
- Establish an open space network including parks and stormwater reserves; and
- Introduce the Waipupuke precinct over the rezoned land to provide for a range of developments including residential, business (including a specialist medical facility), open space and provision for Mana Whenua cultural markers.
- New definitions for Medical and Specialist Facility and Mana Whenua cultural Identity Markers.

25. As set out in the Applicant's opening legal submissions, the Plan Change has been amended since notification to incorporate many of the recommendations made in the Council's reporting officer's section 42A report and in response to submissions. The amended form of the Plan Change was appended to the rebuttal evidence of Mr Lala. The substantive amendments were:

- Reduction in the extent of THAB zoning and a consequential increase in MHU zoning. The amendment reduces the scale of development around the proposed scheduled heritage building (140 Jesmond Road) and to enable more flexibility with lot sizes to the south of the protected stream near Jesmond Road;
- Re-drafting of the Development Staging and Transport Upgrade provisions to include a series of triggers restricting development to no more than 95 dwellings before several local roading upgrades are undertaken. Along with a new Policy 11, the amendments were designed to ensure the delivery of necessary infrastructure at the required time to address the traffic effects of potential development within the Site;
- Zoning the Neighbourhood Centre, Open Space – Civic Spaces to better recognise and provide for the types of uses that will occur in the space, and support local character and sense of identity;
- Including Gross Floor Area caps for retail and office activities within the Neighbourhood Centre zone to ensure unplanned growth of commercial activities does not occur;
- Amending the notification provisions so that Waka Kotahi is notified on a limited basis for any service station or fast-food outlet on a site fronting Karaka Road;

- Clarifying the collector road width of 21m from boundary to boundary and including an indicative cross section of the Collector Road;
- Amending the High Contaminant Yielding Materials standard and the associated matter of discretion and assessment criteria;
- Clarifying references to riparian planting and amending the requirements for the riparian planting plan to ensure that a consistent level of information is provided for any application within the riparian margins in the Site and to achieve successful regeneration of the protected riparian margins;
- Strengthening stormwater provisions by specific reference to the Stormwater Management Plan (SMP) (which has provisional approval) and amending the matters of discretion; and
- Amending the activity status for the Southern Auckland Medical and Specialist Facility from Permitted to Restricted Discretionary, with discretion restricted to traffic effects.

26. Further changes were proposed during the hearing and as part of the Applicant's Closing/Reply and these were:

- (a) Amendments to the drafting of the Development Staging and Transport Upgrade provisions to link infrastructure upgrades with subdivision or development⁵;
- (b) Introduction of an additional cap of 3,500m² on the ground floor area (GFA)⁶ of the Medical and Specialist Facility as an RDA, and a full discretionary activity for a facility larger than 3,500m²;
- (c) Addition of two exclusions to the definition of Medical and Specialist Facility to clarify what activities are not anticipated (and would not be appropriate) as part of the facility – being Helipads and overnight stays of longer than 2 nights;
- (d) Amendment to the maximum height limit of the Neighbourhood Centre from 27m to 21m;
- (e) Amendment to Policy 10 to reflect the Development Staging and Transport Upgrade provisions;
- (f) Amendment to Policies 3 and 9 to provide further certainty and replace references to “manage” to “ensure”;

⁵ Noting the Reply submissions at paragraph 1.2 (a), stating that this was the original intention of how the trigger would operate, but the wording has been revisited in light of submitter concerns.

⁶ We are unsure if the reference GFA was meant to read “ground floor area” or “gross floor area” as are the other GFA provisions.

- (g) Amendment to Precinct Plan 3 and introduction of Standard IXXX.6.9 to provide certainty by showing the pedestrian and cycle connection from the southern end of the north-south connector road to the Notice of Requirement (NoR) boundary; and
 - (h) Deletion of precinct-specific temporary activity rules.
27. In addition to those amendments above, and following the Applicant's further consideration of the provisions after the hearing was adjourned, the Applicant made the following additional amendments to the Plan Change:
- (a) Reduction in the size of the Neighbourhood Centre zone from 1.8ha to 1.1ha; and
 - (b) Further reduction of the floor area caps for Offices of 1000m² GFA and for Retail of 3000m² GFA. Any exceedances of these caps would require a discretionary activity resource consent.
28. Finally, the Applicant also offered the following optional addition to the precinct provisions relating to noise controls, should the Hearing Panel consider it appropriate, but setting out this was not its preference:
- (a) An additional matter of discretion and assessment criteria for acoustic attenuation to apply to all new dwellings in the THAB zone on sites that front Karaka Road (SH22).

THE SITE AND SURROUNDING ENVIRONMENT

29. Both the Plan Change Request and the Section 42A Report provided detailed descriptions of the PC 61 area. The Section 42A Report records –
- “The site is set within a generally flat and gently rolling landscape. Roughly at the centre of the site, a low ridge runs north to south and is surrounded by comparatively low-lying agricultural land. The central ridgeline is the dominant feature within the open rural landscape of the site. There are several streams around the periphery of the site, with a tributary of the Pāhurehure Inlet running across the easternmost corner of the site.*
- The current land uses within the site include agricultural production on arable land and pastoral farmland and rural residential properties with supporting agricultural buildings. Rural grassland and pastoral farmland cover most of the site. Sparsely distributed hedgerows define the various fields and rural lots within the site.*
- The wider landscape is made up of highly modified rural land for agricultural production with scatterings of rural lifestyle blocks and farmsteads.”*
30. The PC 61 area is bounded by Karaka Road (SH22) to the south, Oira Road to the west, Jesmond Road to the east and immediately to the north the site adjoins FUZ

land. Further north-east of the site is Auranga (A, B1 and B2). The south-eastern corner of the site borders several FUZ properties (including the “Red Shed” cafe site).

31. The edge of the existing Drury township and businesses lie approximately 2km’s to the north-east of this site and on the opposite side of the southern motorway. The Auckland rail corridor lies to the south of SH22 approximately 1km away. The Papakura CBD is approximately 8km to the north-east and Pukekohe town centre approximately 12 km to the south-west.

NOTIFICATION PROCESS AND SUBMISSIONS

32. PC 61 was publicly notified on 28 January 2021; with a closing date of 1 March 2020 for submissions. Twenty-nine primary submissions were received, with one submission subsequently withdrawn.
33. A summary of submissions was publicly notified on 9 April 2021; with a closing date of 23 April 2021 for further submissions. Seven further submissions were received.
34. Kāinga Ora withdrew⁷ submission point 20.3 and the related Attachment 1 of its submission. This submission point sought to include 16, 54, 64 and 84 Jesmond Road Drury part of PC 61, and to be zoned THAB.
35. The Section 42A Report provided a summary analysis⁸ of the issues raised by the submitters and these included:
 - Ensuring that the timing of development is coordinated with the delivery of transport and other infrastructure necessary to support PC 61 and manage any potential effects on the surrounding area;
 - The need for transport and land-use integration, particularly around access to public transport;
 - Potential flooding and stormwater effects on downstream properties;
 - The scale and intensity of development enabled through the neighbourhood centre;
 - Precinct provisions that deviate from the underlying unitary plan zone provisions;
 - Whether the location of zoning of open spaces should be confirmed at the plan change stage;
 - The alignment and integration of infrastructure such as the wastewater network; and
 - Whether PC 61 gives effect to regional and national planning documents.

⁷ 11 June 2021

⁸ *ibid* at [11]

36. We address the submitters concerns in some detail below. Of particular significance to this decision are our findings in relation to the submissions of Auckland Transport (**AT**) and Auckland Council as a submitter (**ACS**), who, as their primary position, opposed the grant of PC 61 (noting also that AT and ACS oppose PCs 48 – 51 largely on the same basis).

SECTION 42A –OFFICER’S RECOMMENDATION

37. Mr Zhang, a planner, prepared the section 42A report. He was assisted by the following ‘technical inputs’ of the following experts:

Matter	Reviewing specialist
Urban Design, Landscape and Visual	Rebecca Skidmore,
Freshwater Ecology	Christina Bloom
Terrestrial Ecology	Carl Tutt
Transportation	Wes Edwards
Economics	Tim Heath
Heritage/archaeology	Robert Brassey
Stormwater and Flooding	Jack Turner and Hillary Johnston
Parks	Robin Rawson
Contamination	Ruben Naidoo
Geotechnical	James Beaumont

38. Mr Zhang, having considered all of the submissions and reviewed all relevant statutory and non-statutory documents and having had regard to all statutory obligations including those under sections 32 and 32AA of the RMA, recommended that PC 61 be approved with modifications that he outlined in his Section 42A Report and report back at the hearing.

39. In summary the significant recommended modifications included:

- Delete the THAB zoning in the southern portion of the site and move the northern THAB eastwards;
- Include a series of infrastructure related triggers;
- Delete the activity tables and rely on the AUP OP zone provisions, other than those matters specific only to Waipupuke (e.g. the Medical and Specialist Facility, Mana Whenua Cultural Markers, stormwater, subdivisions and development subject to triggers within the Precinct);
- Remove precinct provisions enabling service stations and fast-food outlets fronting SH22 as a restricted discretionary activity (**RDA**);
- Reduce the scale of the BNC zone and rely on the underlying zone provisions;
- Remove the Open Space Informal Recreation zonings and replace with indicative locations of open space in the Precinct Plan.

40. Mr Zhang did not recommend the introduction of noise and vibration control into the Precinct provisions.

LOCAL BOARD COMMENTS

41. The section 42A Report provides a full summary of both the Franklin Local Board's comments⁹ and the Papakura Local Board's comments. The Papakura Board presented at the hearing.
42. The Franklin Local Board noted:
- *the majority of public submissions do not support this plan change; and*
 - *The Board agreed with public concerns around the funding and timing of infrastructure upgrades required to support urbanisation of these sites, particularly transport and note that these concerns reflect concerns consistently raised by communities within the Franklin Local Board area regarding green-field development*
43. The Papakura Board expressed the view that:
- "The land should be released for development in line with Auckland Council's Future Urban Land Supply Strategy to ensure council can manage the costs associated with the development of infrastructure to support growth. The local board has an advocacy point in the Local Board Plan 2020 regarding infrastructure to be in place before development happens."*
44. Their comments addressed:
- A wider view of the development in the immediate area;
 - Greenspace & play space;
 - Paths and connectivity;
 - Parking and road widths;
 - The presumption that people will use public transport;
 - Public transport;
 - Mana whenua input; and
 - Stormwater.

HEARING AND HEARING PROCESS

45. Due to COVID 19 restrictions, the hearing was held by Remote Access (Teams). The hearing was held on the 6, 7, 8, 12 and 13 October 2021. The hearing was adjourned on 13 October having heard from the Applicant, the Submitters, the Local Boards and the Council. The Applicant's Reply Statement, and a set of 'marked up' precinct provisions, was provided on the 15 October 2021.

⁹ section 6.2

STATUTORY AND POLICY FRAMEWORK

46. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements were set out in the Section 42A Report¹⁰.
47. The Applicant in their Request for Plan Change¹¹ dated 22 January 2021, provided an evaluation pursuant to section 32, and the additional information (Clause 23) requested by the Council.
48. We do not need to repeat contents of the Plan Change Request and Section 32 Assessment Report in any detail. We accept the appropriate requirements for the formulation of a plan change has been comprehensively addressed in the material before us. However, in its evidence and at the hearing, we note that the Applicant proposed changes to the plan change in response to concerns raised by the Council and Submitters.
49. We also note that the Section 32 Assessment Report clarifies that analysis of efficiency and effectiveness of the plan change is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal. Having considered the application and the evidence, we are satisfied that PC 61 has been developed in accordance with the relevant statutory requirements.
50. Clauses 10 and 29 of Schedule 1 require that this decision must include the reasons for accepting or rejecting submissions. We address these matters below, as well as setting out our reasons for accepting or rejecting the submissions. Section 32AA of the RMA requires that any decision must include a further evaluation of any proposed changes to the Plan Change. As we have declined the Plan change, no section 32AA evaluation is necessary.

National Policy Statement on Urban Development and the Regional Policy Statement

51. The National Policy on Urban Development (**NPS-UD**) was gazetted on the 23 July 2020, and come into force on the 20 August 2020. It applies to all local authorities that have all or part of an urban environment within their District. Auckland City is listed as a “Tier 1” local authority.
52. In summary its purpose is to:
 - Have 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; and
 - Provide sufficient development capacity to meet the different needs of people and communities.

¹⁰ Section 42A Report at Section 8

¹¹ Request for Plan Change – at Section 9

53. We address the NPS-UD in more detail later in this decision, particularly in light of the recent Environment Court decision¹², and the legal submissions addressing those provisions which did or did not apply.
54. The purpose of the Regional Policy Statement (**RPS**) is to achieve the purpose of the RMA by providing: an overview of the resource management issues of the region; and policies and methods to achieve integrated management of the natural and physical resources of the whole region.
55. Pursuant to section 75(3) of the RMA, this Plan Change must “give effect” to the NPS-UD and the RPS. We address this matter later in this decision.

Strategic Context

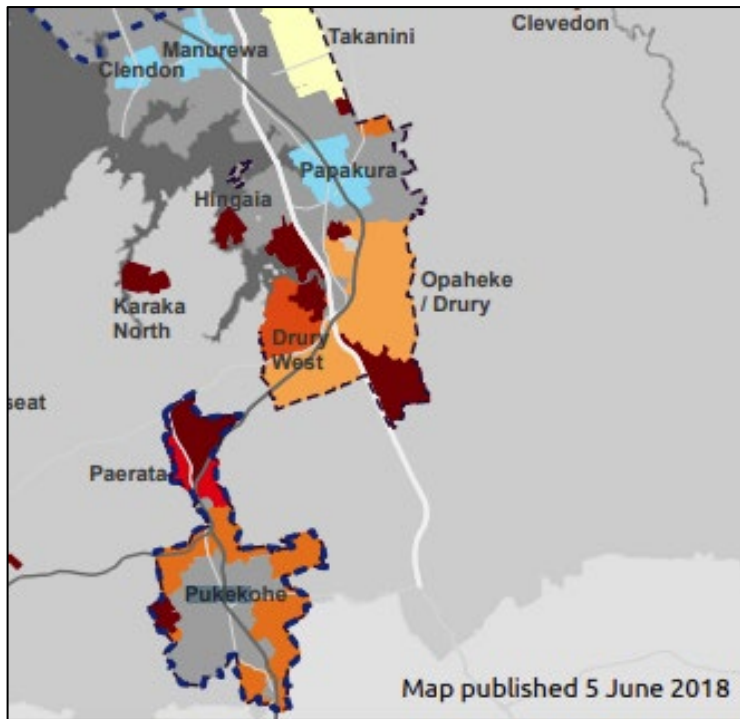
56. The section 42A report (section 3) set out the strategic context to the plan change request and provided a discussion on ‘non-statutory’ documents including the Auckland Plan, the Future Urban Land Supply Strategy (**FULSS**) and the Drury-Opāheke Structure Plan (**DOSP**). We briefly address these below as they set the strategic context in which this plan change needs to be considered vis-à-vis the statutory planning documents.
57. The section 42A report also discussed the relevant Notices of Requirement and infrastructure projects that had been proposed. Again, these are briefly addressed below.

Auckland Plan 2050

58. The Auckland Plan 2050¹³ takes a quality compact approach to growth and development. It defines quality as:
 - most development occurs in areas that are easily accessible by public transport, walking and cycling;
 - most development is within reasonable walking distance of services and facilities including centres, community facilities, employment opportunities and open space;
 - future development maximises efficient use of land; and
 - delivery of necessary infrastructure is coordinated to support growth in the right place at the right time.
59. The Auckland Plan’s Development Strategy shows a number of urban expansion areas in the southern sector, including Drury West (the location of PC 61) – see the map below.

¹² *Eden-Epsom Residential Protection Society Inc v Auckland Council* [2021] NZEnvC 082

¹³ Prepared in accordance with sections 79 and 80 of the Local Government (Auckland Council) Act 2009.



Future Urban Land Supply Strategy

60. The FULSS identifies the sequencing of the release of future urban land with the supply of infrastructure over 30 years for the entire Auckland region. It has a regional focus and attempts to provide a sustainable 'path' for greenfields expansion to the north, west and south of the Auckland urban area.
61. The intended staging for growth in Drury-Opāheke (set out in the FULSS) is:
- (a) Drury west of SH1 and north of SH22 is to be development ready from 2022 (including the PC 61 area).
 - (b) The remainder of the Drury-Opāheke structure plan area is to be development ready by between 2028 and 2032.
62. This plan change request would result in development occurring in line with the 'from 2022' timing set out in the FULSS.

Drury-Opāheke Structure Plan (DOSP)

63. The Council's DOSP was adopted in August 2019, and sets out a pattern of land use and a network of infrastructure for the FUZ land at Drury and Opāheke (1,921ha). As set out in the section 42A report "*The structure plan is intended to be the foundation to inform future plan changes to rezone the land and is a requirement under the AUP before Future Urban zoned areas can be urbanised and 'live' zoned*"¹⁴. We agree.
64. The DOSP land use map indicates a substantial centre at Drury East, a smaller centre at Drury West and large areas of housing to the east and west of SH 1. Over

¹⁴ Paragraph 47 of the Section 42A report.

the 30-year time frame envisaged by the DOSP, it is estimated to provide room for about 22,000 houses and 12,000 jobs, with a total population of about 60,000. As was set out by Mr Allan, ACS and AT's legal counsel, the DOSP Plan area is ultimately anticipated to have a population similar in size to Napier or Rotorua¹⁵. In Reply Mr Loutit set out "We have heard that Drury will be the size of Napier. Napier was not developed all at once"¹⁶. This is a 'theme' we return to later.

65. The Structure Plan map is set out below:



66. The land use zonings proposed in PC 61 are, for the most part, generally consistent with the DOSP. The key differences include:
- A BNC zone in the central part of the site, where the DOSP does not show any Business zoned land, and that part of this zone would provide for a Medical and Specialist Facility;

¹⁵ Structure Plan, section 3.2.

¹⁶ Paragraph 2.8 of the Applicant's Reply Statement

- An additional THAB zone in the south adjoining Karaka Road (SH22) and around the proposed neighbourhood centre; and
 - Several neighbourhood and pocket parks zoned Open Space Informal Recreation and Civic Space (adjacent to the Business zone).
67. The indicative location of the Drury west train station is shown on the DOSP as above. However, there was a general consensus among some experts presenting at the hearing that the location of the Drury west train station would shift south-westwards as a result of more detailed work by KiwiRail, with the station to be located west of the rail line. We had no confirmation of this from KiwiRail, and no NOR had been lodged for it. Accordingly, we have placed little weight on any of the Precinct provisions that were based on the location of the train station (in either location).
68. With respect to PC 61, a necessary corollary before FUZ land can be contemplated, is the completion of a structure plan, either by the developer, or as in this case, the Council (i.e. the DOSP). The comprehensive nature of, and process used to develop the DOSP, has, in our view, set a clear expectation that the area covered by the DOSP is to be lived zoned and developed, subject to appropriate (precinct) planning provisions.
69. The Structure Plan Guidelines of the AUP OP (*1.5. Specialist documents to support the structure plan and plan changes process*) seeks under the heading “Implementation” that a funding plan accompany any structure plan. This did not occur with the DOSP. The reasoning for this was set out in Mr Turbott’s planning evidence for ACS. He also set out that *“To date, a substantial funding gap remains and it has not been possible for the Council to conclude its funding plan for Drury-Opāheke Future Urban Zone or parts thereof”*¹⁷. This was the crux of the ACS/AT case.
70. Mr Turbott recommended that PC 61 be declined. A part of his rationale for this recommendation was that as the Applicant was relying on the Structure Plan as part of its justification for PC 61, that the Applicant should have prepared a funding plan. As they had not it was Mr Turbott’s view that PC 61 was inconsistent with the AUP Appendix 1 provision for a funding plan¹⁸.
71. With respect to Mr Turbott we disagree with him. Appendix 1 to AUP OP requires a funding plan to be submitted when structure plans are prepared, not at the plan change stage. Accordingly, the issue before the Hearing Panel is - has the Applicant funded or committed to the necessary infrastructure upgrades (transport related and water and waste water) to address the direct adverse effects of its proposal on the environment. And whether there are appropriate ‘staging triggers’ in place to ensure

¹⁷ Paragraph 8.22 of Mr Turbott’s evidence

¹⁸ Paragraph 8.19 of Mr Turbott’s evidence

that the necessary upgrades are untaken so as to avoid or mitigate any adverse effects.

72. We have placed considerable weight on the DOSP. This is due to what we understand was a comprehensive and robust Council process; carried out under the LGA 2002 processes. This was to address the requirements in the RPS that a structure planning process was necessary prior to 'live zoning' FUZ land.
73. In summary the DOSP process was initiated in 2017 and developed over a two year period, which included significant consultation and engagement with stakeholders, the public, mana whenua, and the community. It comprised the following phases:
- The process was initiated with an analysis of opportunities and constraints in 2017;
 - A first phase of consultation on planning issues in September – October 2017;
 - Analysis of land use options and selection of a preliminary option;
 - A second phase of consultation on the Drury Opāheke Draft Land Use Plan in 2018;
 - Preparation of a draft DOSP in 2019;
 - The final phase of consultation on the Draft DOSP was concluded in April 2019; and
 - The DOSP was unanimously adopted by the Council's Governing Body in August 2019, and, as we understand, has not been revisited.
74. In respect of the above the DOSP is an RMA mandated statutory process designed to achieve the outcomes set out in the RPS with respect to 'live' zoning FUZ land. For the reasons set out, and as we have already said, we have placed considerable weight on the DOSP.

FINDINGS AND REASONS FOR DECLINING THE PLAN CHANGE.

75. As an overview, we accept the Applicant's rationale for seeking to change the AUP OP, and rezoning of the site from FUZ to 'live' urban zonings. We have found that the proposal could have given effect to the NPS-UD and the RPS (B2 and B3 provisions - Urban growth and form, and Infrastructure, transport and energy), had the Development Staging and Transport upgrade provisions been reliable and workable. They are not, and we address these in some detail later in this decision.
76. We then address a number of matters (as set out in the Executive Summary), and say what we would have supported or not had we approved the Plan Change.
77. We then more specifically address the submissions received on PC 61 and the relief sought in those submissions. In this respect, in accordance with Clause 10(2) of the

RMA, we have grouped together those submissions under the headings that were used in the section 42A report for consistency and simplicity.

78. With respect to further submissions, they can only support or oppose an initial submission. Our decisions on the further submissions reflects our decision on those initial submissions having regard, of course, to any relevant new material provided in that further submission. As an example, if a Further Submission supports a submission(s) that opposes the Plan Change and we have recommended that the initial submission(s) be rejected, then it follows that the Further Submission is also rejected.
79. We also note that we must include 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. As we have declined PC 61, we have not provided a section 32AA evaluation per se, but we have, as mentioned above, set out what we would have supported or not had we approved the Plan Change.
80. For the reasons that follow, we are not satisfied that the PC 61 provisions (in the form presented to us by the Applicant), are the most appropriate in terms of section 32 of the RMA. We address these matters below.

Should Plan Change 61 be declined on the basis that it would not give effect to the National Policy Statement on Urban Development and the AUP OP's Regional Policy Statement?

The positions of the Applicant and Submitters

81. The Applicant's position, unsurprisingly, was that the Plan Change be approved as it satisfied the provisions of the statutory planning documents, and the provisions of the RMA – notably sections 32 and 32AA and Part 2 of the RMA.
82. The most significant 'challenge' to PC 61 was from ACS and AT. Those submitters, who presented a joint case, strongly opposed the approval of PC 61 as its primary position¹⁹. ACS and AT filed extensive legal submissions and evidence (both corporate and expert) to justify their position that PC 61 be declined.
83. ACS' and AT's case was that PC 61 would not give effect to the NPS - UD or the RPS because of its funding constraints to be able to deliver what it considered were the necessary transport upgrades for the Drury area. The legal submissions set out that²⁰:

The Supreme Court held in King Salmon – in a plan change context – that: “Give effect to” simply means “implement”. On the face of it, it is a strong directive, creating a firm obligation on the part of those subject to it. As the Environment Court said in Clevedon Cares Inc v Manukau City Council: The

¹⁹ Those submitters did provide alternative relief if the Hearing Panel was not minded to accept its primary relief.

²⁰ Paragraphs 3.3 and 3.4 of the Submitters Legal Submissions

phrase “give effect to” is a strong direction. This is understandably so for two reasons:

- [a] The hierarchy of plans makes it important that objectives and policies at the regional level are given effect to at the district level; and*
- [b] The Regional Policy Statement, having passed through the [RMA] process, is deemed to give effect to Part 2 matters.*

The Supreme Court also noted that a requirement to “give effect to” a policy which is framed in a specific and unqualified way, may in a practical sense be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction. We address Mr Turbott’s and Ms Sinclair’s / Ms Smith’s evidence and concerns below that PPC 61 will not “give effect to” key provisions in the NPS-UD and the RPS.

84. For the reasons that follow we did not agree with the evidence of Mr Turbott and Ms Sinclair / Ms Smith; that PC 61 could not give effect to the NPS-UD and the RPS. We prefer Mr Lala’s evidence in this respect. We do, however, agree with the submitters’ witnesses that PC 61, in the form proposed by PC 61, would not give effect to the NPS-UD and the RPS.
85. ACS and AT presented an alternative position; that should we not accept their primary position that PC 61 be declined, but if it were to be approved, it should be approved with staging/triggers that would require significant infrastructure improvements (roading, public transport and walking and cycling) in the immediate and wider Drury area prior to development occurring.
86. The Applicant strongly opposed ACS’ and AT’s position. It was the Applicant’s position that PC 61 gave effect to both the NPS–UD and the RPS, and that the infrastructure improvements it proposed (subject to Development Staging and Transport Upgrades) ensured this. The section 42A author, and other submitters including Waka Kotahi, did not agree with the primary position advanced by ACS and AT.
87. The matters highlighted above are addressed below. We set out why we have accepted the Applicant’s (and other parties) position that PC 61 could give effect to the NPS–UD and the RPS, and not that of ACS and AT. It is for other reasons, notably that we do not support the Applicant’s Development Staging and Transport Upgrades²¹, that we have declined the Plan Change.
88. The first matter to address is which provisions of the NPS-UD apply. This was a matter of some contention in this Plan Change (and the other Drury Plan changes we had heard) as a result of the recent Environment Court’s decision - *Eden-Epsom Residential Protection Society Inc v Auckland Council [2021] NZEnvC 082*. We are required to “give effect” to any National Policy Statement (and the Regional Policy Statement pursuant to section 75 (3) of the RMA.

