

**BEFORE THE ENVIRONMENT COURT
TE KOTI TAOIAO O AOTEAROA
AUCKLAND REGISTRY**

ENV-2023-AKL-000051

IN THE MATTER of an appeal under clauses 29(6) and
14(1) of Schedule 1 of the Resource
Management Act 1991

AND

IN THE MATTER of Private Plan Change 73: O'Hara -
Waiuku, to the Auckland Unitary Plan
- Operative in Part

BETWEEN

**GARDON TRUST, MATOAKA
HOLDINGS LIMITED AND
POKORUA HOLDINGS LIMITED**

Requesters and Appellants

AND

AUCKLAND COUNCIL

Respondent

**To: The Registrar
Environment Court – Auckland**

**NOTICE OF APPEAL TO THE ENVIRONMENT COURT AGAINST
THE DECISION ON PRIVATE PLAN CHANGE 73
TO THE AUCKLAND UNITARY PLAN**

26 April 2023

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DECISION APPEALED

1. **Gardon Trust, Matoaka Holdings Limited, and Pokorua Holdings Limited** (the **Requestors** or the **Appellants**) seek to rezone land from rural to residential at 43, 45A, 92 and 130 Constable Road, Waiuku - O'Hara Plan Change 73 (**PC73 or Plan Change**).
2. It is noted that 43 Constable Road is owned by the Ministry of Education, that made a submission in support of PC73 (#34), subject to resolving a split-zoning issue.
3. The Respondent declined the PC73 Application in a decision dated 24 February 2023 (the **Decision**).
4. The Requestors also made submissions on the Plan Change (Conal Dempsey #7 and Terry Short #21 and collectively a further submissions #14).
5. The Appellants are not trade competitors for the purposes of section 308D of the Resource Management Act 1991 (**Act**).
6. The Appellants received notice of the Decision on Friday 10 March 2023 when they downloaded a copy from the Council website after learning of the Decision.
7. The Decision was made by commissioners appointed by the Respondent.

PROVISIONS BEING APPEALED AND RELIEF

8. The Requestors are appealing the Decision to decline the application to rezone the land from rural to residential. The primary reason for the refusal was due to the adverse impact on the soils on the sites and their existing and potential use for primary production (par 317 of the Decision).
9. In the s42A Report on PC73 the Reporting Officer identified a number of reasons, in addition to the concern about the loss of productive land, for the recommendation that consent be declined.
10. While not necessarily agreeing with the scope and magnitude of the issues raised in the s42A Report, the Requestors and their advisers worked constructively to resolve the issues identified. They provided the Respondent and the Hearing Panel, with robust evidence to prove that adverse effects would

be avoided, remedied, and mitigated, and that the statutory planning requirements were satisfied.

11. The Requestors were pleased to see that the Reporting Officer modified their position on many of the issues, initially highlighted, during the Hearing process and as they were provided with further information, as is reflected in the Decision. The main issue that the Reporting Officer considered outstanding at the end of the Hearing was regarding the loss of productive soils.
12. The Decision helpfully identified the key issues and which ones it was satisfied had been fully addressed. The Requestors are therefore pleased to agree with the Decision on the following findings:
 - a) Structure planning is not necessary for the scale of development of PC73 (5% increase in the size of Waiuku) in order to meet the requirements of the Auckland Unitary Plan-Operative in Part – Regional Policy Statement – 2016 (**AUP-RPS**) Chapter B2 and Appendix 1.
 - b) The site has low ecological values and PC73 would result in positive environmental effects (par 106-110).
 - c) The site is geotechnically suitable for development (par 112 – 117). This is a factor that should be given significantly more weight in zoning decisions. The devastating impact of cyclone Gabrielle, with hundreds of homes in the region red stickered due to landslide damage, has exposed the risks of building on land that does not have suitable geology and gradient. There was also a major event in Nelson last year that caused hundreds of landslides.
 - d) Stormwater can be appropriately managed (par 119 - 131). While the Panel acknowledged that the Requestors had worked constructively with Ngati Te Ata to incorporate their tikanga practices, this should have been given more weight.
 - e) The site can be adequately serviced with three waters infrastructure (par 134 – 139). While some public works need to be undertaken before physical connections can be provided, those works are planned and funded. Watercare has recently secured a site for the treatment plant for the South West upgrade, and the private development contributions from PC73 will

make a positive contribution to recovering the significant public expenditure on this project. The Requestors have also offered to collaborate with Watercare to establish a bore on their land that would be in a different aquifer to the current Waiuku Watercare bores, significantly augmenting the available groundwater supply capacity.

- f) Local roads and intersections can be upgraded to safely accommodate the development. While initially raised as an issue, there was inadequate evidence to conclude that providing for growth in Waiuku would generate more vehicle kilometres travelled (**VKT**), or CO₂ emissions, than in other locations (par 150 – 189). PC73 will provide significant accessibility and safety benefits for Waiuku College, and existing Constable Road residents and users, and this was not sufficiently weighted in the overall conclusions.
- g) The provision of roading connections to neighbouring rural land, requested by Auckland Transport, were not necessary.
- h) Landscape and visual effects will be acceptable with the proposed rural buffers (par 190 - 196).
- i) Urban design outcomes will be acceptable and achieve a well-functioning urban environment (par 197 - 206).
- j) The new proposed urban boundary, while relying partly on cadastral boundaries, was appropriate to meet the requirements of the AUP-RPS.
- k) The site does not contain elite soil, but prime soil (reference to the AUP definitions) and 91% of the site is HPL (par 255), as identified in the reports and evidence of Dr Singleton, and corroborated by Dr Hills for the Respondent (par 207 – 212). It is helpful that the types of soil and their classification were agreed by the experts, so that the focus for the appeal can be on their productivity.
- l) Positive effects would arise from PC73 as identified in par 224 - 225. This summary is agreed, but the full range of positive effects is much broader and more substantial, and should have been given more weight in the overall final analysis.

- m) PC73 is consistent with the National Policy Statement – Urban Development – 2020 (**NPS-UD**) and will achieve a well-functioning urban environment (par 249). It is noted for the record that “consistency” is not the correct legal test, but that PC73 must “give effect” to the NPS-UD, which the Requestors say it does.
- n) Not providing Future Urban Zone (**FUZ**) land for Waiuku during the Proposed Auckland Unitary Plan – 2014 (**PAUP**) process was not intentional, in the sense that it would have been without planning merit. It was merely a consequence of Council prioritising growth planning for the main urban area and the 2 satellite towns (par 293).
- o) The Waiuku 2 Precinct provisions developed and modified by the Requestor, in response to matters raised by the Respondent and other submitters, are agreed by the Respondent, on a without prejudice basis, should PC73 be approved (par 309).

WEIGHTING APPEALED

13. Having stated that the Requestors generally agree with the findings in the Decision outlined above, as alluded to in some of the sub-paragraphs, the overall weighting given to different relevant considerations is appealed. As a general comment the Appellants say that insufficient weight was given to the positive and beneficial findings outlined above, and too much weight was given to the NPS-HPL, and the AUP-RPS provisions, for the protection of highly productive land. Two examples of where the Decision weighting is appealed regard hazard risks.
14. Geotechnical Risk: The devastating impact of cyclone Gabrielle, with hundreds of homes in the region red stickered due to landslide damage, has exposed the risks of building on land that does not have suitable geology and gradient. There was also a major event in Nelson last year that caused hundreds of landslides.
15. The National Policy Statement – Highly Productive Land – 2022 (**NPS-HPL**) preference for urban development to take place on Class 4 land and above, needs to be tempered by a robust understanding of land-slide and other hazard risks. The soil maps in the vicinity of Waiuku show that Class 4 and above land has steep topography such as the Awhitu Peninsular and the Hunua Ranges.

Deeper top-soil naturally forms on flatter land, where it does not erode away, and the best land for construction will usually also be the best land for crops. The policy and zoning implications of this reality were not properly understood in the Decision.

16. It is noted for the record, that while cyclone Gabrielle occurred after the Hearing, the Requestors submissions and evidence, had already highlighted the geotechnical hazard risks of building on land that is Class 4 and above.
17. Existing Flooding Risk: While the Panel acknowledged that there would be flood reduction improvements for the downstream catchment, from a new stormwater diversion line installed by PC73, e.g. for Breaker Grove (par 127(c) & 133), this benefit was not sufficiently weighted by the Panel in its overall deliberations and conclusions. The downstream predicament has become more acute after the Auckland Anniversary weekend flooding and cyclone Gabrielle, when some of the Breaker Grove garages were flooded, and more significant damage was only narrowly avoided. The Requestors have photos of this flooding event.
18. With extreme rainfall events increasing with climate change, such as “atmospheric rivers” from the tropics, it is only a matter of time before the Breaker Grove houses will be flooded and probably red-stickered. Havoc caused by cyclone Gabrielle has prompted the Council to urgently seek an extension of 1 year before decisions on Plan Change 78, to intensify Auckland, have to be made. Minister Parker has agreed to this request.
19. The extension is to undertake an extensive work programme to investigate past damage, model potential future flood damage, and develop an appropriate planning/zoning response. It has been forewarned that there will need to be a Variation to PC78. Large parts of Waiuku are likely to be eliminated from further development/intensification e.g. MDRS.
20. In this risk prone context, approval of PC73 is “low hanging fruit”, because it enables much needed housing in a low risk location (once developed) to meet the requirements of Part 2 of the Act (s5, s6(h) & s7(i)). In fact it is even better than that, because it will also remedy a serious existing flooding hazard in Breaker Grove, at no cost to the owners/occupiers who will benefit, which include the social housing provider, Kainga Ora and its tenants.

21. Supporting Submissions and Evidence: Furthermore, the Panel placed insufficient weight on the substantial submissions and evidence, in favour of PC73, provided by independent parties to the Hearing including;
- a) Ngati Te Ata – the mana whenua for Waiuku, who will be actively involved in the design and development of the project as was explained by Roimata Minhinnick in evidence.
 - b) Waiuku College – the immediate and most affected neighbour that will significantly benefit from access and child safety improvements, and a larger roll. It is also very concerned about the adverse effects (sprays, dust, noise etc) of any intensification of primary production.
 - c) NZ Steel – a nationally significant employer that requires adequate and affordable housing to attract and retain an internationally mobile workforce. TDM, Designmax, IMG, Balle Brothers Group are also significant local employers that need housing for workers.
 - d) Evidence from residential builders and developers in Waiuku that know what typologies of development are practicable, feasible, and commercially viable.
 - e) Baseline (2018) Limited – the developer of approximately 78ha Light Industry Zone (**LIZ**) area (Fernleigh) on the other side of Waiuku, for which PC73 is required to complement employment growth, and maintain a house/job ratio that avoids inward work commuting for new businesses.
 - f) Waiuku Business and Development Association – how PC73 is needed to sustain and grow Waiuku, as a vibrant rural service town, and for it to be a well-functioning urban environment.
22. It is very important to also observe that notwithstanding the Decision declining PC73 in order to preserve the soil for primary production, not one primary producer submitted in opposition to the development. Well-resourced and high profile defenders of primary production, including Federated Farmers and HortNZ, did not make submissions in opposition to PC73. They were approached by the Requestors, early in the plan change preparation/consultation stage, but were unconcerned by the use of this land for urban activity. It is not elite land and it is appropriate for urban use.

23. While the PC73 land technically meets the definition of being HPL, there is land that is far more productive that is available in better locations for commercial production, now and for the “foreseeable future” (this term is used in the HPL Guide). Indeed, apart from Auckland Council, in its capacity as a submitter, that is not a primary producer itself, the weight of primary production expert evidence before the Panel approved the use of this land for urban activities. This included:
- a) Productivity experts Mr Allen and Mr Sharp for the Requestors.
 - b) Balle Brothers Group – leading growers with operations throughout South Auckland and other regions (par 214).
 - c) Punchbowl – local kiwifruit producers.
 - d) Hira Bhana & Co Ltd – a leading local grower and advocate for the protection of high class versatile soils, such as the Class 1 and better Class 2 soils, around Pukekohe (par 214).
24. The Decision failed to properly explain why the land needed to be preserved for rural production, when no experienced commercial rural producers supported this conclusion. While Mr Ford did provide generic evidence for the Council in support of rural production, no actual commercial farmers/growers were identified that shared his opinions about this land.

PARTS OF THE DECISION APPEALED

25. Those parts of the Decision that are specifically appealed include the following findings:
- a) That while there are some significant merits, overall, PC73 is inconsistent with the AUP-RPS due to the loss of prime soils and other productive land (par 240). As outlined above, “consistency” is not the correct legal test under s75, and the Requestors say that PC73 does “give effect” to the RPS when read as a whole.

- b) That while there are clear benefits in terms of urban design, economies of scale, affordability and speed of delivery to market, PC73 does not meet the requirements of clauses 3.6(1)(a) and (b) of the NPS-HPL (par 284).
- c) That PC73 does not satisfy clause 3.6(1)(c), considering overall costs and benefits, including tangible and intangible values (par 303). At par 304 the Decision did helpfully note that further expert evidence may satisfy this provision.
- d) PC73 does not satisfy clause 3.6(5) regarding amending the design to avoid the very best soils (par 305).
- e) While generally consistent with the NPS-UD, PC73 does not satisfy all of the directive criteria of the NPS-HPL including Clause 3.6 and fails Objective 1 and Policy 5 (par 306).
- f) That the introduction of the NPS-HPL, in combination with existing provisions in the RPS, relating to avoiding the loss of prime soils, sets a “substantial threshold” to be achieved in order to allow urban rezoning of highly productive land to occur, and this threshold was not satisfied (par 313).
- g) That the evidence of Mr Bradley and Mr Foy, which relied on data from RIMU, who did not attend the Hearing to present evidence, was preferred over that of Mr Thompson and Mr Colegrave, regarding residential demand and supply capacity calculations. It is noted that the Requestors witnesses were the only ones to undertake the required demand assessment under the NPS-UD methodology.
- h) That the interpretation of Clause 3.6(1)(b) means that residential growth can be adequately accommodated in locations in the south other than Waiuku (par 282). The Decision adopted the position advanced by the Council that the “same locality and market” could be defined as “southern regional towns”. This was incorrect, for the reasons provided in submissions and evidence in the Hearing by the Requestors, which has now been confirmed by the recently released National Policy Statement for Highly Productive Land – Guide to Implementation – March 2023 (**HPL Guide**).

- i) That residential growth can be adequately accommodated with intensification of the existing urban area and the use of alternative land in Waiuku (par 283).
 - j) Regarding the precinct plan, that the proposed retirement village was not assured, and that it should have a connecting road through it.
 - k) The soil needs to be preserved for current future primary production and this was necessary for food security, and to meet the requirements of the NPS-HPL.
26. It is important to note that the soil at 45A Constable Rd has already been modified in accordance with a resource consent and no longer contains prime/HPL. This site could have been distinguished in the Decision, and relief for this site is sought in the alternative to the relief for all 4 sites.
27. The modification of 45A also means that the percentage of prime/HPL, of the PC73 site as a whole, is less than indicated in the soil classification report of Dr Singleton, which focussed on the 2 unmodified sites.
28. Other parts of the Decision, that are inconsistent with the PC73 Application and submissions and evidence supplied by the Respondents, are also appealed.

THE LAND AFFECTED

29. The Requestors land that is subject to the Plan Change is 32.5 ha at 43, 45A, 92 and 130 Constable Road, Waiuku.
30. The plans below show the Appellants land to the west of Waiuku and adjoining Waiuku College, and in its wider context.



Figure 1: Site location

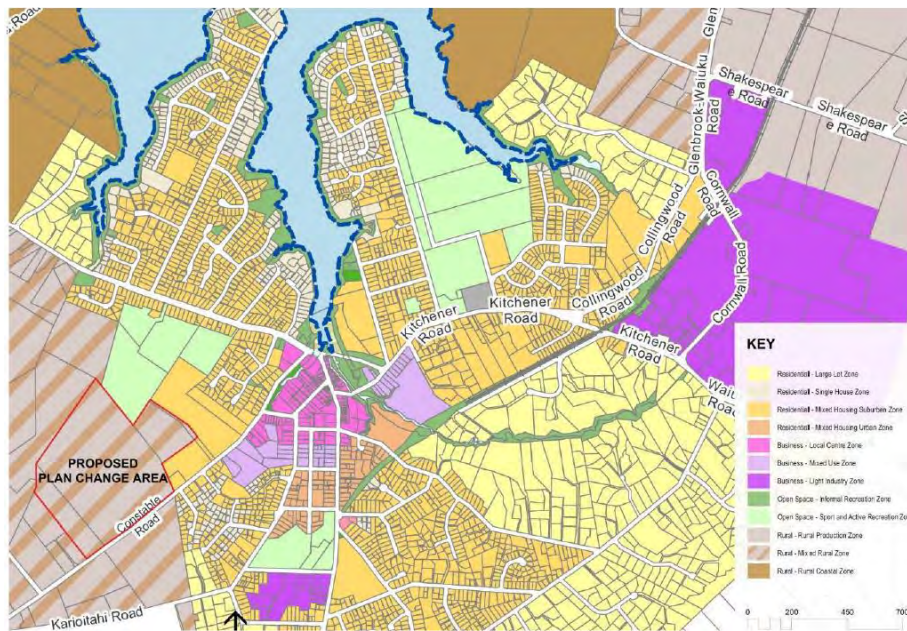


Figure 2: Site location within wider Waiuku context

31. Notable features above are the proximity to the Open Space zone, walkability to the Town Centre, and the 78ha of LIZ to the east of Waiuku (Fernleigh), that PC73 was intended to balance, in terms of maintaining the ratio of houses to jobs being created, to reduce work commuter travel.

REASONS FOR THE APPEAL

32. The reasons for the appeal include, but are not limited to, the following grounds.

33. The Decision did not;

- a) meet the Purpose and Principles in Part 2 of Act;
- b) regarding the interests of Ngati Te Ata (mana whenua), fulfill the mandatory requirements of s6(e), s7(a)(aa) and s8 of the Act, and Chapter B6 of the AUP-RPS;
- c) ensure the Respondent achieved its functions as a unitary authority under sections 30 and 31 of the Act, and in particular, ensure (“shall”) that there is sufficient development capacity for housing in Waiuku to meet demand (s31(1)(aa));
- d) satisfy the s32 and s32AA requirements of the Act, and in particular, the need to assess the benefits and costs of the urban zoning, regarding opportunities for economic growth and employment, that will be significantly reduced as a consequence of the Decision (s32(2)(a));
- e) satisfy the matters that must be considered for a Plan Change (s74);
- f) “give effect” to the higher order statutory planning instruments as is required (s75(3)) as explained further below;
- g) properly apportion respective weight to the NPS-HPL, and the enabling NPS-UD and the RPS, and importantly, resolve policy tensions within the overall statutory framework of the Act;
- h) meet the requirements of Schedule 1 of the Act;
- i) avoid, remedy and mitigate, significant adverse environmental effects, and in particular, the adverse effects on social and economic wellbeing and health as safety, from a shortage of housing choices in Waiuku, and in a location with low hazard risk;
- j) place sufficient weight on the submissions and expert evidence provided by the Requestors in the Hearings, and the many parties in support of PC73,

and put too much weight on the evidence of some of the Respondents witnesses;

- k) recognise the significant urban design and amenity contribution that development of the Requestors land can make to achieve a well-functioning urban environment for Waiuku; and
- l) demonstrate sound resource management practice.

NPS-UD

34. In particular, and without limiting the generality of the above, the Decision does not give effect to the NPS-UD, because it did not;

- a) achieve a well-functioning urban environment that enables people, whanau, and the Waiuku community to provide for their social, economic and cultural wellbeing (Obj. 1);
- b) improve housing affordability and support a competitive land and development market (Obj. 2);
- c) respond positively to this proposal even though it would supply significant development capacity (Obj. 6 & Pol. 8);
- d) improve climate change resilience of the existing urban area, including Breaker Grove (Obj. 8 & Pol. 1(f));
- e) enable a variety of homes, that meet the needs of people, in terms of type, price, and location (Pol. 1(a)(i));
- f) enable Ngati Te Ata to express their cultural traditions and norms (Pol. 1(a)(ii));
- g) enable people to have ready access to “live, work, and play” activity options, within Waiuku, including aging in place for retired residents (Pol. 1(c));
- h) facilitate a more competitive housing market in Waiuku (Pol. 1(d));
- i) ensure that there is sufficient residential development capacity in Waiuku to meet demand that is zoned, serviced and feasible/commercially viable, over the next 10 years (medium term) (Pol. 2);

- j) provide for the changes and benefits anticipated by Policy 6;
- k) realise the benefits of development contributions to help fund the Watercare South West upgrade project (Pol. 10); and
- l) properly apply the provisions in Part 3, for the assessment of development capacity, and relied on erroneous assumptions regarding the ability of redevelopment/intensification to meet housing demand. E.g. ignoring the risks of flooding and landslide hazards, and assuming that it is viable/feasible to effectively level existing residential areas of Waiuku, and redevelop the bare sites from scratch.

NPS-HPL

35. The Decision does not give effect to the NPS-HPL, because it did not;

- a) interpret the NPS-HPL as a whole, and appreciate that while Objective 1 does seek the protection of land for primary production, the policies and clauses contemplate, and provide for, the use of HPL for urban activities providing the assessment criteria are met;
- b) appreciate, that while Policy 5 requires urban activities on HPL to be “avoided”, this is by no means a prohibition;
- c) understand that Policy 5 is enabling to the extent that it specifically refers to the process in Clause 3.6 where the use of HPL for urban activities is provided for, if the criteria are met. PC73 does meet the relevant assessment criteria; and
- d) understand that while the body of Policy 5 has a requirement to “avoid”, the heading in Clause 3.6 for urban zoning of HPL uses the term “restricting” which is a lower threshold. This can be contrasted with the use of HPL for countryside living in Clause 3.7 which requires “avoiding” this use. This difference in terminology is material and important, as noted in the NPS-Guide, but was not taken into account in the Decision.

36. Therefore the Decision is not consistent with the HPL Guide on the interpretation of the NPS-HPL, acknowledging that the Hearing Panel did not have the benefit of the Guide because it was only released in March 2023. The submissions and

evidence of the Requestors, and their supporters, is generally consistent with the interpretation and assessment methodology outlined in the HPL Guide.

37. Urban use of HPL is often appropriate and unavoidable, especially when a town is surrounded by HPL (HPL Guide page 48). As shown in evidence, Waiuku is an example of a town that is surrounded by land that is Class 2-3. The HPL Guide makes it clear that it is more justifiable to use HPL for urban activities than for countryside living as urban densities are a more efficient use of the land (page 41).
38. PC73 is required to meet the growth needs of Waiuku, and the NPS-UD and RPS (Clause 3.6(1)(a)). This is because it has not had any greenfield growth allocation for over 30 years, and many of the areas identified for intensification are hazard prone. Additional housing land is also required to meet the needs of local employers, including NZ Steel, the large LIZ area in the east of Waiuku (Fernleigh), and the significant horticulture industry.
39. Regarding the interpretation of the term “same locality and market” (Clause 3.6(3)), the Decision agreed with the Council witnesses and found that this clause can be satisfied by existing and planned capacity in the south of Auckland, and east of the motorway, and in other towns such as Drury or Pukekohe (par 280). This area was referred to as “southern regional towns” in the evidence of Mr Bradley and Mr Foy for the Council.
40. This finding is not how Clause 3.6(3) has been interpreted in the HPL Guide. It defies common sense to claim that demand for growth in Waiuku can be provided in a completely different town, such as Pukekohe, that is 20km away.
41. Waiuku is the second largest town in the region with a population of approximately 10,000 and is twice the size of Warkworth, which, by contrast, has been planned to quadruple in size. It plays a major role in servicing local industry and the primary sector.
42. Waiuku has its own unique environment, history (Māori, European and other cultures), community and identity. The position of the Council advisers, and the Decision, is contrary to the HPL-Guide, and most importantly, a proper interpretation of Clause 3.6(3). Under the NPS-UD and NPS-HPL, Waiuku must be planned as a well-functioning urban environment in its own right. It is not

merely an indistinct part of a large amorphous southern area, or sub-servient to a dominant metropolitan Auckland.