²¹ And for other reasons that we address in this decision

89. Mr Allan, counsel for ACS and AT, submitted that only the objectives and policies specifically relating to “planning decisions” as referenced in the Court’s decision were relevant. He stated:

“The NPS-UD objectives and policies that specifically refer to “planning decisions”, and therefore those that potentially must be given effect to at this stage, are – as Mr Turbott identifies in his evidence – Objectives 2, 5 and 7 and Policies 1 and 6²²²³”.

90. Mr Allan went on to say²⁴:

“While the Eden-Epsom decision indicates that the provisions of the NPS-UD that must be given effect to by the Panel are limited to those which relate to “planning decisions”, this decision does not ‘change the calculus’ for the Submitters to any great extent, having regard to the relevant RPS provisions which must likewise be “given effect to” (e.g. the same themes as to integration of growth / land use with infrastructure can be found in the RPS)”.

91. Mr Loutit, counsel for the Applicant, did not provide any substantive submissions on the applicability of the NPS- UD vis-à-vis the Eden-Epsom decision, but set out the following in his Reply Statement²⁵

“Counsel for Waka Kotahi and counsel for AT / Council as submitter have raised the Environment Court’s recent decision addressing the relevance of the NPS-UD to private plan changes, in situations where the relevant territorial authority has yet to notify plan changes to implement the requirements of the NPS-UD. Mr Allan argues that only objectives and policies specifically relating to “planning decisions” are relevant; while Mr Matthew Gribben for Waka Kotahi takes a wider lens approach and says that the Panel can and should have regard to the overall themes and outcomes that the NPS-UD seeks to achieve, while bearing in mind future planning processes that are still to come.

We agree with Mr Gribben that the Panel cannot ignore the NPS-UD which very clearly articulates the government’s desired policy direction for urban development in response to the housing shortage. PC61 is consistent with these themes. It is providing high intensity development close to the planned Drury West Train Station and is appropriately integrating development with infrastructure.”

92. Mr Gribben set out²⁶:

“We outlined our view on the application of the National Policy Statement on Urban Development (NPS-UD) and the Southern Cross decision in legal

²² Paragraph 4.18 of Mr Allan’s legal submissions

²³ We note that ACS/AT, as part of their evaluative planning evidence, assessed the plan changes against provisions which do not reference “planning decisions” (such as Objective 6 of the NPS-UD)

²⁴ Paragraph 4.21 of Mr Allan’s legal submissions

²⁵ Paragraph 5.3 and 5.4 of the Reply Submissions

²⁶ Para 3.2 of Waka Kotahi’s legal submissions

submissions for Plan Change 48²⁷. In summary, a number of themes from the NPS are relevant to the plan changes throughout Drury including:

(a) Achieving a well-functioning urban environment;²⁸

(b) Ensuring people can live near centres and areas well served by public transport;²⁹ and

(c) Integration of land use with infrastructure planning and funding³⁰.”

93. We agree with Mr Gribben and Mr Loutit. Given we are required to give effect to the NPS-UD, we need to consider its wider ‘themes’ and not to do so is somewhat artificial as, in our view, the NPS-UD needs to be read as whole. As an example, it is not possible in our view to “give effect” to Policy 1 which contains the words “planning decision” without consideration of Objective 1 (also set out below), which as Mr Allan points out does not contain the words “planning decision”. They are:

Objective 1: New Zealand has 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.

Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

94. One of the major issues in contention between the Applicant and ACS and AT related to Objective 6(a) of the NPS-UD, that any decisions on urban development are to be “*integrated with infrastructure planning and funding decisions*”. Objective 6(a), working in conjunction with the other two elements of Objective 6, requires planning decisions to be integrated, strategic and responsive. Objective 6(b) has a focus on ensuring decisions are strategic in the medium term (3 – 10 years) and long term (10 – 30 years), while Objective 6(c) emphasises the need for decisions to be responsive, particularly in relation to proposals that would supply significant development capacity. This objective is also reflected in Policy 8 of the NPS-UD.

Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments.

95. We accept that the NPS-UD does not provide support for development at any cost. We also accept that a key consideration in assessing whether a plan change would add significantly to development capacity and contribute to a well-functioning urban environment is the ‘infrastructure-readiness’ of the project. We need to be satisfied that PC 61 can provide the infrastructure needed to support it in a timely manner.

²⁷ Legal submissions on behalf of Waka Kotahi for Plan Change 48, 22 July 2021, section 9. In relation to the Southern Cross in summary decision makers can, and should, have regard to the overall themes and outcomes that the NPS-UD seeks to achieve, while bearing in mind future planning processes that are still to come

²⁸ Objective 1 and Policy 1

²⁹ Objective 3

³⁰ Objective 6

96. The issue in the previous paragraph is the major difference between the Applicant and ACS and AT; the Applicant's position being it will provide the infrastructure needed to mitigate its direct adverse effects (discussed in more detail later), while the ACS and AT position is that PC 61 does not have committed funding in place to provide the infrastructure needed. As we set out later ACS and AT's position is that there are no funding or financing solutions in the next 10-years, and potentially beyond that, for it to provide the necessary upgrades to ensure a well-functioning urban environment (as detailed in the Drury Infrastructure Funding and Financing programme (**DIFF**) report); and that there was no funding confirmed to upgrade SH22.

97. ACS' and AT's position in relation to the RPS was the same as that for the NPS-UD; i.e. that PC 61 did not give effect to it. Mr Allan, in terms of legal submissions, and Mr Turbott and Ms Sinclair/Ms Smith in terms of planning evidence, told us that the RPS had similar provisions to the NPS-UD – namely provisions requiring integration of infrastructure with land use³¹. These were set out in sections B2 – Urban Growth and Form and B3 – Infrastructure, Transport and Energy, which involve the strategic integration of infrastructure with land use through objectives, policies and methods. As already stated, section 75 of the RMA required us to be satisfied that PC 61 will “give effect to” or implement the RPS provisions.

98. Conversely, Mr Loutit's legal submissions stated that³²:

“The Plan Change also gives effect to the RPS objectives and policies as embodied in the AUP. The Planning Assessment prepared by Mr Lala as part of the Plan Change application provides a comprehensive assessment of the Plan Change against the RPS.”

99. The parties agreed that many of the NPS - UD provisions were ‘mirrored’ in the RPS. We also agree with this. We have set out our position in relation to the applicability of the NPS-UD (ie those provisions that apply) and acknowledge this is different to the position of ACS/AT. However, we have not solely relied on the NPS-UD for our findings set out above, but those of the RPS which as we say, to a large extent, mirror those of the RPS.

100. There are several RPS objectives and policies in sections B2 – Urban Growth and Form and B3 – Infrastructure, transport and energy that have particular relevance to this Plan Change, and were addressed by a number of the witnesses and include:

B2 – Urban Growth and Form

Objective B2.2.1(1)(c):

A quality compact urban form that enables all of the following:

³¹ As required by section 30 (1)(gb) - the strategic integration of infrastructure with land use through objectives, policies, and methods:

³² Paragraph 8.17 of the Applicant's opening legal submissions

- (c) *better use of existing infrastructure and efficient provision of new infrastructure;*
- (d) *improved and more effective public transport;*

Objective B2.2.1(5):

The development of land within the Rural Urban Boundary, towns, and rural and coastal towns and villages is integrated with the provision of appropriate infrastructure.

Policy B2.2.2(7)(c):

Enable rezoning of land within the Rural Urban Boundary or other land zoned future urban to accommodate urban growth in ways that do all of the following: ...

- (c) *integrate with the provision of infrastructure; and ...*

Policy B2.4.2(6):

Ensure development is adequately serviced by existing infrastructure or is provided with infrastructure prior to or at the same time as residential intensification. (emphasis added)

B3 – Infrastructure, transport and energy

Objective B3.2.1 (5) Infrastructure planning and land use planning are integrated to service growth efficiently:

Objective B3.3.1(1)(b):

(1) Effective, efficient and safe transport that:

(b) integrates with and supports a quality compact urban form; ...

Policy B3.3.2(5):

Improve the integration of land use and transport by:

- *ensuring transport infrastructure is planned, funded and staged to integrate with urban growth;*
- *encouraging land use development and patterns that reduce the rate of growth in demand for private vehicle trips, especially during peak periods...*

101. Furthermore, the explanatory text at B3.5 – Explanation and principal reasons for adoption of the RPS, confirms the intention that:

“Without the connections enabled by transport networks (land, sea and air), piped networks (water, wastewater and stormwater reticulation), energy

generation, transmission and distribution networks (electricity, gas and liquid fuels), and telecommunication networks (wired and wireless), few other forms of activity and development could occur. This means that development, especially that associated with growth in greenfield areas, must be integrated and co-ordinated with the provision of infrastructure and the extension of networks”.

102. In a nutshell, and as alluded to above, it is the Applicant’s position, relying on case law (discussed below), that the necessary infrastructure upgrades relevant to PC 61 had been planned, were subject to Development Staging and Transport Upgrade provisions to ensure the necessary upgrades are undertaken, and would be funded by Lomai. On this basis, they said that PC 61 would “give effect to” to the NPS-UD and the RPS (and in particular those provisions quoted above), and would be consistent with the Auckland Plan 2050, the FULSS and the DOSP.

103. ACS’ and AT’s case, in summary, was set out at paragraphs 1.4 – 1.8 of their legal submissions. Paragraphs 1.4 and 1.5 were:

“As the Panel is aware, PPC 61 is one of several proposed plan changes within the Drury-Opāheke Structure Plan area. The Structure Plan area is ultimately anticipated to have a population similar in size to Napier or Rotorua. While the live zoning of this land is anticipated in the sense that it has been strategically identified as an area that is appropriate for future urban zoning, the live zoning of such a large area of land, all at the same time, presents significant difficulties in terms of ensuring:

(a) that core resource management principles and policies are given effect to; and

(b) that the urban development enabled is well-functioning in a manner that alleviates, rather than exacerbates, the challenge that Auckland currently faces in providing adequate infrastructure to support its growing population.

In this latter respect, the amount of infrastructure required to support the proposed plan changes in Drury is on an unprecedented scale. Current identified sources of funding do not come close to the amount needed to finance and fund the infrastructure needed to support the live zoning of the land. Therein lies the crux of the Submitters’ concerns³³”. (Underlining is our emphasis).

104. In relation to transport and infrastructure financing and funding issues, ACS and AT provided detailed corporate evidence from Ms Duffield, Mr Kloppers and Mr Gudsell. In summary their evidence was:

- An overview of the work undertaken since the completion of the Structure Plan namely through the Drury Transport Investment Programme (**DTIP**) and the Drury Infrastructure Funding and Financing programme (DIFF), to identify the infrastructure (particularly transport infrastructure) that would be required to

³³ We discuss the issue of funding in more detail later in this decision

enable the development of Drury over the full build-out period of 30 years to ensure a sustainable well-functioning urban environment.

- The limited extent of funding available to support growth in Drury. Mr Gudsell identified that \$243 million in funding would be available in the last four years of this decade for transport improvements to support the New Zealand Upgrade Programme (**NZUP**), however that funding is limited, and a significant infrastructure funding shortfall remains. He also outlined the various competing demands confronting Council – rapid growth, changing needs, transport demands, maintaining existing assets and services, responding to climate changes, and the impacts of COVID-19.
- The financing and funding shortfall in relation to that infrastructure, with a focus on the next 10 years (being both the LTP/RLTP period and the ‘time horizon’ for district plan provisions). Ms Duffield explained in her evidence the immediate problem facing the Council in this regard, which is that there is currently no solution to finance and fund the infrastructure for Drury in the next 10 years (nor, she notes, is there a defined solution over the longer term).
- A key issue identified by these witnesses was that the Council had insufficient borrowing capacity to forward finance the required additional infrastructure in Drury in the short to medium term.

105. Ms Duffield, in her summary evidence statement provided us an overview (gap analysis) of the funding required and the various funding tools available and their limitations. Her analysis emphasised that there was no infrastructure financing and funding solution for identified funding gap over the next 10-year period of the LTP / RLTP. In addressing the various funding tools she noted that the Infrastructure and Financing Act 2020 *“could address a modest part of the infrastructure financing and funding gap. It is unlikely to bridge most of the gap, and requires certainty about the remaining infrastructure financing and funding solution before it can be implemented”*³⁴.

106. Ms Duffield also addressed the Council’s draft Development Contributions policy. In terms of the evidence she recorded, that³⁵ *“Mr Khan and Mr Lala refer to the draft Development Contributions Policy as a means to resolve the infrastructure funding gap for PPC 61 (and the other Drury Plan Changes). This is not the case because:”*

The draft Contributions Policy 2021 that is currently being consulted on by Auckland Council will not have a final decision made on it until late in 2021. If it is decided to progress with this policy, the Auckland Council infrastructure included in this policy will not commence to be planned or progressed until 2032. At the earliest the projects would be available in mid-2030s. The projects within the policy are phased from 2032 over a 20 year period. For example, of the projects that Andrew Prosser has identified as being required in the first 10 years to

³⁴ Paragraph 12e of Ms Duffield’s Summary Statement

³⁵ Paragraph 14a of Ms Duffield’s Summary Statement

support PPC 61, the earliest any of these are included in the draft Contributions Policy 2021 is planning commencement in 2032. Many are not included to commence planning until 2034 or 2037. Construction would be several years beyond these dates.”

107. In response to this matter, Mr Loutit set out in Reply³⁶:

Counsel for the Council as submitter and AT states that the Council’s proposed development contribution policy 2021 (DC Policy) does not demonstrate that Council has financing available for Drury upgrades because development contributions do not provide an immediate source of funding for infrastructure needed in the next 10 years. Ms Duffield gave evidence that the DC Policy only relates to infrastructure upgrades intended to be undertaken in 2032 and beyond. In response:

- (a) The Council has committed to build the infrastructure by publishing the DC Policy. It is also only entitled to seek development contributions for infrastructure that it intends to build (section 199 of the Local Government Act 2002);*
- (b) The issue is not directly relevant to PC61 because the applicant has demonstrated through its evidence that it does not rely on any of these wider infrastructure projects and can mitigate its own effects through upgrades it has committed to undertake; and*
- (c) I also come back to my opening submissions around what obligations developers have as per the LandCo Mt Wellington v Auckland City Council and Laidlaw College Inc v Auckland Council decisions. Counsel for Waka Kotahi agreed with these submissions as to the extent of the applicant’s responsibilities for this Plan Change.*

108. For the purpose of this decision we simply note that Ms Duffield does not consider that the proposed revised Development Contributions policy will solve the funding and finance issues. While Mr Louitt sets out it is a funding tool, the Applicant’s position is that it does not rely on any of the wider infrastructure projects and can mitigate its own effects through upgrades it has committed to undertake - and hence this issue of development contributions is not relevant to the issue before us.

109. In terms of the transport implications, Mr Prosser set out the implications of allowing urbanisation to proceed without the required infrastructure being in place, including the “critical” need for the SH22 upgrade works. Mr Prosser’s assessment indicated that 30 transport projects of a total of 70 projects in the DIFF report were required to respond to PC 61 as part of Drury West. He opined that of these 30 projects, there are at least 15 DIFF improvement works, which alongside two other ‘non-DIFF’ projects he identified, would be needed in the first five years from 2023. It was his view that there were a total of 17 ‘early projects’, and a further three of the remaining DIFF projects that were required in the next 10 years.

³⁶ Paragraph 3.13 of the Applicant’s Reply

110. The planning implications of the necessary transport upgrades and the Council's lack of ability to fund these, lead the ACS and AT planning witnesses to opine that live zonings for PC 61 were premature and that it should be declined at this time. On this basis, Ms Sinclair/Ms Smith and Mr Turbott did not consider that PC 61 (and the other Drury Plan Changes) gave effect to the objectives and policies in the NPS-UD and the RPS relating to the strategic integration of infrastructure, and the planning and funding of such infrastructure, with land use.
111. In relation to the above, the ACS and AT planning witnesses said to us, in response to questions, that if funding was not an issue, they would not be opposing the approval of the Plan Change at a strategic level.
112. In summary, it was Mr Allan's submission to us that³⁷:

"However, for PPC 61, the funding and financing solutions required to support the live zoning of the land – including in relation to key unfunded SH22 upgrades that are the responsibility of Waka Kotahi – are not in place [we address this issue further below]. Nor is there any certainty at present that the funding and financing solutions will be achieved within the timeframes needed to support live zoning, if the plan change is approved at this time. It is not responsible and sustainable, nor does it give effect to the RPS and NPS-UD, to live zone land without ensuring that an adequate financing and funding solution is in place to deliver the infrastructure required in the next 10 years. The notion that such issues can be resolved following live zoning is effectively putting the cart before the horse. Without certainty as to the financing and funding of necessary infrastructure to support live zoning, the Submitters regrettably cannot support PPC 61 at this time.

Accordingly, in relation to the Submitters' transport / infrastructure concerns, the primary relief sought by the Submitters is that PPC 61 be declined at this time, with the land retaining its Future Urban zoning for the time being."

113. With respect to SH 22/Karaka Road, Waka Kotahi's legal submissions, (and supported by the evidence of Mr Prince (transport) and Mr Clarke (Planning)) stated³⁸:

"The Waka Kotahi position is that PC61 can be approved now subject to the amended provisions it has proposed given:

- (a) The development is generally consistent with the Drury-Opaheke Structure Plan and the Future Urban Land Supply Strategy;*
- (b) There are adequate and appropriate plan provisions (including triggers) to manage the transport effects on SH22 from the initial stages of development;*

³⁷ Paragraph 1.6 and 1.7 of ACS/AT legal submissions

³⁸ Paragraph 1.9 of the Waka Kotahi legal submissions

- (c) *Effects in the longer term on directly impacted parts of SH22 can be addressed through additional plan provisions as sought by Waka Kotahi;*
- (d) *There is considerable investment and new infrastructure signalled for Drury West, including the Drury West Train Station and new roading upgrades;*
- (e) *Although there is some uncertainty about funding or exact timing of new infrastructure, that is not sufficient to decline this particular plan change in light of the other factors. Given the steps in the Interim Access Plan some development at Waipupuke can occur in the short term without having adverse effects on the state highway network; and*
- (f) *Overall, there is sufficient integration between land use and infrastructure to allow this plan change to be approved, with appropriate triggers.”*

114. In short, Waka Kotahi was satisfied that PC 61 could be approved subject to the amended provisions it proposed. This is a contrary view to that submitted by Mr Allan, and the evidence of ACS and AT traffic and planning experts.

115. In response to ACS and AT legal submissions and evidence, Mr Loutit set out the following in the Reply³⁹.

“After hearing the submitters’ legal submissions and evidence, it has become abundantly clear that these submitters have approached all proposed plan changes in Drury as if they were one proposal. The submitters’ case does not engage in the detail of PC61 at all, and at several times during the hearing, the applicant was left wondering whether the submitters’ counsel and experts had even read the applicant’s evidence.

One particularly stark example of this was Ms Brigid Duffield’s response to questions from the Panel on cost reductions associated with collector roads, where she admitted that she did not know which infrastructure upgrades the applicant had volunteered and were included in the proposed precinct provisions. Another example was Mr Andrew Prosser’s evidence, which on its face did address PC61 but on closer inspection again was always in the context of the other plan changes in this area.”

116. The Applicant accepted that the Drury Transport Investment Programme (**DTAP**) and DIFF reports identified the: short, medium and long term infrastructure upgrades and funding issues necessary for the full build out of Drury. Mr Hills’ set out:

“I generally do not dispute the findings of the DIFF, in the sense that it is obvious that upgrades to the wider transport network will eventually be required (over a 30 year timeframe) to accommodate all planned development in Drury (and beyond to Paerata and Pukekohe). I have acknowledged this in my EIC”⁴⁰.

³⁹ Paragraphs 2.2 and 2.3 of the Reply Statement

⁴⁰ Paragraph 5.3 of Mr Hills’ rebuttal evidence

117. We also accept the DTAP and DIFF reports, and acknowledge the significant amount of work that has gone into those documents. However, it is important to note that the DIFF Report, which Mr Prosser bases his evidence on, and in turn which Ms Sinclair relies, considers traffic growth in Auckland from much wider afield than just Drury.
118. Mr Kloppers acknowledged this in his evidence, and also stated⁴¹:

The DIFF programme's relationship to the private plan change processes

As section 1.2 of the DIFF Report describes, the DIFF programme primarily focused on Council's consideration of funding options. It is not intended to duplicate or replace Council's, Auckland Transport's or Waka Kotahi's detailed assessment of each private plan change. For instance, in relation to the plan change process the DIFF Report notes that the study has a broader network focus than just the individual plan changes, looking at the cumulative growth across both the various plan changes and the wider growth pressures, and does not focus on detailed plan change provisions (e.g. staging triggers)⁴². That said, the DIFF Report details the transport facilities needed to serve the full release of the proposed plan changes in Drury, using assumed yield and build-out rates derived from the Plan Change documents. (emphasis added)

119. It is clear to us that the DIFF report was developed for strategic purposes, and not designed as a tool to assess Plan Change applications. As set out it has a long term and Drury wide focus, and identifies the works that the Council considers necessary for the ultimate (and eventual) build out of the area. PC 61 only applies to a part of the broader area and its development (if approved) would, like the other Plan changes, occur over time rather than instantaneously. In this respect it is more efficient to develop the roading infrastructure over time – i.e. as it is required to accommodate development. This is consistent with RPS Policy B2.4.2(6); already quoted earlier:

Ensure development is adequately serviced by existing infrastructure or is provided with infrastructure prior to or at the same time as residential intensification. (emphasis added)

120. As already noted earlier, Mr Prosser identified 30 transport projects, of which 15 key new DIFF network improvements and a further two 'non DIFF' transport improvement projects were required either immediately and/or within the first five years of Drury-wide development commencing (i.e. the first five years from 2023). Mr Hills addressed Mr Prosser's evidence and stated:

"I have listed the 17 projects and their costs in Table 1 below⁴³, together with a comment on each (noting that the non-DIFF projects are items 7 and 17* in that table). The projects shaded green are projects that Lomai has volunteered to fund and deliver (and for which PC61 precinct (Precinct) provisions include a trigger)."*

⁴¹ Paragraph 5.7 of Mr Kloppers' evidence

⁴² DIFF report, at Section 1.2 bullet point 1

⁴³ Mr Hills' table is attached as Appendix 1

121. Mr Hills table is set out below (noting the shaded boxes set out those projects to be funded by PC 61):

No.	Project	My Comments
1	Great South Road / SH22 (Karaka Road) intersection upgrade DIFF No 3 Cost: \$1-12 million	I note there is already a trigger requirement to upgrade this intersection as part of Drury South and as noted by Mr Prosser " <i>this intersection is currently being designed by Waka Kotahi as a consequence of Drury South private plan change conditions of consent</i> ". The "additional lanes" noted by Mr Prosser as being required from PC51 relate to the left in / left out from PC51 which is not related to PC61. Already part of Drury South (PC61 does not change the initial design).
2	2-Lane bridge over Bremner / Waihoehoe Road DIFF No 16a Cost: Unknown part of NZUP	As noted in Table 5-2 of the DIFF Report this is "funded through NZUP". Already funded by NZUP.
3	SH1 Interchange Upgrade including Ramps DIFF No 19-2 Cost: Unknown part of NZUP	NZUP delivered upgrade to the existing Drury interchange with on and off ramp improvements and increased capacity. Already funded by NZUP.
4	New Intersection on Jesmond Road / Bremner Road DIFF No 40a Cost: \$31-39 million (although this cost includes the Bremner Road extension as well as an intersection)	This is a new signalised intersection on Jesmond Road to the north of the Site which links to the new East-West arterial (new Bremner Road). This link is not shown in the DIFF Report (Fig 5-5) until 2036 (15 years' time) well after PC61 is shown (2022 on DIFF Report). The DIFF Report also states this as responsibility is " <i>cumulative Drury West (depending on surrounding growth and timing of project 65)</i> ". Considered Cumulative Drury West.
5	Jesmond Road Upgrade from SH22 to PC61 boundary DIFF No 41a Cost: \$4-5 million	This is an upgrade of Jesmond Road from PC61 to SH22. In this regard PC61 provides for this full upgrade along the site frontage as well as an active mode link from the southern boundary to SH22. I agree with Mr Prosser that this is considered important and PC61 proposes to upgrade this road along the site frontage and provide a temporary active mode connection to SH22 (when train station is operational). Partly funded by PC61.
6	Jesmond Road from PC61 northern boundary to Bremner Road DIFF No 42a Cost: \$4-5 million	This is an active mode collection from PC61 to the new Bremner Road. Listed as a potential shared path on one side and responsibility to PC61 in the DIFF Report. This is included as mitigation as part of PC61. Shared path on Jesmond Road to school in the north. Funded by PC61.