43. The “same locality and market” is restricted to “nearby” suburbs and settlements (HPL Guide page 49). It would arguably not even include Glenbrook which is 14km away. But it would certainly exclude Clarks Beach (25km), Kingseat (20km), Drury (31km) and Pukekohe (20km). Contrary to the Council evidence, and the Decision finding, the evidence of the qualified economists, Mr Thompson and Mr Colegrave (for the Requestors), as summarised at par 274 of the Decision, should have been adopted. That position, which included Glenbrook, for example, was arguably very “conservative” considering the explanation in the HPL Guide. A settlement 14 km away is not “nearby”, even in a rural context.
44. The Decision, and the Council position of defining a spatially extensive “locality and market”, is also contrary to the Council’s climate change response of trying to reduce the need for private travel, and CO2 emissions. The journey to work Census evidence demonstrated that Waiuku is not a “dormitory suburb” of the main Auckland conurbation, and most travel is local. PC73 will help reduce the distances between residential, employment, recreational, and service activities.
45. The Decision incorrectly interpreted and applied Clause 3.6(1)(b), and greenfield growth is needed for Waiuku to achieve a well-functioning urban environment.
46. PC73 will provide feasible development in a quick timeframe, as properly acknowledged in the Decision (par 281). But alternatives relied upon in the Decision, such as intensification, or the use of land that is not Class 1-3, is not a practicable and feasible option to provide for demand.
47. This is especially the case for unique housing requirements such as aged living, that require a large greenfield site to be viable. There are no other sites available in Waiuku that are suitable, and only 18 “older adult beds” in the Memorial Hospital. Those needing rest home care generally have to relocate to Pukekohe, or other centres. This severs vulnerable people from their place, people, and community, at the time in their lives when they are in most need of enduring and supportive relationships.

48. There are no reasonably practicable and feasible options, to PC73, that are within the same locality and market, that would achieve a well-functioning urban environment (Clause 3.6(1)(b)).
49. Contrary to the conclusion in the Decision, Clause 3.6(1)(c) is satisfied. While no report called a “Social Impact Assessment” was produced, all of the elements in this clause were addressed in submissions and evidence, not only from the Requestors, but also from supporting submitters, including mana whenua and the Business Association.
50. In accordance with Clause 3.6(2) other options to provide for growth were carefully considered by the Requestors in a pragmatic and realistic manner (HPL Guide page 46). However, they had various constraints and limitations and none were both practicable and feasible. For example an area of Large Lot Class 4 land in Waiuku was examined, but ruled out for slope/flooding/fragmentation/infrastructure servicing reasons, and anticipated owner and iwi opposition (Clause 3.6(2)(b)).
51. The PC73 land is the lowest quality land on the edge of Waiuku and is prime land not elite land (Class 1). Other options to the east of Waiuku are more productive and used for cropping. The PC73 land is mostly suitable for grazing and seasonal cropping only with modest overall productivity (Clause 3.6(2)(c)).
52. Future intensification of primary production is not foreseeable and would be of great concern to the College regarding reverse sensitivity effects. As good as management practices may be, not all adverse externalities from farming/horticulture can be internalised to the cultivated site. There are much better land options for growers to pursue intensive production, for at least 30 years, than on the PC73 land.
53. The Decision considered that Clause 3.6(5) was applicable but that no analysis had been undertaken by the Requestors about how the best soils within the site may be avoided. However, as the uncontested soil classification evidence demonstrates, the best soils on the site are somewhat fragmented. During the iterative design phase, avoiding the best prime soils was considered, but there is limited opportunity to reconfigure the masterplan to avoid them. It would also be an inefficient outcome, for both urban development and rural production, to contort the layout in a manner that did not serve either activity well.

54. Having stated the above, and in the interests of resolving the appeal, the Requestors will re-evaluate the master/precinct plan to see if it can improve outcomes for productive land, as well as other considerations such as the best location for the community garden and retirement living.
55. The evidence of the Requestors briefly canvassed the harvesting of the top-soil, and its redistribution to sites that were of a similar or lower productive capacity, or of public benefit, such as a recreation field. Flood mapping shows that the adjoining recreation reserve is currently subject to flooding and raising the level and grading, could significantly improve the value of this area for users and the community. Shifting the top-soil north to the reserve would be a straight forward exercise. The Requestors are willing to constructively engage with the Council, and the current users of the reserve, to explore how soil from the site may be able to enhance these public facilities.
56. The NPS-HPL does not appear to address this relocation mitigation method, but it is valid and relevant to the overall assessment in Clause 3.6. Accounting for an increase in production, on the receiving land, would mean the net loss in productivity could be much less than if all the PC73 area is assumed to be taken out of production indefinitely.
57. The Decision described the requirements of Clause 3.6 as being a “substantial threshold” to overcome for the use of HPL for urban activities (par 313). This description inappropriately elevated the Clause 3.6 assessment process when it must simply be followed in a robust manner relying on relevant and reliable evidence. It would have been more balanced if the Decision had at least also found that; the s31 statutory requirement that a council must provide sufficient housing capacity; the 7 years serviceable minimum capacity in the RPS; and the enabling provisions in the NPD-UD; is a “substantial” policy imperative, to enable people to meet a primary human need – adequate housing.
58. The Decision did helpfully acknowledge that further technical analysis may prove that the requirements of Clause 3.6 can be satisfied (par 313). The Requestors do not accept that the submissions and evidence provided in the Hearing were not adequate to satisfy the criteria in Clause 3.6.
59. However, in the interests of resolving this appeal, the Requestors will undertake further investigations to address matters raised in the Decision. Neither the

Requestors nor the Panel had the benefit of the HPL Guide prior to the Hearing, and it will now be of assistance to the appeal proceedings. For example, resolving the “same locality and market” spatial extent, as discussed above, and providing a methodology, illustrated in Figure 2, to determine the Total Economic Value (TEV) of HPL.

60. In summary, and contrary to the overall finding in the Decision, PC73 does satisfy the requirements of Clause 3.6, Policy 5, and Objective 1, of the NPS-HPL, and it is consistent with the HPL Guide.

AUP - RPS

61. The Decision to decline PC73 does not give effect to the relevant objectives and policies of the AUP-RPS, and in particular;

- a) Chapter B2 and Objective B2.2.1 and Policy B2.2.2(4) regarding the achievement of a quality compact urban form in rural towns;
- b) Objectives B2.2.2(3) (sufficient development capacity) and (5) (integrated development and infrastructure);
- c) Policy B2.2.2(1) that requires the provision of at least 7 years of live zoned land considering any constraints on subdivision and development;
- d) Objective B2.4.1(6) which has a minimum target for sufficient feasible development capacity;
- e) The enabling B2.6 Objectives and Policies for Rural Towns, and the assessment criteria in B2.6.2 for the expansion of Waiuku, which are satisfied;
- f) Regarding Policy B2.6.2(1)(d) while prime soils (approximately 50%) would be rezoned for urban activities, those soils are not significant for their ability to sustain food production, as confirmed by experienced local grower submitters, and expert witnesses for the Appellants;
- g) Chapter B6 Objectives and Policies that recognise and provide for Te Tiriti o Waitangi partnership with Ngati Te Ata, through iwi participation in the design and management of PC73. PC73 enables the mana whenua of Waiuku, which have their main marae nearby, to exercise rangatiratanga, and also for

their whanau to benefit from improved access to affordable housing within their rohe; and

- h) The Decision does not recognise the significant investment in public infrastructure in Waiuku, including wastewater by Watercare, and that development is necessary to recoup that public investment. PC73 integrates landuse and the provision of infrastructure.

62. Further reasons are outlined in the original plan change application, and in the detailed submissions and expert evidence presented during the Hearing process.

CONCLUSIONS

63. The Decision inappropriately elevated the NPS-HPL above the NPS-UD and the AUP-RPS provisions, and all have to be equally “given effect” to. No doubt because the NPS-HPL was a new policy it received more attention from the Panel, however, legally all 3 must be equally considered and applied. For example, the Decision does not explain how declining PC73 gave effect to the requirement in the RPS for a minimum of 7 years serviceable capacity.
64. The Decision did not refer back to the Act to resolve policy tensions in the relevant statutory framework (a *King Salmon* hierarchy exception). While the Requestors position is that PC73 satisfies the requirements of Policy 5 and Clause 3.6 of the NPS-HPL, the Decision found otherwise. That being the case it was incumbent on the Panel to further consider the enabling provisions for housing in both the NPS-UD and the AUP-RPS. Any inconsistency with the NPS-HPL, should have been resolved in favour of approval, if recourse had been properly made to s31(1)(aa), s32, and Part 2 of the Act.
65. The evidence demonstrates that this land was identified as being suitable for urban development over 10 years ago by the legacy Franklin District Council, the 2012 Auckland Plan nominated Waiuku for moderate change, and the PC73 land was intended to be rezoned to meet the residential needs of the employees from the 78ha LIZ area rezoned to the east of Waiuku.

66. The application for PC73 was commenced well before the release of the NPS-HPL, and while in-train public plan changes were “grandfathered”, private plan changes were not. Distinguishing the origin of a plan change in this way is arguably *ultra vires* the Act, which is largely agnostic about the source of a plan change, and applies the same merit tests, regardless of whether it is privately or publicly generated.
67. The justification for the differential procedural treatment of private and public plan changes is outlined on page 18 of the HPL Guide and is due to private plan changes allegedly being:
- “...more contentious and driven by individual landowner aspirations for land development as opposed to being considered strategically as part of wider district and urban growth planning”.*
68. This is a very questionable assumption, and ignores the public benefits of, for example, enabling over 700 households to meet their housing needs. The primary outcome of private development is that the employment and housing needs of people are met (s5). When there is insufficient development, people are homeless, or languish in temporary accommodation, as is regrettably happening in motels in Rotorua, and other towns and cities, at the current time.
69. The differential procedural treatment is also inconsistent with the provisions in the NPS-UD that require favourable consideration of unanticipated plan changes and out of sequence land release, which make a significant contribution to development capacity and a well-functioning urban environment (Policy 8 and Clause 3.8). Case law under the Act established from the outset that there is no presumption that council planning initiatives are necessarily more meritorious than private parties to meet the Purpose of the Act.
70. Having stated the position above, the submissions and evidence demonstrate that PC73 meets the requirements of the NPS-HPL, and no concession is relied upon that the NPS-HPL should not apply. The HPL Guide properly makes it clear that private plan changes for urban development can be granted on HPL (page 18).
71. As outlined above, this is not Class 1 land, rezoning was contemplated over a decade ago, planning for PC73 commenced 2 years before the NPS-HPL was gazetted, and Policy 8 of the NPS-UD must be given effect to. Therefore, the Appellants respectfully request that if the determination on appeal was finely

balanced, and came down to a matter of discretion, that it should be exercised in favour of granting PC73.

72. This meritorious plan change has been “caught” by an 11th hour change in Central Government policy (in terms of this Plan Change process) that regrettably has no transitional provision for PC73 because of a bias against private landowners. This has prejudiced the Requestors and has called into question the fairness of the overall process. If approved, PC73 can be easily distinguished from a plan change that has been lodged after the date that the NPS-HPL became operative.
73. The Decision did properly acknowledge this unfortunate predicament and the Panel had some sympathy for the applicants (par 293).
74. Having outlined the procedural concerns above, for the avoidance of doubt, and as per the section above, PC73 does satisfy all of the requirements of the NPS-HPL. It also gives effect to the NPS-UD and the AUP-RPS, and meets the requirements of Part 2 of the Act.

RELIEF SOUGHT

75. The Appellant seeks the following relief:
 - a) That the Decision be overturned, and PC73 be approved, in accordance with the grounds outlined in this appeal.
 - b) That the Plan Change provisions for the Waiuku 2 Precinct, proposed by the Requestors, following input from the Respondent (**Appendix B**), be adopted into the AUP.
 - c) Further amendments to the proposed Waiuku 2 Precinct provisions, as may be further amended by the parties, or the Court, that are consistent with the grounds for appeal.
 - d) Any relief sought by the Ministry of Education for 43 Constable Road, and its Waiuku College site, to resolve any split-zoning issue.
 - e) Costs of and incidental to this appeal.

DOCUMENTS ATTACHED

76. The following documents are attached to this notice:

- a) The Requestors/Appellants original submissions and a further submission on the Plan Change (**Appendix A**);
- b) The Requestors proposed Waiuku 2 Precinct Provisions (**Appendix B**)
- c) The Decision of the Respondent (**Appendix C**); and
- d) A list of names and addresses of persons to be served with a copy of this notice (**Appendix D**).

DATED this 26th day of April 2023



Peter Fuller
Counsel for Gardon Trust, Matoaka Holdings and Pokoura Limited

Address for service:**Peter Fuller***LLB, MPlan, DipEnvMgt, BHortSc*

Barrister

Quay Chambers

P O Box 106215

Auckland City 1143

Phone: 09 374 1651

021 635 682

Email:

peter.fuller@quaychambers.co.nz

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

You may be a party to the appeal if;

- (a) within 15 working days after the period for lodging a notice of appeal ends you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to obtain copies of documents relating to the appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

APPENDIX A
REQUESTORS ORIGINAL AND FURTHER SUBMISSIONS

From: [Unitary Plan](#)
To: [Unitary Plan](#)
Subject: Unitary Plan Publicly Notified Submission - Plan Change 73 - Conal James Dempsey
Date: Monday, 11 April 2022 6:46:00 PM

The following customer has submitted a Unitary Plan online submission.

Contact details

Full name of submitter: Conal James Dempsey

Organisation name:

Agent's full name:

Email address: conal@dempseywood.co.nz

Contact phone number: 021 967 629

Postal address:

66 Porterfield Rd

RD1 Howick ,Whitford

Auckland 2571

Submission details

This is a submission to:

Plan change number: Plan Change 73

Plan change name: PC 73 (Private): O'Hara, Waiuku

My submission relates to

Rule or rules:

Property address: Constable Road

Map or maps:

Other provisions:

Do you support or oppose the provisions you have specified? I or we support the specific provisions identified

Do you wish to have the provisions you have identified above amended? No

The reason for my or our views are:

This development will be great for the residents of Waiuku and surrounding towns

I or we seek the following decision by council: Approve the plan change without any amendments

Details of amendments:

Submission date: 11 April 2022

Attend a hearing

Do you wish to be heard in support of your submission? Yes

Would you consider presenting a joint case at a hearing if others have made a similar submission?
Yes

Declaration

Could you gain an advantage in trade competition through this submission? No

Are you directly affected by an effect of the subject matter of this submission that:

- Adversely affects the environment; and
- Does not relate to trade competition or the effects of trade competition.

No

I accept by taking part in this public submission process that my submission (including personal details, names and addresses) will be made public.

From: [Unitary Plan](#)
To: [Unitary Plan](#)
Subject: Unitary Plan Publicly Notified Submission - Plan Change 73 - TERENCE V SHORT
Date: Tuesday, 26 April 2022 10:31:05 AM

The following customer has submitted a Unitary Plan online submission.

Contact details

Full name of submitter: TERENCE V SHORT

Organisation name: TV & RP Short Family Trust

Agent's full name:

Email address: 7shorts@ps.gen.nz

Contact phone number: 0274931529

Postal address:

P O Box 57

Waiuku

Auckland 2341

Submission details

This is a submission to:

Plan change number: Plan Change 73

Plan change name: PC 73 (Private): O'Hara, Waiuku

My submission relates to

Rule or rules:

Traffic Safety

Property address: 24 - 28 Constable Rd

Map or maps:

Other provisions:

Health and Safety concerning traffic around the Waiuku College.

Do you support or oppose the provisions you have specified? I or we support the specific provisions identified

Do you wish to have the provisions you have identified above amended? Yes

The reason for my or our views are:

College parking issues.

I or we seek the following decision by council: Approve the plan change with the amendments I requested

Details of amendments: Create parking behind the school with access through the proposed subdivision.

Submission date: 26 April 2022

Attend a hearing

Do you wish to be heard in support of your submission? Yes

Would you consider presenting a joint case at a hearing if others have made a similar submission?

No

Declaration

Could you gain an advantage in trade competition through this submission? Yes

Are you directly affected by an effect of the subject matter of this submission that:

- Adversely affects the environment; and
- Does not relate to trade competition or the effects of trade competition.

Yes

I accept by taking part in this public submission process that my submission (including personal details, names and addresses) will be made public.

FURTHER SUBMISSION ON PROPOSED PLAN CHANGE 73 – O’HARA, WAIUKU AUCKLAND UNITARY PLAN

To: Auckland Council
Private Bag 92300
Victoria Street West
AUCKLAND 1142

Name of Further Submitter: Gardon Trust, Matoaka Holdings and Pokorua Limited

This is a further submission in opposition to parts of a submission on proposed Plan Change 73.

The Further Submitter has an interest in the proposal that is greater than the interest the general public has, because it is the applicant for proposed Plan Change 73.

The Further Submitter opposes parts of submission 17, lodged by **The Surveying Company Limited**, PO Box 466, Pukekohe 2340.

The particular parts of The Surveying Company Limited submission that are opposed are those parts of submission points 17.1 and 17.2 that seek to expand the plan change area.

The Further Submitter thanks The Surveying Company Limited for its support of Plan Change 73 in its current form, and agrees with the reasons for that support, but opposes those parts of the submission that seek expansion of the plan change area, for the following reasons:

- The relief sought by The Surveying Company Limited falls outside of the scope of proposed Plan Change 73;
- The expanded area that is sought has not been subject to the level of detailed investigation and specialist reporting that is required to support a rezoning of the land for urban purposes; and
- The Surveying Company Limited would be able to advance its request for urbanisation of the additional land through the upcoming review of the Auckland Unitary Plan (from 2026) or earlier through a separate private plan change application.

The Further Submitter seeks that those parts of The Surveying Company Limited submission that seek expansion of the plan change area be disallowed.

The Further Submitter wishes to be heard in support of its further submission.



Philip Brown

Campbell Brown Planning Limited

For and on behalf of Gardon Trust, Matoaka Holdings and Pokorua Limited as its duly authorised agent.

10 June 2022

Address for service of Further Submitter:

C/- Campbell Brown Planning Limited

PO Box 147001

Ponsonby

AUCKLAND 1144

Attention: Philip Brown

Telephone: (09) 394 1694

Mobile: 021845327

Email: philip@campbellbrown.co.nz

FURTHER SUBMISSION ON PROPOSED PLAN CHANGE 73 – O’HARA, WAIUKU AUCKLAND UNITARY PLAN

To: Auckland Council
Private Bag 92300
Victoria Street West
AUCKLAND 1142

Name of Further Submitter: Gardon Trust, Matoaka Holdings and Pokorua Limited

This is a further submission in opposition to a submission on proposed Plan Change 73.

The Further Submitter has an interest in the proposal that is greater than the interest the general public has, because it is the applicant for proposed Plan Change 73.

The Further Submitter opposes submission 32, lodged by **Carolyn Jordan**, 79C Hyland Place, Waiuku, Auckland 2681.

Carolyn Jordan’s submission is opposed in its entirety, but the Further Submitter opposes in particular those parts that seek to amend proposed Plan Change 73 in a way that may facilitate an expanded area of urban development (such as submission point 32.6) and those parts that challenge the proposed access arrangements to the plan change land (such as submission point 32.2).

The reasons for the Further Submitter’s opposition are set out below:

- While it is acknowledged that some consideration of urban expansion options on the western flank of Waiuku has occurred in the past, sufficiently detailed investigation and specialist reporting is not in place to support an urban rezoning at this time for land beyond the Plan Change 73 area;
- The submitter would be able to advance any request for urbanisation of additional land through the upcoming review of the Auckland Unitary Plan (from 2026) or earlier through a separate private plan change application; and
- Appropriate access to the proposed Plan Change 73 land will be provided, as confirmed by the integrated transport assessment prepared in support of the plan change application. Access proposals have the potential to significantly improve existing congestion on Constable Road that is associated with Waiuku College.

The Further Submitter seeks that the submission of Carolyn Jordan be disallowed.

The Further Submitter wishes to be heard in support of its further submission.



Philip Brown

Campbell Brown Planning Limited

For and on behalf of Gardon Trust, Matoaka Holdings and Pokorua Limited as its duly authorised agent.

10 June 2022

Address for service of Further Submitter:

C/- Campbell Brown Planning Limited

PO Box 147001

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Attention: Philip Brown

Telephone: (09) 394 1694

Mobile: 021845327

Email: philip@campbellbrown.co.nz

FURTHER SUBMISSION ON PROPOSED PLAN CHANGE 73 – O’HARA, WAIUKU AUCKLAND UNITARY PLAN

To: Auckland Council
Private Bag 92300
Victoria Street West
AUCKLAND 1142

Name of Further Submitter: Gardon Trust, Matoaka Holdings and Pokorua Limited

This is a further submission in opposition to a submission on proposed Plan Change 73.

The Further Submitter has an interest in the proposal that is greater than the interest the general public has, because it is the applicant for proposed Plan Change 73.

The Further Submitter opposes submission 37, lodged by **Kayla Jordan**, 79C Hyland Place, Waiuku, Auckland 2681.

Kayla Jordan’s submission is opposed in its entirety, but the Further Submitter opposes in particular those parts that seek to amend proposed Plan Change 73 in a way that may facilitate an expanded area of urban development and those parts that challenge the proposed access arrangements to the plan change land.

The reasons for the Further Submitter’s opposition are set out below:

- While it is acknowledged that some consideration of urban expansion options on the western flank of Waiuku has occurred in the past, sufficiently detailed investigation and specialist reporting is not in place to support an urban rezoning at this time for land beyond the Plan Change 73 area;
- The submitter would be able to advance any request for urbanisation of additional land through the upcoming review of the Auckland Unitary Plan (from 2026) or earlier through a separate private plan change application; and
- Appropriate access to the proposed Plan Change 73 land will be provided, as confirmed by the integrated transport assessment prepared in support of the plan change application. Access proposals have the potential to significantly improve existing congestion on Constable Road that is associated with Waiuku College.

The Further Submitter seeks that the submission of Kayla Jordan be disallowed.

The Further Submitter wishes to be heard in support of its further submission.



Philip Brown

Campbell Brown Planning Limited

For and on behalf of Gardon Trust, Matoaka Holdings and Pokorua Limited as its duly authorised agent.

10 June 2022

Address for service of Further Submitter:

C/- Campbell Brown Planning Limited

PO Box 147001

Ponsonby

AUCKLAND 1144

Attention: Philip Brown

Telephone: (09) 394 1694

Mobile: 021845327

Email: philip@campbellbrown.co.nz

FURTHER SUBMISSION ON PROPOSED PLAN CHANGE 73 – O’HARA, WAIUKU AUCKLAND UNITARY PLAN

To: Auckland Council
Private Bag 92300
Victoria Street West
AUCKLAND 1142

Name of Further Submitter: Gardon Trust, Matoaka Holdings and Pokorua Limited

This is a further submission in opposition to a submission on proposed Plan Change 73.