7*	Old Bremner Road upgrade from Jesmond Road to Auranga Precinct including Jesmond/Old Bremner Road intersection Cost: \$2-3 million	This is a new project added by Mr Prosser. Of note as part of the Auranga A project, this project is currently being designed (I am directly involved) and the resource consent have been lodged with the Council (in July 2021 known as Stage 7 Auranga A) which includes provision of the upgrade of Old Bremer Road and Jesmond Road / Old Bremner Road intersection (interim priority and future traffic signals). As such this is funded by Auranga A. Funded by Auranga A.
8	SH22 / Jesmond Road intersection DIFF No 43a Cost: \$10-12 million	This project is now related to the Drury West rail station (i.e. station needs connections), as noted by Mr Prosser "A NZUP related project (being part of the required works for the new Drury West Rail Station) with new signalised intersection". Already funded by NZUP.
9	SH22 Widening (Great South Road to Jesmond Road) DIFF No 49 Cost: \$90-113 million	From a review of the DIFF Report this is listed as "Waipupuke, + Auranga + Drury West FUZ + Cumulative south/west" in the staging table (Table 5-2) and in the main assessment table (Table 5-1) this is listed under "Drury East-West". In my opinion, this is a cumulative effect as noted in the DIFF Report but given it is a strategic connection (SH22 midblock) it also relates to wider growth / Future Urban zone (FUZ) in Pukekohe and Paerata. Considered a cumulative regional project.
10	SH22 Widening (Jesmond Road to Oira Road) DIFF No 50b Cost: \$28-34 million	From a review of the DIFF Report this is listed as "Drury West FUZ + Cumulative south/west" in the staging table (Table 5-2) and in the main assessment table (Table 5-1) this is listed under "Drury West". In my opinion, this is a cumulative effect as noted in the DIFF Report but given it is a strategic connection (SH22 midblock) it also relates to wider growth / FUZ in Pukekohe and Paerata. Considered a cumulative regional project.
11	Drury West Rail Station and access from SH22 DIFF No 57 Cost: \$ Unknown part of NZUP	As noted by Mr Prosser "A NZUP project with interdependency on the construction of signalised treatment at SH22 / Jesmond Road and widening of SH 22". Already funded by NZUP.
12	Oira Road Upgrade (SH22 to PC61 Northern Boundary) DIFF No 58 Cost: \$32-42 million	Included as mitigation part of the initial stages of the development including urbanising Oira Road from SH22 to bother boundary. Funded by PC61.
13	Jesmond Road / East West Collector (PC61) – New Intersection DIFF No 59 Cost: \$5-7 million	Included as mitigation as part of PC61. Funded by PC61.

14	SH 22 / Oira Road Intersection Improvements DIFF No 60a Cost: \$10-12 million	Included as mitigation as part of PC61. Funded by PC61.
15	New Collector and Local Roads within PC61 DIFF No 63 Cost: \$27-34 million	Included as mitigation as part of PC61. Funded by PC61.
16	SH22 improvements - west of SH1 interchange to GSR DIFF No 66 Cost: \$29-37 million	From a review of the DIFF Report this is listed as "Waipupuke, + Auranga + Drury West FUZ + Cumulative south/west" in the staging table (Table 5-2) and in the main assessment table (Table 5-1) this is listed under "Drury East-West". In my opinion, this is a cumulative effect as noted in the DIFF Report but given it is a strategic connection (SH22 midblock) it also relates to wider growth / FUZ in Pukekohe and Paerata. Considered a cumulative regional project.
17*	New Public Bus Services across Drury Cost: \$unknown	I agree with the provision of public transport linking the Site to the wider area including the proposed rail stations. Public transport is the responsibility of AT. As per existing Auranga development as development occurs and demand increases, public transport expands. AT's responsibility.

122. As set out in Mr Hills' Table we accept there is already a high degree of funding already committed for the establishment of PC 61. In particular, of the 17 projects:

- PC61 will completely fund five of the projects and partially fund one more;
- NZUP is already committed to funding four of the projects;
- One relates to Drury South;
- Auranga A will build / fund one of the projects;
- One relates to AT responsibilities (Public Transport);
- Three are cumulative projects which relate directly to SH22 improvements which is a regional state highway projects (and we have set out Waka Kotahi's position earlier); and
- One (new intersection on Jesmond Road / Bremner Road) relates to a cumulative project as identified in the DIFF analysis and is only likely to be required in 2036 when the Bremner Road extension is linked to Jesmond Road.

123. As set out by Mr Hills⁴⁴ -

“The projects in Table 1 which PC 61 are funding are projects 6, 12, 13, 14 and 15 as well as one partly funded (project 5). From my review of Mr Prosser’s evidence / Table 1, the total amount of funding from PC61 is effectively \$78-99 million excluding project 5 (which is approximately \$4-5 million). This, in my experience, is a significant investment for this sized plan change.”

124. Moreover, PC 61 will remove the need to undertake an interim roundabout intersection at the intersection of Oira Road / SH22 due to Lomai funding and undertaking this work. This is a project estimated to cost \$8-9M (Project 60b) and allows Waka Kotahi/AT to upgrade the Jesmond Road/SH22 to its final form (signals instead of an interim roundabout)⁴⁵.

125. As we have set out above and address further below, it is not the Applicant’s role to solve wider Drury transport issues. ACS and AT agree with this, but maintain that a significant number of transport upgrades, as set out in Mr Prosser’s evidence, need to be funded, financed and operational before more land is live zoned in Drury.

126. It was Lomai’s position that the full build out of PC 61 will occur over a number of years and in a staged manner, with the DOSP area taking 20 to 30 years – and therefore funding and funding solutions for many of the projects do not need to be found now; and that funding priorities change (e.g. Mill Rd). Mr Church, the traffic expert of the Council agrees with this. Mr Loutit said that Lomai will be ‘doing their bit’ of the inevitable ‘jigsaw puzzle’ to develop the whole of the DOSP area. And they are funding the equivalent of \$100 million infrastructure upgrades to mitigate their ‘direct’ adverse transport effects.

Our Findings

127. As addressed above, a number of witnesses on behalf of submitters presented evidence in opposition (or partial opposition) to the Plan Change on the basis of transport related effects and a lack of funding and finance for them. These include transport experts (Messrs Prince, Prosser and Langwell on behalf of Kāinga Ora) and corporate/finance (Messrs Kloppers, Gudsell and Wong-Toi and Ms Duffield). Messrs Hills and Lala provided expert evidence for the Applicant as to why the concerns of the submitters were either unfounded or overstated such that we should place greater weight on their evidence. In making our decision, we need to base it on the relevant legal (including case law) and statutory policy framework.

128. Mr Loutit set out that it is not the Applicant’s obligation to resolve infrastructure problems beyond local effects. It was his submission that the ACS, AT and Waka Kotahi did not have the ability to require Lomai to resolve the existing and wider transport effects in Drury, but to address/mitigate its direct adverse (transport)

⁴⁴ Paragraph 5.10 of Mr Hills’ rebuttal evidence

⁴⁵ Paragraph 5.11 of Mr Hills’ rebuttal evidence

effects. He addressed us on the leading authorities on this matter - *Landco Mt Wellington v Auckland City Council* and *Laidlaw College Inc v Auckland Council*⁴⁶. We note here that counsel for Waka Kotahi agreed with Mr Loutit's submissions as to the extent of the Applicant's responsibilities for this Plan Change.

129. In the Landco case - In respect of those traffic effects, the Court held:

[9] That Auckland City has major and seemingly ever-increasing traffic problems comes as news to no one. Proposed solutions seem to come and go, being discarded as inadequate, unworkable or unaffordable, while the volume of cars and trucks on the roading network continues to grow.

[10] We need to begin this part of our decision by stating three clear premises. First, this appeal is not the opportunity to solve the traffic problems of Auckland City or even just the Tamaki Edge. The proposal stands or falls on its own merits, and its proponents are not required to resolve infrastructure problems outside its boundaries although they may be required to contribute, by way of financial contributions, to the cost of doing so. ...

[18] We are certainly not sanguine about the traffic situation, but then nobody is. The best that can be said about it is that the expert evidence is that the traffic effects within and immediately surrounding Stonefields can be managed effectively. It is for the Council and the other roading and transport organisations to manage the wider network, and public transport, to cope with the present loads and future growth, wherever in the region that might occur. (Emphasis added)

130. Mr Loutit then set out that subsequent Environment Court decisions have confirmed the approach taken in Landco; in particular, in *Laidlaw College Inc v Auckland Council*. In that case the Environment Court referred to the Landco decision, holding that:

"Whilst we agree with the general principle that an applicant is not required to resolve existing infrastructure problems, neither should it add significantly to them. The question is always one of degree depending on the facts of each case. The focus must be on the effects which arise from a particular proposal." (emphasis added)

131. Based on these decisions, Mr Loutit submitted that in the context of this Plan Change, the Applicant needs to address any immediate localised traffic effects that arise in respect of the development enabled by the Plan Change and must not contribute significantly to wider infrastructure problems. A key issue before us is that the ACS and AT position is that in the absence of the upgrades being undertaken as set out by Mr Prosser, there would be significant adverse effects on the wider transport/ infrastructure network if PC 61 was approved.

⁴⁶ *Landco Mt Wellington v Auckland City Council* [2009] NZRMA 132; and *Laidlaw College Inc v Auckland Council* [2011] NZEnvC 248

132. We also note that Mr Loutit addressed the Environment Court’s comments on financing options for roading infrastructure in *Norsho Bulc*⁴⁷ (which was also cited by Mr Allan). Mr Loutit set out that⁴⁸:

“Judge Kirkpatrick noted that issues of funding future roading upgrades “can be squarely addressed by the road controlling authority through any number of options for the management of the road...”.

133. Mr Loutit’s submission was that the upgrades the Applicant had offered, and that additional capacity that they would provide, was consistent with giving wider consideration to the impact on the network, and was sufficient in the context of the development enabled by PC 61. This was addressed in Mr Hills’ evidence which we have addressed earlier, but also address below.
134. Mr Hills confirmed that upgrades to the wider Drury transport network will eventually be required (over a 30 year timeframe) but highlighted that of the 17 projects that Mr Prosser identified as needing upgrades, there is a high degree of funding already committed (as set out in Mr Hills’ Table above). Lomai has volunteered to fund and build five of the projects and partially fund one more of the identified projects which we accept represents a significant share given the size of the development. The total funding from Lomai (according to Mr Prosser’s evidence at his Table 1) is \$78-99 million excluding project 5. We accept this is a significant funding contribution.
135. In terms of cumulative traffic effects outside the local area, PC 61 represents a small contributing portion of the expected development in the Drury area. From the DIFF Report, Drury East and West are anticipated to add an additional 17,000 houses and 198,000 sqm of business area. From the Drury – Opāheke Structure Plan a total of 22,000 houses will be created in the area. As such PC 61 represents 8% (1,800 dwellings) of the total houses anticipated and 3% (6,000 sqm) of business land in the wider Drury area. It was Mr Hill’s opinion that PC 61’s contribution to *the wider cumulative [traffic] effects “is low (that is, under 8%)”*⁴⁹.
136. With respect to SH 22/Karaka Road, we have already set out Waka Kotahi’s position. Given that position we are satisfied that any adverse effects in relation to SH22 can be mitigated, including by the upgrades and funding proposed by the Applicant. Accordingly, we have placed little weight on Mr Prosser’s evidence, and his concerns about the transport implications of PC 61 as they relate to SH22.
137. Given our finding above, we do not support the extensive “*Development Triggers*” proposed by Ms Sinclair and Ms Smith in their joint evidence-in-chief. Had they been adopted, it would have meant little or no development could occur for more than a decade or more. They are attached in Appendix 1 of this decision.

⁴⁷ *Norsho Bulc Ltd v Auckland Council (2017) 19 ELRNZ 774.*

⁴⁸ Paragraph 3.5 of the reply submissions

⁴⁹ Paragraph 5.13 of Mr Hills’ rebuttal evidence

138. Overall, the Hearing Panel acknowledges the ACS and AT funding and finance position. However, we are satisfied on the evidence before us that PC 61 is able to mitigate its own local traffic effects; and that any contribution to effects on the wider network will be low (that is – not significant as set out in the Laidlaw College case referenced earlier), and reasonable given the level of upgrades that have been proposed. Also, a number of the wider transport upgrades needed over time (the short and longer term) have already been funded as set out in Mr Hills' table.
139. In summary, we do not accept ACS and AT's proposition that all of the infrastructure for the wider area should have committed funding/be provided prior to zoning of the land. This, in our view, is clearly inefficient and does not satisfy the section 32 evaluation 'test' in the RMA. Moreover, without live zoning there is unlikely to be confidence that investment in infrastructure is worthwhile. That is - without a live zoning, there is no rationale to spend money on infrastructure, especially if that infrastructure won't be used for some time.
140. On the basis of the preceding two paragraphs (and all of the reasons set out above), it is our finding that PC 61 could give effect to the relevant provisions of the NPS-UD and RPS set out above. However, notwithstanding our findings, the critical issue is whether the Development Staging and the triggers to facilitate the Transport upgrades proposed by the Applicant, will in fact ensure that the necessary upgrades are achieved; a matter we will address in some detail below.

Development Staging and Transport Upgrades

141. It is our view that PC 61 could appropriately mitigate its adverse infrastructure (mainly transport related) effects. However, this is very much predicated on appropriate development staging and transport upgrade provisions that are workable and readily understood so as to ensure that the necessary upgrades are undertaken and operational, prior to adding significantly more traffic movements onto the surrounding roading network.
142. We do not consider the development staging and transport upgrade provisions proposed by Lomai work; and nor can they be readily understood; despite the Hearing Panel seeking clarification on them in two Memoranda following the hearing. As a consequence, we are not satisfied, in section 32 terms, that these precinct provisions would ensure that the necessary upgrades were undertaken and operational prior to significantly adding traffic movements onto the roading network. The reasons for this are set out below.
143. PC 61 as notified proposed one staging provision in the precinct. That provision required Restricted Discretionary consent for any development after 2,000 residential dwellings had been consented within PC 61. The purpose of that provision was to ensure the performance of the intersections between SH22/Oira Road and SH22/Jesmond Road would perform to an acceptable standard prior to the completion of wider transport infrastructure in the DOSP area.

144. Mr Edwards, the Council’s technical reviewer did not agree with this proposition, and recommended that this staging provision be replaced in its entirety as he did not consider that the provision as notified provided for an adequate outcome. He recommended a set of staging provisions (triggers), and these were set out in the section 42A report.
145. As set out in Mr Lala’s evidence-in-chief under the heading “Efficient transport network and coordinated delivery of transport infrastructure upgrades”, he stated⁵⁰:

“Following the receipt of submissions, further submissions and the Council Report and as a result of ongoing consultation with Waka Kotahi, AT and the SGA, the Plan Change has been amended. The amendments include a series of triggers to ensure the delivery of the necessary infrastructure at the required time to address the traffic effects of potential development within the Site.

The proposed thresholds will ensure the following transport upgrades are implemented before residential or commercial buildings within the Site may be occupied or other triggers specified in the Plan Change (with the exception of 95 residential dwellings):

- (a) Upgrade of Oira Road (for the length of the Precinct frontage to Oira Road);*
- (b) Upgrade of the Oira Road/SH 22 intersection to a two-lane roundabout with approach lanes;*
- (c) Upgrade of Jesmond Road adjacent to the Waipupuke frontage;*
- (d) Construction of the Waipupuke Collector Road/Jesmond Road intersection; and (e) Various pedestrian and cycle lane access upgrades with different triggers as set out in proposed Standard IXXX.6.8(3)”*

146. Mr Lala’s rebuttal evidence set out a series of development staging and transport upgrade provisions based on certain traffic upgrades being undertaken prior to dwellings or commercial buildings being “occupied”. In questioning Mr Lala about the issues of occupation as the control mechanism, he accepted that this was unlikely to be the most appropriate, but that the use of section 224(c) of the RMA and Building Consents was more appropriate. The Development Staging and Transport Upgrades provisions proposed by the Applicant were set out in the Reply Statement. They were:

IXXX.6.8 Development Staging & Transport Upgrades

Purpose

- *To ensure that transport upgrades are implemented as needed to ensure the direct transport related effects resulting from development within Waipupuke are appropriately remedied or mitigated.*

⁵⁰ Paragraphs 6.21 and 6.22 of Mr Lala’s evidence-in-chief

- *Assess the performance of the Karaka Road (SH22)/Oira Road and Karaka Road (SH22)/Jesmond Road intersections after 2,000 dwellings have been consented within Waipupuke Precinct.*
- (1) *Subdivision or development within Waipupuke shall not progress beyond the issue of a 224(c) certificate (for subdivisions) or the issue of building consent (for new buildings) until Oira Road is upgraded (for the length of the Waipupuke Precinct frontage to Oira Road) and the Oira Road/Karaka Road (SH22) intersection is upgraded to a two-lane roundabout with approach lanes and both are operational, except that up to 95 residential dwellings may be occupied prior to these upgrades being operational subject to:*
 - a. *A traffic management plan demonstrating how safe vehicle movements to and from the dwelling(s) or commercial building(s) can be achieved, is approved by Waka Kotahi and Auckland Transport as part of any resource consent or building consent for a dwelling or commercial building.*
 - (2) *Subdivision or development within Waipupuke shall not progress beyond the issue of a 224(c) certificate (for subdivisions) or the issue of building consent (for new buildings) within Waipupuke with vehicular access to Jesmond Road prior to the Jesmond Road/Karaka Road (SH22) intersection being upgraded, except that up to 95 residential dwellings may be occupied prior to this upgrade being operational subject to:*
 - a. *A traffic management plan demonstrating how safe vehicle movements to and from the dwelling(s) or commercial building(s) can be achieved, is approved by Waka Kotahi and Auckland Transport as part of any resource consent or building consent for a dwelling or commercial building.*
 - (3) *Jesmond Road is to be upgraded to its ultimate design layout for the length of the Waipupuke precinct frontage including northern and southern approaches by the time the Jesmond Road/SH22 intersection upgrade is operational.*
 - (4) *The Waipupuke Collector Road/Jesmond Road intersection is to be upgraded to its ultimate design by the time the Jesmond Road/SH22 intersection upgrade is operational.*
 - (5) *An interim shared pedestrian/cycle path along the western side Jesmond Road (within the existing legal road or designation boundary) from the southern boundary of the Waipupuke Precinct to SH22 shall be provided by the time the Drury West rail station is operational.*
 - (6) *An interim shared pedestrian/cycle path along the western side of Jesmond Road (within the existing legal road or designation boundary) from the northern boundary of the Waipupuke Precinct to the proposed new Secondary School shall be provided by the time the Jesmond Road secondary school is operational.*
 - (7) *The ultimate design for the shared pedestrian/cycle path along SH22 (within the existing legal road or designation boundary) from Oira Road to the*

eastern boundary of the Waipupuke Precinct on SH22 shall be provided by the time the Drury West rail station is operational.

- (8) An interim design for the shared pedestrian/cycle path along SH22 (within the existing legal road or designation boundary) from the eastern boundary of the Waipupuke Precinct on SH22 to Jesmond Road shall be provided by the time the Drury West rail station is operational.*
- (9) A restricted discretionary resource consent application shall be required for any residential dwelling resource consent application after 2,000 residential dwellings have been consented within Waipupuke Precinct.*

147. Having reviewed those provisions, we requested clarification of them. In our first Memoranda⁵¹ we sought the following:

- 1. *“The clarifications sought are:*
 - i. *In Standards 1 and 2 above an exception is made for 95 dwellings. However, 1(a) and 2(a) refer to “the dwelling(s) or commercial building(s). We are unclear what the reference to “commercial building(s)” means?*
 - ii. *In Standard 2 above reference is made to “intersection being upgraded”. All of the other Standards reference “upgrade is operational”. Should Standard 2 also reference “upgrade is operational”?*
 - iii. *The Hearing Panel understands that “Activities that do not comply with Standard IXXX6.8 (3) – (8)” are proposed to be a Restricted Discretionary Activity. However, it is unclear to us (including IXXX6.8 (5) – (8) which are linked to the operation of the Drury West rail station and new Secondary School which are not in the control of Lomai): what the mechanism is to ensure a Restricted Discretionary Activity resource consent(s) is sought; who would be required to seek any consent(s); and when would any consent(s) need to be sought, should those upgrades not occur as required?*
 - iv. *Standard 2 above is “Subdivision or development within Waipupuke shall not progress beyond the issue of a 224(c) certificate (for subdivisions) or the issue of building consent (for new buildings) within Waipupuke with vehicular access to Jesmond Road prior to the Jesmond Road/Karaka Road (SH22) intersection being upgraded..” Standards 3 and 4 require Jesmond Road and Waipupuke Collector Road/Jesmond Road intersection to be upgraded to their ultimate design layout by the time the Jesmond Road/SH22 intersection upgrade is operational. It appears to us that the upgrades required by Standards 2, 3 and 4 would need to occur at the same time. Is our understanding correct? If it is, why are the upgrades required by Standards 3 and 4 a Restricted Discretionary Activity and not a Non-Complying activity as is Standard 2 if those upgrades are not undertaken as required?*
 - v. *What is intended or meant by the term “interim” shared pedestrian/cycle path (rule 5, 6 and 8) and the “ultimate” shared pedestrian/cycle path (rule 3, 4 and 7)?*

⁵¹ 28 October 2021

- vi. *Rules 7 and 8 refer to the “design for the shared pedestrian/cycle path” to be provided whereas rules 5 and 6 requires the provision of “the interim shared pedestrian/cycle path. What does the word “design” mean?*

148. The second Memorandum⁵² set out further clarification from the Hearing Panel after receiving a clarification request from the Applicant in response to our first Memorandum. In this Memorandum we set out:

Lomai has sought clarification in relation to iii above. They asked:

“Point iii, which we would like some further guidance on.

Is the Panel concerned that the trigger for upgrades listed (such as the school, the Jesmond Rd/SH22 intersection and train station) in proposed standard 6.8 (3) – (8) are outside the control of Lomai and therefore should be removed from the plan change and should they be replaced with a consent related mechanism triggered by development of houses or commercial buildings within the plan change?

If so, we drafted an amendment that would address this concern.

To clarify – our concern is not that standards 6.8 (3) – (8) are outside the control of Lomai. We simply observed that Lomai does not have control over when the operation of the Drury West rail station and new Secondary School commence). Our clarification is:

- *Standard 1 and 2 commence with – “Subdivision or development within Waipupuke shall not progress beyond the issue of a 224(c) certificate (for subdivisions) or the issue of building consent (for new buildings) until ...”. Activities that do not comply with Standard IXXX6.8 (1) and (2) are a Non-Complying Activity. It is clear to us what is required in relation to these Standards and how they would operate.*
- *The remaining standards (3 - 8) do not commence with the wording of standards 1 and 2 (and activities that do not comply with Standard IXXX6.8 (3) – (8) are a Restricted Discretionary Activity). Without the commencing words in Standards 1 and 2 we are not clear how Standards 3 – 8 are actually ‘triggered’. While we accept they are intended to be ‘Standards’ they appear more as Statements, and we are unsure how they are to operate (unlike Standards 1 and 2). Specifically:*
- *Who is it that will be applying for any necessary resource consent(s) should the standard not be complied with;*
- *When will any consent(s) need to be applied for; and*
- *What is the mechanism that would alert the Council that a resource consent(s) was required if Standards 3 – 8 are not complied with.”*

⁵² 2 November 2021

149. The response was⁵³, and the amended development staging and transport upgrades⁵⁴ are, as follows (with the changes shown as red text):

Please see below Lomai's responses to the Commissioners' questions. We also attach an updated version of the plan change reflecting our responses (amendments shown in track change).

- i. Agree, in 1 (a) and 2(a) the reference to "commercial building(s)" should be deleted. The reference to 'commercial building' at the end of each of these standards should also be removed. Amendment included in attached updated version of the plan change.*
- ii. Agree – wording added to include "upgrade is operational". Amendment included in attached updated version of the plan change.*
- iii. The intention is that Lomai would deliver the upgrades required in (5) – (8), and if these upgrades are not in place at the time the Drury West Rail Station or Secondary School are operational then a restricted discretionary activity resource consent would be required. However, we agree there is a gap in the mechanism to ensure the RD consent is applied for as there is no consent requirement in the plan change for the train station or the school, who applies for it and when any consent(s) should be sought. In order to address this, we propose a trigger that building consent for any residential or commercial building in the Southern THAB (defined on updated Precinct Plan 3) shall not be granted the specified upgrade it operational. As every residential or commercial building in the THAB zone requires a restricted discretionary activity resource consent, this enables the consent authority to impose a condition of consent requiring this. The timing of development in the Southern THAB is 2026. Also prospective purchasers of these sites can include this requirement in their contracts. We also propose an addition which requires the NOR's and Engineering Plan Approvals to be approved (as the upgrades cannot be implemented without these).*
- iv. Agreed. (2), (3) and (4) are all required to be implemented by the time the Jesmond Rd/SH22 intersection upgrade is operational and on that basis (3) and (4) should also be non-complying if not upgraded at the time required. In reality all three will most likely be implemented at the same time. Amendments to the plan change have been made to reflect this.*
- v. Interim = temporary upgrade to be implemented **prior to** the full upgrade of Jesmond Road and SH22 as envisaged by the respective NOR's. Ultimate = final upgrade of Jesmond Road and SH22 as envisaged by the respective NOR's.*
- vi. Amended to remove the uncertainty and replace with 'the implementation and operation of the'.*

Amended Development Staging & Transport Upgrades

Purpose

⁵³ Email dated 3 November 2021

⁵⁴ Attached amended precinct provisions attached to the 3 November email

- To ensure that transport upgrades are implemented as needed to ensure the direct transport related effects resulting from development within Waipupuke are appropriately remedied or mitigated.
- Assess the performance of the Karaka Road (SH22)/Oira Road and Karaka Road (SH22)/Jesmond Road intersections after 2,000 dwellings have been consented within Waipupuke Precinct.
 - (1) Subdivision or development within Waipupuke shall not progress beyond the issue of a 224(c) certificate (for subdivisions) or the issue of building consent (for new buildings) until Oira Road is upgraded (for the length of the Waipupuke Precinct frontage to Oira Road) and the Oira Road/Karaka Road (SH22) intersection is upgraded to a two-lane roundabout with approach lanes and both are operational, except that up to 95 residential dwellings may be occupied prior to these upgrades being operational subject to:
 - a. A traffic management plan demonstrating how safe vehicle movements to and from the dwelling(s) ~~or commercial building(s)~~ can be achieved, is approved by Waka Kotahi and Auckland Transport as part of any resource consent or building consent for a dwelling ~~or commercial building~~.
 - (2) Subdivision or development within Waipupuke shall not progress beyond the issue of a 224(c) certificate (for subdivisions) or the issue of building consent (for new buildings) within Waipupuke with vehicular access to Jesmond Road prior to the Jesmond Road/Karaka Road (SH22) intersection being upgraded and the upgrade is operational, except that up to 95 residential dwellings may be occupied prior to this upgrade being operational subject to:
 - a. A traffic management plan demonstrating how safe vehicle movements to and from the dwelling(s) ~~or commercial building(s)~~ can be achieved, is approved by Waka Kotahi and Auckland Transport as part of any resource consent or building consent for a dwelling ~~or commercial building~~.
 - (3) Prior to any building consent being granted for residential or commercial building(s) within the Southern THAB zone as identified on Precinct Plan 3, Jesmond Road is to be upgraded to its ultimate design layout for the length of the Waipupuke precinct frontage including northern and southern approaches by the time the Jesmond Road/SH22 intersection upgrade is operational, subject to the Notice of Requirement for Jesmond Road being approved (and the land acquired) and Engineering Plan Approval being granted.
 - (4) Prior to any building consent being granted for residential or commercial building(s) within the Southern THAB zone as identified on Precinct Plan 3, the Waipupuke Collector Road/Jesmond Road intersection is to be upgraded to its ultimate design by the time the Jesmond Road/SH22 intersection upgrade is operational, subject to the Notice of Requirement for Jesmond Road being approved (and the land acquired) and Engineering Plan Approval being granted.
 - (5) Prior to any building consent being granted for residential or commercial building(s) within the Southern THAB zone as identified on Precinct Plan 3,

an interim shared pedestrian/cycle path along the western side Jesmond Road (within the existing legal road or designation boundary) from the southern boundary of the Waipupuke Precinct to SH22 shall be provided by the time the Drury West rail station is operational, [subject to the Notice of Requirement for Jesmond Road being approved \(and the land acquired\) and Engineering Plan Approval being granted.](#)

- (6) Prior to any building consent being granted for residential or commercial building(s) within the Southern THAB zone as identified on Precinct Plan 3, an interim shared pedestrian/cycle path along the western side of Jesmond Road (within the existing legal road or designation boundary) from the northern boundary of the Waipupuke Precinct to the proposed new Secondary School shall be provided by the time the Jesmond Road secondary school is operational, [subject to the Notice of Requirement for Jesmond Road being approved \(and the land acquired\) and Engineering Plan Approval being granted.](#)
- (7) Prior to any building consent being granted for residential or commercial building(s) within the Southern THAB zone as identified on Precinct Plan 3, the ~~implementation and operation of the~~ ultimate design for the shared pedestrian/cycle path along SH22 (within the existing legal road or designation boundary) from Oira Road to the eastern boundary of the Waipupuke Precinct on SH22 shall be provided by the time the Drury West rail station is operational, [subject to the Notice of Requirement for SH22 being approved \(and the land acquired\) and Engineering Plan Approval being granted.](#)
- (8) Prior to any building consent being granted for residential or commercial building(s) within the Southern THAB zone as identified on Precinct Plan 3, the ~~implementation and operation of an~~ interim design for the shared pedestrian/cycle path along SH22 (within the existing legal road or designation boundary) from the eastern boundary of the Waipupuke Precinct on SH22 to Jesmond Road shall be provided by the time the Drury West rail station is operational, [subject to the Notice of Requirement for SH22 being approved \(and the land acquired\) and Engineering Plan Approval being granted.](#)
- (9) A restricted discretionary resource consent application shall be required for any residential dwelling resource consent application after 2,000 residential dwellings have been consented within Waipupuke Precinct.

150. We have set out in detail the process of establishing the Development Staging and Transport Upgrades. This is because they are critical to PC 61 satisfying the NPS-UP and RPS provisions addressed earlier, and mitigating the likely potential adverse traffic effects on the surrounding road network. We do not think that the provisions have been well thought through, or 'tested' to satisfy us that they are effective and workable (i.e. achieving their intended purpose). We do not find that they would be effective or workable. This is one of the key reasons why we have declined the Plan Change.

151. In terms of the Development Staging and Transport Upgrade provisions we are satisfied on the evidence before us that 95 houses, subject to a traffic management

plan “*demonstrating how safe vehicle movements to and from the dwelling(s) can be achieved, is approved by Waka Kotahi and Auckland Transport as part of any resource consent or building consent for a dwelling*” would be acceptable. We also accept Development Staging and Transport Upgrades 1 and 2, other than the issue of “building consents” (which we address below) could be appropriate. In short, we accept reliance could be placed on a section 224(c) certificate (for subdivisions) to prevent progress beyond this in terms of subdivision or development within Waipupuke. Section 224(c) certificates are issued as part of subdivision consents under the RMA.

152. The Applicant’s revised Development Staging and Transport Upgrade provisions place greater emphasis on building consents as a key mechanism to ensure required transport related up-grades are achieved. We are not satisfied that reliance can be placed on withholding a Building Consent to ensure the required transport related up-grades are achieved.
153. At the hearing we questioned Mr Lala about the ability of using building consents, which are granted under the Building Act, to manage the effects of development under the RMA. Mr Lala said that the Council already issued resource consents with conditions preventing the issue of building consents until certain works/actions had been undertaken. He considered that this was appropriate, and the Development Staging and Transport Upgrade provisions he recommended would operate in a similar manner. We are not convinced this is appropriate or vires.
154. The purposes of the Building Act⁵⁵ are:
- (a) *To provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
 - (i) *people who use buildings can do so safely and without endangering their health; and*
 - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
 - (iii) *people who use a building can escape from the building if it is on fire; and*
 - (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
 - (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

155. Furthermore, Section 49 provides:

⁵⁵ Section 3 of the Building Act 2004

1. *A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.*
 2. *However, a building consent authority is not required to grant a building consent until it receives—*
 - (a) any charge or fee fixed by it in relation to the consent; and*
 - (b) any levy payable under section 53.*
 - (c) [Repealed]*
156. As we understand it, subject to the exceptions in s49(2) above which are not relevant to the issue of the staging provisions, the Council cannot refuse to grant a building consent where it complies with the building code, as section 49(1) provides that the Council must grant the building consent.
157. Moreover, section 51(2) – Issue of building consent - states:
- The issue of a building consent does not, of itself,—*
- (a) relieve the owner of the building or proposed building to which the building consent relates of any duty or responsibility under any other Act relating to or affecting the building or proposed building; or*
 - (b) permit the construction, alteration, demolition, or removal of the building or proposed building if that construction, alteration, demolition, or removal would be in breach of any other Act.*
158. It is evident that section 51(2) the Building Act is clear that its ‘role’ is not to ‘regulate’ or ‘address’ matters controlled by “*any other Act*” – including the RMA. In short, each Act needs to ‘stick to its knitting’.
159. Section 37 of the Building Act was also discussed. We note that a section 37 ‘notice’ can be put on a building consent where a resource consent has not yet been obtained and needs to be obtained for the works to proceed. This would not apply in terms of the Development Staging and Transport Upgrade provisions.
160. Moreover, in addition to the matter of using building consents as a method to prevent development, this does not align with or support Development Staging and Transport Upgrades 3 – 8. We are unclear why these solely relate to “*residential or commercial building(s) within the Southern THAB zone*”, especially as the Development Staging and Transport Upgrades 3 – 8 relate to Jesmond Road upgrades and the operation of the Drury West rail station and the Secondary School. The Drury West rail station and the Secondary School may well be operational prior to any development occurring in the southern THAB. Given that there are no staging provisions (timings) within the precinct of when particular areas (e.g. the development of the Southern THAB) will be developed, there appears to us at least, there is no certainty these upgrades will occur.

161. Furthermore, as we have set out in the Executive Summary and address in more detail below, we do not support the zoning of the southern portion of the site as THAB. This of itself makes the Development Staging and Transport Upgrades provisions unworkable.
162. We are also concerned about the wording “*subject to the Notice of Requirement for SH22 being approved (and the land acquired) and Engineering Plan Approval being granted*”. Firstly, these upgrades are required, and the standard as drafted means they would not be if the Notice of Requirement for SH22 (which NoR?) was not approved or the land not acquired, or if an Engineering Plan Approval was not granted. Moreover, the matters covered by the proviso are all matters outside of the control of PC 61 land owners, require a third-party action, and essentially create a significant level of uncertainty as to whether the upgrades can or will be delivered. If those upgrades cannot be achieved, then it is our view PC 61 cannot be approved, or certainly not at the scale proposed.
163. The short point is, we are not satisfied that the Development Staging and Transport Upgrade provisions satisfy the section 32 or 32AA requirements; that they are the most appropriate to effectively and efficiently ensure the traffic generated effects of PC 61 are mitigated to ensure a safe and efficient transport network.
164. We also record that even had we found the Development Staging and Transport Upgrade provisions to be appropriate, we would have amended the objectives and policies relating to them to ensure a more robust evaluative assessment of any resource consent in relation to the development staging and transport upgrades. These would have been more in-line with those proposed by Ms Sinclair/Smith for ACS, such as avoiding any activity, development and/or subdivision that was not in accordance with the Development Staging and Transport Upgrade provisions.

Mana Whenua

165. There was very strong support from Mana Whenua for PC 61. We find that PC 61 would give effect to the Mana Whenua provisions in the RPS.
166. The Applicant commissioned a *Mana Whenua Engagement Report*⁵⁶ which outlined the engagement⁵⁷ with participating iwi and highlighted the options for further engagement with iwi throughout the various stages of the planned development.
167. Cultural values of the plan change area were assessed in the three Cultural Value Assessments (‘CVA’) prepared by:
- Ngāti Te Ata Waiohua⁵⁸;
 - Te Ākitai⁵⁹; and

⁵⁶ Waipupuke Mana Whenua Engagement Report – Tiumalu Peter Fa’afiu Navigator Limited August 2020

⁵⁷ Request for Plan Change at [11.2]

⁵⁸ *ibid* at attachment E(i)

- Ngāti Tamaoho⁶⁰.

168. An agreed set of outcomes were documented arising from the CVA which included: renaming the project ‘Waipupuke’⁶¹ and setting out how cultural heritage and aspirations will be addressed. It was also a key objective for the Precinct to revitalise the mauri in the waterways and to regenerate (as the mauri upholds creation) the land, through binding physical and spiritual elements of all things together. The Precinct Description (in part) includes:

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

169. Mr Loutit, in his opening legal submissions noted, the Plan Change is the result of extensive engagement with Mana Whenua and this is a core part of the Plan Change⁶². He provided a summary overview of Mana whenua engagement including:

- The close partnership with Mana Whenua has resulted in the name of the Precinct being changed to “*Waipupuke*”, which means “*where the streams meet*” and represents the spiritual significance of the subject site to Mana Whenua;
- The adopted tohu symbol represents a connection between the tributaries of the Oira and Ngakaroa streams that run through the Site; and
- Mana Whenua have been fundamental in designing the open space / blue-green network in the Precinct.

170. Mr Khan, in his evidence, told us⁶³ that he was very conscious of the cultural and historical importance of the land which he was proposing to develop. Initially six Iwi⁶⁴ were involved with the Structure Plan process, they agreed⁶⁵ that three Iwi - Ngāti Tamaoho, Ngāti Te Ata and Te Akitai Waiohua – had Mana Whenua status for “Drury West”.

⁵⁹ ibid at attachment E(ii)

⁶⁰ ibid at attachment E(iii)

⁶¹ Waipupuke – this name better reflects the cultural history and values of the site.

⁶² Paragraph 2.1 of the Applicant’s Opening legal submissions

⁶³ Paragraph 5.2 of Khan’s evidence-in-chief

⁶⁴ Ngāti Tamaoho; Ngāti Te Ata Waiohua; Te Akitai Waiohua; Ngai Tai ki Tamaki; Ngāti Maru; and Waikato-Tainui. Section 42A Report at [6.1]

⁶⁵ Paragraph 5.4 of Khan’s evidence-in-chief

171. Mr Khan and Mr Fa'afiu set out that they led a comprehensive engagement process with representatives from the three Iwi; establishing a Mana Whenua Working Group Forum Group, enabling Mana Whenua to express their cultural traditions and history as it pertains to the Site to Lomai, along with their recommendations for the Plan Change.
172. Moreover, workshops were held which covered a range of issues important to the Iwi including: water quality; master plan / neighbourhood centre; parks / open spaces, and the cultural design framework for the whole Waipupuke Precinct.
173. The cultural outcomes of the engagement process were agreed and documented in the *Key Agreed Outcomes Arising from Cultural Values Assessments*⁶⁶. The key aspects included:
- The renaming of the proposed precinct – Waipupuke and development of a unique tohu;
 - The masterplan and design which incorporates Te Aranga Design Principles⁶⁷, artworks, cultural markers, pouwhenua; and
 - Mana Whenua involvement in the consideration of Freshwater and ecological effects including the SMP and wetlands.
174. We were advised that the Mana Whenua Working Group would undertake design and construction of the cultural features throughout Waipupuke to create a built form that gives the Site both historical and cultural context; with features that provide for a spiritual connection to the whenua and wai. Moreover, Tikanga Māori and customary activities will influence how parks and open spaces are planned, developed and managed. As an example, the Neighbourhood Centre Park will reflect stories relating to wai and Nga tapuwae through water features and sculpture in the space.⁶⁸
175. Mr Flavell emphasised how the cultural significance of the site would be expressed through the Cultural Identity Markers, which Mana Whenua have been commissioned to design and make. The Cultural Identity Markers⁶⁹ (an important cultural outcome) would provide Mana Whenua with cultural design opportunities that align with the agreed design themes the CVAs' outcomes specified for the Plan Change namely:
- Tangata/People;
 - Taiao/Nature: and
 - Hauora/Health & Wellbeing.

⁶⁶ Plan Change Request p315 - 321

⁶⁷ Paragraph 5.8 of Mr Fa'afiu evidence

⁶⁸ Ibid at Section 6

⁶⁹ A definition in the Precinct is provided: Mana Whenua Cultural Identity Marker include: Pouwhenua; Carvings; Waka; Architectural detailing; Facial representations; Bone or stone symbols and Monuments

176. The Mana Whenua Working Group would undertake design and construction of cultural features throughout Waipupuke to create a built form that gives the Site historical and cultural context. The intention was also that the features would provide for a spiritual connection to the whenua and wai.
177. The Applicant was of the view that engagement with iwi has positively influenced the plan change⁷⁰ in a unique way so that the change would achieve integrated Mana Whenua outcomes with a connected network of open spaces combined with ecological and stormwater connections. Mana Whenua agreed with this, as was set out by Mr Flavell at the PC 61 hearing.
178. We acknowledge the support of Mana Whenua to this Plan Change. To the extent that we can provide for that relationship through the Plan provisions, we would have provided for the Cultural Identity Markers as a permitted activity within the precinct, provided a precinct specific definition, providing for, at least some of, the open space requested by the Applicant by zoning the key sites and showing the rest as indicative open space to provide some flexibility and included provisions relating to the Te Aranga Design Principles.

THE USE OF PRECINCT PROVISIONS VS AUP-OP PROVISIONS

179. A number of submitters, and the section 42A author, raised issues about the proposed precinct provisions vis-à-vis those in the AUP OP zone provisions.
180. Chapter A1.6.5 of the AUP OP outlines the Plan's intentions for precincts and states:
- “Precincts enable local differences to be recognised by providing detailed place-based provisions which can vary the outcomes sought by the zone or Auckland-wide provisions and can be more restrictive or more enabling. In certain limited circumstances the rules in a precinct vary the controls of an overlay, either by being more restrictive or more enabling. However, the general approach is that overlays take precedence over a precinct.”*
181. Mr Lala addressed this issue in his evidence – in-chief, as part of his “*Overall Approach*” taking the view that the proposed precinct provisions were appropriate in order to recognise the “*specific activities and built form proposed for Waipupuke and to enable place-based provisions*”⁷¹. It was his opinion that PC 61 met the AUP OP's stated ‘position’ relating to precincts, and the specific precinct provisions were needed to enable the establishment of the “*Southern Medical and Specialist Centre and includes specific placed based provisions that depart from some zone and Auckland-wide rules/standards (but not any overlay provisions)*”⁷².
182. Mr Zhang acknowledged the role of the precincts, and that they should be utilised when the AUP OP zoning provisions did not address the specific (place based) outcome sought in the precinct. However, it was his opinion that where the AUP OP

⁷⁰ ibid at [5.2.1]

⁷¹ Paragraph 3.2 of Mr Lala's evidence-in-chief

⁷² Paragraph 3.4 of Mr Lala's evidence-in-chief

zoning provisions adequately addressed the issue there should not be bespoke precinct provisions. Mr Zhang stated⁷³:

“Precincts enable local differences to be recognised by providing detailed place-based provisions which can vary the outcomes sought by the zone or Auckland-wide provisions and can be more restrictive or more enabling. It is therefore important that Precinct provisions do not just replicate existing AUP provisions.”

183. Mr Zhang was also of the view that many of the precinct provisions set out in PC 61 simply replicate existing AUP OP provisions, stating⁷⁴:

“It is recommended that all zone-specific activity tables are deleted and replaced with a precinct wide table covering land use and subdivision activities. The reasons for deletion are addressed in section 9 and section 10.2, with the primary reasons being summarised as follows:

- *The underlying AUP provisions are generally adequate;*
- *There is insufficient assessment of the potential effects of activities which are significantly more enabling relative to the underlying zone provisions;*
- *The potential effects of new activities have not been sufficiently addressed;*
- *There is insufficient justification that deviating from the AUP provisions is required within the context of the plan change area; and*
- *The activity essentially replicates existing AUP provisions or is very similar (it is often unclear as to why the precinct cannot rely on the AUP provisions).”*

184. Accordingly, he recommended the deletion of most of the activity tables proposed by the Applicant, and that they be ‘collapsed’ into one table (as set out in Appendix 7 – Recommended Changes to Waipupuke Precinct Provisions Table IX.4.1 Land use and subdivision activities in Waipupuke Precinct). We agree with Mr Zhang for the reasons he set out.

185. Had we approved the Plan Change we would have provided one activity table, similar to that recommended by Mr Zhang in his section 42A report.

ZONING

186. PC 61 proposed a number of zones, and sought a number of bespoke provisions within them. We address the spatial layout of those zones below, and what decisions we would have made, had we approved the Plan Change.

⁷³ Paragraph 752 of the Section 42A Report

⁷⁴ Paragraph 759 of the Section 42A Report

Terrace House and Apartment Buildings Zone (THAB)

187. The Applicant sought two areas to be zoned THAB; the northern area and the southern area. The extent of the zoning was set out in the precinct plans.
188. Mr Zhang, in the section 42A report, recommended that the THAB zoning more closely align to the DOSP. He suggested 'moving' the northern THAB eastward and northward to concentrate the THAB zoning along Jesmond Road. He recommended deleting the southern THAB zone.
189. It was the Applicant's position that the extent of the THAB was appropriate, and had already been adjusted, partly in response to the Council Report and submissions. It was to also allow the villa at 140 Jesmond Road (discussed later) to have greater space around it. The Applicant's amendments reduced the overall THAB zoning and increased the MHU zoning in the north-eastern end of the Site. We note Kāinga Ora opposed this amendment, and preferred the notified version of PC 61, but supported the southern extent of THAB zone.
190. The Council's recommended relocation of the northern THAB zone would remove THAB zoning from the perimeter of the Suburb Park (we discuss Open Space below) and much of the Neighbourhood Centre (which we also address below). In Ms de Lambert's opinion, this relocation, while supporting the Jesmond Road transport corridor, was not desirable in respect of the overall future urban form of Waipupuke or the amenity of the THAB zone. In her opinion, the proposed layout better leveraged the open space amenity of outlook over, and proximity to, the Suburb Park for residents and better supported the viability and amenity of the Neighbourhood Centre⁷⁵.
191. With respect to the Northern THAB, we largely agree with the section 42A recommendation and Kāinga Ora's position. The reasons for this are: that it would better support the Jesmond Road transport corridor; better align with the Neighbourhood Centre as we would have approved it; we would not have scheduled the villa at 140 Jesmond Road; and it would more closely align with the DOSP.
192. With respect to the Southern THAB, it was Ms de Lambert's, Mr Hills' and Mr Lala's opinion that the proposed southern THAB zoning was desirable and well located to support a walkable catchment to the future Drury West rail station⁷⁶. Ms de Lambert's opined that deleting the southern THAB zoned area would weaken the catchment of the proposed station and that the southern portion of the Site was also well connected to the wider Drury area through walking and cycling connections, making it the optimal location for higher intensity housing⁷⁷.
193. The section 42A report recommended the deletion of the southern THAB. This was based on the expert opinion of Ms Skidmore, Mr Edwards and Mr Zhang. It was Ms

⁷⁵ Paragraph 9.6 of Ms de Lambert's evidence-in-chief

⁷⁶ Paragraph 9.5 of Ms de Lambert's evidence-in-chief and paragraph 12.12(a) of Mr Hills' evidence-in-chief

⁷⁷ Paragraph 9.5 of Ms de Lambert's evidence-in-chief

Skidmore's view that there had not been a clear urban design rationale provided to demonstrate how the land-use pattern enabled by the plan change integrates with the public transport network, particularly in terms of connectivity and accessibility. Of particular note Ms Skidmore states that the Urban Design Assessment did not provide an adequate analysis to show that the proposed southern THAB zone will be within a walkable catchment of the future Drury West train station⁷⁸.

194. In section 9.4 – Transport Effects of the section 42A report, the following was set out⁷⁹

“For the southern THAB zone adjoining Karaka Road (SH22), the proposed location of the Drury West train station⁸⁰ is approximately a 1km walk from the edge of the plan change area, as shown on Figure 4. This means the higher density THAB zoning is not within walking distance to the station. Karaka Road in its current form and function (priority on movement and freight) is unlikely to provide an environment conducive for bus services that will service adjacent residential development. When the Pukekohe Expressway is available (timed for 2048+), lower speeds and removal of the State Highway status is likely and this could enable the provision of bus services (local/connector level services).”

195. We think that very limited regard can be given to a possible western Drury West Train Station. At the time of hearing this Plan Change proposal (and this decision) there was no NOR for a train station, Kiwi Rail was not a submitter to advise a possible train station location, and accordingly there is no certainty as to the location of a train station (noting that the train station is shown as “indicative” in the DOSP in a more eastern location).
196. Notwithstanding the above, we find there are other uncertainties with respect to access to a possible Drury West train station from the southern THAB zone. These include the lack of provision of key pedestrian connections to any train station and the timing of upgrades to Karaka Road (SH22) to support active modes. Moreover, the distribution of THAB zoning in the southern area of the site is not anticipated by the DOSP.
197. Given our reasoning above, we agree with the section 42A recommendation. Had we approved PC 61, we would have deleted the Southern THAB and that land would have been zoned MHU. We note that our position on this may have been different had the Drury West train location been confirmed, but it had not. Accordingly, it is premature to provide for Southern THAB as proposed.

Business- Neighbourhood Centre Zone (BNC)

⁷⁸ Noting that this refers to the possible train station further west than the indicative location of the train station in the DOSP

⁷⁹ Paragraph 2.85 of the section 42A report

⁸⁰ Again noting that this refers to the possible train station further west than the indicative location of the train station in the DOSP

198. PC 61 sought a large (by the AUP OP standards) BNC zone⁸¹. As notified, it was approximately 1.8 hectares. This was reduced in size to 1.1 by the Applicant in its Reply statement to address concerns raised by submitters and the section 42A officer. The Applicant's position was that while the BNC was now 1.1 hectare, a significant portion of this was a joint access lot and carparking; and on this basis was comparable to many other BNCs, and was an appropriate scale to largely serve the immediate Waipupuke precinct.
199. The DOSP did not include a 'commercial' area within this precinct area⁸². The reasons for including the BNC within PC 61 were set out in the Application and in Mr Lala's planning evidence (and supported by the expert evidence of Mr Colegrave – economic, and Ms de Lambert – urban design). Mr Lala set out⁸³:

“The Plan Change is to deliver a comprehensively planned and integrated community for the Site, based around the Southern Auckland Medical Centre and the commercial activities of the Neighbourhood Centre.

The Plan Change proposes a Business – Neighbourhood Centre zone within the centre of the neighbourhood. The purpose of this zoning is to provide local services for the residential and commercial population envisaged within the Precinct. This will prevent vehicle movements from occupants within the Precinct having to travel to centres outside Waipupuke, thereby reducing vehicle movements on either Jesmond Road, Oira Road or SH22.

The following activities are envisaged within the Neighbourhood Centre zone (as demonstrated in the Illustrative Concept for the Neighbourhood Centre notified as part of the Plan Change):

- (a) A Medical and Specialist Facility including a pharmacy;*
- (b) Offices up to 3,500m² GFA across the Neighbourhood Centre zone;*
- (c) Retail up to 3,500m² GFA across the Neighbourhood Centre zone;*
- (d) A small-scale local supermarket;*
- (e) A fitness centre;*
- (f) A hotel or apartment building;*
- (g) Residential dwellings; and (h) Parking and Servicing areas.*

The Southern Medical and Specialist Facility is a key component of the Precinct.”

200. Mr Zhang, Ms Skidmore and Mr Heath⁸⁴ were supportive of the establishment of the BNC in the proposed current location, but not the scale, intensity and range of activities as proposed. Ms Skidmore's view was that the scale and function of the zone should be more closely aligned with the AUP OP zone purpose.