The Further Submitter has an interest in the proposal that is greater than the interest the general public has, because it is the applicant for proposed Plan Change 73.

The Further Submitter opposes submission 31, lodged by **Greg Jordan**, 79C Hyland Place, Waiuku, Auckland 2681.

Greg Jordan’s submission is opposed in its entirety, but the Further Submitter opposes in particular those parts that seek to amend proposed Plan Change 73 in a way that may facilitate an expanded area of urban development (such as submission point 31.6) and those parts that challenge the proposed access arrangements to the plan change land (such as submission point 31.2).

The reasons for the Further Submitter’s opposition are set out below:

- While it is acknowledged that some consideration of urban expansion options on the western flank of Waiuku has occurred in the past, sufficiently detailed investigation and specialist reporting is not in place to support an urban rezoning at this time for land beyond the Plan Change 73 area;
- The submitter would be able to advance any request for urbanisation of additional land through the upcoming review of the Auckland Unitary Plan (from 2026) or earlier through a separate private plan change application; and
- Appropriate access to the proposed Plan Change 73 land will be provided, as confirmed by the integrated transport assessment prepared in support of the plan change application. Access proposals have the potential to significantly improve existing congestion on Constable Road that is associated with Waiuku College.

The Further Submitter seeks that the submission of Greg Jordan be disallowed.

The Further Submitter wishes to be heard in support of its further submission.



Philip Brown

Campbell Brown Planning Limited

For and on behalf of Gardon Trust, Matoaka Holdings and Pokorua Limited as its duly authorised agent.

10 June 2022

Address for service of Further Submitter:

C/- Campbell Brown Planning Limited

PO Box 147001

Ponsonby

AUCKLAND 1144

Attention: Philip Brown

Telephone: (09) 394 1694

Mobile: 021845327

Email: philip@campbellbrown.co.nz

**APPENDIX B
REQUESTORS RELIEF
POST-HEARING WAIUKU 2 PRECINCT PROVISIONS**

I4XX Waiuku 2 Precinct

I4XX.1 Precinct Description

The Waiuku 2 Precinct comprises 32 hectares of land on Constable Road, on the western flank of Waiuku and the closest land is situated approximately 500m from the existing town centre.

The purpose of the precinct is to provide for the integrated development of a new inclusive residential community of around 700 to 900 homes, while recognising the landscape and amenity values of the site that arise from its location at the edge of the rural township of Waiuku. A suitable site for a retirement village is identified within the Precinct.

The zoning of land within this precinct is Residential - Mixed Housing Urban Zone.

All relevant overlay, Auckland-wide and zone provisions apply in this precinct unless otherwise specified below.

I4XX.2 Objectives [dp]

- (1) Subdivision and development are in accordance with Precinct Plan 1, are staged, delivered and designed to align and integrate with the provision of infrastructure and open space, and provide an appropriate transition to the rural land adjacent to the precinct.
- (2) The development potential of the land resource in the precinct is realised with a range of housing types, densities and site sizes whilst ensuring that the rural township amenity of the precinct is maintained and enhanced.
- (3) Subdivision and development in the precinct respond positively to the natural and physical features of the precinct and the land, including utilising natural drainage patterns, enhancing riparian planting, and minimising changes to the natural land contour.
- (4) A well connected, safe and efficient movement network within the precinct is provided, including connections to the wider roading and pedestrian network and to adjacent urban or recreational land.
- (5) Recreational needs of the community are met through the provision of open space areas and provision of connections to the adjacent King Street Reserve. Open space within the precinct is publicly accessible, and is either vested in Council or privately owned in perpetuity by all landowners in the precinct.
- (6) Consultation with mana whenua takes place regarding the development and management of the site.
- (7) A community garden and affordable housing are provided.
- (8) Stormwater is managed to prevent or minimise adverse effects of contaminants on

freshwater and coastal water quality and to improve biodiversity and sediment quality.

I4XX.3 Policies [dp]

- (1) Require development to take place in general accordance with Precinct Plan 1.
- (2) Enable a range of housing sizes, types and designs throughout the precinct, including provision for integrated residential development to enable retirement living.
- (3) Ensure that less intensive development is located immediately adjacent to rural land to provide for a softer transition from urban to rural land uses.
- (4) Subdivision and development provide a safe and convenient connection for walking and cycling to the reserve land adjoining the north-east boundary of the precinct, and provide a positive frontage to the reserve land.
- (5) Ensure mana whenua are consulted over the development and management of the Indicative Open-space Reserve, the Indicative Greenway Connection, and the Gateway Area, and the naming of streets and places.
- (6) Ensure a community garden is provided as part of the Indicative Open-space Reserve.
- (7) Require a proportion of all housing to be affordable.
- (8) Enable a community that models sustainability, particularly the principles of passive solar design, energy efficiency, and sustainable water management.
- (9) Mitigate adverse effects of stormwater runoff on freshwater systems, freshwater and coastal waters during new development and redevelopment within the Precinct by all of the following:
 - (a) Requiring measures to reduce contaminants, particularly from roads.
 - (b) Requiring measures to reduce the discharge of gross stormwater pollutants.
 - (c) Application of water sensitive design to achieve water quality and hydrology mitigation.
 - (d) Ensuring that all impervious surfaces are treated through a 'treatment train' approach to enhance water quality and protect the health of stream and marine environments.
 - (e) Seeking integrated improvements to water quality, habitat and biodiversity.
 - (f) Ensuring an integrated stormwater management approach is undertaken during subdivision and development.
 - (g) Ensuring intensification is supported by appropriate stormwater infrastructure, including natural assets that are utilised for stormwater conveyance and

overland flow paths.

- (h) Ensuring whole of life costs and maintenance access is considered when designing stormwater devices.
- (10) Require subdivision and development to achieve a sustainable transport network that connects to the wider transport network in Waiuku, and the existing Waiuku Town Centre by:
- (a) Ensuring the road travelling between Constable Road and the greenway of the precinct is provided to a Collector standard.
 - (b) Ensuring a clear and legible walking and cycling connection to the Recreation Fields is provided within the precinct.
 - (c) Ensuring that vehicle access to Constable Road is avoided where subject to a Vehicle Access Restriction, and that development creates an appropriate interaction to this road.
 - (d) Requiring that necessary upgrades to footpaths and a safe crossing point are constructed to the west of the Waiuku College prior to, or at the same time, as development.
 - (e) Ensuring that the frontages of the precinct to Constable Road are upgraded to an urban standard, and that a pedestrian connection to the western end of Constable Road is achieved prior to, or at the same time, as development.
 - (f) Ensuring roads within the precinct are developed with a design that reflects the function of each road (as shown on the Precinct Plan and in associated Road Function and Design Elements Table), and that provides for cycling and public transport infrastructure on key routes, while acknowledging any site-specific constraints that might apply.
- (11) Require subdivision and development to be staged to align with the availability of bulk wastewater and water infrastructure.

I4XX.4 Activity table

All relevant overlay, Auckland-wide and zone activity tables apply unless the activity is specifically provided for by a rule in Activity Table I4XX.4.1 below.

Activity Table I4XX.4.1 specifies the activity status of land use, development and subdivision activities in the Waiuku 2 Precinct pursuant to sections 9(3) and 11 of the Resource Management Act 1991.

Where a blank cell or no activity status has been included in the activity status column, the activity status is to be determined on the basis of the applicable overlay, Auckland-wide or zone activity rules and the relevant standards to be complied with for the activity unless otherwise stated in section I4XX.6 below.

Table I4XX.4.1 Activity table

Activity		Activity status
Use		
(A1)	Up to three dwellings per site	
(A2)	Four or more dwellings per site	
(A3)	The conversion of a principal dwelling existing as at 30 September 2013 into a maximum of two dwellings	
(A4)	Integrated Residential Development	
(A5)	Dwellings or Integrated Residential Development that do not meet the standards I4XX.6.1.1, I4XX.6.1.2, I4XX.6.1.4, I4XX.6.1.5, and I4XX.6.1.7	D
Subdivision		
(A6)	Subdivision	
(A7)	Subdivision that is not in general accordance with Precinct Plan 1	D
(A8)	Subdivision within the Indicative Retirement Village Area identified on Precinct Plan 1 that is not for the purpose of establishing a retirement village	D
(A9)	Subdivision that is not in accordance with Standards I4XX.6.2.1, I4XX.6.2.2, I4XX.6.2.3, I4XX.6.2.4, and I4XX.6.2.5	D
Development		
(A10)	New buildings and additions to buildings	
(A11)	New buildings and additions to buildings that do not comply with Standard I4XX.6.1.9	RD
(A12)	Internal and external alterations to buildings	
(A13)	Accessory buildings	
(A14)	Additions to an existing dwelling	
(A15)	New buildings and additions to buildings that do not comply with standards I4XX.6.1.1 and I4XX.6.1.2	D
(A16)	Internal and external alterations to buildings that do not comply with standards I4XX.6.1.1 and I4XX.6.1.2	D
(A17)	Accessory buildings that do not comply with standards I4XX.6.1.1 and I4XX.6.1.2	D
(A18)	Additions to an existing dwelling that do not comply with standards I4XX.6.1.1 and I4XX.6.1.2	D
(A19)	Development that does not comply with Standard I4XX.6.1.8	RD
(A20)	Development that does not comply with Standard I4XX.6.1.6(1)	NC
(A21)	Development that does not comply with Standard I4XX.6.1.6(2)	D
(A22)	Development that does not comply with Standard I4XX.6.1.3	D

I4XX.5 Notification

- (1) Any application for resource consent for an activity listed in Activity Table I4XX.4.1 above will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (2) When deciding who is an affected person in relation to any activity for the purpose of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

I4XX.6 Standards

- (1) All Auckland-wide and zone standards apply to all activities listed in Activity Table I4XX.4.1 above.
- (2) Permitted and Restricted Discretionary Activities must comply with the activity standards in I4XX.6.1 below.
- (3) Subdivision must comply with the standards in I4XX.6.2 below.

I4XX.6.1 Permitted and Restricted Discretionary Activity Standards

I4XX.6.1.1 Direct Vehicular Access to Constable Road

Purpose: To reinforce the landscape threshold between town and country when entering or leaving Waiuku via Constable Road while ensuring acceptable urban design outcomes.

- (1) No direct vehicular access to Constable Road shall occur from any dwelling or site located within the Vehicle Access Restriction Boundary shown on Precinct Plan 1.
- (2) All retaining walls constructed adjacent to the Vehicle Access Restriction must not exceed 1m in height above the road reserve.
- (3) Any fencing constructed adjacent to the Vehicle Access Restriction, must be visually permeable fencing with no more than 25% solid materials as viewed perpendicular to the boundary.

I4XX.6.1.2 Rural Buffer Boundary

Purpose: To minimise the potential landscape and reverse sensitivity effects of urban development adjoining rural zones.

- (1) One dwelling per site within the Rural Buffer Boundary.
- (2) A minimum 10m wide planted strip shall be established and maintained immediately adjacent to any boundary with a site in the Rural - Mixed Rural Zone or to a boundary with Constable Road that is south of the roundabout. The planted strip must comprise a mixture of trees, shrubs or ground cover plants (including grass) within and along the full extent of the strip within the site, other than any provision for a pedestrian/cycling path.

I4XX.6.1.3 Frontage Boundary to Recreation Reserve

Purpose: to ensure passive surveillance of the recreation reserve from adjoining houses and avoid solid high fences on the boundary with the reserve.

- (1) Any fence on or within 1.5m of the boundary of the Recreation Reserve must have no more than 25% of solid materials by surface area and be no more than 800mm in height.

I4XX.6.1.4 Affordable Housing

Purpose: to ensure the provision of a significant proportion of housing at a relatively affordable price point.

- (1) Not less than 20% of dwellings shall be sold for no more than 70% of the median regional house price.
- (2) The calculation of the 70 percent of the Auckland region median house price shall be calculated as an average of 3 calendar months previous figures published by the Real Estate Institute of New Zealand prior to the date the application for 224c is lodged with council or Code Compliance Certificate for the dwelling is achieved (being whichever comes first).

If the application is only for a subdivision consent, the applicant must identify the sites of the subdivision allocated for the building of affordable dwellings and must specify the mechanism (consent notice for example) for ensuring that the combined value of the building and the land upon completion will meet that criterion or is a building associated with such a dwelling.

- (3) Eligible purchasers are limited to households earning up to 120% of the average regional income.
- (4) All resource consent applications requiring the provision of affordable dwellings/vacant sites must be accompanied by details of the location, number and percentage of affordable dwellings/vacant sites.

I4XX.6.1.5 Community Garden

Purpose: to provide an area of land for a community garden within the precinct, to recognise the productive heritage of Waiuku, and foster relationships between mana whenua, new residents, school students and the wider community.

- (1) The area for the community garden is to be shown on the scheme plan of subdivision and shall be no less than 500m².
- (2) The land for the community garden is to be retained in perpetuity.
- (3) The long-term governance structure and management of the community garden is to be confirmed at the time of subdivision.

I4XX.6.1.6 Transport Infrastructure

Purpose: to ensure that appropriate local transport infrastructure is constructed prior to or at the same time as development to provide for pedestrian movement on Constable Road, manage vehicle speeds on Constable Road, to facilitate the provision of public transport to serve residents and ensure cycling connections to Waiuku Town Centre and other destinations.

- (1) The following transport upgrades must be constructed, and be operational, prior to lodgement of any resource consent application for a residential activity within the precinct:
 - (a) The Constable Road roundabout, shown on Precinct Plan 1, must be designed to accommodate the tracking of a standard bus, and meet the sightline distances required by AustRoads Guide to Road Design (Part 4b Section 3.2) or any subsequent revisions. Any land required for the roundabout, which exceeds the width of the current road reserve, must be vested from land within the precinct. The roundabout shall have a 14m diameter central island and be designed to reduce traffic speed to 30km/h. Tracking for a 12.6m bus is to be provided.
 - (b) Upgrade Constable Road to an urban standard including a footpath from the northern boundary of the precinct's Constable Road frontage to the pedestrian entrance to Waiuku College.
 - (c) A bus stop (excluding shelter) shall be established at an appropriate location within Constable Road, to the north of the roundabout.
 - (d) A raised zebra pedestrian crossing point must be established in Constable Road between O'Sullivan Place and the Waiuku College entrance.
 - (e) Transport connections must be provided as follows:
 - (i) A public walking and cycling link must be constructed within the Indicative Greenway Connection shown on the precinct plan to the boundary of the Recreation Fields that enables a future link to the intersection of King Street and Queen Street, and
 - (ii) If the link through the Recreation Fields is not constructed, a suitable cycling facility must be provided on Constable Road from the precinct connecting to Waiuku Town Centre via Leonard Street.
 - (f) The full Constable Road frontage of the precinct, west of the proposed roundabout, must be upgraded to public standard, including a footpath, lighting, and tree planting.
- (2) Applications for resource consent will be deemed to meet subclause (1) if the corresponding infrastructure is:
 - (a) Constructed and operational prior to lodgement of the resource consent application; or
 - (b) Proposed to be constructed by the applicant as part of the resource consent application or under construction at the time of the lodgement of the resource consent application, and the application is made on the basis that the relevant transport upgrades will be completed and operational prior to:
 - i. The issue of a s224(c) certificate in the case of a subdivision consent

- application; and/or
- ii. The occupation of any dwellings or other proposed land uses in the case of a land use consent application; and
 - iii. The application expressly includes conditions offered on an *Augier* basis confirming that the requirements set out in (i) or (ii) will be met.

I4XX.6.1.7 Sustainable Design

Purpose: ensure new dwellings adopt minimum sustainable design measures to provide cost, comfort and health benefits to their occupants, and sustainability benefits to the wider community.

- (1) All new dwellings that contain a garage or dedicated parking space are to be wired to provide for electric vehicle charging capability (the actual charging equipment need not be installed in order to achieve this standard). In relation to external parking spaces, wiring for electric vehicle charging capability must be provided to either the parking space or to the external wall of the dwelling.
- (2) All new dwellings are designed to achieve a calculated or modelled Building Performance Index value at 1.2 or lower using an acceptable method for calculating compliance with H1 of the New Zealand Building Code.
- (3) All new dwellings (excluding apartments), have a solar or heat pump hot water system installed, or an alternative system that achieves a minimum of 5.5 stars applying the Energy Efficiency and Conservation Authority Water Heating Assessment Tool or a similar objective standard.
- (4) All new dwellings shall be provided with photovoltaic panels and supporting infrastructure sufficient to derive more than 50% of the dwelling's power requirements from that source.
- (5) All new dwellings are designed to have non-potable water requirements (for toilets, laundry and gardens) supplied by rainwater tanks (or bladders) sized in accordance with the requirements of the Precinct Stormwater Management Plan, summarised in the table below. Rain tank/bladder capacity for attached housing and apartment typologies can be provided in either individual or as communal rainwater systems; and
- (6) All new dwellings are fitted with water efficient fixtures, to a minimum 3 Star standard (under the Water Efficiency Labelling Scheme (WELS)).

Table I4XX.6.1.7.1 Stormwater Reuse/Retention/Detention Requirements

Area B (underlain by peat soil)	recharge pits to take first 15mm of rainfall.
Area B (not underlain by peat soils)	1.5m ³ /100m ² impervious area retention/reuse tank.
Area C	Combined 3m ³ retention and 2m ³ detention tanks
Area D	Combined 4m ³ retention and 1m ³ detention tanks.

Note: These areas are shown on Fraser Thomas drawing 32897/203 Rev B. The locations of the peat soils areas will be refined during the subdivision consent process.

I4XX.6.1.8 Stormwater Management

Purpose: To ensure an integrated stormwater management approach has been adopted as part of development of the precinct, and that stormwater related effects are appropriately mitigated.

- (1) Stormwater runoff from all impervious areas other than roofs must be either:
 - (a) treated at-source by a stormwater management device or system that is sized and designed in accordance with 'Guidance Document 2017/001 Stormwater Management Devices in the Auckland Region (GD01)'; or
 - (b) treated by a communal stormwater management device or system that is sized and designed in accordance with 'Guidance Document 2017/001 Stormwater Management Devices in the Auckland Region (GD01)' that is designed and authorised to accommodate and treat stormwater from the site; or
 - (c) treated by an approved alternative device that must be demonstrated as being designed to achieve an equivalent level of contaminant or sediment removal performance.

I4XX.6.1.9 New buildings and additions – High Contaminant Yielding Materials

Purpose: To protect water quality in streams by avoiding the release of contaminants from building materials

- (1) New buildings, and additions to buildings must be constructed using inert cladding, roofing and spouting building materials that do not have an exposed surface made from contaminants of concern to water quality (i.e. zinc, copper and lead).

I4XX.6.2 Subdivision Standards

The subdivision controls in E38, Subdivision Urban apply in this precinct, with the following additional standards specified below:

I4XX.6.2.1 Minimum Size of Lot Adjoining Rural Zones

Purpose: To provide for larger lots adjoining rural zones to ensure a less abrupt transition between urban and rural landscapes.

- (1) The minimum net site area for any residential lot immediately adjoining a rural zone shall be 700m².

I4XX.6.2.2 Riparian Planting

Purpose: To ensure that the riparian margins of permanent or intermittent natural watercourses are planted.

- (1) The riparian margins of permanent or intermittent natural streams (excluding artificial drainage channels) must be planted to a minimum width of 10m measured from the top of the stream bank.
- (2) Planting shall be undertaken in accordance with a riparian planting plan approved by Council as part of an application for subdivision consent, or alternatively prepared in accordance with the guideline set out in Appendix 16 of the Auckland Unitary Plan.

I4XX.6.2.3 Road construction standards

Purpose: To identify the functional requirements for roads within the precinct and ensure roads are constructed to an appropriate design standard.

- (1) All roads to be vested shall be constructed to a design in accordance with the table at Attachment A.

I4XX.6.2.4 Infrastructure staging standards

Purpose: To ensure that subdivision is integrated with the provision of appropriate infrastructure.

- (1) Subdivision of residential lots (excluding superlots) cannot occur prior to the South Western Wastewater Plant becoming operational.
- (2) Subdivision of residential lots (excluding superlots) cannot occur prior to the Waiuku Water Treatment Plant becoming operational.

I4XX.6.2.5 Infrastructure Capacity

Purpose: To ensure that there is sufficient infrastructure capacity in place at the time of development and that flooding risks are not exacerbated further downstream.

- (1) Discharge of stormwater runoff towards the direction of Constable Road cannot occur until the necessary stormwater infrastructure is in place in Constable Road and vested to Council or until appropriate mitigation exists.

I4XX.7 Assessment – controlled activities

There are no controlled activities in this precinct.

I4XX.8 Assessment – restricted discretionary activities

Matters of Discretion

- (1) For all subdivision and development
 - (a) Stormwater and Flooding
 - (b) Servicing
 - (c) Effects on the transport network and active modes
- (2) For subdivision and development that does not comply with Standard I4XX.6.1.8 Stormwater Management
 - (a) Matters of discretion E9.8.1(1) apply

I4XX.8.1 Assessment Criteria

- (1) Stormwater and Flooding
 - (a) Whether development and/or subdivision is in accordance with the approved Stormwater Management Plan and policies E1.3(1) – (16)
 - (b) Whether the proposal for development and/or subdivision provides sufficient floodplain storage, including attenuation storage, within the precinct to avoid increasing flood risk within the receiving environment (particularly the residential block contained by Martyn Street-Breaker Grove-Constable Road-Leonard Street) and King Street to the north from 10 year ARI to 100 year ARI events, and minimise increased flood risk within the precinct.
 - (c) Whether there is sufficient infrastructure capacity to provide for flood conveyance and protect land and infrastructure.
 - (d) The design and efficiency of infrastructure and devices (including communal devices) with consideration given to the likely effectiveness, whole lifecycle costs, ease of access and operation and integration with the built and natural environment.
- (2) Servicing
 - (a) Whether there is sufficient capacity in the existing or proposed utilities network, and public reticulated water supply, wastewater and stormwater network to service the proposed development having particular regard to infrastructure capacity.
 - (b) Where adequate network capacity is not available, whether adequate mitigation or staging is proposed including being consistent with an integrated stormwater management approach.

(3) For subdivision and development that does not comply with Standard I4XX.6.1.8 Stormwater Management

(a) Assessment criteria E9.8.2(1) apply.

(4) Transport and Active Modes

- (a) The effects on the function and the safe and efficient operation of the transport network including pedestrian movement, particularly at peak traffic times;
- (b) The implementation of mitigation measures proposed to address adverse effects which may include measures such as travel planning, providing alternatives to private vehicle trips including accessibility to public transport, staging development, or contributing to improvements to the local transport network; or
- (c) The trip characteristics of the proposed activity on the site.
- (d) Safety, quality and passive surveillance of the greenway connections.

I4XX.9 Special information requirements
















There are no special information requirements in this precinct.