⁸¹ Mr Lala provides a spreadsheet showing the BNC locations and their size

⁸² A small centre was shown to the southwest of the precinct, but just outside it and on the southern side of SH 22

⁸³ Paragraphs 6.3, 6.12 and 14 of Mr Lala's evidence-in-chief

⁸⁴ With GFA caps provide for retail and offices

201. It was Mr Zhang’s opinion, in agreeing with Ms Skidmore, that “...*the scale and intensity of development and the mix of activities proposed for the BNC is not appropriate in this location*”⁸⁵.
202. Two height limits were also proposed for the zone; the northern portion being 18 m and the southern portion 27 m. In the Reply Statement the 27 m was reduced to 21m. As set out in the Application (and supported by Ms de Lambert and Mr Lines (landscape and visual) in their evidence-in-chief, the additional height was intended to enable a higher intensity of development and to provide for the types of activities envisaged such as apartments, hotels and for the medical specialist facility.
203. In terms of the additional height proposed the Applicant’s Landscape and Visual Assessment provided the following rationale:

“It is proposed that development in this zone would predominantly enable development up to 18m in height (5 storeys), with one site enabling development up to 27m (8 storeys). This additional height is requested through the plan change in order to provide greater variation in built form and to accentuate the location of the proposed neighbourhood centre, assisting in way-finding within the greenfield urban development. Specific standards within the plan change are proposed to facilitate this desired outcome. and

The proposed BNC with additional height sought, will create an apparent visual landmark and identifiable focal point to the community, creating a sense of place.”

204. Ms Skidmore and Mr Zhang did not agree with the additional height limits proposed for the zone. It was Mr Zhang’s opinion that⁸⁶:

“The permitted height for buildings in the BNC is 13m, which generally allows for buildings of up to 3-4 storeys. In my view, this is sufficient for meeting the needs of activities and land uses anticipated in the BNC zone. I do not consider a clear rationale has been provided for allowing significantly more height and scale in this location, particularly given that the proposed extent, mix of activities and intensity proposed in the BNC is inconsistent with what the AUP anticipates for the zone.”

205. The AUP OP’s zone description for the Business – Neighbourhood Centre Zone states:

“The Business – Neighbourhood Centre Zone ...applies to single corner stores or small shopping strips located in residential neighbourhoods. They provide residents and passers-by with frequent retail and commercial service needs.

⁸⁵ Paragraph 148 of the Section 42A report

⁸⁶ Paragraph 153 of the Section 42A report

Provisions typically enable buildings of up to three storeys high and residential use at upper floors is permitted. Development is expected to be in keeping with the surrounding residential environment”.

206. The zone’s specific objectives are:

“Commercial activities within residential areas, limited to a range and scale that meets the local convenience needs of residents as well as passers-by, are provided in neighbourhood centres.

Neighbourhood centres are developed to a scale and intensity in keeping with the planning outcomes identified in this Plan for the surrounding environment.”

207. It is our finding that the range and scale of activities proposed in the Waipupuke precinct BNC zone are not consistent with the BNC zone’s purpose and objectives in the AUP OP. Moreover, for the reasons that follow, we do not find that there is anything ‘unusual’ in the Waipupuke precinct that would warrant a ‘bespoke’ BNC zone as proposed; nor do we think another zone (eg Business Local Centre) is appropriate (noting the Applicant did not support this zoning, and we received little evidence on it).

208. With respect to the range of activities proposed, we do not support the provision of a Medical and Specialist Facility within the BNC. We address this separately in more detail below. Given this facility was one of the main reasons for the BNC zoning; not providing for it removes the need, in our view, for the zone provisions as proposed by PC 61.

209. The DOSP, and the majority of the zoning sought in PC 61, is for residential purposes. The DOSP and other private plan changes being considered at the same time as this plan change (ie 48, 49, 50 and 61) are providing for a range of activities and zones including residential, but also a Town Centre Zone and a Metropolitan Centre Zone⁸⁷.

210. As set out above the BNC objective is that neighbourhood centres are developed to a scale and intensity in keeping with the planning outcomes identified in this Plan for the surrounding environment, and to serve the local convenience needs of residents as well as passers-by. The planned outcome for this area is largely residential.

211. With respect to the additional height sought, we understand the Applicant’s desire to “create an apparent visual landmark and identifiable focal point to the community, creating a sense of place”. However, as discussed at the hearing, Waipupuke does not exist as an ‘island’ and according to the DOSP it is part of the wider urbanisation of Drury, and is part of that matrix.

212. However, that is not to say each ‘precinct’ should not create an identifiable focal point to the community and create a sense of place. We think Waipupuke’s identifiable

⁸⁷ Noting that at the time of drafting this decision, no decisions had been made on any of these other plan changes

focal point to the community and a sense of place would have been the use of Mana Whenua Markers and its blue-green network linked up by the scale and nature of the open spaces. In our view, the additional height is not required to achieve this, and nor is it appropriate in terms of the BNC zone that we would have provided for.

213. While a BNC is supported by almost all parties, and it is supported by us; that support is only for a 'small scale' zone as envisaged by the AUP OP. We find that there is nothing unusual in terms of the Waipupuke precinct to justify (section 32 and section 32AA terms) bespoke or different provisions than the BNC zone in the AUP OP. This also includes a different height than set out in the AUP OP's BNC.

Extent of the Open Space zoning

214. As part of the application an Open Space Framework report was prepared by Mr Clark to support the plan change. The framework proposed the following network of open space:
- A 3 ha Suburb Park on the northern part of the site;
 - A 0.44 ha Civic Space park located adjacent to the Neighbourhood Centre;
 - A 0.3 ha pocket park at the entrance to Karaka Road; and
 - A 0.25 ha pocket park on the eastern side of the site.
215. The Applicant sought that these open spaces be zoned as Open Space - Informal Recreation, and the site located adjacent to the BNC as Open Space - Civic. The open space zoning was addressed in the evidence of Mr Clark.
216. The section 42A report, and the evidence filed by Mr Barwell and Mr Turbott on behalf of ACS record the following concerns:
- The Plan Change provides an oversupply of parks;
 - The shape of several proposed open spaces is not efficient;
 - The proposed open spaces should not be zoned but should be shown as 'indicative' open spaces on the Precinct Plans; and
 - The amendments to the open space zone rules are not supported.
217. The section 42A report and the evidence of Mr Barwell both concluded that the provision of a Suburb Park and one Southern Neighbourhood Park was appropriate to support the recreational needs of the future Waipupuke residents. However, they did not support the remainder of parks within the Plan Change (i.e. the Neighbourhood Park) and the two pocket parks (Entry Pocket Park and Eastern Pocket Park). They considered there was an 'over-supply' of open space in terms of Council's Open Space Policy and the DOSP.

218. Mr Barwell's evidence was that the Council may consider acquiring a Suburb Park and neighbourhood park. However, ACS is opposed to the proposed zoning of the land as it may prejudice the Council's discretion to receive or acquire the open spaces in future and predetermine its suitability for acquisition. On this basis Mr Barwell and Mr Zhang considered that these open spaces should be shown as being indicative open spaces in the Precinct Plans; with the final zoning and boundaries of the two open spaces to be determined after subdivision occurs and land is either vested or acquired.
219. It appears to us that much of Mr Barwell's concerns relates to the implication that if land is zoned or shown as indicative open space, the Council will be placed under pressure to purchase it (noting that the proposed level of open space provision exceeds the potential open space acquisition by 1.4 hectares). While we acknowledge the Council's concern, this is not an RMA issue, but one of Council Policy, and if the council does not wish to purchase a site that does not meet its policy, then it exercises its right not to purchase it.
220. Mr Clark's opinion was that the proposed open space network was appropriate to support the higher intensity residential zones and BNC proposed in the Precinct. It also gave effect to Mana Whenua engagement and the quality of living for future residents that are envisaged in Waipupuke. Ms de Lambert agreed with the proposed Open Space framework as part of the urban design response of the Plan Change to the Site. Mr Lala opined that all of the open spaces shown should be zoned now, and not shown as indicative.
221. In respect of the method for providing open space, Mr Clark and Mr Lala were both of the opinion that zoning is the most appropriate way to ensure the provision of the scale and quantity of the open spaces for the future community. Zoning would provide certainty that the level of open spaces necessary for the development will be realised. Mr Lala also noted that the open spaces are a key element of the open space framework, which had been developed in collaboration with Mana Whenua, and which would enhance local character and create a sense of identity.
222. Mr Loutit set out in his opening legal submissions, that⁸⁸:
- "...PC61 is in a unique position in that the Applicant has already confirmed its subdivision layout and lodged subdivision consent with the Council (currently being processed). There is no risk that the open space network will change in the future and necessitate a further plan change".*
223. The Applicant's position was that they intended the land to be developed in accordance with the precinct plan, and the subdivision application as referred to by Mr Loutit. From the Applicant's perspective the location of the open space was fixed.

⁸⁸ Paragraph 7.68 of the opening legal submissions

224. We have not approved the Plan Change and therefore the issue of the provision of open space is somewhat moot. However, it has been ‘standard practice’ not to zone areas of open space (in most cases), but to show it indicatively (as shown in the DOSP) for the reasons opined by Mr Turbott and Mr Zhang. However, we accept the Applicant’s position that the PC 61 situation is somewhat different. The Applicant is seeking the open space to be zoned in accordance with its Open Space Framework, the Precinct Plan and the subdivision consent application lodged. Also, the Open Space Framework has been developed in collaboration with Mana Whenua and Mana Whenua strongly support PC 61.
225. It is likely that had we approved the Plan Change we would have zoned the Suburb Park and Southern Neighbourhood Park (supported by Mr Barwell) as Open Space – Informal Recreation. We would have also most likely zoned the open space adjacent to the BNC Open Space – Civic; or at least indicated this was its likely purpose, recognising the Applicant’s aspirations for this part of the Precinct. We would have shown the rest of the open space as “indicative” in the precinct plans.

Medical and Specialist Facility

226. The purpose of PC 61 as expressed by the Applicant was to deliver a comprehensively planned and integrated community for the plan change area, based around the Southern Auckland Medical Centre. The Precinct description states:
- “Urbanisation of the land will provide for housing diversity and choice based around a neighbourhood centre which supports additional building height. A key feature of the neighbourhood centre and the precinct is the Southern Medical and Specialist Facility which will provide health and medical services to the population of the Auckland Region, particularly those in South Auckland. Specific provision is made for this medical centre and hospital within the Precinct provisions.”* (emphasis added)
227. The nature of, and need for, the Medical and Specialist Facility was addressed in evidence by a number of witnesses including Mr Khan, Dr Devarajah, Ms de Lambert and Mr Lala. It was also addressed in opening and closing legal submissions. We also acknowledge that the Papakura Local Board supported the Neighbourhood Centre including the Medical and Specialist Facility, and that this facility would not adversely affect the operation of existing town centres, in particular the Papakura Metropolitan centre.
228. As set out below we do not support the specific precinct provisions for the Medical and Specialist Facility. We find that the AUP OP provisions should apply as a “hospital” given the evidence presented about the nature of the facility. We wish to make it clear that we do not dispute the need for such a facility.
229. The Medical and Specialist Facility was proposed in the notified plan change to be a permitted activity within the precinct’s BNC. The proposed definition was:

Medical and Specialist Facility

Facilities used for providing specialist medical services.

Includes

- *Accident & Emergency Services*
- *Specialist consulting services including Endoscopy, Cardiology, Pediatrics, Fertility, Oncology including associated overnight stays*
- *Radiology*
- *Laparoscopic day procedures and overnight stays*

230. The following exclusions to the definition were added to the definition during the hearing to clarify what activities were not anticipated:

Excludes

- *Helipads*
- *Overnight stays longer than two nights*

231. In opening legal submissions, we were advised that the activity status for the Medical and Specialist Facility was amended from Permitted to Restricted Discretionary activity, with discretion restricted to traffic effects.

232. During the hearing and in the Reply submissions, in response to submitter concerns, the Applicant further amended the rules for the Medical and Specialist Facility. The applicant introduced a cap of 3,500m² on the ground floor area (GFA) of the Medical and Specialist Facility (as a Restricted Discretionary activity) and beyond that a Discretionary Activity, along with the two additional exclusions to the definition set above.

233. Mr Khan set out in his evidence that the proposed medical facility would be:⁸⁹

“Operational by 2027 and would have a specialist Māori and Pasifika health unit that will provide pro-active community-based services. The Medical Facility will include a fully-fledged mobile medical service that will serve the community in South Auckland at various Marae and community centres. The Medical Facility has to be designed to incorporate lessons learnt from the COVID-19 outbreak and enable virtual consultations”.

234. Dr Devarajah set out in his evidence that⁹⁰:

“If the Proposed Plan Change 61 (private) Waipupuke (Plan Change) is granted, I will be one of the directors of the proposed Medical and Specialist Facility (Medical Facility) that will form part of the Neighbourhood Centre. I am also a shareholder in BMD Properties Limited that will be developing the medical

⁸⁹ Paragraph 2.5 of Mr Khan’s summary statement

⁹⁰ Paragraph 2.5 of Dr Devarajah evidence

facilities and building. There is already a group of nine doctors and specialists, and a chemist that have committed to investing in, and operating, the Medical Facility. Three of the investor specialists currently serve Hamilton Hospital and Waikato based private clients”.

235. Dr Devarajah's evidence addressed:

- The shortage of medical specialists in South Auckland and the need for a comprehensive medical centre in the Drury-Opāheke Structure Plan (Structure Plan) area;
- The under-performance in delivery of health services to Māori and Pasifika patients; and
- A description of the Medical Centre that is proposed in the Plan Change and how it will resolve these problems.

236. We accept Mr Khan's and Dr Devarajah's evidence in relation to the facility, its nature, operation and its need as described to us and in evidence.

237. Ms de Lambert, in her evidence-in-chief, and in her summary statement detailed the Applicant's aspiration to incorporate a Medical and Specialist Facility (as well as a small local supermarket (up to 1,500m² Gross Floor Area (GFA)), local offices (up to 1,500m² GFA), retail including food and beverage such as a gastropub and café up to 3,500m² GFA) in the BNC zone. She stated: ⁹¹

“In this way, Waipupuke aspires to move slightly beyond a more traditionally suburban greenfield residential area creating a more distinctive, diverse, interesting and locally self-sufficient series of highly attractive, walkable neighbourhoods well connected by public transport to the wider Auckland”.

238. Ms de Lambert opined that the inclusion of a mixed-use commercial centre including the medical facility would enhance the urban character, amenity and liveability of Waipupuke as a “*complete neighbourhood*” in a way that is desirable and beneficial to future residents and the wider local area. In questioning Ms de Lambert about this (in relation to the medical facility) she said there was nothing inherently special or unusual about the site or precinct that made it particularly suitable for the medical facility in urban design terms. However, notwithstanding this, she re-stated her position that such a facility could be integrated into the site (BNC) and area.

239. It was Mr Lala's evidence that the medical facility was appropriate given its purpose and the reasons set out in the evidence of Mr Khan and Dr Devarajah. He also advised us that the medical facility was not a “healthcare facility” or a “hospital”⁹², and

⁹¹ Table at 2.1 of her Summary Statement

⁹² Healthcare facilities are a permitted activity and Hospitals are a non-complying activity in the BNC zone

that there was a gap in the Chapter J definitions for ‘healthcare facility’ and ‘hospital’⁹³.

240. The AUP OP’s definition of “healthcare facility” and “hospital” are:

Healthcare facility

Facilities used for providing physical or mental health or welfare services.

Includes:

- *medical practitioners;*
- *dentists, and dental technicians;*
- *opticians;*
- *physiotherapists;*
- *medical social workers and counsellors;*
- *midwives;*
- *paramedical practitioners;*
- *alternative therapists;*
- *providers of health and well-being services;*
- *diagnostic laboratories; and*
- *accessory offices*

Hospital

Facility that provide for the medical, or surgical or psychiatric care and treatment of persons. Includes:

- *accessory offices;*
- *accessory retail including pharmacies, food and beverage, and florists;*
- *accessory commercial services including banks and dry cleaners;*
- *ambulance facilities and first aid training facilities;*
- *conference facilities;*
- *helicopter facilities;*
- *hospices;*
- *hospital maintenance and service facilities, including kitchens and laundries;*
- *medical research and testing;*
- *mortuaries;*
- *rehabilitation facilities;*
- *supported residential care; and*
- *training*

241. Mr Lala set out the key features of the proposed Medical and Speciality Facility that he considered were not covered in either definition; and are that the Medical and Specialist Facility will:

- accommodate overnight stays but not long-term stays (more than two nights), and the associated effects that go along with long term stays in terms of extensive catering and staffing; and
- Will not permit the full range of activities that a hospital offers and are included in the definition for hospital, for example helicopter facilities and overnight stays longer than two nights.

⁹³ Ms Sinclair for Auckland Transport agreed with Mr Lala

242. While we understand the Applicant's desire to establish a Medical and Speciality Facility, we find it 'fits' within the definition of "hospital", and albeit if the Applicant wishes to provide specific services and specifically limit some matters (the exclusions), it is still in our view a hospital. As stated, a Hospital is a non-complying activity in BNC zone. For the reasons that follow we find no reasons why a different activity status should apply.
243. We have already set out the role, function and purpose of the BNC zone. Hospitals (Medical and Specialist Facility), including at the potential scale proposed given the Applicant's evidence describes the proposed facility as "*large*"⁹⁴, "*comprehensive*"⁹⁵ and as providing health and medical services to the "*people of South Auckland*"⁹⁶. We do not find the BNC zone is necessarily the appropriate location for this facility, even with the amended activity status and definition proposed by the Applicant.
244. The Section 42A report raised concerns that this facility will become a destination and will add to the traffic issues. ACS (Mr Turbott) and AT (Ms Sinclair and Ms Smith) raised similar concerns to that of Mr Zhang. In response it was the Applicant's position that the general practice facilities will primarily support local residents, the specialist facilities will have low trip generation rates, and that the facility will have a significant mobile service. While the activity's amended activity status would allow some of these matters to be addressed, there is no mechanism that could (easily) limit the Medical and Specialist Facility serving only South Auckland (and limiting traffic movement).
245. Moreover, and importantly, Waipupuke, and much of the surrounding area, is planned as residential areas/communities, with small scale commercial areas providing for the day-to-day convenience needs of the local (and passer-bys) needs. A potentially large hospital (or medical facility) in the centre of a residential neighbourhood is unlikely, in our view, to enhance residential amenity. As stated, a hospital is not envisaged within a neighbourhood business zone.
246. Overall, it was Mr Zhang's recommendation in the section 42A report that the Southern Medical and Specialist Facility be deleted; a position he did not resile from in his comments to us prior to the Applicant's Reply. Mr Turbott's evidence on behalf of ACS was that that the facility should be deleted entirely, or alternatively that it should be relocated closer to Jesmond Road. We agree that the facility be deleted from the Precinct for the reasons we have set out; noting again that we accept the evidence that there is a need for this facility.
247. Given our decision on this facility, the precinct provisions relating to the Medical and Specialist Facility would have been deleted, including the definition.

Service Station and Fast Food Outlets - Restricted Discretionary Activity in the THAB Zone

⁹⁴ Paragraph 6.13 of Mr Colegrave's evidence

⁹⁵ Paragraph 65.1 of Dr Devarajah's evidence

⁹⁶ Paragraph 5.3 of Mr Colegrave's evidence

248. Service stations and fast-food outlets (including drive through facility) fronting SH 22 were proposed to be restricted discretionary activities in the precinct. In the AUP OP THAB zone, a service station on an arterial road is a discretionary activity while the 'Fast-food outlets' activity is not defined in the AUP OP. Therefore, fast-food outlets (including drive-through restaurants) are activities not provided for which makes them a non-complying activity.
249. Waka Kotahi, Auckland Transport and Auckland Council all requested the deletion of the service station (A2) and fast-food outlet (A3) activities from the THAB Activity Table IXXX.4.1. They considered that service stations and fast-food outlets fronting Karaka Road (SH22) were not appropriate as RDAs. These activities can be classed as 'high trip generating activities', and have the potential to generate significant traffic volumes and consequential effects on Karaka Road (SH22) where access restrictions apply.
250. Mr Zhang and Ms Skidmore also did not support service stations and fast-food outlets (including drive through facilities) fronting SH22 as RDAs in the precinct. Mr Zhang agreed with Ms Skidmore's assessment that the underlying zone provisions should be maintained as they present amenity issues when located amid high intensity development.
251. We also note that the existing AUP provisions already provide for food and beverage type activities in the THAB zone. Cafes and restaurants up to 100m² (gross floor area per site) are restricted discretionary activities. We do not consider a new 'fast-food outlet' activity is necessary.
252. Had we approved PC 61, we would not have made service stations and fast-food outlets an RDA.

Noise and Vibration

253. We received expert acoustics and vibration evidence from Dr Chiles (Waka Kotahi) and Ms Drewery (ACS/AT). Their evidence, was uncontested (from any other expert acoustics and vibration specialists), and demonstrated that there were adverse health and amenity effects from road noise (and vibration as part of noise⁹⁷).
254. In response to Dr Chiles' and Ms Drewery's evidence, the planning witnesses for Waka Kotahi (Mr Clarke) and ACS and AT (Ms Sinclair and Ms Smith) recommended that noise controls should be imposed to ensure the health and amenity of people living in the residential properties near SH22 and Jesmond Road (as a future arterial road) – noting the AUP OP does not include internal noise criteria for residential zones. They also recommended that these rules were also to address reverse sensitivity issues.

⁹⁷ Section 2 – Interpretation of the RMA is "noise includes vibration"

255. Based on modelling Ms Drewery assessed that future road traffic noise of up to 65 dB LAeq (24 hour) could be expected at the boundary of PPC 61 adjacent to SH22 and Jesmond Road⁹⁸. Applying Waka Kotahi guidance for managing noise sensitive land use near the state highway network, Ms Drewery identified a maximum indoor design noise level of 40 dB LAeq(24hour) to be appropriate for road traffic noise⁹⁹.
256. To address potential health, amenity and reverse sensitivity effects, Ms Drewery and Ms Sinclair / Ms Smith recommended the inclusion of a suite of precinct provisions based on the “noise contour plans” prepared by Ms Drewery¹⁰⁰.
257. Waka Kotahi, like ACS/AT sought to amend PC 61 to include provisions to manage the noise and vibration effects from road traffic. In summary Dr Chiles’ and Mr Clarke’s evidence was that PC 61 should:
- Set internal road-traffic noise limits for new and altered buildings containing activities sensitive to noise within an identified overlay area;
 - Require mechanical ventilation sufficient to provide reasonable thermal comfort, if windows need to be closed to achieve internal noise limits;
 - Set an outdoor road-traffic noise limit unless there is screening from the road;
 - Set a road-traffic vibration limit to be achieved in new and altered buildings containing activities sensitive to noise within 40 metres of a state highway; and
 - Require submission of a design report prior to construction, demonstrating compliance with the above performance standards.
258. We note that the proposed noise and vibration provisions sought by Waka Kotahi are similar to those sought by AT (in this and the other Drury plan changes 48 – 51). We accept the primary basis of the proposed rules was to manage the effects of road traffic noise and vibration on human health and amenity and, as a secondary purpose, managing reverse sensitivity effects.
259. Kāinga Ora opposed the introduction of noise provisions (as they had in terms of Plan Change 48 and 49 and subsequently PC 51). Legal submissions and planning evidence was presented on this matter. Kāinga Ora’s position, in summary was that the approach to the acoustic controls sought by the transport agencies was simplistic, unreasonable, and inappropriate.
260. Mr Matheson, legal counsel for Kāinga Ora, set out that¹⁰¹:

“... if the Transport Agencies maintain their position that RMA-regulation of development adjacent to transport corridors is required, then, as discussed

⁹⁸ Paragraph 5.7 of Ms Drewery’s evidence

⁹⁹ Paragraph 6.13 of Ms Drewery’s evidence

¹⁰⁰ Paragraph 6.12 of Ms Drewery’s evidence, and paragraph 11.6 of Ms Sinclair/Smith

¹⁰¹ Paragraph 2.9 of Mr Matheson’s legal submissions

further shortly, they should promote a regionwide plan change process. To the extent that the Transport Agencies remain unwilling to promote such a plan change, then their s 32AA assessment identifies five alternative (non-RMA) methods that could be examined and utilised: urban design strategy, bylaws, NZ Standards, Building Code and Waka Kotahi Guidance.”

261. Mr Zhang did not support the introduction of noise and vibration controls. It was his opinion that¹⁰²:

“The proposed standards raise several uncertainties from a planning perspective, which are discussed below:

- In my view, this is more an issue about health effects (which I assume are to do with indoor activities i.e. sleeping) and amenity effects (I associate this with outdoor activities i.e. entertaining/lunch outdoors) rather than reverse sensitivity effects. Therefore, the health effects and amenity effects of residential land uses next to arterial roads should be clearly established. I do not feel this has been done in the submissions by AT or Waka Kotahi.*
- The potential urban design implications of this blanket approach have not been considered. Implications include incentivising backyards of dwellings to be located against arterials, high opaque fences, and potentially unbroken blocks of dwellings to act as noise barriers for any dwellings behind.*
- It is unclear what the traffic noise effects arising from planned future upgrades to the arterials are likely to be on the adjoining land. Presumably the effect is significant enough to warrant that every activity (within 100m of the arterial road) demonstrate compliance with the proposed standards (likely through an acoustic assessment and report).*

It is acknowledged that the road controlling authorities are not able to fully internalise the noise effects resulting from use of the roads, but they still have a role to play in mitigation. If there are significant health and amenity effects resulting from traffic on arterials, then costs of mitigation should not fall largely on landowners and some cost sharing of noise mitigation should be considered. It is unclear whether it is appropriate to apply the 100m setback for managing noise consistently across the entire length of any relevant road (i.e. do contours/local conditions reduce noise and therefore reduce the necessary setback).

As noted earlier, I’m not convinced that the provisions proposed by AT and Waka Kotahi can be framed as addressing a reverse sensitivity effect. The effects of reverse sensitivity include potentially curtailing the operations of an established activity, or requiring that activity to undertake mitigation measures. In my view, neither of the above effects are reasonably likely to occur. Therefore, the

¹⁰² Paragraphs 687 to 690 of the section 42A report

proposed provisions should not pass the mitigation measures largely onto the landowners as a way of addressing reverse sensitivity.

In my view, protecting sensitive activities from road noise is a region-wide issue and is not unique to this precinct. A more consistent planning approach could be potentially investigating changes to the Auckland-wide provisions of the AUP. Otherwise, this matter would need to be considered for every plan change along Jesmond Road and Karaka Road (SH22) to ensure a consistent management approach is undertaken.

At this stage I'm unable to support AT or Waka Kotahi's submissions."

262. The Reply Statement from Mr Loutit stated¹⁰³:

"Noise and vibration:

- (a) The applicant adopts and endorses in full the legal submissions from counsel for Kāinga Ora that noise and vibration controls should not be included in this precinct. If this is a significant issue for the region, then region-wide AUP provisions should be pursued. It would also be ad hoc and unfair to impose it on this Plan Change when other plan changes already approved do not have such provisions.*
- (b) The information that the submitters relies on is also uncertain. For example, after earthworks the contour line may well move. As other witnesses have said it is a matter for design and should be dealt with at resource consent stages. I also note in passing that noise modelling may be impacted by the uptake in electric vehicles and asphalt surfaces.*
- (c) Upon questioning from the Panel, it also became evident that there are some real practical difficulties in applying the Council and AT's proposed noise rules, and that the Council and AT witnesses themselves were unclear about how they would work in practice.*
- (d) Notwithstanding our position above, should the Panel be minded to impose noise controls over dwellings in proximity to SH22, Mr Lala has drafted a new matter of discretion and assessment criteria that could apply to new dwellings in the THAB zone on sites that front SH22. The proposed approach will enable a condition at the resource consent stage, and building certification at building consent stage (if considered necessary following an assessment).*
- (e) It is not proposed to apply this assessment to Jesmond Road owing to the uncertainty relating to the form, layout and finishing of Jesmond Road and when it will be constructed (as opposed to SH22 which is an existing situation). It is also not considered that this matter of discretion needs to apply to buildings beyond those fronting SH22. These buildings will offer*

¹⁰³ Paragraph 9.2 of the Applicant's Reply Statement

some form of acoustic mitigation to those behind them and therefore no additional assessment is considered necessary for dwellings further back.

- (f) *This optional assessment matter is in the revised precinct plan provisions attached to these submissions. For clarity, the applicant's preference is not to include this additional matter of discretion in the precinct provisions, but it offers it as an option to the Panel should they consider some form of control to be necessary.*"

263. We acknowledge that noise and vibration controls are an issue that needs to be addressed. The expert evidence before us is that there are adverse health and amenity effects. This is uncontested. We also acknowledge the legal submissions and expert evidence before us; both supporting and opposing the introduction of noise and vibration controls.
264. We agree that this is a region-wide issue opined by Mr Lala, Mr Campbell (for Kāinga Ora) and Mr Zhang. It would clearly be preferable if a region-wide plan change, with the necessary technical and planning input (a section 32 evaluation), was promoted. However, we agree with Ms Sinclair and Ms Smith who stated:¹⁰⁴
- "... without any clarity as to the timing of such a region wide plan change, the opportunity to protect the new development and the upgraded transport network will be regrettably lost, leaving resolution of any potential health, amenity and/or reverse sensitivity effects unaddressed."*
265. As we have declined PC 61 we have (obviously) not imposed any noise and vibration controls. However, we find that Waka Kotahi and ACS/AT have made a good case for controls to be contemplated. However, we were not satisfied with the controls suggested by those planning witnesses, and share the same concerns of those parties who do not support the control (expressed above).
266. In this respect, and probably most notably, the proposed use of a noise control area/overlay, based on the modelling undertaken by Dr Chiles and Ms Drewery, is problematic. It was acknowledged that the area/overlay proposed is affected by both road alignment and land form (which could be significantly altered by earthworks). The area/overlay, if imposed, may or may not be adequate or appropriate to address the concerns expressed.
267. If noise and vibration controls were to be introduced into PC 61, we think more work would be necessary to justify, in section 32 terms, those controls. We also record that we were less convinced by the need for controls on outdoor noise and vibration.
268. We also note, for the record, that we do not support the Applicant's position (set out in Reply) that this matter could be addressed by adding a matter of discretion and assessment criteria¹⁰⁵ within the THAB zoning. We think there would need to be a

¹⁰⁴ Paragraph 15.14 of Ms Sinclair and Ms Smith

¹⁰⁵ Acknowledging this was not the Applicant's preference; which was to have no controls

“standard” so the outcome is clear, as opposed to a more ‘open-ended’ assessment. It also would not have addressed the effects in relation to all of Jesmond Road adjunct to PC 61 (as the Applicant only proposed the additional controls in the THAB zone, and in any event, we have not supported the ‘southern THAB’ as proposed by the Applicant.

Historic Heritage

269. Detailed information and evidence was provided by Mr Brown in relation two properties within the Plan Change area that were identified as potential places for detailed evaluation of historic heritage values namely 329 Karaka Road and 140 Jesmond Road.
270. Mr Brown undertook a detailed evaluation of 329 Karaka Road, and concluded it did not merit inclusion in the AUP OP Schedule 14.1 as a place of considerable or greater historic heritage value. Mr Brassey and Ms Freeman agreed, and so do we.
271. Mr Brown had a different opinion with regards to 140 Jesmond Road (the ‘John Fitzgerald Homestead’), and recommend that it be added to the AUP OP Schedule 14.1. Mr Brassey and Ms Freeman did not support Mr Brown’s evaluation that 140 Jesmond Road merited scheduling.
272. Mr Brassey and Ms Freeman agreed that 140 Jesmond Road did have some heritage value and that this value should be retained if possible. What they did not agree on is that 140 Jesmond Road met the scheduling criteria in the AUP OP due to its ‘value’.
273. We posed the question – what was the ‘downside’ of scheduling 140 Jesmond Road even if it did not meet the scheduling criteria given the Applicant’s aspiration for the building. Mr Brassey responded ¹⁰⁶:
1. *Adding something that doesn’t meet the criteria and thresholds to any schedule, whether it be a historic place, natural area, tree or whatever, undermines the integrity of the schedule. It is contrary to the RPS objectives and policies and leaves the scheduled item vulnerable to removal at a later date.*
 2. *In the meantime, scheduling would impose a regulatory regime that would generate the requirement for future owners to obtain resource consent for changes to the building or the scheduled extent of place, which would not necessarily be granted. Such a regime is justified for a significant place but would not necessarily achieve worthwhile heritage outcomes when applied to a place of lesser significance or value.*

These are essentially planning arguments. And

¹⁰⁶ Mr Brassey’s ‘technical’ comments as part of the Council’s (as regulator) response

If I was asked to review a nomination for scheduling of a place on the basis that it had considerable significance (i.e., was of great importance or interest) in relation to the Context criterion when it was clear that the physical context was going to be completely destroyed, I would not recommend that it be accepted for evaluation.

274. We agree with Mr Brassey. On this basis, we would not have scheduled 140 Jesmond Road.
275. As a final note, in the Applicant's Reply, it was set out that if the Hearing Panel was minded to agree with the Council and not schedule 140 Jesmond Road, the underlying zoning of this area should revert back to THAB (as shown in the notified PC 61). We agree; this is what we would have decided.

Wastewater and Water Supply

276. Mr Stuart (Watercare) gave evidence that PC 61 should be declined because the applicant has not demonstrated that the Site can be serviced for wastewater. He then went on to confirm, however, that Mr Bellingham's suggested solutions were all feasible, but would be subject to further work and, in the case of two options, discharge consents being approved.
277. Ms Gotelli (Watercare) also accepted that the Applicant, rather than funding all the cost of the Bremner Road pump station could fund the cost of bringing the upgrade forward from 2030 to 2022 (this is a further viable option for servicing the Site).
278. As set out in the Reply submissions from Mr Loutit, the Applicant accepts that it is its own responsibility to apply for discharge consents if it chooses to pursue the onsite water treatment option, or trucking (if required). This is not a matter for the Plan Change and this would need to be resolved through resource consents. We accept the key for us is if there are viable options for servicing the Site. We also that we have evidence of solutions to water and waste water; and this is also accepted by Watercare.
279. We also acknowledge the concerns raised by other submitters in relation to infrastructure servicing - wastewater and water supply (and stormwater) – and a lack of coordination with respect to development of the surrounding area in relation to these (and other) matters. These included: Mr Daken, the Wing Family Trust (Mr Wing) and Ms Pan, Paralysis NZ (Mr Wang), and Harnett Orchards Limited (Mr Harnett).

Stormwater

280. There was disagreement between the Applicant and the Council (Healthy Waters) regarding the appropriate stormwater provisions.
281. The Applicant had submitted a Stormwater Management Plan (SMP) as part of the notified plan change. We were advised that this had been provisionally approved by

Healthy Waters for adoption into the Network Discharge Consent (NDC) alongside the plan change process.

282. However, Ms Vincent for ACS (Healthy Waters) stated¹⁰⁷:

“While the SMP is considered to be a particularly good example of integrated stormwater management, the NDC and relevant SMP are not sufficient in and of themselves to ensure that their outcomes are achieved in greenfields development. Precinct provisions are needed to provide direction on development design and apply appropriate controls to development and subdivision to achieve NDC outcomes and ensure that the effects of stormwater are managed as the Regional Policy Statement B7.4.2 and Chapter E1 requires. These precinct provisions relate to:

(a) Treatment of stormwater runoff to achieve water quality outcomes.

(b) Use of inert building materials.”

283. In relation to Ms Vincent’s evidence, Mr Lala stated¹⁰⁸:

“Section 11 of her evidence identifies the need for separate precinct provisions relating to stormwater even though there are operative Auckland Unitary Plan (AUP) provisions in place, a Region-wide Stormwater Network Discharge Consent (NDC) has been consented and a Stormwater Management Plan has been provisionally approved.

In my opinion, if Council considers the NDC provisions are insufficient to manage stormwater effects across the Auckland Region, then it is open to Council to seek variations to the NDC to align the consent with the outcomes they seek. If the Council is of the view that the AUP does not sufficiently reflect the National Policy Statement for Freshwater Management 2020/National Environmental Standards then it should also propose its own changes to the Auckland-wide AUP provisions including amendments to E10 relating to SMAF 1 and 2 areas, as opposed to seeking a piecemeal approach that is currently being pursued through submissions to private plan changes such as Waipupuke.”

284. As the Plan Change has not been approved, we do not need to ‘resolve’ the stormwater issues. However, we would have imposed “*separate precinct provisions relating to stormwater*” had PC 61 been approved.

285. However, we would not have supported the proposed provisions (in particular the policy) recommended by Ms Vincent. She sought:

“Require subdivision and development to be assessed for consistency with any approved network discharge consent and supporting stormwater management plan adopted by Council under that discharge consent ...”

286. Ms Vincent did acknowledge in answering the Hearing Panel’s questions, that it was the “intent” of the wording that she recommended rather than the specific wording.

¹⁰⁷ Paragraph C of Ms Vincent’s summary of evidence

¹⁰⁸ Paragraphs 5.2 and 5.3 of Mr Lala’s rebuttal evidence

We agree with her intent, and note that we do not think that policy should 'lock-in' a resource consent (the Network Discharge Consent) or a particular stormwater management plan adopted by the Council. In our view the policies need to 'stand alone' and provide a 'pathway' to give effect to the objective. We would have most likely reworded the policy to require a treatment train approach so as to enhance water quality and protect the health of stream and marine environments, but without reference to a Network Discharge Consent, but may have included reference to a supporting stormwater management plan.

287. Several neighbouring landowners raised concerns with potential flooding effects on their properties from the potential development of the PC 61 land. While no expert evidence was called, we acknowledge the submitters concerns. However, the Applicant and the Council (as regulator and submitter) addressed stormwater issues, and sought to include appropriate precinct provisions. We also note that the Plan Change contemplates possible downstream flooding by providing for significant floodwater storage on the Site if pass forward flows are inappropriate due to downstream conditions.

Notification

288. It was the Applicant's position that the normal tests of notification should not apply. In the Reply version of the precinct provisions, the notification provisions sought were:

IXXX.5 Notification

(1) Any application for resource consent for a restricted discretionary activity, except for Service Stations and Fast food outlets (including drive through facility) on sites fronting SH22, listed in Tables IXXX.4.1 to 4.5 will be considered without public or limited notification or the need to obtain written approval from affected parties unless the Council decides that special circumstances exist under sections 95A(9) or 95B(10) of the Resource Management Act 1991.

(2) Restricted Discretionary activity applications for Service Stations and Fast-food outlets (including drive through facility) on sites fronting SH22 shall be notified on a limited basis to Waka Kotahi.

289. It was Mr Lala's opinion the precinct, zone and Auckland-wide rules provided adequate measures to ensure the effects of the proposed activities were appropriately addressed as part of any resource consent application process. On this basis he did not support the relief sought in a number of submissions (addressed below) requiring the standard notification tests to apply.
290. Mr Lala did accept amendment to the notification rule to require limited notification to Waka Kotahi for applications for service stations or fast-food outlets on sites fronting SH22. It was his opinion that as the road controlling authority, it was appropriate they have input into the potential adverse traffic effects from such activities in this location.

291. A number of submitters (Waka Kotahi, ACS/AT, Kāinga Ora and Counties Power) raised concerns (and addressed in legal submissions and evidence) about the proposed notification provisions. Their concerns related to the possibility that most of the activities (as RDAs) may have significant adverse effects and that it was more appropriate to rely on the standard notification provisions in the RMA.
292. It was Mr Zhang's opinion that RDAs should be subject to the normal tests for notification where:
- “the scale of effects on neighbours and the wider environment cannot be well ascertained and may directly affect the residential amenity of residents or generate other adverse effects¹⁰⁹. He recommended that that the “proposed exclusion for RD activities from limited or public notification be deleted and be replaced with the standard notification provisions that should generally apply¹¹⁰.”*
293. Having considered this matter, and for the reasons expressed by the submitters, Mr Zhang, and our reason with respect to the activity status for service stations and fast food outlets; had we approved the Plan Change, we would have required the standard notification tests set out in the RMA.

Other

294. Soco Homes Limited (Soco Homes) submitted that they enjoy the residential amenity of their property, and that PC61 will leave them with no access out of their Site, and that better road connection should be made in PC 61 to their property. We note that their current access is via a right of way behind the Red Shed.
295. We acknowledge that PC 61 does not affect their existing access. We also note that PC 61 provides several access points between the Site and neighbouring properties, and these were illustrated on the updated Precinct Plan 3, although as Mr Rae pointed out, a number of these connections appeared to 'stop short' of the adjoining boundaries.

Positive Outcomes

296. We accept that in addition to the Mana Whenua matters addressed above, we find there would have been positive effects had PC 61 been approved. These included the provision of additional residential and commercial development, as well as a significant contribution to the necessary infrastructure upgrades, especially to SH 22.
297. We also noted that had PC 61 been approved the development of the proposal would generate economic activity and employment that could be of some importance as the country deals with the economic impacts of COVID 19.

¹⁰⁹ Paragraph 703 of the section 42A report

¹¹⁰ Paragraph 705 of the section 42A report

Matters not in contention, resolved between the parties, or no need to address matters at the hearing.

298. There were a number of matters addressed in PC 61 that were either not contested, the matter had been resolved between the parties, or that there was not need to address these matters at the hearing. These included issues related to:

- Contamination;
- Geotechnical;
- Archaeology
- Ecology; and
- Arboriculture.

299. While evidence was prepared on these matters, and has been considered by the Hearing Panel, we had no questions for those expert witnesses.

DECISIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS

300. The following section sets out the submissions received and a summary of the relief sought. We have ‘assessed’ all of those submissions in the sections above (and as we have declined the Plan Change, we have not needed to go into detail with respect to some submissions). However, we do wish to record that we have understood the concerns raised by all of the submitters.

301. As we have declined the Plan Change, we have **rejected** all of those submissions which fully supported it or who sought changes to the precinct provisions but still sought its retention. Those submissions seeking that the plan change not be approved, for whatever reasons, have been **accepted**.

- For efficiency reasons we have adopted the submission tables set out in the Council Officer’s section 42A report. Submissions that address¹¹¹ the same issues and seek the same relief have generally been grouped together in the following tables.

Decisions on Submissions and Further Submissions

Support PC 61 in its entirety

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel’s Decision
1.1	Anthony Joyce	Approve the plan change	<i>FS1 – O</i>	Reject

The reasons for this decision are those set out above.

¹¹¹ Section 42A Report at [10.2]

Opposing PC 61 in its entirety

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
3.1	Balkar Singh	Decline the plan change in its entirety..	<i>FS4 – S</i>	Accept
7.1	Malcolm Douglas Scott	Decline the plan change in its entirety..	<i>FS1 - OIP</i>	Accept
10.1	Katherine Grace de Courcy and Robert Russell Maunganui Smith	Decline the plan change in its entirety. The infrastructure not in place and may be several years away.	<i>FS1 – OIP FS3 – O</i>	Accept
14.1	Shan Yin Property Investment Family Trust	Decline the plan change in its entirety. Should be a Council lead plan change.	<i>FS1 – OIP FS3 – OIP</i>	Accept
15.1	The Te Henga Family Trust	Decline the plan change in its entirety. Should be a Council led plan change for consistency and clarity in outcome for the Drury/Opaheke area.	<i>FS1 – OIP FS3 – OIP</i>	Accept
18.1	Elly S Pan	In its current form, decline the plan change in its entirety. PC61 needs to address its effects on surrounding properties. There are no means to ensure infrastructure is in place before the levels of demand degrade service performance.	<i>FS1 - SIP</i>	Accept
23.1	Auckland Council	Decline the plan change in its entirety until there is a fully funded and appropriately staged solution for the integration of land use, infrastructure and development for the Precinct and Sub Region. If the plan change is not declined, amend to retain the provisions as set out in council's submission.	<i>FS1 – S FS3 – OIP</i>	Accept
29.1	Mark Lewis Grey	Decline the plan change in its entirety. The proposed upgrade of Jesmond Road is not supported.	<i>FS3 - O</i>	Accept
29.2	Mark Lewis Grey	Decline the plan change in its entirety. Leave the existing property as it is.	<i>FS3 - O</i>	Accept

Decisions

The reasons for these decisions are those set out above.

Staging, timing and funding Issues

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
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Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
11.4	Linqi Wang	Transport infrastructure funding and delivery of the roading upgrades should be addressed prior to approval of PC61.	<i>FS1 – S</i> <i>FS3 – OIP</i>	Reject ¹¹²
16.3	Ministry of Education	The following provision in the proposed Waipupuke Precinct is supported: Objective IXXX.2 (9)		Reject
19.18	NZ Transport Agency (Waka kotahi)	Amend Standard IXXX 6.8 (Arterial Road Intersections) to reflect the appropriate triggers as identified in the ITA..	<i>FS1 – SIP</i> <i>FS3 – SIP</i>	Reject
19.2	NZ Transport Agency (Waka kotahi)	Amend PC61 to provide clarity over staging of development and any associated triggers for staging. A proposed suite of infrastructure triggers is proposed in Attachment 1 to the NZTA submission.	<i>FS1 – SIP</i> <i>FS3 – SIP</i>	Reject
22.2	Auckland Transport	Decline PC 61 unless the reasons for Auckland Transport's submission are addressed and resolved, including the funding of transport infrastructure and services. If PC 61 is not declined, there is a need to consider a range of mitigation methods including the potential deferral or review of land development staging to ensure co-ordination and alignment with the required transport network mitigation.	<i>FS3 – OIP</i> <i>FS6 – S</i>	Accept ¹¹³
22.3	Auckland Transport	Amend PC 61 to incorporate provisions and / or mechanisms which address the following in relation to the upgrade of Oira Road, State Highway 22 / Karaka Road and Jesmond Road: <ul style="list-style-type: none"> • Vesting and formation of frontage, drainage and carriageway upgrades • Timing of upgrade requirements • Funding and delivery of the above work. 	<i>FS2 – S</i> <i>FS6 – S</i>	Reject
22.4	Auckland Transport	Decline PC 61 on the basis that the area is not giving effect to the Regional Policy Statement (RPS) or alternatively reconcile the discrepancy between the relevant RPS provisions (B2.2.1 Objective 2 and B2.2.2 Policy 4) and the Drury – Opāheke Structure Plan in the context of statutory regional planning guidance on future urban zones in Auckland.		Accept

¹¹² Submissions are rejected as the Plan Change is declined

¹¹³ Submissions are accepted as the Plan Change is declined

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
22.6	Auckland Transport	Amend PC 61 to include appropriate activity rules, standards, matters of discretion and assessment criteria in relation to staging requirements.	<i>FS2 – S</i> <i>FS6 – S</i>	Reject
22.8	Auckland Transport	<p>Decline PC 61 or alternatively amend the plan change to incorporate provisions addressing the staging and timing of transport infrastructure and services with the proposed development build-out and the interim effects of development proceeding ahead of the ultimate planned network, including:</p> <ul style="list-style-type: none"> • The requirement for transport infrastructure and services to be delivered prior to the construction of anticipated stages of development enabled by the plan change. • The appropriate application of development staging rules and standards including the activity status when breaching triggers for transport infrastructure requirements. • Recognising the associated processes necessary to bring about delivery of transport infrastructure and services as the basis for defining the timeframes for transport infrastructure and services in relation to the staging of the enabled land use development. • The transport infrastructure requirements to include: <ul style="list-style-type: none"> - Early active mode access to the proposed new rail station and / or bus services; - Introduction of public transport services to the Precinct Plan area; - Any interim improvements to State Highway 22; - Upgrade of the State Highway 22 / Oira road intersection to a roundabout; and - Internal collector and local connections identified within precinct plan. - Any other transport improvements identified as being required to support development 	<i>FS2 – S</i> <i>FS3 – SIP</i> <i>FS5 – SIP</i> <i>FS6 – SIP</i>	Accept
23.2	Auckland Council	Ensure that the council's concerns about bulk infrastructure: funding deficit, timing and location uncertainty	<i>FS1 – SIP</i> <i>FS3 – OIP</i> <i>FS6 – S</i>	Accept

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
		<p>are resolved by the following or other means:</p> <p>a. Evidence is presented at the hearing that a mechanism has been identified with the agreement of the council that unfunded infrastructure (as of October 2020) will be funded.</p> <p>b. Evidence is presented at the hearing that parts of the plan change area are not constrained by infrastructure funding, timing or location uncertainty and can proceed without significant adverse effects.</p> <p>c. Infrastructure development threshold or staging rules can be devised that are enforceable and effective, and supported by robust objective and policy provisions. This could for example include:</p> <ul style="list-style-type: none"> • Threshold rules are not used for infrastructure works to be supplied by third party, e.g. Auckland Transport or NZTA, if these agencies do not have funds allocated for the works. • Threshold rules are not used for infrastructure works which are scheduled beyond the lifetime of the plan (2026). • Threshold rules are not used for works to be funded privately but there is no funding agreement in place. • Threshold rules are not used for works which would require a funding contribution from multiple landowners or developers and there is no agreement to apportion costs and benefits in place. • Threshold rules do not use gross floor area as a metric (the council may not be able to track this with current data systems). • Use of prohibited activity status for infringement could be considered. <p>d. Notices of requirement have been lodged for the relevant infrastructure by the time of the hearing.</p>		
25.3	Counties Power	Retain Objective lxxx.2 (9) in the	<i>FS3 – SIP</i>	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
		proposed Waipupuke Precinct as notified.		

Decisions

The reasons for these decisions are those set out above.