I4XX.10 Precinct plans

I4XX.I0.1: Precinct Plan 1 – Precinct Plan



KEY

-  Precinct Area
-  Indicative Open-space Reserve
-  Indicative Retirement Village Area
-  Rural Buffer Boundary (10m)
-  Rural Buffer and Indicative Walkway Boundary (10m)
-  22m Collector w. Cycle-lane
-  Indicative Road Circulation and Connections
-  Indicative Greenway Walking and Cycling Connection
-  Frontage Boundary to Recreation Reserve
-  Vehicle Access Restriction Boundary
-  Footpath
-  Traffic Calming
-  Pedestrian Crossing (indicative location)
-  Escarpment Edge Feature
-  Roundabout



rev	date	details	by
D	29/10/2022	added Collector, cycleway and modal filter	tk
E	21/11/2022	Final - minor annotation alts	tk
F	1/12/2022	added footpath along Constable boundary	tk

APPENDIX C
AUCKLAND COUNCIL DECISION ON PC73

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

Proposal

To rezone approximately 32.5 hectares of land on 43, 45A, 92 and 130 Constable Road, Waiuku from Rural – Mixed Rural Zone to Residential – Mixed Housing Urban Zone and to introduce a new precinct within the Auckland Unitary Plan (Operative in part).

This plan change is REFUSED. The reasons are set out below.

Private Plan Change:	Plan Change 73 - O'Hara, Waiuku
Applicant:	Gardon Trust, Matoaka Holdings, and Pokorua Limited
Hearing commenced:	Monday, 7 November 2022 to Thursday, 8 November 2022 (and Thursday, 10 November 2022 if required), 9.30 a.m.
Hearing panel:	Robert Scott (Chairperson) Nigel Mark-Brown Helen Mellsop
Appearances:	<p><u>For the Applicant:</u> Peter Fuller - Legal Submissions Terry Short - Applicant Donna Goettler - Applicant Conal Dempsey - Applicant and Submitter Tim King - Urban Design Simon Cocker - Landscape Architecture Ian Munro - Urban Design Dr Peter Singleton – Soils and Land Use Capability Paul Sharp – Productivity James Allen – Productivity Sarah Flynn – Ecology John Parlane – Traffic and Transportation Adam Thompson – Economics and Capacity Fraser Colegrave – Economics Vaughan Crang – Engineering Dr Sean Finnigan – Engineering Philip Brown – Planning</p> <p><u>For the Submitters:</u> Ann-Maree Gladding for Tripp Andrews Surveyors Roimata Minhinnick for Ngāti Te Ata Waiohua Todd Black for TDM Craig Libscombe for Designmax Bruce Bonner for IMG Mark Ball</p>

	<p>Graham Windross for Baseline Vanessa Newman for Waiuku Business and Development Association Melaina Voss for Watercare Stuart Kelly for Waiuku College Auckland Transport represented by,</p> <ul style="list-style-type: none"> - Jason Ashby – Corporate - Paul Schischka – Transport - Scott Macarthur – Planning <p>Auckland Council as Submitter represented by,</p> <ul style="list-style-type: none"> - Ryan Bradley – Planning - Alex Cumming – Legal - Karen Foster – Infrastructure <p><u>For Council:</u> Chloe Trenouth, Planner Martin Peake, Traffic Engineer David Russell, Development Engineer Lisa Mein, Urban Designer Lea van Heerden, Parks Planner Rob Pryor, Landscape Architect Derek Foy, Economist Reece Hill, Soil Scientist Stuart Ford, Rural Productivity Specialist, Nick Somerville, Kaitohutohu Whakawātanga Hearings Advisor</p>
Hearing adjourned	Friday, 25 November 2022
Commissioners’ site visit	Thursday, 10 November 2022
Hearing Closed:	Monday 12 December 2022

Executive Summary

1. We have set out our key findings on this Plan Change application (**PC 73**) at a high level. This provides the context for reading the substantive decision below.
2. We would like to thank all the participants for their evidence and conduct in this hearing and for the cordial approach taken during the proceedings. We appreciated the quality of the evidence and submissions received from professional experts, lay submitters and the support/hearing management we received from Mr Nick Somerville (Hearings Advisor).
3. Our key findings are:
 - a. PC 73 would improve the terrestrial and freshwater ecological values within the site and the aquatic receiving environment;
 - b. The land is suitable for urban development from a geotechnical perspective;

- c. Proposed stormwater management would avoid, remedy or mitigate potential adverse effects on the Rangiwheia Stream, and the proposed stormwater pipeline along Constable Road would likely have a positive effect in reducing the current extent of flooding in the Breaker Grove area;
- d. Wastewater and water supply can be ensured through alignment of development stages with planned wastewater and water supply upgrades in the Waiuku area;
- e. Transportation effects could be appropriately managed through the subdivision and development process and through the various mechanisms to ensure roading upgrades in the proposed Precinct provisions, which include a number of agreed triggers for transport and the implementation of infrastructure;
- f. The boundaries of the Plan Change area are not based on defensible natural features but landscape and visual amenity impacts can be adequately mitigated by the reduced residential density and proposed landscape buffers at the proposed new rural/urban boundaries;
- g. PC 73 would result in acceptable urban design outcomes and would result in a well-functioning urban environment;
- h. PC 73 has some significant merits in terms of urban design, provision for infrastructure, management of natural hazards and transportation and is consistent with these chapters of the Regional Policy Statement (RPS). However, it has some significant inconsistencies with regard to the permanent loss of prime soils and other productive land. Overall, it is inconsistent with the RPS;
- i. We are not satisfied that the Requestor has demonstrated that PC 73 satisfies the criteria of Clause 3.6 of the NPS-HPL, with regard to allowing urban rezoning of highly productive land. In particular, we find that the Requestor has not demonstrated:
 - Whether there is sufficient existing development capacity to meet demand for housing; and
 - The environmental, social, cultural and economic costs and benefits of rezoning.

As a consequence, PC 73 fails under objective 1 and policy 5 of the NPS-HPL;

- j. Overall, PC 73 has not been developed in accordance with the relevant statutory and policy matters with regard to the protection of prime soils and highly productive land now and for future generations. Pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, the Plan Change is declined.
- k. 46.3% of the Plan Change area is land containing prime soils, as defined in the Auckland Unitary Plan (Operative in Part) (**AUP**), and 91% of the land is Highly Productive Land under the National Policy Statement – Highly

Productive Land (**NPS-HPL**). The loss of prime soils and highly productive land would have significant adverse effects on the environment and on the options for future generations with regard to food supply;

- I. Positive effects of PC73 include increased economic activity and employment, improved housing affordability and choice, provision of retirement living in Waiuku, flooding mitigation to adjacent land and improved ecological values;
- m. With the exception of its adverse effects on prime and highly productive soils, PC73 is consistent with the National Policy Statement – Urban Design and would achieve a well-functioning urban environment;

Introduction

- 4. This decision is made on behalf of the Auckland Council (**Council**) by Independent Hearing Commissioners Robert Scott (Chairperson), Nigel Mark-Brown and Helen Mellsop (Commissioners) appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (**RMA**).
- 5. The Commissioners have been given delegated authority by the Council to make a decision on Private Plan Change 73 – O’Hara, Waiuku (**PC 73**) to the Auckland Council Unitary Plan Operative in Part (**Unitary Plan**) after considering all the submissions, the section 32 evaluation, the reports prepared by the Council officers for the hearing, and evidence presented during and after the hearing of submissions.
- 6. PC 73 is a private plan change that has been prepared following the standard RMA Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as also enabled under the RMA).
- 7. The plan change was publicly notified on 24 March 2022 following a feedback process involving Iwi, as required by Clause 4A of Schedule 1. Notification involved a public notice as well as letters to directly affected landowners and occupiers alerting them to the plan change. The latter step was aimed at ensuring that landowners and occupiers of properties affected by potentially significant changes were made aware of the proposal.
- 8. A summary of submissions was notified for further submissions on 26 May 2022. A total of 59 submissions and 16 further submissions were made on the plan change.

SUMMARY OF PLAN CHANGE

The site and surrounding area

- 9. Section 3 of the Plan Change Request (**Request**) includes a description of the land subject to the Request and its surrounding environment. By way of summary PC 73 relates to 32.5ha of land located on the south-western edge of Waiuku at 43, 45A, 92 and 130 Constable Road (**plan change area**).
- 10. The plan change land is located approximately 800m from the Waiuku town centre on the northern side of Constable Road adjoining the urban edge of the township.

The Waiuku rugby grounds adjoin the plan change area to the north-east and Waiuku College immediately to the east. Surrounding land to the east along Constable Road is largely residential in the vicinity of the site, transitioning to business activities along the southern side of Constable Road opposite the college. Surrounding land to the west and south is largely pastoral farmland with some established horticultural activity to the north-west and south-west (along Constable Road). Approximately 500m south along Constable Road is the southern boundary between the Auckland and Waikato regions.

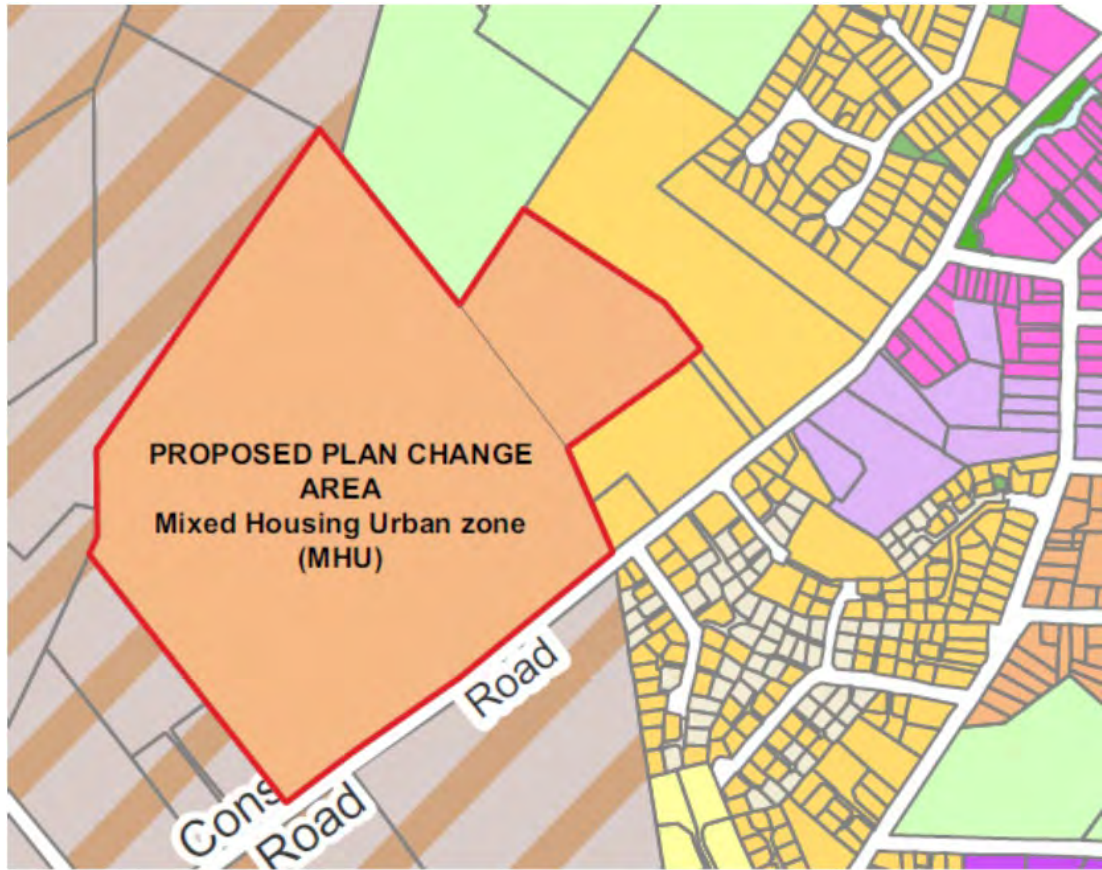


Figure 1 - Proposed zoning sought by PC 73

11. Waiuku is a rural town located at the southern end of the Waiuku River, which is an estuarial arm of the Manukau Harbour, and lies on the isthmus of the Āwhitu Peninsula. It is 40km southwest of Auckland city centre and 20km west of Pukekohe. The town has a resident population of 8,319. Waiuku is an established town and currently accommodates a range of land uses including residential, business, and industrial and provides a variety of social infrastructure such as primary and secondary schools, medical centres, shops and supermarkets.
12. As set out in the Council section 42A hearing report prepared by Chloe Trenouth (**hearing report**), the plan change area is contained within four individual records of title and it comprises a range of rural and residential activities including dry stock grazing, residential, and ancillary agriculture buildings. Topography across the plan change area is mainly flat to undulating pastoral farmland with rolling sides which dip towards Constable Road in the south and a tributary of the Rangiweha Stream in the northwest. The predominant vegetation cover is pasture, with small groups of exotic amenity plantings and trees around the edge of the existing dwellings and

farm buildings at 92 and 130 Constable Road. The four sites sit within the following three areas:

- a. 92 and 130 Constable Road (28.95 ha) - pastoral and used for dry stock grazing, with one dwelling located on each of the sites alongside some agricultural buildings.
 - b. 45A Constable Road (3.36 ha) – recently earthworked as part of a two-stage residential vacant lot subdivision on 45 Constable Road.
 - c. 43 Constable Road – relates to a small slither of land along the south-western boundary of 43 Constable Road (Waiuku College School) that is zoned Mixed Rural.
13. Under the provisions of the Unitary Plan the entire plan change area is zoned Rural – Mixed Rural Zone (**RMR Zone**).
 14. The plan change area is identified within the New Zealand Land Resource Inventory (**NZLRI**) as containing Land Use Capability (**LUC**) Class 2 soils. Under the National Policy Statement – Highly Productive Land (**NPS-HPL**) the plan change area contains highly productive land. We discuss both these aspects in detail later in this decision.
 15. The plan change area is situated within the Rangiwheia Creek catchment and includes some small areas of flood plain associated with existing streams and overland flow paths. A tributary to the Rangiwheia Stream traverses the western corner of the plan change area on 130 Constable Road.
 16. The commissioners visited the plan change area and the surrounding Waiuku environment on Thursday, 10 November 2022.

The Plan Change Request

17. The proposed plan change is described in detail in the PC 73 Request, the hearing report and the various statements of evidence from the Requestor. These are all available on the Council website. Without repeating this in detail, a summary of key components of the plan change is set out below.
18. The Requestor seeks that the plan change area be rezoned from RMR Zone to Residential – Mixed Housing Urban Zone (**MHU Zone**). The Request also includes a precinct and precinct plan with specific provisions to guide development and trigger the construction or implementation of necessary infrastructure. The Proposed precinct (Waiuku 2 Precinct) has the stated purpose: *to provide for the integrated development of a new residential community of around 700 homes, while recognising the landscape and amenity values of the site that arise from its location at the edge of the rural township of Waiuku*. During the process of the hearing the precinct provisions changed in response to evidence and questions from the Commissioners. At the close of the hearing the precinct included the following components:

- No direct vehicular access to Constable Road south of the main roundabout entry to the development;
- A 10m wide planted strip to be established and maintained immediately adjacent to any boundary with a site in the RMR Zone or to a boundary with Constable Road that is south of the roundabout;
- Not less than 20% of dwellings to be sold for no more than 70% of the median regional house price (Affordable housing);
- Provision of a 500m² community garden;
- An upgrade of Constable Road to an urban standard including a new roundabout, a bus stop, and public and cycling links;
- “Sustainable Design” standards providing for electric vehicle charging capability, compliance with H1 (Energy Efficiency) of the Building Code, solar or heat pumps, solar panels, and non-potable water infrastructure for toilets laundry and gardens;
- Stormwater management devices and mitigation of existing flooding hazards;
- Riparian planting of stream margins;
- An indicative open space reserve, rural buffer boundary, indicative roads, indicative greenway connection, frontage boundary to a recreation reserve, vehicle access restriction boundary, and a gateway area; and
- An “indicative retirement village” comprising 6.1 ha.

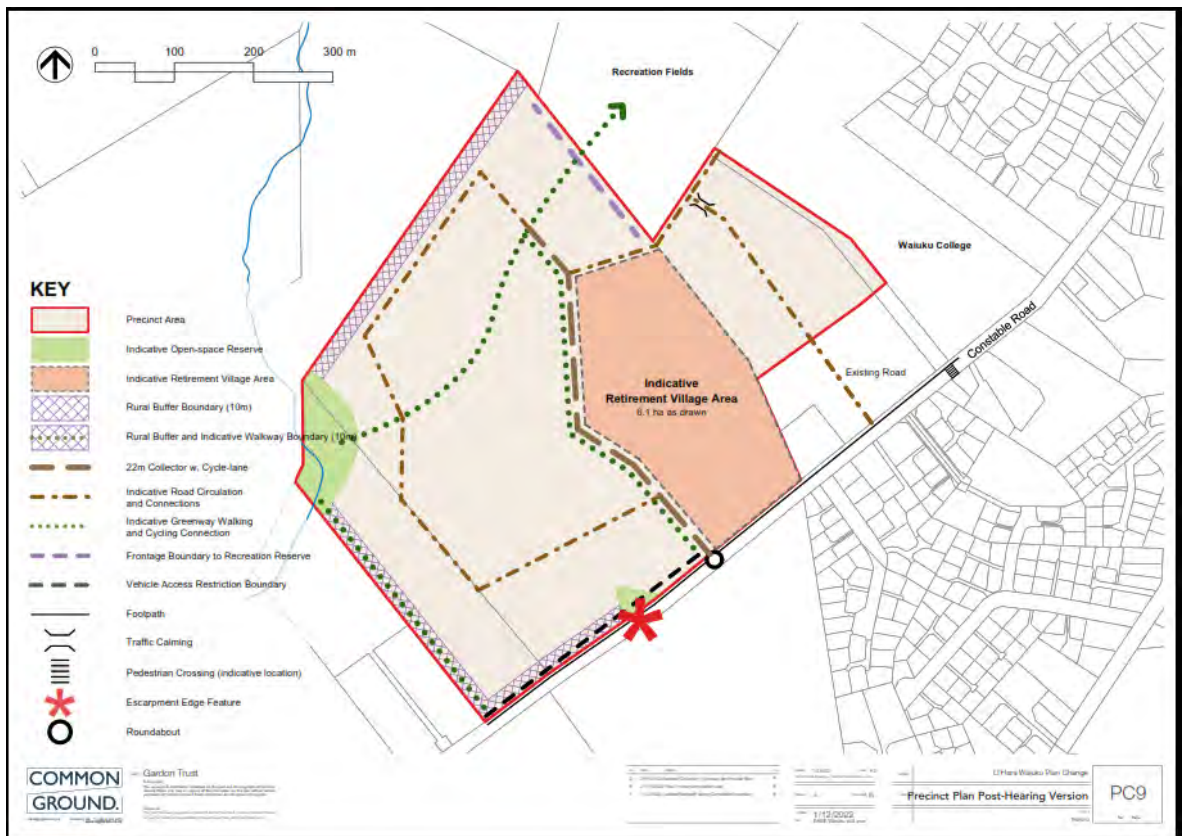


Figure 2 - PC 73 Proposed Precinct Plan (final version)

HEARING PROCESS

19. All expert evidence of the Applicant and submitters was pre-circulated (via the Council's website) and pre-read by the Commissioners prior to presentation. Unfortunately, the Requestor's legal counsel (Peter Fuller) was infected by Covid-19 immediately prior to the start of the hearing and his submissions were read, at very short notice, by the Requestor's planner Philip Brown. We are grateful to Mr Brown for stepping into the role of Mr Fuller to read the legal submissions and competently co-ordinate and manage the presentation of the Requestor's case. While Mr Fuller took no part in the presentation of the Requestor's evidence and evidence of submitters, he was fortunately well enough recovered to present closing submissions.
20. The hearing of evidence was conducted at the Pukekohe War Memorial Town Hall on 7, 8 and 10 November 2022 with the Council response to evidence and the Requestor's closing submissions held at the Auckland Town Hall on 25 November 2022.

PROCEDURAL MATTERS AND LATE SUBMISSIONS

Late Submissions

21. There were no late submissions received by the Council.

Qualifications of Mr Bradley and Foy

22. In his reply submissions, Mr Fuller questioned the weight to be given the evidence of Mr Bradley and Mr Foy regarding housing capacity evaluation¹. While Mr Bradley states in his evidence that he is not an expert economist with regard to his evidence on this aspect of the plan change, Mr Foy presented evidence on this matter as an economics expert. Mr Fuller submitted that while it is acknowledged that Mr Foy has experience, he is not formally qualified as an economist. The inference that we took from this statement is that greater weight should be afforded to the Requestor's experts (Mr Thompson and Mr Colgrave who are qualified economists) and less weight given to the evidence of Mr Foy.
23. Our understanding of what qualifies a person to be an expert or to provide expert evidence relates to having either specialised knowledge or skills and experience based on training and qualifications. While Mr Foy does not have a recognised qualification that would allow him to call himself an economist, we note that he has a BSc in Geography and an LLB from the University of Auckland. He states in his summary statement that he has 22 years consulting and project experience, working for commercial and public sector clients. He also states that he specialises in retail analysis, assessment of demand and markets, the form and function of urban economies, the preparation of forecasts, and evaluation of outcomes and effects, and that he has applied these specialties in studies throughout New Zealand, across

¹ Para 9.6 Requestor Reply Submission P Fuller

most sectors of the economy, notably assessments of retail, urban form, land demand, commercial and service demand, housing, tourism and local government.

24. On that basis, while not strictly an economist, we are satisfied that he has considerable and relevant skills and expertise to advise us on housing capacity matters and other areas relating to housing supply and demand.

RELEVANT STATUTORY FRAMEWORK

25. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. As set out in the hearing report it was agreed that the mandatory requirements for plan preparation are as summarised in *Long Bay-Okura Great Park Society Inc v North Shore City Council*² with updates made from *Colonial Vineyard Ltd v Marlborough District Council* as set out in Mr Fullers legal submissions³. In summary, therefore, the relevant statutory requirements for the plan change provisions include:
- a. whether they are designed to accord with and assist the Council to carry out its functions for the purpose of giving effect to the Resource Management Act 1991;
 - b. whether they accord with Part 2 of the RMA;
 - c. whether they give effect to the regional policy statement;
 - d. whether they give effect to a national policy statement;
 - e. whether they have regard to the Auckland Plan (being a strategy prepared under another Act);
 - f. whether the rules have regard to the actual or potential effects on the environment including, in particular, any adverse effect.
26. Under s32 of the Act we must also consider whether the provisions are the most appropriate way to achieve the purpose of the plan change and the objectives of the Unitary Plan by:
- a. identifying other reasonably practicable options for achieving the objectives; and
 - b. assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:
 - i. identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:

² Long Bay-Okura Great Park Society Inc v North Shore City Council NZEnvC Auckland A78/08, 16 July 2008 at [34].

³ Colonial Vineyard Ltd v Marlborough District Council [2014] NZEnvC 55 at [17]

- economic growth that are anticipated to be provided or reduced; and
 - employment that is anticipated to be provided or reduced; and
- ii. if practicable, quantifying the benefits and costs; and
 - iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
27. Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions. The decision must include a further evaluation of any proposed changes to the plan change arising from submissions; with that evaluation to be undertaken in accordance with section 32AA. With regard to Section 32AA, we note that the evidence presented by submitters and Council effectively represents this assessment, and that material should be read in conjunction with this decision, where we have determined that a change to PC 73 should be made.

SUMMARY OF EVIDENCE

28. The Council hearing report was circulated prior to the hearing and taken as read. The expert evidence of the Applicant and submitters was also pre-circulated. The Applicant's expert evidence also included summary statements (presented at the hearing) and rebuttal evidence.
29. The hearing report recommended that PC 73 be declined on the grounds that it would not give effect to the Regional Policy Statement (**RPS**) to achieve a quality compact urban form and a well-functioning urban environment, including integration of land use and transport and that it will result in the loss of highly productive land.