Traffic and transportation effects

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submission	Hearing Panel's Decision
16.1	Ministry of Education	The following provision in the proposed Waipupuke Precinct is supported: Objective IXXX.2 (6)	<i>FS1 – OIP FS3 – SIP</i>	Reject
16.2	Ministry of Education	The following provision in the proposed Waipupuke Precinct is supported: Objective IXXX.2 (8)	<i>FS1 – OIP FS3 – SIP</i>	Reject
16.4	Ministry of Education	The following provision in the proposed Waipupuke Precinct is supported: Policy IXXX.3 (6)	<i>FS1 – OIP FS3 – SIP</i>	Reject
16.5	Ministry of Education	The following provision in the proposed Waipupuke Precinct is supported: Policy IXXX.3 (10)	<i>FS1 – OIP FS3 – SIP</i>	Reject
16.6	Ministry of Education	The following provision in the proposed Waipupuke Precinct is supported: Permitted Activity Standard: IXXX.6.3 Collector Roads	<i>FS1 – OIP FS3 – SIP</i>	Reject
16.7	Ministry of Education	The following provision in the proposed Waipupuke Precinct is supported: Permitted Activity Standard IXXX.6.5 Arterial Road Access.	<i>FS3 - SIP</i>	Reject
16.8	Ministry of Education	Amendment is sought on the following provision in the Waipupuke Precinct: Permitted Activity Standard IXXX.6.8 Arterial Road Intersections (change is shown as strikethrough). (2) This standard shall not apply if the following transport upgrades are provided prior to the 2,000 residential dwelling number being reached within Waipupuke Precinct: a. Oira Road widening and SH22 intersection upgrade. b. Jesmond Road widening and SH22 intereaction upgrade.	<i>FS1 – O FS2 – S FS3 – SIP</i>	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submission	Hearing Panel's Decision
		<p>c. SH22 improvements</p> <p>d. Jesmond Road Extension</p> <p>e. Drury West rail station construction</p> <p>f. Rail network upgrade</p> <p>g. Bremner Road works</p> <p>h. Pukekohe Expressway</p>		
17.2	Ministry of Housing and Urban Development (HUD)	The road layouts and connections with the neighbouring land at the corner of Jesmond Road and SH22 should be designed to provide better pedestrian access and connectivity to the location of the planned rail station.	<p><i>FS1 – SIP</i></p> <p><i>FS2 – S</i></p> <p><i>FS3 – SIP</i></p> <p><i>FS5 – SIP</i></p>	Reject
19.9	NZ Transport Agency (Waka kotahi)	Add a new non-complying activity reference in all Zones as follows: <u>(AXX) Any activity not in accordance with Standard IXXX.6.8 Arterial Road Intersections</u>	<p><i>FS1 – S</i></p> <p><i>FS3 - SIP</i></p>	Reject
19.12	NZ Transport Agency (Waka kotahi)	Retain the following provision as notified: A17 – Infringement of Standard IXXX.6.5 – Arterial Road Access in Table IXXX.4.1 Residential -Terrace House and Apartment Building Zone		Reject
19.13	NZ Transport Agency (Waka kotahi)	Retain the following provision as notified: A12 – Infringement of Standard IXXX.6.5 – Arterial Road Access in Table IXXX.4.2 Residential -Mixed Housing Urban Zone		Reject
19.17	NZ Transport Agency (Waka kotahi)	Retain Rule IXXX.6.5(3)- Arterial Road Access in the proposed Waipupuke Precinct	<i>FS3 – SIP</i>	Reject
19.20	NZ Transport Agency (Waka kotahi)	Add additional assessment criteria and matters of discretion to IXXX.7.1(1), IXXX.7.1(13), IXXX.7.2(1) and IXXX.7.2(13) as follows: <u>(x) the outcome of any consultation with Waka Kotahi</u>	<i>FS3 - O</i>	Reject
20.4	Kāinga Ora – Homes and Communities	The land situated at 85 Jesmond Road is owned by Kāinga Ora, which is opposite the spatial extent of the proposed precinct's interface with Jesmond Road. Additional traffic generation and consequential effects on the existing transport will therefore have an effect on future development in the wider area.	<i>FS1 – SIP</i>	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submission	Hearing Panel's Decision
		Kāinga Ora seeks clarification and/or amendments to the proposed Waipupuke Precinct Provisions to ensure that any localised traffic effects that may require certain upgrades to the roading network, are sufficiently acknowledged within respective Precincts and equitably distributed to ensure that individual developers are not burdened with sole-responsibility for necessary network upgrades.		
20.5	Kāinga Ora – Homes and Communities	It would appear that the provisions of the proposed Waipupuke Precinct as-notified enables development of up to 2,000 dwellings to occur without any upgrade to the Oira Road intersection with SH22. The supporting Commute report however states that this intersection needs to be upgraded prior to any development within Waipupuke. Therefore, Kāinga Ora seeks amendment to IXXX.6.8 to ensure that all necessary upgrades to the existing road network are accounted for, and clearly related to any necessary thresholds and/or timeframes.	<i>FS1 – SIP</i> <i>FS2 – S</i>	Reject
22.5	Auckland Transport	Amend PC 61 to incorporate amended and/or additional objectives and policies to address the application of transport and land use integration principles including: <ul style="list-style-type: none"> • efficiently servicing key origins/destinations by high quality public transport from the outset of development; • minimising walk distances to public transport nodes and stops; • mitigating barriers to safely accessing public transport; • locating a variety of land uses within a defined catchment to reduce travel distances / enable local trips by active modes; and • encouraging travel demand management initiatives. 	<i>FS2 – S</i>	Reject
22.7	Auckland Transport	Amend PC 61 to incorporate provisions that address cross	<i>FS2 – S</i> <i>FS6 – S</i>	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submission	Hearing Panel's Decision
		boundary transport network mitigation requirements and determining the responsibility for the delivery to ensure interim adverse effects on the transport network are mitigated.		
22.9	Auckland Transport	<p>Amend PC 61 precinct provisions to provide for the mitigation of operational transport effects as part of the suite of transport staging provisions.</p> <p>These effects will potentially include but are not limited to the following:</p> <ul style="list-style-type: none"> • Accelerated rate of damage on roading assets generated by increased vehicle movements • Consideration of the requirements to build significant utility infrastructure in the existing road corridors which are also likely to disturb the in situ pavements. • Rerouting of traffic via Bremner Road (i.e. as a rat run east west across Drury) based on the development timing and the potential effects on Jesmond Road and its intersection controls. • Rerouting of traffic and network impacts due to temporary construction detours 	<p>FS3 – O</p> <p>FS6 – S</p>	Reject
22.10	Auckland Transport	Given the status of State Highway 22 / Karaka Road and Jesmond Road as key parts of the transport network, Auckland Transport supports the proposed arterial road access restrictions (Table IXXX.4.1 (A17), Table IXXX.4.2 (A13), Table IXXX.4.3 (A19), Table IXXX.4.4(A23) and IXXX.6.5 Arterial Road Access).	<p>FS3 – SIP</p> <p>FS6 – S</p>	Reject
22.11	Auckland Transport	<p>State Highway 22 / Karaka Road is part of the State Highway network managed by Waka Kotahi and is classified as an arterial road in the AUPOP. Jesmond Road has been identified as a future arterial road as part of the Supporting Growth Programme's strategic network.</p> <p>Amend PC 61 to include an additional objective in the precinct provisions addressing the safe and efficient operation of the key strategic routes supporting the plan change</p>	FS3 – O	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submission	Hearing Panel's Decision
		area.		
22.12	Auckland Transport	Amend PC 61 to include an additional policy in the precinct provisions addressing the management of adverse effects on the effective, efficient and safe operation of State Highway 22 / Karaka Road and Jesmond Road for all transport users through the application of vehicle access restrictions.	FS2 – S FS3 – O	Reject
22.13	Auckland Transport	Amend PC 61 to indicate the extent of the vehicle access restrictions on IXXX9.3 Waipupuke Precinct Plan 3: Transport and provide appropriate cross references in the relevant standards.	FS3 - O	Reject
22.16	Auckland Transport	Amend PC 61 east-west collector network to align with the proposed collector network shown in the Drury - Opaheke Structure Plan 2019.	FS2 – S FS3 – OIP	Reject
22.17	Auckland Transport	Delete IXXX.6.3(1) road cross-section diagram, and: Amend PC 61 to include provisions relating to the minimum road reserve widths and key design elements and functional requirements of new roads and roads which need to be upgraded to urban standards including but not limited to: <ul style="list-style-type: none"> • Carriageway • Footpaths • Cycleways • Public Transport • Ancillary Zone (parking, street trees etc.) • Berm • Frontage • Building Setback • Design Speed (e.g. to support safe active mode movements) • Confirming that the proposed width of collector roads is adequate to accommodate required design elements and increase if necessary 	FS3 – SIP FS5 – SIP FS6 – S	Reject
22.18	Auckland Transport	Auckland Transport supports the use of precinct provisions to set out any specific transport related mitigation, assessment or staging requirements.	FS3 – SIP	Reject
22.20	Auckland Transport	Amend the PC 61 precinct provisions to incorporate policies, standards and assessment criteria as appropriate to	FS2 – S FS3 – SIP	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submission	Hearing Panel's Decision
		<p>provide for efficient and effective active mode movements reflecting the following transport outcomes:</p> <ul style="list-style-type: none"> • Walking and pedestrian connections to / from public transport routes (including Jesmond Road Frequent Transit Network and Oira Road), stops and future rail stations • Walking and pedestrian connections to / from local facilities and destinations including schools. • Safe walking and cycling facilities provided for as part of the proposed road/street network including local roads and access ways and provisions for rear access along roads with cycle facilities. • To include pedestrian and cycleway linkages as shown in the PC 61 masterplan documents on IXXX9.3 Waipupuke Precinct Plan 3: Transport and any additional items as noted above. 	<i>FS6 - S</i>	
22.26	Auckland Transport	<p>Auckland Transport seeks the following:</p> <ul style="list-style-type: none"> • That feasible and optimal future network link alignments to the east and west and north of PC 61 be confirmed and integrated with PC 61 and wider network requirements. • That these be identified within the Precinct Plan or by other means where they continue beyond it. 	<i>FS3 – OIP FS6 - S</i>	Reject
22.27	Auckland Transport	<p>As part of Auckland Transport's submission on PC 51 (Private): Drury 2 Precinct it was suggested that there should be a direct east west link from Jesmond Road to the town centre and north south collector network which is capable of accommodating buses. Auckland Transport requests that the PC 61 collector network is aligned with the provision of a direct link from Jesmond Road to the town centre being considered as part of PC 51: Drury 2 Precinct.</p>	<i>FS3 – OIP</i>	Reject
25.2	Counties Power	<p>Support in part Objective Ixxx.2 (8) of the proposed Waipupuke Precinct. However, Counties Power seeks alternative road corridor design to ensure appropriate electricity infrastructure can be provided to service the developments within the</p>	<i>FS1 – O FS3 – O</i>	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submission	Hearing Panel's Decision
		<p>plan change area. These changes include:</p> <ul style="list-style-type: none"> • 700mm grass covered strip at the back of the berm along both sides of the road • Suitable provision required for distribution substations within the road reserve in agreement with Counties Power. 		
25.7	Counties Power	<p>Standard IXXX.6.3 is supported in part. Counties Power seeks alternative road design to ensure appropriate electricity infrastructure can be provided to service the developments within the plan change area. These changes include:</p> <ul style="list-style-type: none"> • 700mm grass covered strip at the back of the berm along both sides of the road • suitable provision required for distribution substations within the road reserve in agreement with Counties Power. 	<p><i>FS1 – O</i> <i>FS3 – O</i></p>	Reject
25.10	Counties Power	<p>Retain Assessment criteria IXXX.7.2 (4) in the proposed Waipupuke Precinct as notified.</p>	<p><i>FS1 – O</i> <i>FS3 – SIP</i></p>	Reject

Decisions

The reasons for these decisions are those set out above.

Urban Design Effects

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
11.3	Linqi Wang	<p>If the Neighbourhood Centre is retained, the proposed additional height controls of 18m and 27m in precinct should be removed.</p>	<i>FS3 – OIP</i>	Reject
17.3	Ministry of Housing and Urban Development (HUD)	<p>Increase the height variation control to 27m across all of the THAB zone to the south of the collector road for the medical centre.</p>	<p><i>FS1 – OIP</i> <i>FS3 – SIP</i></p>	Reject
19.3	NZ Transport Agency (Waka kotahi)	<p>Retain reference to setback along State Highway 22 in the Connectivity Plan in the Masterplan prepared by Buchan.</p>	<p><i>FS1 – SIP</i> <i>FS3 – OIP</i></p>	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
19.4	NZ Transport Agency (Waka kotahi)	In the Connectivity Plan in the Masterplan prepared by Buchan, remove reference to a connection between the Collector Road and State Highway 22.	<i>FS1 – SIP</i> <i>FS3 – SIP</i>	Reject

Decisions

The reasons for these decisions are those set out above.

Ecological effects

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
23.6	Auckland Council	Amend IXXX.6 to provide a standard that requires management of effects of weed removal including potential stream bank erosion for the following rules: <ul style="list-style-type: none"> •Rule (A11) in Table IXXX.4.1 Residential – Terrace House and Apartment Building Zone. •Rule (A7) in Table IXXX.4.2 Residential - Mixed Housing Urban Zone. •Rule (A17) in Table IXXX.4.4 Open Space – Informal Recreation Zone. 		Reject
23.7	Auckland Council	Delete rules (A12) and (A13) in Table IXXX.4.1 Residential – Terrace House and Apartment Building Zone. Delete rules (A8), and (A9) in Table IXXX.4.2 Residential - Mixed Housing Urban Zone. Delete rules (A18) and (A19) in Table IXXX.4.4 Open Space – Informal Recreation Zone If any are retained, then make amendments to address the additional matters raised in the bullet points below: <ul style="list-style-type: none"> •Some of the proposed rules may be inconsistent with the Resource Management (National Environmental Standards for Freshwater) Regulations 2020. •Some of the rules appear to be regional rules but this is not clear and needs to be clarified in accordance with AUP drafting standards if the rules are retained. • Any AUP rules that are not intended to apply need to be clearly identified in the header to the activity table. 	<i>FS3 – SIP</i> <i>FS5 – SIP</i>	Accept

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
		<ul style="list-style-type: none"> It is not necessary to reference rules from Table E15.4.1 Activity table - Auckland-wide vegetation and biodiversity management rules, which do not apply in this zone. 		

Decisions

The reasons for these decisions are those set out above.

Stormwater and flooding effects

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
6.2	Andrew Daken	Stormwater should be connected directly and piped from the PC61 site to the estuary/outlet and not across 169 Jesmond Road.		Reject
6.3	Andrew Daken	No additional stormwater flow to the existing watercourse that goes across 169 Jesmond Road.		Reject
12.1	Wing Family Trust	<p>It is requested that stormwater discharge is designed and implemented within the PC61 area so that there are no site changes to flood levels received on the Submitters site. Technical assessments supporting this design should be provided as part of the PC61 process and included in the SMP submitted for the NDC approval. Agreement of Healthy Waters to this approach should be provided to ensure that the design is adopted as part of the SMP/NDC process.</p> <p>Also requested is any consequential text or zone changes to grant the relief sought.</p>	<i>FS1 – O</i>	Reject
13.1	Harnett Orchard Limited and L and C Griffen	Stormwater discharge is designed and implemented within the PC61 area so that there are no site changes to flood levels received on 64 and 84 Jesmond Road. Technical assessments supporting this design should be provided as part of the PC61 process and included in the SMP submitted for the NDC approval. Agreement of Healthy Waters to this approach should be provided to ensure that the design is adopted as part of the SMP/NDC process.	<i>FS3 – O FS7 – S</i>	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
		Also requested is any consequential text or zone changes to grant the relief sought.		
22.24	Auckland Transport	Any subsequent amendments to the PC 61 precinct provisions providing direction on the how stormwater is managed within the road network are reviewed and if required amended to safeguard Auckland Transport's interests in the sustainable management of the road network.	FS3 – O	Reject
22.25	Auckland Transport	Auckland Transport seeks that the drafting of the stormwater related provisions be consistent with those to apply with the Drury East plan changes (PC48-50). This includes those policies and rules requiring consideration of the operating costs associated with proposed stormwater treatment assets as well as opportunities for consolidation of treatment assets where appropriate.	FS3 – O	Reject
23.3	Auckland Council	Amend Policy IX3(9) to read: Manage the effects of stormwater on water quality in streams through riparian margin planting, and at source hydrological mitigation. <u>Require subdivision and development to be consistent with any approved network discharge consent and supporting stormwater management plan including the application of water sensitive design and treatment train to achieve water quality and hydrology mitigation.</u>	FS3 - O	Reject
23.4	Auckland Council	Delete the phrase “• E36.4.1 - Rules A23 to A42 inclusive do not apply” where it occurs under the heading IXXX.4 Activity tables.	FS3 – SIP	Accept
23.8	Auckland Council	Amend IXXX.6.6 High Contaminant Yielding Materials to: <ul style="list-style-type: none"> • clarify the statement of purpose with respect to maintaining coastal marine ecosystems, • delete the 5m2 per site exemption, • provide greater clarity on what is considered high contaminant generating materials. <p>The following amendments or words to similar effect are requested:</p>	FS3 – SIP	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
		<p>IXXX6.6 High Contaminant Yielding Materials</p> <p>Purpose:</p> <ul style="list-style-type: none"> • maintain water quality <u>and the health of coastal marine ecosystems</u> by limiting the release of contaminants from building materials to streams. <p>(1) The total area of high contaminant <u>Roofing, spouting, cladding or external architectural features on a site must not exceed 5m² use the following high contaminant generating building materials which are exposed:</u></p> <ul style="list-style-type: none"> • <u>surface(s) or surface coating of metallic zinc of any alloy containing greater than 10% zinc,</u> • <u>surface(s) or surface coating of metallic copper or any alloy containing greater than 10% copper,</u> • <u>treated timber cladding surface(s) or any roof material with a copper containing or zinc-containing algacide.</u> 		
23.9	Auckland Council	<p>The construction of the stormwater management structures is put forward as a RD activity. The matters of discretion should include the efficacy of the design and that it is designed for ease of operations and maintenance as these are aspects of the functionality of the stormwater area that are best addressed at design and construction stage. Add additional Matters of Discretion in IXXX.7.1(2) to address:</p> <ul style="list-style-type: none"> • efficacy of device and • operation and maintenance requirements. 	<p>FS1 – S FS3 – O</p>	Reject
23.10	Auckland Council	<p>Amend rule IXXX.7(8)(b) to read:</p> <p>The SMP <u>stormwater management plan approved by the network utility operator</u> for the Precinct.</p>	FS6 – S	Reject

Decisions

The reasons for these decisions are those set out above.

Zoning and Plan Change Boundary

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
2.1	Song Wanping	Oppose Terraced Housing and Apartment Building zone. Only allow single houses and single storey houses.	<i>FS1 – OIP</i> <i>FS3 – O</i>	Reject
8.1	Prem Lal	The area surrounding Oira Road remains zoned Future Urban. Rate discount is requested if rezoned to urban.	<i>FS3 – O</i>	Reject
11.1	Linqi Wang	The proposed PC61 zoning should be amended to be consistent with the Drury-Opaheke Structure Plan: - Less THAB and more MHU - More uniform THAB zone - THAB zone surrounded by MHU zone before transitioning to MHS	<i>FS3 - OIP</i>	Reject
11.2	Linqi Wang	Remove the 2-ha proposed zoning for Business: Neighbourhood Centre and instead zone it MHU	<i>FS3 - OIP</i>	Reject
11.6	Linqi Wang	Council should undertake a public plan change for land in Drury West Stage 1 of the Future Urban Land Supply Strategy. If this does not occur, PC61 should be expanded to include all Future Urban zoned land in Drury West Stage 1 of the Future Urban Land Supply Strategy.	<i>FS2 – S</i> <i>FS3 – OIP</i> <i>FS5 – SIP</i>	Reject
17.1	Ministry of Housing and Urban Development (HUD)	Increase the extent of the THAB so that it also includes also all of the stage 2 (Superlot Overlay - Masterplan prepared by Buchan) area currently proposed for MHU.	<i>FS1 – SIP</i> <i>FS2 – OIP</i> <i>FS3 - SIP</i>	Reject
19.1	NZ Transport Agency (Waka kotahi)	Support the levels of residential density consistent with the Drury-Opaheke Structure Plan, subject to the specific amendments and relief sought in the NZTA submission.	<i>FS3 - SIP</i>	Reject
20.1	Kāinga Ora – Homes and Communities	Kāinga Ora seeks the retention of the proposed zoning and the layout in the spatial extent of the Proposed Waipupuke Precinct.	<i>FS1 - OIP</i>	Reject
22.15	Auckland Transport	Amend PC 61 land uses in terms of density and zoning location to better align and integrate with the proposed pattern of future bus routes and services.	<i>FS3 – OIP</i>	Reject
23.18	Auckland Council	Ensure that any residential yield that is additional to that estimated for the Drury – Opāheke Structure Plan August 2019 and Integrated Transport Assessment, is located	<i>FS1 – SIP</i> <i>FS2 – S</i> <i>FS3 – SIP</i>	Reject

		<p>within a consistent realistic walkable distance of the proposed Jesmond Road FTN route.</p> <p>Ensure that the Terrace Housing and Apartment Buildings Zone (THAB), the proposed centre zoning and medical facilities are all contained within a consistent and realistic walkable distance of the proposed Jesmond Road FTN route. In particular, the centre should be located as close as possible to the FTN route.</p> <p>If necessary, additional height could be considered close to (within 200m) of the FTN route, to offset any reduction in potential yield further west in the PC 61 area.</p>		
23.19	Auckland Council	<p>Delete the south western part of plan change area from 99 Oira Road southwards, or ensure:</p> <ul style="list-style-type: none"> • that it is staged with development of the infrastructure listed in the bullet points opposite, • that the zoned intensity does not result in excessive car dependency and car trip generation in the context of a realistic assumption of mode shift to public transport in this location. • that development does not occur before walkable pedestrian connections are available to the proposed Jesmond Road FTN. 	<p><i>FS1 – SIP</i> <i>FS2 – SIP</i> <i>FS3 – O</i></p>	Reject
23.20	Auckland Council	<p>Review the size, type and location of the proposed centre zone to ensure that the most appropriate zoning and height options are applied.</p>	<p><i>FS2 – SIP/OIP</i> <i>FS3 - SIP</i></p>	Reject
24.1	GYL Holdings Limited	<p>Should proposed Plan Change 61 be approved at the scale proposed, it should not compromise the development potential of land outside the proposed Plan Change area. In particular that consideration is made to the scale of the proposed Neighbourhood Centre Zone and corresponding THAB zone and whether this would restrict or inhibit development on the property at 316 Jesmond Road.</p>	<p><i>FS3 – SIP</i></p>	Reject

Decisions

The reasons for these decisions are those set out above.

Cultural effects

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
23.13	Auckland Council	Without prejudice to the position that Open Space – Informal Recreation Zone should be deleted from PC 61, retain rule (A7) in Table IXXX.4.4 Open Space – Informal Recreation Zone.	<i>FS3 – OIP</i>	Reject

Decision

The reason for this decision is those set out above.

Archaeology and Heritage Effects

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
27.1	Heritage New Zealand Pouhere Taonga	Heritage New Zealand supports the proposed retention of the c.1893 villa at 140 Jesmond Road and proposed scheduling as a Category B Historic Heritage Place in Schedule 14.1 of the Auckland Unitary Plan (Operative in Part) (AUP), in accordance with extent of place, primary feature and exclusions as proposed.	<i>FS3 - SIP</i>	Reject
27.2	Heritage New Zealand Pouhere Taonga	The proposed Schedule 14.1 entry should include the 'Additional Controls for Archaeological Sites or Features' as per the recommendation made in Section 9.2 of the '140 Jesmond Road, Drury, Auckland, Historic Heritage Evaluation', completed by Plan.Heritage, dated October 2020, at page 44.	<i>FS3 - SIP</i>	Reject
27.3	Heritage New Zealand Pouhere Taonga	<p>The adaptive reuse of the villa is also supported, toward an appropriate publicly accessible use, as is the use of the adjoining pocket park and the refurbished villa for the reinstatement of Te Whare Nohoanga in recognition of the past use of the place by Māori, 'as a place of learning/wānanga'.</p> <p>The proposed plan change is amended to include provisions requiring the refurbishment and restoration of the homestead to provide for an appropriate publicly accessible adaptive reuse such as a childcare/kohanga reo/community/communal facility or café in accordance with principles of the ICOMOS New Zealand Charter 2010</p>	<i>FS3 - SIP</i>	Reject
27.4	Heritage New Zealand Pouhere Taonga	Heritage New Zealand however does not support the indicative inclusion of several features including community gardens, an orchard, and fitness & play elements within the site surrounds of the house (the 'home paddock') and proposed scheduled extent of place. These features should more appropriately locate adjacent to but outside of the 'home paddock' house surrounds.	<i>FS3 - SIP</i>	Reject

27.5	Heritage New Zealand Pouhere Taonga	<p>The proposed configuration of zone boundaries in relation to the homestead and associated extent of place are not supported, and present a confusing scenario, with the extent partially falling within intensive Residential – Terrace Housing & Apartment Building (THAB) zone; partially within the road reserve; and partially within the Eastern Pocket Park and Open Space – Informal Recreation zone.</p> <p>The proposed plan change is amended to locate the entire proposed 'John Fitzgerald Homestead' Historic Heritage Place Extent of Place within Open Space – Informal Recreation zone with proposed Eastern Pocket Park features located outside the extent of place, and with road frontage along the eastern boundary of the extent of place but not within it</p>	<i>FS3 - OIP</i>	Reject
27.6	Heritage New Zealand Pouhere Taonga	Heritage New Zealand does not support the placement of THAB zoning within the homestead extent with this presenting a development expectation incongruous with the retention and preservation of the homestead and its extent, and has the potential of over dominating the scale and setting of the homestead.	<i>FS3 - OIP</i>	Reject
27.7	Heritage New Zealand Pouhere Taonga	Provision should be made to ensure an appropriate setback and transition of density from THAB zone development to the villa site and proposed accompanying/encompassing area of open space.	<i>FS3 - OIP</i>	Reject
27.8	Heritage New Zealand Pouhere Taonga	To locate the entire proposed 'John Fitzgerald Homestead' Historic Heritage Place Extent of Place within Open Space – Informal Recreation zone with proposed Eastern Pocket Park features located outside the extent of place, and with road frontage along the eastern boundary of the extent of place but not within it.	<i>FS3 - O</i>	Reject
27.9	Heritage New Zealand Pouhere Taonga	Heritage New Zealand seek that in the finalisation of roading and lot configurations, consideration is given to reflecting existing site and subdivision boundaries which contribute to the meaning of place, and that the pattern of development appropriately addresses the villa, including the provision of sightlines to	<i>FS3 - SIP</i>	Reject

		the dwelling from within the development.		
27.10	Heritage New Zealand Pouhere Taonga	The archaeological assessment does not make specific mention of the lengths of Ngakaroa Stream and Oira Stream tributaries that fall within the site. Heritage New Zealand considers additional archaeological site survey should be completed to determine the likelihood for these areas to contain archaeological remains, and that this informs proposed riparian margin restoration planting and stormwater park design and management as appropriate, to ensure any potential archaeological remains are avoided in the first instance.	<i>FS3 - SIP</i>	Reject
27.11	Heritage New Zealand Pouhere Taonga	The plan change request materials recommend recording of 140 Jesmond Road and 329 Karaka Road as archaeological sites on the New Zealand Archaeological Association (NZAA) database ArchSite, (and their addition to the Auckland Council Cultural Heritage Index (CHI)), this has yet to be undertaken and should be completed. Archaeological extents for both locations should be established and included as part of each record.	<i>FS3 - SIP</i>	Reject
27.12	Heritage New Zealand Pouhere Taonga	Heritage New Zealand seeks the addition of provisions to require interpretation of late 19th century historic European settlement and farming on the subject land and the wider Karaka area and beyond, in accordance with recommendations made in the in the historic heritage assessments prepared in support of the plan change request, and in accordance with conservation principles as outlined in the ICOMOS New Zealand Charter 2010.	<i>FS3 - OIP</i>	Reject
27.13	Heritage New Zealand Pouhere Taonga	Heritage New Zealand supports iwi/hapu in the exercising of kaitiakitanga and support the provisions proposed in the precinct plan to provide interpretation and recognise Māori cultural heritage values that have been identified. The provisions in the proposed Waipupuke Precinct which recognise cultural heritage values identified by mana whenua is supported.	<i>FS3 - SIP</i>	Accept
27.14	Heritage New Zealand Pouhere	To enable retention of existing vegetation within the site at 329 Karaka Road (particularly any	<i>FS3 - OIP</i>	Reject

	Taonga	identifiable as having early historic associations with the homestead), and the incorporation of onsite interpretation of both the cultural and historical background of the plan change area within the proposed reserve at 329 Karaka Road and in association with 140 Jesmond Road, in accordance with principles of the ICOMOS New Zealand Charter 2010.		
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Decisions

The reasons for these decisions are those set out above.