The Requestor's Evidence

30. The evidence presented by the Requestor can be referred to as part of the online hearing record, including by reference to an 'Evidence Index' that had been prepared as part of that record (and which lists the evidence generally in the order that it was heard). That index includes reference to the witnesses' statements of evidence and the various legal submissions, communications, photographs, videos and other documentation that were presented to us, or tabled, during the hearing process. In that light, we provide a brief summary of the evidence in the sections that follow.

Legal Submissions

31. As discussed above, legal submissions were prepared by Peter Fuller and presented by Mr Brown in his absence. The submissions introduced the proposed plan change and outlined the legal framework based on the recent Environment Court authority being *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55.

32. The submissions took us through the relevant resource management documents including the national policy statements relating to urban development and highly productive soils which were considered particularly relevant to the Request. We were also guided through the relevant provisions of the RPS including those relating to urban growth and form, transportation and infrastructure, the rural environment (including prime and elite soils) and natural hazards.
33. The legal submissions also responded to the hearing report and rejected the basis upon which the Council recommended declining PC 73 . It was submitted that each matter raised by the Council was supported by the specialist evidence of the Applicants.
34. As Mr Fuller was not present, we were not able to ask any questions arising from the legal submissions.

Terry Short - Requestor

35. Mr Short is a director of Matoaka Holdings Limited which is the owner of 130 Constable Road. He stated that PC 73 offered the best growth strategy for the township of Waiuku and stated that a planned greenfield response to demand for residential growth was preferable and more viable than relying on intensification within existing urban areas. He stated that Waiuku was a rural town with a distinctive character, different from metropolitan Auckland, which justified the approach taken with PC 73.

Donna Goettler - Requestor

36. Ms Goettler is a company director/administrator, and a trustee for the Gardon Trust, which owns 26ha of the land at 92 Constable Rd. She explained that PC 73 was named the O'Hara, Waiuku plan change as a tribute to the O'Hara family that once owned all the land subject to the Request and have a proud history in Waiuku.
37. Ms Goettler spoke to the benefits of the plan change area for urban development in terms of its location proximate to the existing Waiuku township and the Manukau Harbour and spoke to the proposed infrastructure, walking, cycling, roading and community improvements that would arise as part of the proposal.
38. Ms Goettler stated that the urbanisation of this land was not a new proposal and had been promoted and identified for future growth under the former Franklin District Council as part of former Plan Change 14 to that legacy district plan. She advised us that the Unitary Plan process ultimately took over this process and had not rezoned the land for future urban development as requested.

Conal Dempsey - Requestor

39. Mr Dempsey is the managing Director of Dempsey Wood Civil Ltd, and advised that he was a 2/3 shareholder of Pokorua Holdings Ltd, and a 1/3 shareholder of Matoaka Limited. His evidence focussed on the benefits of planned urban development in greenfield areas versus intensification within existing urban areas and the opportunity to provide affordable housing to meet residential demand in Waiuku and support local business and industry. It was his view that the proposed

greenfield approach to urban development at Waiuku would deliver a master planned, connected and staged development, producing affordable sites that only a greenfield development can offer.

Tim King – Urban Design

40. Mr King is a qualified and experienced landscape planner and urban designer with over 45 years experience. He advised that intensification of existing urban areas, as proposed in the Council's Plan Change 78 (**PC78**) which would give effect to the Government's Medium Density Residential Standards (**MDRS**) was not appropriate for a rural town like Waiuku, which in his view, justified a planned greenfield approach as set out in PC 73. He advised that the urban design approach taken in PC 73 and articulated in the precinct provisions and precinct plan were the best way to achieve a quality compact urban form and a well-functioning urban environment.
41. Mr King's rebuttal statement responded to the evidence of Ryan Bradley - submitter for the Council and other aspects of the Council hearing report.

Simon Cocker – Landscape

42. Mr Cocker is an experienced and qualified landscape architect with over 25 years' experience in New Zealand and the United Kingdom. His evidence described the landscape values and the expected landscape and visual effects of urban development. He also spoke to the proposed reserve area within the plan change area, the celebration and protection of the "gateway" along Constable Road and the establishment and maintenance of the proposed 10m rural buffer along the north-western boundary of the land and along Constable Road.

Dr Peter Singleton - Landuse Capability

43. Dr Singleton is an experienced and qualified soil scientist with over 40 years experience, specialising in land and soil assessment. He advised that there was no "elite" Class 1 soil on the land and opined that not all of the identified "prime" Class 2 and 3 soil could correctly be classified as "prime" (based on definitions in the Unitary Plan) due primarily to poor drainage. He advised the total area of prime land was 46.3% with other productive land being 47.9% and non-productive land being 5.8%.
44. He advised us that under the NPS-HPL, 91% of the land met the definition of being "highly productive land".

Paul Sharp - Rural Productivity

45. Mr Sharp is an experienced and qualified agricultural consultant with 28 years experience providing advice relating to farm operating systems. He stated that the most likely rural land use for the plan change land would be in the form of lifestyle blocks or small scale pasture farming. He did not consider the land to be particularly suitable for vegetable growing as, in his view, these producers were attracted more to class 1 Elite soils. He did however concede that kiwifruit growing may be an

option but added that the cost of investment may be prohibitive in the current market.

Ian Munro – Urban Design

46. Mr Munro is a qualified and experienced urban designer and urban planner with 23 years experience in New Zealand. Mr Munro stated that PC 73 represented a logical extension of Waiuku from an urban design perspective and was well-positioned relative to Waiuku's centre and other amenities, and is superior in that respect to much of Waiuku's existing urban-zoned land.
47. He expressed scepticism that the planned up-zoning of residential land under PC78 would be able to deliver the quantum and quality of dwellings that would be enabled under a planned greenfield approach such as PC 73. He was also confident that PC 73 could deliver dwellings in a more timely manner than relying on infill development.
48. Like Mr King, Mr Munro opined that PC 73 would deliver a well-functioning urban environment that was superior to that enabled within existing urban areas.

John Parlane - Transportation

49. Mr Parlane is an experienced and qualified traffic engineer and transportation planner with 34 years experience. His evidence stated that he had updated the transportation modelling, resulting in the road network operating better than initially set out in the ITA, particularly with regard to traffic congestion. He concluded that all identified potential adverse traffic effects could be mitigated.
50. Mr Parlane expressed scepticism that the Vehicles Kilometres Travelled (**VKT**) approach to assessing fuel efficiency and consumption as part of an emission reduction policy approach was relevant to this plan change as it did not recognise the effects of congestion (experienced in shorter trips in metropolitan Auckland) as opposed to longer but congestion-free trips in rural communities.

Dr Sean Finnigan – Civil Engineering/Three Waters

51. Dr Finnigan is an experienced and qualified civil engineer at Fraser Thomas which were responsible for the assessment relating to bulk earthworks, geotechnical investigations, contamination, stormwater, water supply, wastewater treatment and disposal and wastewater funding. His evidence covered all these aspects and concluded that PC 73 was appropriate and that the development is technically capable of being serviced in the future.
52. He advised us that negotiations with Watercare to address the concerns raised in their submission with regard to water supply capacity and wastewater funding had been positive and that a memorandum of understanding between the two parties had been reached.

Vaughan Crang – Engineering

53. Mr Crang is an experienced civil engineer with 29 years experience in land development, earthworks, stormwater, water and wastewater investigations. His evidence related to the civil engineering matters associated with the land at 45A Constable Road and he advised that there were no significant engineering constraints in terms of geotechnical constraints, contaminated land, earthworks, and the provision of stormwater management to development of that land.

Adam Thompson - Economics

54. Mr Thompson is an experienced and qualified economist with over 18 years experience in the fields of urban economics, property market analysis and property development advisory. He stated that Waiuku was the third largest town in the Auckland region and had experienced low rates of growth due to it not having any greenfield areas available for development unlike most other rural settlements in the region.
55. Mr Thompson stated that greenfield development at Waiuku would be less expensive than infill development within existing urban areas due to lower costs and economies of scale. He doubted that infill development would deliver a quantum of affordable dwellings to meet the demand within Waiuku. He also opined that Waiuku was relatively self-sufficient and had the commercial and industrial base to support the growth that would be enabled by PC 73. He doubted that future residents would need to commute large distances (i.e. to metropolitan Auckland) for work.
56. With regard to the NPS-UD, Mr Thompson opined that while there is a larger “plan enabled” and “commercially feasible” capacity, the reality at Waiuku is the number of dwellings “reasonably expected to be realised” was much lower (303 dwellings) and insufficient to meet demand. He opined that the evaluation of demand should be focused on Waiuku only given its size, history, significant rural catchment, available services and amenities, planned employment node and planned infrastructure investment.

Fraser Colgrave - Economics

57. Mr Colgrave is also an economist and he has over 22 years experience as an economics consultant within the areas of land-use, property development, transport economics, and local infrastructure funding. His evidence was essentially rebuttal, focussed on the economic assessment undertaken by Mr Foy for the Council as part of the evaluation of PC 73 and the planning evidence of Mr Bradley as lodged on behalf of Council as submitter.
58. With regard to Mr Foy, Mr Colgrave disputed his wider region-wide assessment in favour of a more localised sub-market approach. He stated that the potential for residential growth was much larger than acknowledged by Mr Foy.
59. With regard to Mr Bradley’s evidence, Mr Colgrave highlighted perceived inconsistencies between data sources used by him and Mr Foy and disputed the assumptions and conclusions reached regarding feasible housing capacity. In particular, he stated that the key components to calculating Housing and Business

Capacity Assessment being: house prices, construction costs, and interest rates had dramatically changed over the last two years and can no longer be considered valid.

Philip Brown - Planning

60. Mr Brown is an experienced planning consultant with over 20 years experience as a policy planner in local government and as a consultant in the private sector. Mr Brown stated that he relied on the evidence of the Requestor's experts and stated that Waiuku did not have sufficient development capacity to meet its housing needs resulting in issues of social cohesion and affordability.
61. Mr Brown outlined the history of planning for urban growth under the former Franklin District Council where the PC 73 land was identified and approved by the former Council for future urban growth but had not progressed through to a plan change prior to Waiuku falling under the territorial jurisdiction of Auckland Council. He advised that Auckland Council did not include it as a Future Urban Zone under the Proposed Auckland Unitary Plan, and while a submission sought a Future Urban Zone, Mr Brown advised that there was not sufficient time and resource under that process to properly investigate the growth options for rural towns and villages and the matter was deferred to a future and separate process.
62. Mr Brown's evidence took us through the various planning instruments including the NPS-UD, the NPS-HPL, the RPS and the proposed zoning and precinct provisions. He concluded that PC 73 will provide a well-functioning urban environment for Waiuku, and the wider region, and support the existing relatively self-sufficient relationship between jobs, services, and houses, and that it would allow the town to grow naturally, and extend in the most logical location, previously identified for expansion.

Tabled Evidence

Sarah Flynn

63. We received evidence tabled from Ms Flynn as we did not have any questions for her. Her evidence stated that the site contains pastoral farmland, with no notable indigenous ecological features or natural wetlands present within the site. It was her opinion that the proposed precinct provisions, including riparian enhancement and management of stormwater quality, would improve ecological values within the site and the aquatic receiving environment.

James Allen – Rural Productivity

64. Mr Allen is an experienced and qualified agricultural consultant. He stated that there were commercial limitations to undertaking either commercial vegetable or kiwifruit horticulture on the site despite it being classified "prime" soil under the Unitary Plan.

Submitters Evidence

Ann-Maree Gladding - Tripp Andrews Surveyors

65. Ms Gladding is a director and surveyor at Tripp Andrews Surveyors and gave evidence in support of PC 73. She gave us a background to the process undertaken by the former Franklin District Council to rezone land for business and residential growth which was enacted for the proposed business land (Plan Change 23 to the Franklin District Plan) but not enacted to enable the residential component prior to amalgamation to create Auckland Council.
66. She outlined a number of merits to PC 73 including supporting planned business and industrial growth, planned infrastructure to service development, affordability, and proximity to existing urban areas.

Roimata Minhinnick – Ngaati Te Ata

67. Mr Minhinnick is the CEO and the Lead Negotiator for the Ngaati Te Ata Claims Support Whanau Trust and gave evidence on behalf of the Ngaati Te Ata iwi.
68. He outlined the traditional and historic relationship to Waiuku district. He stated that Ngaati Te Ata are the only mana whenua iwi over the PC 73 land. He advised that they had been commissioned to prepare a cultural values assessment for PC 73. He advised that during on-going, good faith negotiations, an agreement had been reached between Ngaati Te Ata and the Requestor over how the development would occur, while maintaining the values that iwi are obliged to uphold in their role as kaitiaki for their rohe. For the reasons set out in their evidence, Ngaati Te Ata now support PC 73.

Craig Lipscombe – Designmax Homes

69. Mr Lipscombe is the Managing Director of a Waiuku based Design & Build Construction company and he gave evidence in support of PC 73. He stated that he was relocating his business to the recently established Fernleigh Industrial Estate in Waiuku and opined that there needed to be new greenfield development opportunities to meet the growing business demand in Waiuku.

Stuart Kelly – Waiuku College

70. Mr Kelly is the Principal of Waiuku College and gave evidence in support of PC 73. He stated that the growth enabled by PC 73 would support student and teacher retention at the school and would also assist in redeveloping the adjoining reserve land to the west of the school. He was also supportive of the retirement village concept.

Bruce Bonner – IMG Limited

71. Mr Bonner is Waiuku resident and operates a business in Waiuku that supports the NZ Steel operation at Glenbrook. He stated that greenfield development was needed to provide more affordable housing to attract and retain staff. He also stated

that additional housing at Waiuku would reduce the commuting distances staff travel from elsewhere to undertake work in Waiuku and at Glenbrook.

Auckland Transport

Jason Ashby – Legal Submissions

72. Mr Ashby outlined the position of Auckland Transport and why it was opposed to PC 73 and the key evidence of its experts. He stated AT have identified through its experts “areas of necessary revision” to address likely adverse effects on the transport network and to ensure that subdivision and development is appropriately integrated with the provision of transport infrastructure in accordance with the Unitary Plan.

Paul Schischka

73. Mr Schischka is a qualified and experienced traffic and transportation engineer with 18 years experience. He expressed concern that the two existing roundabouts at King Street in the Waiuku town centre would not operate satisfactorily from a capacity and congestion perspective and would need to be upgraded to provide additional capacity to mitigate the effects of the PC 73 development.
74. Mr Schischka also considered that should PC 73 be approved it needed to provide for future connection opportunities despite the Requestor designing the plan change to not provide those connections in order to protect prime soil and rural character. His evidence also discussed public transport opportunities, pedestrian and cycle linkages, the triggers for future transportation infrastructure implementation and sought the relocation of the indicative retirement village to another location within the plan change area.

Scott Macarthur

75. Mr Macarthur is a qualified and experienced planner with 18 years experience working in local government. Mr Macarthur stated that PC 73 would not give effect to the NPS-UD for a range of reasons including its proximity to the Waiuku town centre, it lacked the provision of a neighbourhood centre, did not have linkages for the further expansion, and provided no certainty with regard to the provision of necessary roading and cycling infrastructure. He stated that the proposal was also deficient with regard to the RPS for similar reasons.

Melaina Voss - Watercare Services Limited

76. Ms Voss is an experienced and qualified consultant planner with 18 years experience. She is engaged by Watercare as part of strategic planning partnership to provide support to the Major Developments team.
77. The Watercare submission was in opposition to PC 73 for four main reasons being that adequate water and wastewater capacity for Waiuku and PC 73, in the immediate and planned long term, is limited; capacity upgrades within the Watercare water and wastewater networks to service PC 73 have not been identified; staging of development and its coordination with water and wastewater network upgrades to

ensure sufficient capacity is available at the time of connection; and the absence of an infrastructure funding agreement between the Applicants and Watercare.

78. As will be discussed further in this decision, since the delivery of this evidence, the water supply and wastewater infrastructure upgrade works and the development staging are now aligned. Watercare and the Requestors have agreed to enter into a Memorandum of Understanding and later a development agreement.

AUCKLAND COUNCIL

Alex Cumming – Legal Submissions

79. Mr Cumming made verbal legal submissions for Auckland Council as submitter and responded to a number legal submissions made by the Requestor including the consideration of greenhouse gas emissions as part of this Request and the use of figures in the Council's Research and Evaluation Unit (**RIMU**) that were used by Mr Bradley being "technically hearsay".

Ryan Bradley - Planning

80. Mr Bradley is an experienced and qualified policy planner at the Council with 18 years experience. He gave evidence in opposition to PC 73 primarily focussed on the NPS-UD, the NPS-HPL and the provisions of the Unitary Plan that concern land with high productive potential. Mr Bradley stated that he led the Auckland Council's response to the NPS-HPL and stated that he had solid understanding of the background and purpose of the NPS-HPL, and the intentions and reasons for the way it was drafted.
81. A central tenet to Mr Bradley's evidence was that additional development capacity is not required to meet the projected growth of Waiuku based on existing capacity for intensification within existing areas of Waiuku and in other enabled growth areas within the locality. Mr Bradley stated that it was his view that PC 73 does not achieve the minimum requirements for a well-functioning urban environment and it is therefore inconsistent with Policy 1 of the NPS-UD. Similarly, Mr Bradley stated that the tests for the expansion of a rural town outlined in the RPS are not met on the grounds that there is already sufficient development capacity.
82. With regard to the effect on prime soils, Mr Bradley stated that these soils would be unnecessarily lost due to development capacity already existing (and proposed to be increased through PC78) within Waiuku.

Council Response

83. Following the close of the Requestor's case the hearing was adjourned until 25 November 2022 to allow the Council officers some time to consider the evidence presented and for the Requestor to prepare a right of reply. Both the Council officers' response to evidence and the Requestor's reply was presented on 25 November 2022.

Dr Reece Hill - Soils

84. Dr Hill is an experienced and qualified soil scientist and he provided a peer review included in the hearing report on the matter of soil versatility. Dr Hill responded to the evidence of Dr Singleton and the land use capability of the soil. He agreed that there is a mix of versatility of soil in the plan change area (using Unitary Plan criteria) and stated that prime soils comprise 10ha of that land. He agreed that most productive soils are located to the eastern and southern section of the plan change area. He confirmed that under the NPS-HPL 91% the land is classified as Highly Productive Land. He concluded that it was still his opinion that in relation to prime soils and NPS-HPL highly productive land alone, PC 73 does not give adequate effect to the Unitary Plan and the requirement to retain land containing prime soil, nor does it give adequate effect to the NPS-HPL for the protection of highly productive land for use in land-based primary production, both now and for future generations.

Stuart Ford – Rural Productivity

85. Mr Ford is an experienced agri-business consultant and he provided a peer review for the Council and included in the hearing report, on the rural production assessment of Mr Sharp and Mr Allen. He questioned a number of assumptions and findings of each assessment and concluded that vegetable or kiwifruit growing was more commercially viable than that presented by the Requestor. Mr Ford also commented on the issue of food security and the health benefits of maximising opportunity for growing fruits and vegetables and concluded that, food security was a very real threat to the health of New Zealanders and that it was important to maintain highly productive soils for both present and future horticultural needs.

Rob Pryor - Landscape

86. Mr Pryor provided a peer review of the landscape and visual effects assessment provided by Mr Cocker. While he was initially opposed to PPC 73 on landscape and visual grounds (especially at the urban/rural interface), he stated that he recommended that the rural landscape buffer area be extended to 10m and supported the Requestor's amendments to facilitate this. He supported the concept of large tree plantings in groupings or an avenue effect with lower planting below in the western rural buffer, typical of a rural driveway accessing a property. He also supported the precinct provisions that require a minimum 30m lot depth and minimum lot size of 700m² at that rural interface.

Lisa Mein – Urban Design

87. Lisa Mein is an experienced and qualified urban designer and planner and she provided the peer review of the assessment of Mr King. While Ms Mein's peer review stated that she was opposed to PC 73, she accepted evidence presented at the hearing that it could meet the definition of a well-functioning urban environment. She questioned whether the plan change area had natural defensible boundaries but accepted that amendments made by the Requestor in the form of the landscape buffer and larger lot sizes at the rural interfaces provided a defensible boundary and

helped mitigate reverse sensitivity effects. She also supported the housing affordability provisions subject to them being strengthened.

Martin Peake - Transportation

88. Mr Peake is a qualified and experienced transportation engineer and he provided the peer review of the ITA submitted by the Requestor as well as comment on the submission lodged by AT. Mr Peake concluded that he supported PC 73 from a transportation perspective subject to the amendments proposed by the Requestor through the course of the hearing.

Derek Foy - Economics

89. Mr Foy is an experienced and qualified expert in retail analysis, assessment of demand and markets and the function of urban economies. He provided the peer review of the economics assessment of Mr Thompson and also commented on the rebuttal evidence of Mr Colgrave. Mr Foy acknowledged a number of positive aspects of PC 73 from an economic perspective but still remained of the view that there appears to be significant residential capacity in Waiuku, and he stated that he was not convinced that the capacity that would be enabled by PC 73 is needed.

Chloe Trenouth - Planning

90. Ms Trenouth is an experienced planning consultant and she was responsible for preparing the hearing report for PC 73. She confirmed that the former Franklin Council intended to provide for new growth areas in combination with its provision of more business land as part of Plan Change 14 but this approach was not adopted by the new Council in 2010 when amalgamation occurred. She agreed with Mr Bradley and Mr Brown that there was insufficient time or resources to consider the scale of requests, and any legacy future urban zones were rolled over. Ms Trenouth added that the policy framework for considering urban expansion at Waiuku has changed since amalgamation and it cannot be assumed that just because it was identified previously for future growth that it is still appropriate.
91. With regard to the NPS-UD Ms Trenouth stated that she was now satisfied that PC 73 achieves a well-functioning urban environment because it is well located in relation to the Waiuku township, and it would enable a variety of homes with good accessibility to jobs, community services and open space. She was also satisfied that PC 73 would support the reduction of greenhouse gases and in combination with the other factors discussed above would achieve the minimum requirements of a well-functioning urban environment.
92. With regard to the NPS-HPL Ms Trenouth acknowledged that it was only released shortly before the completion and pre-circulation of the hearing report and conceded that, in the time available, she was not able to fully consider the approach to rezoning of highly productive land as set out in clause 3.6 and discussed at the hearing. She stated that while PC 73 had urban design, cultural and some economic benefits, it still failed an assessment under this section of the NPS-HPL. Ms Trenouth concluded that PC 73 was consistent with the Auckland Plan 2050, was inconsistent with the RPS (as it did not protect prime soils), was a well-functioning

urban environment under the NPS-UD and did not meet all three tests under section 3.6 of the NPS-HPL.

Requestor's Reply

93. Extensive closing submissions were provided by Mr Fuller in writing following the comments from Council officers. Without repeating the detail of those submissions, he addressed matters covered by the Requestor's experts and responded to the evidence provided by the submitters in opposition and support.
94. Mr Fuller spent some time on the reasons why no land at Waiuku had been zoned FUZ or otherwise identified for urban growth under the Unitary Plan hearing process and he presented documentation to support his submission that that the omission of Waiuku was not deliberate, but merely a reflection of a lack of time and resources, to undertake the necessary technical work, to create any new FUZ or greenfield zoned land in Waiuku.
95. The submissions also canvassed the evidence presented relating to the need for a structure plan, whether Waiuku could be considered a satellite town, the support from mana whenua, the proposed urban/rural boundary treatment, the matters of vehicle emissions and VKT and the question of prime soils and highly productive land.
96. The closing submissions also focussed on tests in 3.6 of the NPS-HPL as being the pathway and tests for territorial authorities to allow urban rezoning of highly productive land. Mr Fuller confirmed the evidence of his experts that these tests had been met.
97. Finally, Mr Fuller addressed the matter of infrastructure servicing and funding and submitted that all outstanding three water matters had been addressed.