Infrastructure and servicing matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
5.1	Watercare Services Limited	Amend Objective 9 as follows: (9) Subdivision and development (including infrastructure provision) is coordinated with, <u>and does not precede</u> , the delivery of the transport, infrastructure and <u>water and wastewater</u> services required to provide for the development.	<i>FS1 – S</i> <i>FS2 – S</i> <i>FS3 – OIP</i> <i>FS5 – SIP</i>	Reject
5.2	Watercare Services Limited	Amend Policy 10 as follows: (10) Require subdivision and development to provide appropriate transport and other infrastructure capacity, <u>including water and wastewater infrastructure</u> , within the precinct and to provide connections to the adjoining road network in accordance with Precinct Plan 3.	<i>FS3 – SIP</i> <i>FS5 – SIP</i>	Reject
5.3	Watercare Services Limited	Insert a new Policy 11 as follows: (11) <u>Manage subdivision and development to avoid, remedy or mitigate adverse effects on infrastructure, including reverse sensitivity effects or those which may compromise the operation or capacity of existing or authorised infrastructure.</u>	<i>FS3 – OIP</i> <i>FS5 – S</i>	Reject
6.1	Andrew Daken	Wastewater be piped down public access points, specifically Jesmond Road and connector road(s) to join T002. Not across 169 Jesmond Road.	<i>FS1 – OIP</i>	Reject
11.5	Linqi Wang	A review of infrastructure capacity is required given the higher densities proposed in PC61 relative to that envisaged in the structure plan.	<i>FS1 – SIP</i> <i>FS3 – OIP</i>	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
12.2	Wing Family Trust	<p>Public wastewater connections are aligned as illustrated in Figure 8 in the submission or other such alignment to the Submitters satisfaction.</p> <p>Also requested is any consequential text or zone changes to grant the relief sought.</p>	<p><i>FS1 – OIP</i> <i>FS3 – OIP</i></p>	Reject
13.2	Harnett Orchard Limited and L and C Griffen	<p>Public wastewater connections are aligned as illustrated in Figure 5 in the submission or other such alignment to the Submitters satisfaction.</p> <p>Also requested is any consequential text or zone changes to grant the relief sought.</p>	<p><i>FS1 – OIP</i> <i>FS7 – S</i></p>	Reject
25.1	Counties Power	<p>Counties Power supports the establishment of a connected network of public open space and riparian margin. However, electrical infrastructure must be taken into consideration when planning landscaping and planting in the vicinity of electricity infrastructure and should be carried out in consultation with Counties Power.</p> <p>Counties Power seeks recognition of the rights that the Electricity Act 1992, New Zealand Electrical Code of Practice for Electrical Safe Distances, NZECP 34:2001 and the Electricity (Hazards from Trees) Regulations 2003 offer in order to protect the lines from encroachment from vegetation/trees to ensure their safe and reliable operation and ensure access for maintenance is not restricted.</p> <p>Counties Power seeks consultation regarding the species of trees/shrubs proposed required by any standard in the vicinity of overhead lines on the perimeter of the PC 61 area and new underground cables within the development to ensure that due consideration is given to the potential hazards to the electricity network associated with the location and species of trees and areas of landscaping.</p> <p>If bridges are to be installed over streams in the Plan change area, Counties Power request prior</p>	<p><i>FS3 - O</i></p>	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
		consultation to establish whether provision needs to be made for ducts to be attached or incorporated into the structure for power reticulation.		
25.4	Counties Power	Policy Ixxx.3 (8) is supported in part. Counties Power seeks consultation regarding the species of trees/shrubs proposed required by any standard in the vicinity of overhead lines or underground cables to ensure that due consideration is given to the height and spread of the tree and any potential hazards to the electricity network associated with the location and species of the tree.	FS3 - SIP	Reject
25.5	Counties Power	Retain Policy Ixxx.3 (10) in the proposed Waipupuke Precinct as notified.	FS3 – SIP	Reject
25.8	Counties Power	Standard IXXX.6.4(2) is supported in part. Counties Power seeks consultation regarding the species of trees/shrubs proposed required by any standard in the vicinity of overhead lines or underground cables to ensure that due consideration is given to the height and spread of the tree and any potential hazards to the electricity network associated with the location and species of the tree.	FS3 – O	Reject
25.9	Counties Power	Regarding the Matters of discretion IXXX.7.1(4) for Construction of a Collector Road that does not comply with Standard IXXX.6.3, Counties Power seeks that the matters of discretion are amended to consider the following factors: Consideration of any existing or proposed electricity infrastructure is needed when assessing an application for the construction of a collector road that is not compliant with the permitted activity standards. Counties Power is of the opinion that the matters of discretion should clearly outline what matters are been assessed when considering alternative road location and cross sections. For example, the effects of alternative road layout and design on the provision of infrastructure and servicing, in particular, utilities within the road reserve.	FS1 – O FS3 – O	Reject

Decisions

The reasons for these decisions are those set out above.

Reverse Sensitivity

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
19.6	NZ Transport Agency (Waka kotahi)	Insert new objective into the Waipupuke Precinct: <u>Protect sensitive activities from potential health and amenity effects that may arise from noise and vibration associated the operation of the transport network.</u>	<i>FS3 – O</i>	Reject
19.8	NZ Transport Agency (Waka kotahi)	Insert a new policy into the Waipupuke Precinct: <u>Policy X</u> <u>Locate and design new and altered buildings, and activities sensitive to noise to minimise potential effects of the transport network</u> <u>Policy XX</u> <u>Manage the location of sensitive activities (including subdivision) through set-backs, physical barriers and design controls.</u>	<i>FS3 - O</i>	Reject
19.19	NZ Transport Agency (Waka kotahi)	Insert activity controls as per attachment 2 of NZTA's submission.	<i>FS3 - O</i>	Reject
22.28	Auckland Transport	Add a new policy under IXXX.3 Policies as follows: <u>Ensure that new activities sensitive to noise adjacent to arterial roads are located, designed and constructed to mitigate adverse effects of road noise on occupants.</u>	<i>FS3 – O</i>	Reject
22.29	Auckland Transport	Add a new standard under IXXX.6 Standards to require that the assessed incident noise level to the façade of any building facing an arterial road that accommodates a noise-sensitive space is limited to a given level. As a consequential amendment, add a new activity under IXXX.4.1, IXXX 4.2, IXXX 4.3 and IXXX.4.4 Activity tables as follows: <u>X) Development that does not comply with IX.6.X Noise Mitigation - Restricted Discretionary</u>	<i>FS3 – O</i>	Reject
22.30	Auckland Transport	With respect to IXXX.7.2 Assessment criteria, Auckland Transport requests that the following assessment criterion	<i>FS3 – O</i>	Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
		is added: <u>The extent to which noise sensitive activities in proximity to arterial roads are managed.</u>		

Decisions

The reasons for these decisions are those set out above.

Open space matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
23.11	Auckland Council	Delete the proposed Open Space – Informal Recreation Zone from the zone maps. Insert indicative open space within one of the precinct plans and amend the title and key of the precinct plan to that effect.	<i>FS3 – OIP</i>	Reject
23.12	Auckland Council	Without prejudice to the position that Open Space – Informal Recreation Zone should be deleted from PC 61, delete the rules in Table IXXX.4.4 Open Space – Informal Recreation Zone, unless another submission point from the council seeks their retention.	<i>FS3 – OIP</i>	Reject

Decisions

The reasons for these decisions are those set out above.

Notification provisions

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
19.16	NZ Transport Agency (Waka kotahi)	Delete Rule IXXX.5 (Notification) in the proposed Waipupuke Precinct.	<i>FS3 - SIP</i>	Accept
20.6	Kāinga Ora – Homes and Communities	Kāinga Ora submits that limited notification is appropriate for the following activities and seeks that the limited notification exclusion (at least) does not apply to: alternative collector road locations (x.4.1 (A15)), (x.4.2 (A11)), (x.4.3 (A17)); Community Centres and Halls (x.4.4 (A1)), Clubrooms (x.4.4 (A3)) and Recreation Facilities (x4.4 (A5)).	<i>FS1 - OIP</i>	Reject
22.19	Auckland Transport	Amend the notification rule (IXXX.5 Notification for restricted discretionary activities so that the normal tests for	<i>FS3 - O</i>	Reject

		notification under the relevant sections of the Resource Management Act apply.		
23.17	Auckland Council	Amend the IXXX.5 Notification rule (1) which requires non-notification, to instead apply the normal tests for notification under the relevant sections of the RMA.	FS3 – O FS6 – S	Reject
25.6	Counties Power	The IXXX.5 Notification rule is opposed. Counties Power requests the notification rule to be amended as follows: <u>(1) Any application for resource consent for an activity listed in Tables IXXX.4.1 to 4.4 will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.</u> <u>(2) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4)</u>	FS3 – O	Reject

Decisions

The reasons for these decisions are those set out above.

Proposed Precinct

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
19.5	NZ Transport Agency (Waka kotahi)	The objectives of the proposed Waipupuke Precinct are generally supported, subject to relief sought in NZTA's submission points.	FS3 - OIP	Reject
20.2	Kāinga Ora – Homes and Communities	Kāinga Ora seeks the retention of the provisions and precinct plan of the Proposed Precinct with the exemptions as noted in its submission.	FS1 - OIP	Reject
20.8	Kāinga Ora – Homes and Communities	Kāinga Ora seeks the following amendment to the proposed wording of IXXX.6.2 Yards: (i) [...] Side yards within the Business-Neighbourhood Centre zone, Residential-Terrace House and Apartment Building zone and the Residential-Mixed Housing Urban zone do not apply to <u>those parts of a site boundaries</u> where there is an existing common wall between two buildings on adjacent sites or where a common wall		Reject

		is proposed.		
23.14	Auckland Council	Delete the sentence “In the case of any uncertainty, the precinct provisions apply instead of the zone, overlay or Auckland-wide provisions.” in IXXX.4.		Accept
23.15	Auckland Council	Insert a clause in the first paragraph of each activity table to clearly identify which section of the Act the proposed rules are pursuant to, in accordance with standard AUP drafting practice. Refer to other precincts for examples.		Reject
23.24	Auckland Council	Delete the proposed definition of Medical and Specialist Facility. If it is retained, then place it within the precinct rather than section J1 of the AUP.		Accept

Decisions

The reasons for these decisions are those set out above.

Land-use

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decisions
19.10	NZ Transport Agency (Waka kotahi)	Delete Activity A2 (service stations) from Table IXXX.4.1	<i>FS3 - SIP</i>	Accept
19.11	NZ Transport Agency (Waka kotahi)	Delete Activity A3 (fast food outlets) from Table IXXX.4.1	<i>FS3 - SIP</i>	Accept
19.14	NZ Transport Agency (Waka kotahi)	Delete Activity A6 (Retail (excluding supermarkets) greater than 3,500m2 GFA per site) from Table IXXX 4.3 unless additional assessment as to the traffic effects of large format retail on the transport network is provided.	<i>FS3 - S</i>	Accept
19.15	NZ Transport Agency (Waka kotahi)	Delete Activity A8 (Medical and Specialist Facility) from Table IXXX.4.3 unless additional assessment as to the traffic effects of these additional activities on the transport network.	<i>FS3 - S</i>	Accept
22.21	Auckland Transport	Amend the PC 61 precinct provisions by removing activities (A2) Service Stations fronting State Highway 22 and (A3) Fast food outlet (including drive through facilities) fronting State Highway 22 from Table IXXX.4.1 Residential - Terrace House and Apartment Buildings zone and removing related matters of discretion (IXXX.7.1(1)) and assessment criteria (IXXX.7.2.(1)).	<i>FS3 – SIP</i>	Accept
22.23	Auckland Transport	Further assessment of the transport effects of the enabled land use activities proposed in the PC 61	<i>FS3 – SIP</i>	Reject

		<p>precinct plan provisions is sought from the applicant. Depending on the outcome of this assessment, to include amended and / or additional provisions (objectives, policies, rules, standards and assessment criteria) are sought within PC 61 that:</p> <ul style="list-style-type: none"> • Restrict the overall scale and intensity of activities that can be provided without any identified transport mitigation measures OR provide for appropriate transport mitigation measures with the staged development of PC 61. • Provide for the further assessment (through later resource consents or similar) of any development at a scale beyond that which can be shown to be satisfactorily accommodated by the transport network, without any identified transport mitigation measures. • Provide for an appropriate activity status for high trip generating activities, including associated assessment criteria to consider effects on the operation of the transport network. 		
23.21	Auckland Council	Delete rules (A1), (A2), (A3), (A4), and (A5) in Table IXXX.4.1 Residential – Terrace House and Apartment Building Zone.	<i>FS3 – SIP</i>	Accept
23.22	Auckland Council	Delete rules (A1), (A1A) in Table IXXX.4.2 Residential - Mixed Housing Urban Zone.	<i>FS3 – SIP</i>	Accept
23.23	Auckland Council	Delete rules (A1), (A4), (A5), (A6), (A7), (A8), (A9), (A10), (A11), (A12) and (A13) in Table IXXX.4.3 Business – Neighbourhood Centre Zone. Refer also to related submission points on the type of centre zone, location of centre zone and medical and specialist facility.	<i>FS3 – SIP</i>	Accept

Decisions

The reasons for these decisions are those set out above.

Other / General Matters

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
9.1	Soco Homes Limited	PC61 to be amended to address the issues outlined in its submission. Decline the plan change unless	<i>FS1 – SIP</i> <i>FS2 – SIP</i> <i>FS3 – OIP</i>	Accept

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
		<p>proper consideration is given to the wider context of the Drury Structure Plan area, including transport grid links and servicing infrastructure connections.</p> <p>Additional information and clarification is needed, particularly around the impacts of the proposed transport and infrastructure networks on the surrounding area.</p>		
19.7	NZ Transport Agency (Waka kotahi)	Clarification is required on which 'Precinct Plans' are being referred to in the Policy set (Precinct Plan 2 (Policy 8) and Precinct Plan 3 (Policy 10)).	<i>FS3 – SIP</i> <i>FS5 - S</i>	Reject
20.7	Kāinga Ora – Homes and Communities	Numbering within Table IXXX.4.4 Open Space – Informal Recreation Zone contains an error and omits the (A2) activity. Kāinga Ora seeks renumbering of the Table IXXX.4.4 Open Space – Informal Recreation Zone as-required.		Reject
21.1	Karaka and Drury Limited	PC61 be approved as notified. The submitter does not support any changes being made to PC 61 as notified, to the extent that such changes may impact on the quality of planning outcomes that the submitter seeks to achieve for Drury West, or the timing of when those outcomes can be delivered.	<i>FS1 – O</i> <i>FS3 – SIP</i>	Reject
22.1	Auckland Transport	Decline PC 61 unless Auckland Transport's concerns as outlined in its submission including the main body and Attachment 1 are appropriately addressed and resolved.	<i>FS3 – OIP</i> <i>FS6 - S</i>	Accept
22.14	Auckland Transport	As and when Jesmond Road is upgraded to an arterial route, amend the AUPOP planning maps (arterial road control) to identify it as an arterial road.	<i>FS3 – O</i>	Reject
22.31	Auckland Transport	Make necessary amendments to PC 61 to achieve an integrated development framework with and between adjoining/adjacent plan changes/development areas to ensure consistency in approach, including in relation to objectives, policies, rules, methods and maps, across the private plan changes within the Drury growth area.	<i>FS3 – SIP</i> <i>FS6 – SIP</i>	Reject
23.5	Auckland Council	Amend the last line of the key in Precinct Plan 2 to read:		Reject

Sub. No.	Name of Submitter	Summary of the Relief Sought by the Submitter	Further Submissions	Hearing Panel's Decision
		<u>Indicative Stormwater Control Management Areas.</u>		
23.16	Auckland Council	Ensure that the consent categories in IX4.1 Activity table, standards in section IXXX.6, matters of discretion in IX.8.1, and assessment criteria in IX.8.2, are the most appropriate to give effect to matters raised in this submission.		Reject
26.1	Hao Li	Supports the idea of a plan change, but requests that Auckland Council lead the process and include properties surrounding PC61 in the plan change. The impacts of new infrastructure on downstream infrastructure needs to be properly identified so as to not hinder the future development of properties outside the PC61 area.	<i>FS1 – SIP FS3 – OIP FS6 – S</i>	Reject
28.1	Tingran Doreen	The plan change should include the wider area, particularly areas around Jesmond Road. A council masterplan and better integration of the plan change with surrounding infrastructure (including proposed train stations, underground services and roads) is sought.	<i>FS1 – SIP FS3 – OIP</i>	Reject
9.2	Kainga Ora	Opposes proposed precinct designed to manage land-use matters for stormwater quality and roading layouts. The proposed precinct duplicates objectives, policies and provisions of the AUP(OP), does not follow the precinct format of the AUP(OP) and does not add any value to the plan change area.	<i>FS01</i>	Accept

Decisions

The reasons for these decisions are those set out above.

PART 2 OF THE RMA

302. Section 32(1)(a) of the RMA requires assessment of whether the objectives of a plan change are the most appropriate way for achieving the purpose of the RMA in Part 2. Section 72 of the Act also states that the purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA. In addition, section 74(1) provides that a territorial authority must prepare and change its district plan in accordance with the provisions of Part 2. While this is a private plan change, these provisions apply as if it is the Council who is approving the private plan change, which will change the AUP (OP).

303. For all of the reasons set out in this decision, we are not satisfied that PC 61 meets the purpose of the RMA. That is, in terms of section 5 of the RMA, it is our finding that the provisions of PC 61 are not consistent with, nor the most appropriate way, to achieve the purpose of the Act. PC 61, in its current form, will not enable the efficient development of the site for urban development while avoiding or mitigating any actual and potential adverse effects, given the precinct provisions proposed.

DECISION

304. That pursuant to Schedule 1, Clauses 10 and 29 of the Resource Management Act 1991, that Proposed Plan Change 61 to the Auckland Unitary Plan (Operative in Part) be **declined**.

305. Submissions on the plan change are accepted or rejected as set out in this decision.



Greg Hill – Chairperson, and for Commissioners Karyn Kurzeja and Mark Farnsworth

15 December 2021

Appendices

Appendix 1 – Development Triggers Proposed by Ms Sinclair and Ms Smith.

Appendix 1 – Development Triggers Proposed by Ms Sinclair and Ms Smith.

<u>Development Trigger</u>	<u>Transport Network Infrastructure Upgrades</u>
<u>Prior to any activity, development and/or subdivision in the precinct</u>	<p><u>SH22/Oira Road Intersection Improvements including four laning east and west approaches (including active modes) to the roundabout on SH22</u></p> <p><u>This includes improvements to a 3 leg dual lane roundabout treatment.</u></p>
<u>Development Trigger</u>	<u>Transport Network Infrastructure Upgrades</u>
<u>Prior to any activity, development and/or subdivision in the precinct</u>	<p><u>SH22/Oira Road Intersection Improvements including four laning east and west approaches (including active modes) to the roundabout on SH22</u></p> <p><u>This includes improvements to a 3 leg dual lane roundabout treatment.</u></p>
<u>No more than 95 dwellings in the precinct and prior to any activity, development and/or subdivision in the business neighbourhood centre zone.</u>	<p><u>Great South Road/SH22 Intersection Upgrade</u></p> <p><u>This includes requiring a fourth leg, provide left turn entry and left turn exit movement only, additional lanes on SH22</u></p>
<u>No more than 95 dwellings in the precinct and prior to any activity, development and/or subdivision in the business neighbourhood centre zone.</u>	<p><u>SH1 Interchange upgrade including on and off ramps improvements.</u></p>
<u>No more than 95 dwellings in the precinct and prior to any activity, development and/or subdivision in the business neighbourhood centre zone.</u>	<p><u>Old Bremner Road Upgrade from Jesmond Road to Auranga Precinct including Jesmond/Old Bremner Road intersection.</u></p> <p><u>This includes construction of new traffic signals and/or roundabout at this intersection.</u></p>
<u>No more than 95 dwellings in the precinct and prior to any activity, development and/or subdivision in the business neighbourhood centre zone.</u>	<p><u>SH22 Widening (Great South Road to Jesmond Road).</u></p> <p><u>This includes widening SH22 between this section to include 4 traffic lanes and walking and cycling improvements, lowering speed limit from 80km/hr to 50km/hr, frontage upgrade, widening and safety improvements and separated walking and cycling facilities improvements.</u></p>
<u>No more than 95 dwellings in the precinct and prior to any activity, development and/or subdivision in the business neighbourhood centre zone.</u>	<p><u>SH 22 upgrades (west of SH1 interchange to Great South Road)</u></p> <p><u>This includes the requirement of 4 laned, urban upgrade with separated walking and cycling on both sides.</u></p>

<u>No more than 95 dwellings in the precinct and prior to any activity, development and/or subdivision in the business neighbourhood centre zone.</u>	<u>Jesmond Road / East West Collector (Waipupuke Precinct) – New Intersection</u> <u>This includes the requirement to connect the proposed east-west collector road to Jesmond Road (with either signals and/or roundabout).</u>
<u>No more than 95 dwellings in the precinct and prior to any activity, development and/or subdivision in the business neighbourhood centre zone.</u>	<u>New Collector and Local Roads within Waipupuke Precinct</u> <u>This includes the requirement to construct 2 laned roads, walking and cycling facilities, new intersections with Waipupuke Precinct.</u>
<u>No more than 95 dwellings in the precinct and prior to any activity, development and/or subdivision in the business neighbourhood centre zone.</u>	<u>Oira Road Upgrade including active modes (SH22 to Waipupuke Precinct Northern Boundary)</u> <u>The includes the requirement to upgrade to an urban standard with separated walking and cycling facilities.</u>
<u>No more than 400 dwellings in the precinct and prior to any activity, development and/or subdivision in the business neighbourhood centre zone.</u>	<u>2-Lane bridge over Bremner Road / Waihoehoe Road</u> <u>This includes the requirement to upgrade to 2 lane urban standard with separated walking and cycling on both sides.</u>
<u>No more than 400 dwellings in the precinct, up to 500m² of offices, up to 450m² of retail GFA in the business neighbourhood centre zone and prior to the construction of the 'Medical and Specialist Facility' in the business neighbourhood centre zone.</u>	<u>New Intersection on Jesmond Road / Bremner Road</u> <u>This includes providing improvements to east-west connectivity.</u>
<u>No more than 400 dwellings in the precinct, up to 500m² of offices, up to 450m² of retail GFA in the business neighbourhood centre zone and prior</u>	<u>Jesmond Road Upgrade from SH22 to Waipupuke Precinct Northern Boundary</u> <u>This includes link to new SH22 and Jesmond signalised</u>
<u>to the construction of the 'Medical and Specialist Facility' in the business neighbourhood centre zone.</u>	<u>intersection, upgrade of this section to an urban standard to support construction traffic and walking and cycling connections to the new Drury West rail station.</u>
<u>No more than 400 dwellings in the precinct, up to 500m² of offices, up to 450m² of retail GFA in the business neighbourhood centre zone and prior to the construction of the 'Medical and Specialist Facility' in the business neighbourhood centre zone.</u>	<u>SH22 / Jesmond Road Intersection</u> <u>This includes new signalised intersection including walking and cycling connections with the Drury West Rail Station, Waipupuke Precinct and Drury 2 Precinct.</u>
<u>No more than 400 dwellings in the precinct, up to 500m² of offices, up to 450m² of retail GFA in the business neighbourhood centre zone and prior to the construction of the 'Medical and Specialist Facility' in the business</u>	<u>SH22 Widening (Jesmond Road to Oira Road).</u> <u>This includes road safety to SH22 and lane alignments with the new intersection treatments at Oira Road and Jesmond Road. This is interdependent on the upgrades at Jesmond Road and Oira Road, 400m section between Jesmond</u>

<u>neighbourhood centre zone.</u>	<u>Road and Oira Road is widened to 4 laned.</u>
<u>No more than 400 dwellings in the precinct, up to 500m2 of offices, up to 450m2 of retail GFA in the business neighbourhood centre zone and prior to the construction of the 'Medical and Specialist Facility' in the business neighbourhood centre zone.</u>	<u>Drury West Rail Station and Access from SH22</u> <u>This is interdependent on the construction of signalised treatment at SH22/Jesmond Road and widening of SH22 (Oira Road to Jesmond Road to Great South Road)</u>
<u>No more than 400 dwellings in the precinct and up to 3500m2 GFA in the business neighbourhood centre zone.</u>	<u>Jesmond Road from Waipupuke Precinct Northern Boundary to Bremner Road including active modes.</u> <u>This includes active mode facilities, shared path on western side of Jesmond.</u>