FINDINGS AND REASONS ON THE PLAN CHANGE

98. The following section addresses our overall findings on PC 73 and why we have declined it; having heard and considered all of the material and evidence before us.
99. We had extensive evidence before us, with parties requesting a number of specific changes to the precinct provisions. Many of these were addressed by the Requestor's planner and we appreciated the input into these provisions from submitters and Council officers. At the time of writing of this decision, the provisions of the proposed precinct are effectively settled. We have taken these provisions into account as part of our overall assessment and reasoning for our decision.
100. We address the submissions received to PC 73 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 hearing report for consistency.
101. With respect to further submissions, they can only support or oppose an initial submission. Our findings on the further submissions reflects our decisions on those initial submissions having regard to any relevant new material provided in that

further submission. For 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.

102. 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. With regard to that section, the evidence presented by the Requestor, Submitters and Council Officers, effectively represents that assessment.

The Reason for the Plan Change

103. We accept the Requestor's rationale for seeking to change the Unitary Plan and rezoning of the site from RMR Zone to MHS Zone. This was detailed in the Request, evidence and the legal submissions. We acknowledge that during the hearing process the NPS-HPL was released (22 September 2022) and this came into force on 17 October 2022, effectively three weeks prior to the commencement of the hearing. This policy statement, in the Panel's view, is significantly consequential with regard to urban zoning of rural land containing productive soils and has a significant bearing on the final evaluation and findings reached by us.
104. Having considered the submissions and further submissions received, the hearing report, the evidence presented at the hearing and the Council officers' response to questions, our findings and reasons are set out below.

Environmental Effects of the Plan Change

105. The proposed RMHR Zone and its rules and standards, together with the proposed rules and standards in the proposed precinct provisions have actual or potential adverse effects on the environment. These effects were extensively canvassed in the Requestors evidence, the hearing report and expert evidence of submitters. Some matters were more contentious than others and we have addressed those least contentious matters first.

Ecological Effects

106. The ecological assessment for the Requestor was prepared by Sarah Flynn. The plan change area is gentle to flat pastoral farmland on a plateau, sloping to river terraces to the north-west and south-east, within the mainly rural Rangiwheia Creek catchment. The site has a long history of livestock grazing and is actively maintained in pasture. No remnant indigenous vegetation or habitat is present on the site. Trees present on the site include small groups of exotic amenity plantings and single trees around the existing dwellings and farm buildings at 92 and 130 Constable Rd⁴.
107. Other than channelised drains, no natural flow paths were found on the site. Quadrant sampling within modelled flood-prone areas determined a predominance of pasture

⁴ para 5.1 Evidence of S.Flynn

comprising ryegrass and plantain, with no evidence of ponding or periodic wetness. Therefore, no natural wetlands are present within the subject site⁵.

108. Watercourses within the subject property are confined to graded drainage channels in the northwestern corner of the site. The immediate aquatic receiving environment downstream of the subject property is in poor condition, with negligible riparian cover other than close-cropped pasture, and heavily trampled banks.⁶
109. In her evidence Ms Flynn notes the proposed precinct plan objectives specify that the subdivision and development utilises natural drainage patterns, enhances riparian planting, and minimises changes to the natural land contour; and that stormwater is managed to prevent or minimise adverse effects of contaminants on freshwater and coastal water quality, and to improve biodiversity and sediment quality. Ms Flynn concludes that the proposed precinct provisions will contribute to improving the ecological values within the site and the aquatic receiving environment.⁷
110. The hearing report agrees that the plan change area has low ecological values and the proposal to urbanise the land provides an opportunity for enhancement of water quality and the establishment of greater habitat through revegetation. It also notes the proposed precinct provisions will result in ecological enhancements that will have positive effects.⁸

Finding

111. Our finding is that that the proposed precinct provisions, including riparian enhancement and management of stormwater quality, will improve ecological values within the site and the aquatic receiving environment.

Geotechnical Effects

112. The geotechnical assessment by Fraser Thomas⁹ concluded that in general terms and within the limits of the high-level geotechnical assessment undertaken, the plan change area is suitable for the proposed urban zoning and associated future subdivisional development. Two main potential geotechnical hazards within the site were identified relating to slope instability and settlement/subsidence. The site was grouped into three hazard risk zones – low, medium and high (zones 1, 2 and 3 respectively). Zone 3 (high risk) comprises the more steeply sloping sections of the site close to Constable Road. Site earthworks will regrade this area and reduce the extent of the Zone 2 and 3 areas in the south-eastern corner of the site, mitigating this issue.¹⁰

⁵ para 5.3 Ibid

⁶ para 5.4 Ibid

⁷ para 6.1 Ibid

⁸ section 269 S42A Report

⁹ Geotechnical Assessment Report, O'hara Waiuku Plan change 45A, 92 & 130 Constable Road, Waiuku, Fraser Thomas Ltd, July 2021

¹⁰ para 1.7 EIC S.Finnigan

113. It is anticipated that there will be no significant geotechnical constraints within the Low Risk Zone that would restrict residential building development beyond those which would normally be identified during any subdivisional development.¹¹
114. The geotechnical assessment considers that within the Moderate and High Risk Zones there is a moderate to high risk of slope instability and/or settlement of highly compressible organic soils or soft sediments. However, the assessment considers that land within the Moderate to High Risk zones would be suitable for residential development although slope stabilisation and/or foundation improvement measures may be required at the development stage.¹²
115. Within any risk zone, the Requestor has acknowledged that it needs to demonstrate that the proposed development will not accelerate, worsen or result in the land being subject to erosion, slippage or inundation by slip debris or be adversely impacted by settlement, to the satisfaction of Council.¹³
116. The geotechnical assessment found that liquefaction and/or lateral spreading does not pose a significant risk to the proposed development.¹⁴
117. The Requestor's evidence is that the identified geotechnical hazards will be further considered at the subdivision consent application stage.¹⁵ The hearing report states that there is agreement with the Requestor that the Unitary Plan adequately provides for the consideration of stability at the subdivision and development stage.¹⁶

Finding

118. Accordingly, we find that the PC 73 land is suitable for urbanisation and future subdivisional development from a geotechnical perspective. We note that specific geotechnical investigation, appraisal and reporting is required in support of any application for subdivision or building consent in order to identify potential geotechnical risks and the need for any slope stabilisation and/or foundation improvement measures that may be required. We understand that the geotechnical investigation, appraisal and reporting will be required by the Council at the subdivision and/or building consent application stage.

Stormwater Effects

119. As set out in the evidence of Mr Finnigan the proposed stormwater management measures satisfy the requirements for "greenfield developments" set out under the regional Stormwater Network Discharge Consent (**NDC**), in relation to the essential components of a Stormwater Management Plan (**SMP**) which is provided as a separate report, addressing water quality, stream hydrology, flooding: 10% AEP property/pipe capacity and flooding: 1% AEP – buildings, as well as the

¹¹ Section 9 Geotechnical Assessment Report

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ para 301 s42A Report

requirements for a private stormwater discharge consent under Section E8, Activity A10 of the Unitary Plan as a discretionary activity, should this be required¹⁷.

120. To meet these requirements, Mr Finnigan states that stormwater from the proposed development would be managed in the following ways:¹⁸
- a. Treatment of impervious areas including roofing (except where relatively inert roofing materials are used), paving and roading;
 - b. Retention of at least 5mm of rainfall from all impervious areas;
 - c. Detention of the difference in runoff volume from pre development to post development for a 95th percentile storm;
 - d. No increases in peak flow for a 10% Annual Exceedance Probability (AEP) event from the site, or otherwise demonstrating sufficient downstream stormwater system capacity; and
 - e. No increases in downstream flooding for a 1% AEP event, for those areas where downstream flooding is currently a problem.
121. To clarify one item, “paving” in this context we understand from the evidence that this refers to joint owned accessways or similar, together with other impervious areas such as driveways on individual lots.
122. Key features of this approach are¹⁹:
- a. minor recontouring of the site so as to redirect runoff from stormwater problem areas (i.e. Breaker Grove/O’Sullivan Place area) through a large constructed treatment/retention/detention wetland to the Rangiwhea Stream, which has significant flow and volume capacity; and
 - b. a new 825-1200mm diameter stormwater pipeline will also be provided along Constable Road. This goes beyond the minimum compliance requirements of the Regional Stormwater NDC, further alleviating existing stormwater and flooding problems in the Breaker Grove/O’Sullivan Place area.
123. The proposed stormwater management measures have been assessed against recommendations from the Cultural Values Assessment and the NDC Schedule 4 requirements and we accept that there is strong alignment with both documents.²⁰
124. We note that further discussions with Council as part of the Clause 23 response process has resulted in the following amendments to the stormwater management approach²¹:
125. Stormwater Management Area Flow 1 (SMAF1) Overlay requirements will be applied to the Plan Change area. The adopted stormwater approach already provides for this.

¹⁷ para 9.1 EIC S.Finnigan

¹⁸ para 9.2 Ibid

¹⁹ para 9.3 Ibid

²⁰ para 9.4 EIC S.Finnigan

²¹ para 9.5 Ibid

126. All new dwellings will be designed to have non-potable water requirements (for toilets, laundry and gardens) supplied by rainwater tanks (or bladders).
127. The Requestor's evidence stated that collectively, the proposed measures will ensure that:²²
- a. Flooding downstream along the Rangiwhea Stream is no worse than the existing situation;
 - b. Flooding to the north of the site (sportsfields and King St) will be reduced compared with the existing situation; and
 - c. Flooding in the Breaker Grove subdivision area will be reduced compared with the existing situation.
128. A peer review of the stormwater and flooding assessment was prepared on behalf of the Council by Healthy Waters and is included in the hearing report²³. This review confirms that the SMP meets the NDC requirements. The review advises that if the Plan Change is approved, stormwater discharges can be authorised under the NDC by way of a regulatory manager approval to vary Schedule 1 to amend the urban area. Alternatively, the review advises that the SMP demonstrates that a private stormwater discharge consent could also be considered if there were any issues with the NDC. This approach provides two mechanisms for approving the proposed stormwater management measures, thus addressing the concerns raised by some submitters that the Plan Change area falls outside the remit of the NDC requirements.
129. The peer review advises that Healthy Waters generally accepts the methodology and conclusions reached in the SMP²⁴. Management of flows to pre- development levels is considered necessary to mitigate potential adverse effects on the Rangiwhea Stream and the downstream Significant Ecological Area – SEA-M2-319, Marine 2 from erosion.
130. The key issue in contention identified by Healthy Waters relates to certainty that the proposed new stormwater pipe in Constable Road will be constructed at the time of subdivision²⁵. The review advises that extension of the stormwater pipe relies on a third party for the development of 45 Constable Road and therefore is not considered to be adequate to demonstrate effects will be managed. Therefore, Healthy Waters recommended that a permitted standard be included in the precinct to require the stormwater pipe extension along Constable Road as a pre-requisite to development to avoid exacerbating downstream. We note that this has been included in the precinct plan provisions under I4XX6.2.5 Infrastructure Capacity.
131. We acknowledge that the proposed new stormwater pipeline along Constable Rd goes beyond the minimum compliance requirements of the Regional Stormwater NDC and represents "betterment" compared with the existing situation²⁶. We also

²² para 9.8 Ibid

²³ para 9.11 Ibid

²⁴ para 9.12 EIC S.Finnigan

²⁵ para 9.13 Ibid

²⁶ para 9.15 Ibid

acknowledge that the proposed pipeline results in the overland flow catchment from the PC 73 site to the Breaker Grove area reducing by 88%. The overall external catchment draining through the Breaker Grove area is reduced by 32%. This is expected to result in similar reductions in both peak flows and volumes from this source, reducing both nuisance and storm related flooding of the Breaker Grove area.²⁷

Findings

132. We find that the stormwater management approach for the plan change, including management of flows to pre-development levels can be expected to avoid, remedy or mitigate potential adverse effects on the Rangiwha Stream and the downstream reaches including from erosion. We find there is a benefit in reducing flooding effects downstream by diverting an extent of stormwater flows within the site to the proposed wetland.
133. We also find that there will be a significant benefit provided by the proposed stormwater pipeline along Constable Road to reduce flooding within the Breaker Grove area.

Three Waters Infrastructure

134. We were advised that there is an existing wastewater treatment plant serving Waiuku and this has a resource consent enabling it to continue operation until 2027 while the proposed South-Western Sub Regional Wastewater Scheme is constructed.
135. Watercare are in the process of planning and designing for the proposed South-west Wastewater System upgrade to service a Waiuku population equivalent of 16,000 by 2050 and a total population of 30,000-50,000, with the higher figure allowing for higher growth in the Kingseat area. Review of Watercare's wastewater projections shows that this figure is approximately equivalent to an adjusted population projection for Waiuku for 2050 of 13,472 on a per person basis.²⁸
136. The Southwest WWTP forms part of major upgrades to wastewater servicing in Waiuku, Clarkes Beach and Kingseat, and is planned by Watercare over the next 4 years. These upgrades are referred to as the 'Southwest Wastewater Scheme' and include the new Southwest WWTP at Clarkes Beach, associated discharge of highly treated wastewater to the coast, and new pipeline and pump stations extending from the new wastewater treatment plant to Kingseat and Waiuku. The scheme is subject to a resource consent requiring the Southwest WWTP to be operational by 2026; however connection to Waiuku may be later than 2026.²⁹
137. The Requestor has been liaising with Watercare on the project since early 1991 and has identified wastewater reticulation upgrades required to serve the PC 73 area and understands Watercare agrees with these assessments.³⁰

²⁷ para 5.7 Rebuttal evidence S.Finnigan

²⁸ para 1.31 EIC of S. Finnigan

²⁹ para 4.21 Evidence of M.Voss

³⁰ paras 3.4 & 3.5 Rebuttal evidence of S. Finnigan

138. Watercare's position as advised in the evidence of Melaina Voss was as follows³¹:

Watercare will continue to work with the Applicants in relation to the following:

- (a) *confirming preferred solutions for wastewater reticulation within PC 73,*
- (b) *timing and impacts of connections to the existing network ahead of the Waiuku WWTP improvements and the Southwest Wastewater Scheme being operational. This provides an opportunity for the Applicants and Watercare to consider development triggers and staging to be applied, mitigating impacts on the limited wastewater capacity, until planned upgrades are complete,*
- (c) *confirming necessary upgrades to the wastewater network; and*
- (d) *agreement with the Applicants to fund these upgrades.*

Having considered its position further since its submission, Watercare's position is that a feasible servicing solution for PC 73 is not available until the Southwest Wastewater Scheme is operational. However, Watercare consider that it would be in a position to support the Plan Change if:

- (e) *staging and development triggers are applied,*
- (f) *there are limited connections to the wastewater network until such time planned upgrades are completed at the Waiuku WWTP are completed and capacity within the network is available to supply Waiuku and PC 73; and*

Until Southwest Wastewater Scheme is operational, no connections to the wastewater network will be approved by Watercare without available capacity.

Water Supply

139. We were advised that Waiuku's water supply is sourced from groundwater at four bore separate locations. An existing resource consent was granted to Watercare in 2020 and expires in 2052. A Water Supply Demand Management Plan is required every 5 years as part of this Consent compliance and reporting process. That plan confirms the yield necessary to meet existing and forecasted water demand for the remaining duration of the consent.³²

140. The existing water consent was granted for an estimated baseline population, which excluded development of the Plan Change Area. Watercare has forecasted the annual limit under this permit, based on medium density growth projections for water take, will be reached by 2052. If high density growth rates occur, as would be the

³¹ paras 4.30-4.32 Evidence of M.Voss

³² Para 4.4 Evidence of M.Moss

case if PC 73 is granted, it is estimated that the annual limit will be reached by 2040, 12 years ahead of the existing consent expiry date of 2052.³³

141. All experts agreed that the existing Waiuku Water Treatment Plant (**WTP**) and bores require upgrade to meet current and future demands. These upgrades would allow the Waiuku WTP and bores to meet the maximum limits set under the existing groundwater consent. The Watercare evidence stated that these upgrades are identified in Watercare's Asset Management Plan and are planned for 2025. Watercare's position was that development prior to that time may require the use of interim solutions which will need to be agreed with Watercare and may not be readily available due to existing constraints within the network³⁴.
142. Watercare also advised that they are experiencing water supply shortages throughout the year to service existing customers within Waiuku. This is due to limited yield from bores and treatment plant capacity. Watercare must continue to provide water during these shortages and tank water to Waiuku approximately 4 months out of the year. Interim solutions are being explored by Watercare to improve treatment capacity and reduce the need for tanked water to Waiuku. These interim solutions will be necessary until upgrades to the Waiuku WTP and bores are complete around 2025.³⁵
143. Mr David Russell, Council's Senior Development Engineer provided the peer review for the hearing report. His assessment confirms that there are already existing capacity water supply issues in Waiuku, resulting in all new developments being referred to Watercare for review and that Watercare are not currently approving plans for new developments in Waiuku due to the inability to provide a reliable water supply. That said, Mr Russell accepts overall, that there are options for water servicing and that these need to be resolved between the applicant and Watercare³⁶
144. Ongoing correspondence between Fraser Thomas Ltd and the Council's Groundwater Allocation Team has confirmed that as the site is located over the Awhitu Kaawa aquifer, and as such, it may be possible to apply for a stand-alone bore take and that there could well be 200,000m³/year remaining available from this aquifer. Further assessment by Dr Finnigan shows that the maximum annual demand of PC 73 could feasibly be provided by a bore extending into the shell beds of the aquifer and that likely recharge of the aquifer gives a total groundwater availability considerably larger than the estimated annual demand of PC 73³⁷. This demonstrates to us that there is potentially an alternative water source available to the Watercare reticulated network.
145. Watercare agrees in its evidence that there is a solution for network reticulation that is acceptable and details of that solution can be confirmed at resource consent stage³⁸.

³³ Para 4.5 Ibid

³⁴ Para 4.7 Ibid

³⁵ Para 4.8 Ibid

³⁶ para 1.26 EIC of S.Finnigan

³⁷ para 4.5 Rebuttal evidence of S.Finnigan

³⁸ para 4.2 Evidence of M.Voss

146. Accordingly, Watercare's position as advised in the evidence of Ms Voss is that³⁹:

Watercare will continue to work with the Applicants in relation to the following:

- (a) *confirming preferred solutions for water supply reticulation within PC 73,*
- (b) *considering timing and impacts of connections to the existing network ahead of capacity upgrades at the WTP. This provides an opportunity for the Applicants and Watercare to consider development triggers and staging to be applied, mitigating impacts on the limited water supply availability until planned upgrades are complete,*
- (c) *confirming necessary upgrades to the water supply network; and*
- (d) *agreement with the Applicants to fund these upgrades.*

Watercare also advised that⁴⁰:

A feasible servicing solution for PC 73 is not available until the planned upgrades are complete. Watercare however would support the Plan Change if:

- (a) *Staging and development triggers are applied.*
- (b) *Connections to the water supply network are limited until such time planned upgrades are completed and capacity within the network is available to supply Waiuku and PC 73 from the towns existing water supply source.*

Wastewater and Water

147. Prior to the close of the hearing a meeting held between representatives of the Applicant and Watercare included the following outcomes⁴¹:

Watercare indicated they are happy in principle to enter into a MOU with the Applicant referring to a developer's agreement being reached once sufficient information is available, based on the applicant providing two stages of funding for:

- a. *WSL costs for them to do the investigation work relating to servicing the PC 73 site, as development of this area is not allowed for in their work to date. They would provide the Applicant with relevant information on their findings and associated costs, for review by the Applicants and their technical experts.*
- b. *WSL costs for infrastructure upgrading, based on the outcomes of the above step.*

³⁹ para 4.14 Evidence of M.Voss

⁴⁰ para 4.15 Ibid

⁴¹ para 3.26 S. Finnigan Rebuttal Evidence

148. Watercare further advised that the precinct provisions should include appropriate provisions relating to water supply and wastewater, based on the preceding discussions. The latest version of the precinct plan provisions have since been augmented to include the relevant requirements for wastewater and water as follows:

14XX.3 Policies

- (11) *Require subdivision and development to be staged to align with the availability of bulk wastewater and water infrastructure.*

14XX.6.2.4 Infrastructure staging standards

Purpose: To ensure that subdivision is integrated with the provision of appropriate infrastructure.

- (1) *Subdivision of residential lots (excluding superlots) cannot occur prior to the South Western Wastewater Plant becoming operational.*
- (2) *Subdivision of residential lots (excluding superlots) cannot occur prior to the Waiuku Water Treatment Plant becoming operational.*

14XX8.1 Assessment Criteria

- (2) *Servicing*
- (a) *Whether there is sufficient capacity in the existing or proposed utilities network, and public reticulated water supply, wastewater and stormwater network to service the proposed development having particular regard to infrastructure capacity.*

Finding

149. We find that wastewater and water servicing can be aligned with the development of PC 73 such that adverse effects are sufficiently avoided remedied or mitigated. Furthermore, we find that the infrastructure upgrade works and the development staging can be aligned as provided for in the provisions.

Transportation

150. Transportation effects was a matter that remained in contention throughout the hearing and was central component of the submission from AT. Our evaluation of the evidence presented to us falls into the following sub-categories.
- Access into the site
 - Internal Road layout
 - Connectivity with other land
 - Wider traffic effects (King Street roundabouts)
 - Vehicle dependence/VKT

Access into the site

151. The proposed access to the site is described in the evidence of Mr Parlane as follows⁴²:

A roundabout is now proposed as the main entrance into the future residential land as a result of a productive discussion with AT about its submission points.

A roundabout has a number of advantages over the earlier proposal of a give way controlled intersection. A roundabout can be designed to ensure that the speed of traffic entering the urban part of Waiuku from the south slows down to no more than 50km/h. That will bring a number of safety advantages not just to cars and cyclists accessing the future subdivision, but it also ensures all traffic is travelling at a safe speed by the time it reaches Waiuku College. A roundabout will be a perfect gateway to the town and ensure a reduction in traffic speed.

A roundabout also has the advantage of giving priority to traffic entering the subdivision over the smaller number of drivers approaching from the southeast. The roundabout will be designed for buses and will have a mountable central island of approximately 6.5m radius.

The Precinct Plan shows an access restriction onto Constable Road along the southern-most frontage. This access restriction would ensure that no access is provided where visibility could be restricted by a crest in the existing road, and it ensures there will be no access outside of the area demarcated by a Gateway Area. That Gateway Area would mark the boundary between the rural section of Constable Road and the urban section. This would be a good location for a future extension by Auckland Transport to the 50km/h speed restriction should that be approved in conjunction with a future subdivision and intersection.

152. At the close of the hearing, we were satisfied that the above proposed access to the site is acceptable to Council's transportation reviewer Mr Peake and to Auckland Transport (AT). Accordingly, we find that the proposed access to the plan change area is appropriate and adverse transportation effects in this regard will be avoided, remedied or mitigated.

Internal Road layout

153. The Requestor advised that the internal roads are indicative only and will be designed at the time of development and subject to detailed scrutiny with regard to layout, topography etc. Greenways are shown on the precinct plan which would allow for walking and cycling within a central location on the land and this will promote modal shift and choice. An indicative road extends to the recreation fields behind Waiuku College.

⁴² paras 8.5 to 8.7 EIC J.Parlane

154. Requirements for internal roads including cycling were refined with input from submitters with the main aspects which are provided for within Policy (10) as follows:

- *Ensuring the road travelling between Constable Road and the greenway of the precinct is provided to a Collector standard.*
- *Ensuring a clear and legible walking and cycling connection to the Recreation Fields is provided within the precinct.*
- *Ensuring roads within the precinct are developed with a design that reflects the function of each road (as shown on the Precinct Plan and in associated Road Function and Design Elements Table), and that provides for cycling and public transport infrastructure on key routes, while acknowledging any site-specific constraints that might apply.*

155. An important connection within the site is between the proposed road along the northern side of the indicative retirement village, connecting to the rear of Waiuku College and connecting to the proposed north-south road which runs through constable Road. The Requestor originally proposed a modal filter road and then traffic calming at this connection. In his evidence, Mr Peake did not support a modal filter and was not opposed to traffic calming but noted it this was not necessary to be shown on the Precinct Plan as traffic any necessary calming could be provided at the consenting stage if it is deemed appropriate⁴³. Both Mr Schischka and Mr Macarthur for AT also did not support the use of a modal filter at this location.

156. The final agreed precinct plan provisions do not include the requirement for a modal filter or traffic calming. Rather there is an assessment criterion which states:

14XX.8.1 (4) Transport and Active Modes

- (a) The effects on the function and the safe and efficient operation of the transport network including pedestrian movement particularly at peak traffic times.*

157. We find that criterion this to be sufficient to address this matter and as such we find the internal road access would have effects that are capable of being avoided, remedied or mitigated.

Roading Upgrades and Connectivity with other land

158. As a response to submissions and Council officer concerns and throughout the hearing there have been a number of modifications to the proposed provisions on matters relating to new transportation infrastructure required to enhance connectivity of the plan change area with adjoining or significant nearby areas. These have resulted in provisions within the precinct plan which require a number of transport upgrades to be constructed and be operational, prior to lodgement of any resource

⁴³ para 2.65 Evidence of M.Peake

consent application for a residential activity within the precinct: (I4XX6.1.6 Transport Infrastructure) these include: (...)

- (b) *Upgrade Constable Road to an urban standard including a footpath from the northern boundary of the precinct's Constable Road frontage to the pedestrian entrance to Waiuku College.*
- (c) *A bus stop (excluding shelter) shall be established at an appropriate location within Constable Road, to the north of the roundabout.*
- (d) *A raised zebra pedestrian crossing point must be established in Constable Road between O'Sullivan Place and the Waiuku College entrance.*
- (e) *Transport connections must be provided as follows:*
 - (i) *A public walking and cycling link must be constructed within the Indicative Greenway Connection shown on the precinct plan to the boundary of the Recreation Fields that enables a future link to the intersection of King Street and Queen Street, and*
 - (ii) *If the link through the Recreation Fields is not constructed, a suitable cycling facility must be provided on Constable Road from the precinct connecting to Waiuku Town Centre via Leonard Street.*
- (f) *The full Constable Road frontage of the precinct, west of the proposed A roundabout, must be upgraded to public standard, including a footpath, lighting, and tree planting.*

159. Additional matters were raised in the evidence of Mr MacArthur⁴⁴ for AT in that he considered the proposal does not give effect to the National Policy Statement on Urban Development (**NPS-UD**) as:

- a. *it is not located within close proximity to an existing town centre, making walking to and from destinations such as jobs, community services and open spaces unlikely given the distances involved; and*
- b. *it provides a blanket residential zoning, rather than varied zoning which could, for example, include a Neighbourhood centre. He opined that this further exacerbates the above issue with people required to leave the precinct for day-to-day needs; and*
- c. *it has poor levels of public transport accessibility and an inward-looking design that will prevent any future servicing of the area by public transport*

⁴⁴ Item B in summary of evidence of S. MacArthur

160. Mr Peake commented on above items (a) and (c) of Mr Macarthur's evidence as follows⁴⁵:

The evidence of Mr MacArthur for Auckland Transport discusses the accessibility to Waiuku town centre for residents to access on foot⁴. The walking distance is stated to the town centre is 1.8km. This is based on someone walking from the furthest point of the PC area to a location on Queen Street.

Taking this distance from the furthest point of the development is considered unreasonable. A mid-point within the development would provide a more realistic 'typical' walking distance. In addition, the assessment ignores the proximity to other key destinations including the College, the medical centre (and associated facilities including café) on Constable Road opposite the college, New World supermarket and recreational facilities such as the rugby grounds on the north eastern boundary of the site.

The existing bus stop at 2 Constable Road is not within an 800m walk of the site, however, should a new bus stop be provided on Constable Road near the site access, this would improve the accessibility to public transport for PC 73, as well as for other residents to south of Constable Road.

I note the intensification with the MDRS will affect Waiuku with the up zoning of much of Waiuku to Mixed Housing Suburban. A significant proportion of development enabled by MDRS will not have access to any public transport, cycling facilities or be within a reasonable walking distance of amenities.

161. Regarding Item (b) of Mr Macarthur's evidence above Mr Peake noted the need for a neighbourhood zone has not been identified and that a neighbourhood zone would reduce the need for residents to travel outside of the Precinct and encourage walking and cycling to amenities⁴⁶.
162. The need for a neighbourhood zone with respect to transportation matters was not addressed in the evidence of Mr Parlane. However, Mr Parlane's evidence on public transport included the following⁴⁷:

In section 11 of his statement Mr Schischka discusses access to public transport. The provision of public transport in Auckland is a matter solely in the hands of Auckland Transport. All any developer can do is provide bus stops and shelters and ensure that a development has the connectivity and pedestrian permeability to enable people to get to a bus stop should Auckland Transport provide a service.

In this case a bus stop is proposed on Constable Road which would allow Auckland Transport to extend existing services along Constable Road with the bus being able to make a U-turn at the new roundabout. In my view this

⁴⁵ paras 2.57-2.60 Evidence of M.Peake

⁴⁶ para 2.3 Evidence of M.Peake

⁴⁷ paras 8.1 & 8.2 EIC J.Parlane

is a reasonable and sensible provision to make and addresses any effects created by the plan change.

163. Mr Parlane's evidence on walking included the following⁴⁸:

In paragraph 6.11 Mr Macarthur calculates a distance from the farthest point of the PC 73 land to the main street of Waiuku (not the edge of the local centre zone or even the centre of it). He then states that it would be more than a 20 minute walk and compares that to the 10-minute walking catchments used in Plan Change 78. However, my understanding⁷ is that the 10 minute walkable catchment was used specifically to define an area around stations on the Rapid Transit Network and the area around the outside of Metropolitan Areas where 6-storey buildings would be appropriate. I do not consider it to be a limiting factor when considering the expansion of a rural town, particularly when many of the amenities and services, such as a high school or medical centre are close by.

164. Another matter regarding connectivity with other land is that raised in the evidence of Mr MacArthur⁴⁹ that the precinct plan precludes connections to potential future transport networks, due to the "Rural Buffer Boundary" that is provided along the south-west and northwest boundaries of the PPC area. He considered it is imperative that a through road is enabled through the PPC area. This would also enable a bus route to be extended to service the plan change and wider area in future. This would require an amendment to the precinct plan to allow for the extension of the roads across the rural buffers.

165. Mr Peake's evidence on this matter⁵⁰ was that to allow for the future proofing of the extension of the roads would require a gap in the housing to be provided of sufficient width for the roads to be extended, or houses would need to be demolished to allow the road to be extended. As the Requestor has not adopted to extend the road across the rural buffers there is a risk that the proposed Precinct could preclude development beyond PC 73 but he noted that there has been no planning for any further development.

166. Mr Parlane's evidence⁵¹ noted that not extending roads across the buffers did not preclude consideration of future development areas and future through roads because the Auckland Transport are a Requiring Authority under the Act and can at any time they choose issue a notice of requirement should they decide such a through route is needed.

167. The closing legal submissions was of assistance on this matter including the following comments relevant to extending roads across the buffer areas⁵².

AT is trying to make the Applicants responsible for the costs of providing access to neighbouring land now. Setting aside the point that any future development is purely speculative at this time, it is appropriate for this Panel

⁴⁸ para 15.1 Rebuttal evidence of J.Parlane

⁴⁹ paras 6.14 and 6.15 Evidence of S.MacArthur

⁵⁰ para 2.2 evidence of M.Peake

⁵¹ para 15.2 Rebuttal evidence of J.Parlane

⁵² para 7.3 Applicant closing legal submissions

to consider whether the recommendations of AT are lawful, fair and reasonable. In my submission they are neither lawful, nor fair and reasonable, for reasons including:

- a) *What AT are effectively requesting is that a significant cost is imposed on the Applicants purely for the benefit of neighbouring private landowners. If the AT relief is granted other parties would get a “windfall” and road connections would also make it difficult to resist future rezoning applications.*
- b) *Under the Act, parties undertaking activities, are only legally responsible to avoid remedy and mitigate the adverse effects of their own activities. The Applicants cannot be legally required to undertake more works than necessary to manage their effects.*
- c) *This legal position was well established in the leading Estate Homes v Waitakere City Council case where the Court rejected an attempt to require a higher capacity road of one developer, that would service a neighbouring developer, without adequate compensation for the additional capacity.*
- d) *As the Panel will be aware, the Applicants have agreed to a higher specification for the main entry road, to collector standard and 22m in width, but this is to provide for bus passage and a cycleway. Incidentally, it could also service the neighbouring land in the future, but that is not the reason it is being offered, and could not be a reason to be required, without compensation.*
- e) *If the neighbours did want to develop in the future, they would of course be highly motivated to secure some land from the Applicants to achieve a connection. Providing there is a willing buyer and seller there is no reason that a private market arrangement could not be reached between neighbours as occurs on a regular basis. In this case, the concern that AT has raised about not having future access, would not eventuate at all.*
- f) *Even if, for some reason, the Applicants land was not available to be sold in a private agreement, the neighbours could still approach AT to acquire the land at their cost, and at no cost to AT or the public. They would of course be motivated to pay these costs, and because the road connection would be primarily for their benefit, and not the Applicants. It is fair and reasonable that all of AT’s costs would be reimbursed. AT cannot be compelled to use its powers, so it has significant commercial leverage in this scenario to avoid incurring costs for ratepayers.*

In summary, it would be inappropriate for this Panel to agree to ATs request for road connections, because it would be speculative, unlawful and unfair. There are mechanisms and processes, for any road land that may be required in the future, to be acquired at no cost to AT, if the use of the Public Works Act process proved necessary.

168. The planning rebuttal evidence of Mr Brown acknowledges that the land to the northwest of the PC 73 land has been identified as being potentially suitable for urban expansion in earlier growth studies undertaken by the former Franklin District Council. However, in this case he favours maintaining the defensible boundary proposed for the time being. He adds that the Unitary Plan provides an opportunity to debate these matters each decade, and the next review is due in less than four years.⁵³

169. Mr King in urban design rebuttal statement was of the view that this was not the time to consider such matters and states:

My view is that at this point in time it is too early to be able to determine whether that is achievable, what it should look like, and where it should be located. Nonetheless, I support a future connection being allowed for as part of the Resource Consent for the development if PC 73 is granted, if the Panel considers it appropriate to include provisions to “future proof” this outcome.⁵⁴

170. Ms Trenouth in her Planning summary memo refers to the need for defensible boundaries but also acknowledges there is logic to the identification of the plan change area for urban expansion. She adds that the requirement for a defensible boundary is implied in Policy B2.2.2(2)(m) although it is not required, rather she states that it requires that the RUB is aligned with strong natural boundaries, or where strong natural boundaries are not present other natural elements or human elements including property boundaries. Ms Trenouth adds, there is no such requirement under Policy B2.6.2(1) for expansion of rural and coastal towns.⁵⁵ She concludes:

I accept that a future plan change could seek to expand beyond the boundaries of PC 73 and this would need to be considered on its merits at that time. I do not support the amendment sought by Mr Macarthur to identify future connections to the adjoining land within the precinct plan when a decision to expand has not been made.⁵⁶

171. Having considered all the evidence on this matter, we accept that there is a tension between the need provide a defensive rural buffer, especially as this land is located on and adjoins prime and highly productive soils and the desire to keep options open for future development should that be desirable. We consider the need to protect productive soils to be a very important component to any urban expansion and are cognisant that any attempt to retain the option of future expansion may be also be interpreted as an indication that future urban expansion has been provided for.

172. Accordingly, we find that the provision of roading connections are not necessary or justified.

⁵³ Para 3.17 Rebuttal evidence P. Brown

⁵⁴ Para 4.7 Rebuttal evidence of T. King

⁵⁵ Paras 2.31 and 2.32 Summary statement C. Trenouth

⁵⁶ Ibid Para 2.33

173. The final matter regarding to connectivity to other land related to the evidence from AT⁵⁷ that the rural buffer should be removed along the full Constable Road frontage to ensure an appropriate interaction between development in the precinct and this road. AT also sought that the precinct plan should be amended to show a walking and cycling link between the western portion of the precinct and Constable Road. The final precinct plan offered by the applicant does not adopt these above requests from AT, however proposed provision I4XX.3 Policies (10) (e) reads:

Ensuring that the frontages of the precinct to Constable Road are upgraded to an urban standard, and that a pedestrian connection to the western end of Constable Road is achieved prior to, or at the same time, as development.

174. Like the provisions for a neighbourhood centre zone, we consider this to be more of an urban design matter and we discuss these further in that part of our decision.

Wider Traffic Effects

175. Mr Parlane's evidence⁵⁸ states that in terms of the non-work trips, the PC 73 land is ideally located within Waiuku to ensure short trips can be made either by car or by walking and cycling. The distance to Waiuku means the longer trips will not occur daily for most people. He opined that that itself is a valid form of travel management. He also comments that wider area transport infrastructure is not needed to be provided to avoid, remedy or mitigate actual or potential effects.⁵⁹
176. Mr Parlane's evidence⁶⁰ notes that in his visits to Waiuku he looked at the operation of most parts of the town and the routes to both Glenbrook and Pukekohe and did not see any areas that would be likely to be adversely affected by the proposed PC 73 traffic. He also made use of Google Traffic to look for areas where there might be existing bottlenecks but didn't find any. He concluded that there are no significant areas of travel delay around Waiuku or between Waiuku and the local employment areas.
177. In response to concerns expressed by AT⁶¹ relating to the close spacing of the two existing roundabouts on King Street Mr Parlane's response⁶² was that his modelling showed the King Street roundabouts still work at an acceptable level of service. This is despite using a higher growth rate than actually has been measured to exist (1.5% instead of 0.5%) and despite the fact that some of the houses within the subdivision are now likely to be occupied by retired people who will generate fewer peak hour trips. This means that the trip rates applied are over-estimating the traffic and degree of saturation but can still work at an acceptable level anyway.
178. In response to AT concerns⁶³ about the capacity effect the pedestrian crossing between the roundabouts might have, Mr Parlane⁶⁴ does not consider the need

⁵⁷ para 2.2 Summary Hearing Statement S. MacArthur

⁵⁸ para 6.6 EIC J.Parlane

⁵⁹ para 16.9 Ibid

⁶⁰ para 4.1 Rebuttal Evidence J.Parlane

⁶¹ paras 8.3 to 8.5 EIC P.Schischka

⁶² para 5.6 rebuttal evidence J.Parlane

⁶³ para 8.24 EIC P.Schischka

⁶⁴ para 5.8 Ibid

for cars to stop and let a pedestrian cross will have any noticeable effect on the operation of the roundabouts.

179. Mr Parlane does not support converting either or both of the roundabouts to traffic signals⁶⁵ and the modelling shows this is not required or appropriate in the Waiuku village. In Mr Parlane's view no additional or further modelling is required.
180. In its evidence, AT requested that a new standard to be included in the provisions requiring the operation of the King Street roundabouts to be assessed when any application for resource consent would exceed 75% of the development of the precinct or 683 dwellings or 227 lots based on the advice of Mr Schischka.⁶⁶
181. Mr Peake's evidence was that it was unclear what further information that assessment would provide compared to that prepared by Mr Parlane given that there are no planned changes to the roading network and that there are no developments planned that would generate significant traffic volumes. In his view, the main uncertainty is the effect that MDRS may have on traffic volumes⁶⁷.
182. In response to questioning from Commissioners, Mr Peake stated he did not consider the requested review assessment by AT is necessary.
183. Having considered all the expert opinions on this matter, we prefer the evidence of Mr Parlane and Mr Peake that wider area transport infrastructure is not needed to be provided to avoid, remedy or mitigate actual or potential effects of the proposed plan change.

Vehicle dependence (VKT)

184. In his evidence, Mr Parlane notes that professionally he does not endorse using the concept of VKT as a planning instrument, at least at this time, when data has not been gathered and robust modelling undertaken⁶⁸. In his view it does not reflect carbon emissions particularly well as it leaves out traffic congestion, the effect of low traffic speed, changes to vehicle efficiency or the uptake of EVs. He added that VKT will become even less reliable as more drivers convert to using EVs.
185. Mr Parlane's opinion is that we simply can't conclude that additional housing in Waiuku will increase VKT or carbon emissions from transport more than if the housing were not allowed to be developed there⁶⁹.
186. Mr Parlane considers that VKT is not currently fit for purpose as a planning instrument when considering growth in rural towns⁷⁰. In his view it holds places like Waiuku to a different standard from the urban parts of Auckland and the surrounding areas, and is biased in favour of CBD centric development. It takes no account of

⁶⁵ para 5.9 rebuttal evidence J.Parlane

⁶⁶ para 9.4 EIC S. MacArthur

⁶⁷ para 2.41 Evidence of M.Peake

⁶⁸ para 1.8 EIC J.Parlane

⁶⁹ para 13.9 EIC J.Parlane

⁷⁰ para 13.28 Ibid

the fact that people in more distant places contribute less to traffic congestion and use their cars mostly for shorter trips.

187. Ms Trenouth in her response evidence for Auckland Council accepted that VKT cannot be considered a reliable indicator of greenhouse gas emissions particularly at the scale of PC 73⁷¹. She further accepted that it is not possible to determine that PC 73 would result in an increase in greenhouse gas emissions⁷². She noted the Applicant's proposed precinct provisions support electric vehicle charging infrastructure and an integrated walking and cycling network to support active modes. Importantly there are significant employment opportunities in the local area that reduce the necessity to travel for work. Therefore, she considered PC 73 would support the reduction of greenhouse gases and in combination with other factors would achieve the minimum requirements of a well-functioning urban environment.
188. Our finding is that there are practical difficulties in using VKT as a reliable indicator of greenhouse gas emissions and there is no evidence that additional housing resulting from the proposed plan change in Waiuku will increase VKT or carbon emissions from transport more than if the housing were not allowed to be developed.

Finding

189. Our overall find regarding transportation effects is that these can all be managed through the subdivision and development process that follows the urbanisation of land. This process would also be assisted by the proposed precinct plan provisions which have a number of agreed triggers for transport infrastructure (including walking and cycling) to be implemented as well as specific transportation development standards that must be met.

Landscape and Visual Effects

190. Mr Cocker described the landscape of Waiuku and its environs as comprising a central basin surrounded by terraces, with the site being located largely on the western enclosing terrace⁷³, adjacent to the 'hard' urban edge of the township. He further clarified that a remnant dune ridge, which is bisected by Constable Road, forms a 'perceptual gateway' to Waiuku settlement on its south-western approach⁷⁴. This landform is identified as an Escarpment Edge Feature on the post-hearing version of the Precinct Plan and part of it is designated as indicative open space. However PC 73 extends to the west beyond this landform 'gateway'. A valley feature in the west of the site is to be retained as open space and used for stormwater retention/treatment.
191. PC 73 would change the site from open pastoral land to relatively dense urban form surrounded by rural land on three sides. Both Mr Cocker and Council's landscape reviewer, Mr Pryor, consider that this change (with mitigation measures) could be absorbed within the landscape with low to moderate adverse effects on landscape and visual amenity values, as long as effective buffers were provided to the

⁷¹ para 2.10 Summary statement of Planning Issues C.Trenouth

⁷² para 2.11 Ibid

⁷³ Application material Volume 2, pp221-222.

⁷⁴ Ibid.

adjoining rural land. We note that there were no submissions from neighbouring landowners on visual amenity issues.

192. A number of different opinions were expressed at the hearing regarding the appropriate width and design of the landscape buffers, and the necessity for a lower residential density near rural boundaries. For example, Mr King suggested that the western buffer should provide walking and/or vehicle access as a jointly-owned access lot (JOAL)⁷⁵. These suggestions aside, the post-hearing Precinct provides for 10-metre wide landscaped buffers on the north-western, western and southern boundaries, with no JOAL required, and a lower residential density on lots that include part of the buffer. An indicative walkway is provided for in the south-western buffer. We set out the final precinct plan provisions as follows:

14XX.3 Policies [dp]

- (3) *Ensure that less intensive development is located immediately adjacent to rural land to provide for a softer transition from urban to rural land uses.*

14XX.6.1.2 Rural Buffer Boundary

Purpose: *To minimise the potential landscape and reverse sensitivity effects of urban development adjoining rural zones.*

- (1) *One dwelling per site within the Rural Buffer Boundary.*
- (2) *A minimum 10m wide planted strip shall be established and maintained immediately adjacent to any boundary with a site in the Rural - Mixed Rural Zone or to a boundary with Constable Road that is south of the roundabout. The planted strip must comprise a mixture of trees, shrubs or ground cover plants (including grass) within and along the full extent of the strip within the site, other than any provision for a pedestrian/cycling path.*

14XX.6.2.1 Minimum Size of Lot Adjoining Rural Zones

Purpose: *To provide for larger lots adjoining rural zones to ensure a less abrupt transition between urban and rural landscapes.*

- (1) *The minimum net site area for any residential lot immediately adjoining a rural zone shall be 700m².*

193. In the absence of any wider structure planning or Future Urban zoning on the western side of Waiuku, we find that landscape buffers on the north-western and southern boundaries of PC 73 are appropriate to avoid, remedy or mitigate adverse effects. We do not consider the planted buffers would provide any additional barrier to future roading connections or urban growth, over and above private lot ownership on these boundaries.

⁷⁵ Para 5.57-5.63 EIC T King.

194. At the hearing, Mr Pryor recommended that the provisions contain additional detail about the design of the Rural Buffer Boundary, including in regard to planting types/heights and fencing⁷⁶. We consider these details can be adequately addressed as part of any future subdivision, within the context of the relevant policies and rules.
195. Ms Trenouth supported the provision of a walkway in the south-western rural buffer but did not support its identification on the Precinct Plan, due to uncertainty about future land ownership⁷⁷. We consider that a walkway in this location would enhance connectivity and that the issues of land ownership could be resolved at the time of subdivision.

Finding

196. We note that PC 73 is based on cadastral boundaries rather than any landform features (eg. streams or ridges) that would provide a defensible natural edge to the urban growth of Waiuku. However, we find that the potential landscape and visual amenity impacts of the proposal would be adequately mitigated by the proposed rural buffers and associated Precinct provisions. We consider that the post-hearing provisions relating to the rural/urban interface are adequate to mitigate adverse landscape and visual amenity effects on neighbouring rural land.

Urban design

197. The urban design experts (Messrs King and Munro for the applicant and Ms Mein for Council) all agreed that Waiuku is a rural township that is relatively self-contained. The experts also agreed that PC 73, as modified during the hearing, could contribute to a well-functioning urban environment⁷⁸. It is suitably and conveniently located in relation to the town centre, community services and open spaces, potentially provides for a variety of residential typologies including retirement living, includes an integrated walking and cycling network, and allows for future public transport services.
198. Mr McArthur for Auckland Transport told us that a wider structure planning process was required to ensure that the future growth of Waiuku was well integrated, based on defensible boundaries and integrated with transport infrastructure⁷⁹. While Mr Munro presented a high level consideration of structure plan issues for Waiuku as part of his evidence⁸⁰, he acknowledged that this was limited to the shape and form of the settlement and did not take into account constraints such as infrastructure, hazards or highly productive soils. Ms Mein also highlighted the benefits of a more comprehensive structure planning exercise but concluded that such an exercise was likely to have identified at least part of the PC 73 land as appropriate for urban expansion⁸¹. Ms Trenouth, Council's planner, confirmed that the technical

⁷⁶ Para 2.4-2.5, Reply R Pryor.

⁷⁷ Para 2.36, Reply C Trenouth.

⁷⁸ As defined in Policy 1 of the NPS-UD.

⁷⁹ Summary of Evidence C, EIC S McArthur.

⁸⁰ Appendix 2, EIC I Munro.

⁸¹ Para 1.15-1.16, Reply L Mein.

assessments in support of PC 73 met the structure planning requirements in Appendix 1 of the AUP⁸².

199. Concerns were raised during the hearing about the internal layout and design of PC 73, including:
- The lack of a transition to lower density residential (Large Lot Residential) adjacent to rural land;
 - The lack of natural defensible boundaries to urban form;
 - Effect of the indicative retirement village area on connectivity within the plan change area;
 - Walking/cycling connections to the town centre;
 - Need for a neighbourhood centre zone;
 - Road/greenway typologies; and
 - The extent to which affordable housing would be facilitated.
200. Some of these issues were resolved during the hearing, with agreement between urban design experts that a transition to lower density was not essential and that the proposed rural buffers could provide a boundary to the urban area. From an urban design perspective walking/cycling connections and road typologies were agreed. Mr King emphasized the importance of the Precinct Plan greenway in the design of PC 73⁸³ but we note that there are no functional requirements or standards for the greenway in the Precinct provisions and we therefore cannot assume that any more than a shared walking/cycling path would be provided.
201. While Mr McArthur recommended provision of an area of Neighbourhood Centre zoning within PC 73 to provide for local shops or cafes⁸⁴, Mr Brown considered the location for such amenities was best determined through a resource consent process. We agree that Neighbourhood Centre zoning is not required at this point in time, particularly given the proximity of undeveloped Business – Mixed Use land about 620m away on Constable Road and the connectivity to these areas proposed by the Requestor and reflected in the precinct plan provisions.
202. At the hearing, Precinct provisions for affordable housing stipulated that no less than 20% of dwellings would be sold for no more than 75% of the median regional house price. Under questioning, it was clarified that house prices in Waiuku are already substantially lower than the median regional price and that the affordable housing provided would likely be no more affordable than the existing local supply. In the post-hearing Precinct, the percentage of the Auckland regional house price was reduced to 70% and the method of calculation clarified to be consistent with other affordable provisions already included in the Unitary Plan. We find that these

⁸² Para 2.29-2.33, Reply C Trenouth.

⁸³ Para 5.3-5.6, EIC T King.

⁸⁴ Para 6.21, EIC S McArthur.

changes are appropriate in this context to ensure provision of affordable housing in the Waiuku context.

203. The evidence presented included consideration of an indicative retirement village which the Requestor presented as a positive benefit to the community on the grounds that there are no retirement villages in Waiuku and that there was demand for people to retire in the community they grew up in. It was also submitted that a retirement village would provide local employment opportunities.
204. We also heard that the location chosen for the retirement village on the Precinct Plan has the effect of severing future residential development on 45A Constable Road from that on 92 and 130 Constable Road, despite the road connection shown to the north. Solutions advanced at the hearing included deleting the indicative retirement village from the Precinct Plan and showing a road connection instead (Ms Mein) and retaining the retirement village area but showing a road link through it (Mr Peake). Mr Peake provided us with an example of a retirement village in Karaka that has a publicly accessible street connecting through it. Given the desirability of enhancing connectivity within PC 73, we consider that a low speed street connection through the designated retirement village area would be appropriate.

Finding

205. We find that PC 73 would result in acceptable urban design outcomes and would result in a well-functioning urban environment.
206. If we had determined to grant PC 73, we would have directed that the Precinct Plan be updated to show an indicative road connection through the retirement village area.

Prime/Highly Productive Soils and Rural Productivity

Prime Soils

207. Dr Singleton's evidence on soil and land use capability identified the 29ha comprising 92 and 130 Constable Road as having Class 2 (62%) and Class 3 (29%) with smaller areas of class 4 and 6 soil. The land at 45A Constable Road was not investigated as it has an existing consent for earthworks. He stated the soils were mostly free-draining Karaka soils but other soils on the land were poorly drained peat or clay soils. He stated that there were no Class 1 Elite soils on the land⁸⁵.
208. In classifying which soils were "prime" soils, Dr Singleton referred to the definition in the Unitary Plan which states:

Land containing prime soil:

Land identified as land use capability classes two and three (LUC2, LUC3) with slight to moderate physical limitations for arable use.

⁸⁵ Paras 10 and 11 Primary evidence of Dr Singleton

Factors contributing to this classification are:

- *readily available water;*
- *favourable climate;*
- *favourable topography;*
- *good drainage; and*
- *versatile soils easily adapted to a wide range of agricultural use*

209. Dr Singleton’s interpretation of this definition is that the definition lists a number of required factors. In his view, these factors are specific and identify the most versatile or “prime” soils as a subset of land within LUC class 2 and 3. In his view, they are not a random list of land features designed to show the reader examples of what class 2 and 3 land can contain.⁸⁶ Based on this interpretation Dr Singleton’s evidence was that 46.3% of the land comprised prime soils with 47.9% comprising “other productive land” and 5.8% being non-productive.⁸⁷ This resulted in approximately 13.4ha of the plan change land being classified as “land containing prime soil”.

LUC class	Hectares	Per cent	Elite/prime
2s4	5.5	19.0	Prime land
2e4	4.6	16.0	Prime land
3e5	3.3	11.3	Prime land
2w3	1.4	4.9	Other
2w3	0.3	1.5	Other
2w3	6.1	20.9	Other
3w2	5.0	17.3	Other
4e & 6e	0.9	3.3	Other
Tracks & buildings	1.7	5.8	Non-productive
TOTAL	28.9	100.0	

Table 1 - Area of LUC mapping units on the plan change land⁸⁸

210. Dr Reece Hill provided a peer review for the Council (included in the hearing report) and a summary statement in response to evidence presented. He agrees that there is no elite soil on the land and agrees with Dr Singleton’s interpretation and classification of the class 2 soils as being “prime” and “other productive land”. Dr Hill’s view was that the more contiguous area of land containing prime soil in the front half of the plan change area has the greatest potential for cropping or horticultural land uses.⁸⁹ He added that those soils will be directly impacted by the subdivision and development enabled by the proposed plan change and contribute to the ongoing fragmentation of productive land in the Auckland region and concluded PC 73 does not give adequate effect to the Unitary Plan and the

⁸⁶ Para 23 - Primary evidence of Dr Singleton

⁸⁷ Ibid Para 14

⁸⁸ Ibid Para 18

⁸⁹ Para 2.9 Summary statement of Dr Hill

requirement to retain land containing prime soil.⁹⁰ Dr Singleton's view was that this land was less versatile and there was other land in the locality (which contained both elite and prime soils) and on that basis there was logic to directing urban growth to those areas with the least versatility. He added that allowing the least versatile land to be urbanised would provide more protection for the more versatile soils.

Highly Productive Land

211. Under the NPS-HPL highly productive land is defined as:

highly productive land means land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land).

212. Both Drs Singleton and Hill agreed that 26.3ha or 91.0% of the land met this definition and is classified as highly productive land under the NPS-HPL. Both experts agreed that the NPS-HPL was in its early phase of implementation and that the required mapping of highly productive soils by regional councils was yet to be undertaken and until this time "highly productive land" was defined as:

- a. Land zoned general rural or rural production; and
- b. LUC 1, 2, or 3 land

Rural Productivity

213. James Allen gave evidence for the Requestor on rural productivity and was of the view that notwithstanding the soil classification under the Unitary Plan or the NPS-HPL he was of the view that the land did not meet the necessary threshold for commercial viability under the current economic circumstances. His evidence relied on the classifications of prime and other productive land by Dr Singleton and discussed several commercial horticulture scenarios including the growing of commercial vegetables, kiwifruit, maize and livestock farming. He also factored in the need and estimated costing for irrigation, annual rainfall and other commercial and capital costs. His view was that the land would be marginally profitable for commercial horticulture.⁹¹

214. Mr Allen also referred to the submissions (in support) from Balle Brothers Group and Hira Bhana & Co. as further evidence that the land was not commercially viable.⁹² We note that while we need to have regard to these submissions, neither submitter appeared at the hearing and as such we were unable to ask them any questions on this matter.

⁹⁰ Ibid Paras 2.9 and 2.10

⁹¹ Para 1.11 Evidence of J Allen

⁹² Ibid Paras 14.2-14.4

215. Like Dr Singleton, Mr Allen was in favour of urbanisation occurring on the least productive land and concluded that the productivity issues identified by his assessment supported urbanisation on this land.⁹³
216. Paul Sharp also gave evidence on the matter of rural productivity and he identified similar issues to those identified by Mr Allen but also added the relatively small size of the land holdings (in rural production terms) and its proximity to existing urban areas (and resulting reverse sensitivity issues) as additional limitations. In his view, the most likely land use for 43, 45A, 92 and 130 Constable Road would be lifestyle blocks, or pasture farming support/beef production, and would be on a small scale relative to these industries in New Zealand.⁹⁴
217. Stuart Ford provided the Council peer review and a summary statement of the rural productivity evidence and he disputed Mr Allen's assessment and produced his own assessment of profitability which painted a much more profitable picture of commercial viability. Mr Ford also referred to the practice of aggregated agribusiness enterprise models where operations are spread across several blocks of land to improve economies of scale. In his peer review Mr Ford states:

The highest and best use for the Prime soils that are present is either commercial vegetable production or deeper rooted plants such as Kiwifruit and Avocados. This is due to the relatively high natural fertility of the soils, the relatively deep nature of their profile and their free draining properties. The soils that are best suited to the production of these crops are relatively limited in abundance across the Auckland and Waikato Regions.

It is my opinion the land and soil types are highly suited to a very wide range of horticultural crops which are not deep rooting. These shallow rooting crops include salad greens; root vegetables such as potatoes, kumara, carrots; cucurbits such as squash, onions, pumpkins; leafy greens such as cabbage, cauliflower, broccoli, lettuce, spinach; other vegetables such as tomatoes and corn and Berryfruit such as strawberries.

The land which is described as other soils would have Bull Beef or Dairy grazing as their highest and best use.⁹⁵

218. Both Mr Allen and Mr Ford discuss the issue of food security with Mr Allen satisfied that the loss of prime soils would not have an impact on food security within New Zealand whereas Mr Ford considers the provision of vegetables and other produce is an extremely vital ingredient of the nation's wellbeing.⁹⁶

Finding

219. We accept the expert evidence that the classification of prime land under the Unitary Plan is more than simply identifying whether the land is Class 2 or 3 and involves a somewhat nuanced assessment based on the factors outlined in the Unitary Plan definition of "Land containing prime soil". On that basis we find that the plan change

⁹³ Ibid Para 18.1-18.3

⁹⁴ Para 1.7 Evidence of P Sharp

⁹⁵ Page 445 hearing report – S. Ford Council peer review

⁹⁶ Page 4 – Council summary statement S. Ford

land contains 13.4ha (46.3%) of prime soils and 13.7ha (47.9%) of other productive land within this classification.

220. Under the NPS-HPL we find that 91% of the plan change land is classified as Highly Productive Land, at least until such time as regional mapping required under clause 3.5 of the NPS-HPL has been completed.
221. We also accept that the plan change land does not contain any elite soils and these are located in other areas in the locality and are best for the production of commercial horticultural produce. That said, a significant proportion of the land is considered prime land with a similar proportion also being classified as productive, albeit with some additional constraints.
222. We are assisted by the rural production evidence of both Mr Allen and Mr Ford and we are more persuaded by Mr Ford's assessment of the potential commercial productivity on the plan change land and consider that his analysis and evaluation is more thorough and representative of the likely economic and commercial considerations needed to undertake a commercial horticulture business case.
223. That said, we are also mindful that these assessments are only a representation of the economic and commercial viability considerations under the current market conditions. While these are relevant to the present time, we are also cognisant that the protection of prime soils relates to their productive potential including for future generations and that includes recognition that economic conditions and technologies change. In that regard, we are also mindful that the rural economy is dynamic and is subject to unpredictable change including the effects of climate change. Accordingly, while we are inclined to place some weight on current productivity assessments we also consider that this should also be balanced against the need to make this soil available to future generations. We find therefore, that the loss of prime soils, other productive soils and highly productive soils will have significant adverse effects on the environment.

Positive effects

224. There were a number of positive effects identified by the Requestor and the submitters in support and we summarise these as follows:
- Increased economic activity and employment;
 - Flooding mitigation to adjoining residential land;
 - Affordability and Choice;
 - Retirement village;
 - EV and solar charging for each dwelling
 - Climate change resilience
 - improved ecological values within the site and the aquatic receiving environment
225. We acknowledge these positive effects as generally applicable and we have more to say on these matters in the assessment of costs and benefits under the NPS-HPL.

Regional Policy Statement

226. There are a number of the chapters in the RPS that are relevant to PC 73 and these have been extensively canvassed in the planning evidence before us. As set out in the Request, hearing report and evidence we agree that the most relevant chapters of the RPS are:
- a. B2 Urban growth and form;
 - b. B3 Infrastructure, transport and energy;
 - c. B6 Mana whenua; and
 - d. B9 Rural environment.

Urban Growth and Form (Chapter B2)

227. Part B2 of the Unitary Plan addresses urban growth and form. It focuses on the enablement of growth in a quality and compact urban form and includes enabling growth in rural towns subject to the avoidance of identified adverse effects. These are set out in Objective B2.6.1 and Policies B2.6.2. Of relevance to this plan change the objective and policies set out adverse effects to be avoided and these relate to mana whenua values, the loss of elite soils and where practicable, prime soils which are significant for their ability to sustain food production. The objective also requires any urban development to be consistent with the local character of the town or village and the surrounding area and the provision of adequate infrastructure.
228. We note that Plan Change 80 was notified on 18 August 2022 that incorporates key directions from the NPS-UD into the RPS including specific direction relating to environmental risk, natural hazards and climate change, a compact urban form, a quality and well-functioning built environment, and residential growth and intensification.
229. The planning witnesses are in agreement that PC 73 will maintain the anticipated character of Waiuku and has been well-designed to achieve an acceptable compact and quality urban form. Its proximity to the Waiuku town centre, other business zoned land and Waiuku College is also appropriate and complementary and in this regard we agree that it would achieve a well-functioning and suitably compact urban environment. Added to this is the inclusion of affordable housing, resilience against natural hazards and future proofing in the form of providing for solar power generation and EV vehicle charging infrastructure.
230. We accept that this plan change does not need a specific structure plan in accordance with B2.6.2(4) on the grounds that its scale is sufficiently small to avoid this requirement. However, we note that while not essential, a structure plan process would have assisted with resolving some of the wider context issues such as future connectivity and defensible boundaries based on topographical features.
231. Despite our conclusions above, we have concern that the loss of prime soils will be significant even if a large proportion of those soils currently have limitations as set

out by Dr Singleton. Our interpretation of Objective B2.6.1(1)(b) and Policy B2.6.2(1)(d) is that they are directive with a clear focus on avoidance.

B2.6.1. Objectives

- (1) *Growth and development of existing or new rural and coastal towns and villages is enabled in ways that: (...)*
- (b) *avoid elite soils and avoid where practicable prime soils which are significant for their ability to sustain food production;*

B2.6.2. Policies

- (1) *Require the establishment of new or expansion of existing rural and coastal towns and villages to be undertaken in a manner that does all of the following: (...)*
- (d) *avoids elite soils and avoids where practicable prime soils which are significant for their ability to sustain food production;*

232. While we accept that there are no elite soils within the PC 73 land, the requirement to avoid where practicable the remaining prime soils (and especially those without limitations) is still an onerous obligation. We are conscious that once urbanisation occurs, those productive soils are, most likely, lost forever. We note that the design and layout of the plan change has not sought to exclude those areas that contain prime soils that are not subject to limitations. Rather, the loss of prime soils appears to be justified on the grounds that the more productive soils represent a smaller proportion of the total land area and that they have economic constraints in terms of the investment needed or expected lower returns on certain crops. As we have set out above, the protection of prime (or elite) soils should not be discounted based on the economic circumstances of the day as these circumstances are subject to change over time. In our view, what may not be considered economically viable today could be more viable in the future under different circumstances. The policy direction, in our view, is therefore directed more towards avoiding the loss of prime soils based on their long term productive capability and less on their viability under current economic circumstances.

233. We heard evidence from Mr Brown that the PC 73 area was the most logical place to enable urban expansion and that this was consistent with previous endeavours by the legacy Franklin District Council to enable further residential expansion. We note that Ms Trenouth and Mr Bradley for Council also agreed that this was the most logical location for urban expansion. However, we are of the view that the avoidance directive in B2.6.1(1)(b) and B2.6.2(1)(d) as a prerequisite for urban expansion has not been met in this case. This matter takes on additional significance when viewed under the additional lens of the NPS-HPL which we discuss later in this decision.

Infrastructure, Transport and Energy (Chapter B3)

234. Chapter B3 sets out objectives and policies relating to the provision of resilient, efficient and effective infrastructure which in this case includes the three waters: water supply, wastewater and stormwater and the provision of effective, efficient and

safe transport infrastructure. All parties agree that the provision of these infrastructure components are essential for any well-functioning urban environment.

235. As discussed in the effects assessment above, we are satisfied that the Requestor can provide adequate three waters and transportation infrastructure and we acknowledge the effort made by the Requestor to engage with relevant submitters (being AT and Watercare) to resolve these matters. We therefore find that PC 73 is consistent with Chapter B3 of the RPS.

Mana Whenua (Chapter B9)

236. Chapter B6 - Mana Whenua of the RPS provides for iwi and mana whenua to engage and participate in the sustainable management of natural and physical resources including ancestral lands, water, sites, wāhi tapu and other taonga.⁹⁷
237. As set out the evidence of Mr Brown, the Requestor has engaged with mana whenua throughout the process to discuss the merits of the proposal and to get advice on cultural matters.

Rural Environment (Chapter B9)

238. Chapter B9 – Rural Environment of the RPS contains policies relevant to the effects of urbanisation including the protection of elite quality soils, the effects of fragmentation and reserve sensitivity issues. The objectives and policies are similar with regard to those set out in Chapter B2 but with a more hierarchical distinction between elite, prime and other productive soils:

B9.3.1 Objectives

- (1) Land containing elite soils is protected through land management practices to maintain its capability, flexibility and accessibility for primary production.*
- (2) Land containing prime soil is managed to enable its capability, flexibility and accessibility for primary production.*
- (3) The productive potential of land that does not contain elite or prime soil is recognised.*

B9.3.3 Policies

- (2) Encourage activities that do not depend on using land containing elite and prime soil to locate outside these areas.*
 - (3) Recognise the productive potential of land that does not contain elite or prime soil and encourage the continued use of this land for rural production.*
239. As with our finding under Chapter B9 with regard to prime soils, while acknowledging that the objectives and policies contain some differences, we

⁹⁷ Chapter B6 RPS - B6.2.2. Policies

nonetheless reach a similar conclusion. While there is an obvious tension within the RPS in terms of providing for growth and also protecting elite and prime soils, we are of the view that the land, overall, has significant productive potential and that these resources would be lost for future generations if allowed to be urbanised. We also consider that the Requestor has not demonstrated that there are no other viable alternatives (such as a smaller urban expansion on the less productive land) and we have more to say on that matter in our evaluation under the NPS-HPL.

Overall Finding on the RPS

240. We find that while PC 73 has some significant merits in terms of urban design, provision for infrastructure, management of natural hazards and transportation and is consistent with these chapters of the RPS however, it has some significant inconsistencies with regard to the permanent loss of prime soils and other productive land and the implications that has for future generations. Overall, therefore, the Request is found to be inconsistent with the RPS.

NATIONAL POLICY STATEMENTS

National Policy Statement – Urban Development (2020)

241. The provisions of the NPS-UD were extensively described and evaluated in the expert planning and urban design evidence for the Requestor, the Council (in the hearing report) and by the Council as submitter. These provisions were also well canvassed in the legal submissions of Mr Fuller for the Requestor, Mr Ashby for AT and Mr Bradley for the Council as submitter.
242. The NPS-UD has the primary objective of ensuring that 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 future⁹⁸. This also includes, among other things, improving housing affordability by supporting competitive land and development markets and ensuring that urban environments are integrated with infrastructure planning and funding decisions.⁹⁹ In the context of the Auckland Region (as a Tier 1 local authority) the NPS-UD requires Auckland to provide sufficient development capacity within urban environments, so more homes can be built in response to demand.
243. The planning evidence of Mr Brown was that PC 73 is entirely consistent with the relevant objectives and policies of the NPS-UD. He stated that it would enable the development of a significant number of new dwellings in Waiuku, in a way that will contribute to increasing the capacity of developable land to meet the demand for housing generated by a growing population in the medium to longer term. He also highlighted the increase of developable residential land and how that enables the community to provide for its social wellbeing into the future, by creating opportunities for the next generation of Waiuku families to obtain housing within the town and for elderly residents to age in place.

⁹⁸ NPS-UP Objective 1

⁹⁹ Ibid Objective 6

244. The evidence of Mr Brown also referred to a variety of housing that would be enabled including the provision of affordable housing and a mix of typologies that could be established on the finished lots.
245. Mr King's urban design evidence focussed on how the design and layout had focussed on this outcome and referred to the proposed pedestrian and cycle greenways and the landscaped urban rural edge which would also be a defensible urban boundary. Mr Munro's design review also concluded that PC 73 will improve the opportunity for people living in Waiuku to access local facilities by foot or bicycle and make the most efficient use of land well-suited for residential purposes close to the centre, school and public reserve land.
246. The legal submissions by Mr Fuller referred to the demand and capacity assessment of Mr Thompson and supported by evidence of Mr Colgrave with regard to demand and need for greenfield development opportunities in addition to infill development opportunities. Both Mr Thompson and Mr Colgrave were sceptical that additional plan enabled housing capacity within existing urban areas in Waiuku would be realised to meet the nature and volume of demand that existed there.
247. Mr Bradley's planning evidence for Council as submitter, took the opposite view and he stated that while PC 73 would undoubtedly add development capacity to Waiuku with potentially a variety of housing options he did not consider that additional development capacity is required to meet the projected growth of Waiuku. Rather he was of the view that the existing plan enabled capacity within existing zoned areas within Waiuku, together with the additional capacity that would result under PC78, was sufficient to meet demand.
248. The Council peer review (planning and urban design), while initially concluding that it was not consistent with the NPS-UD ultimately concluded that the final revised proposal, including amendments to the precinct provisions and agreements with Watercare regarding the provisions of infrastructure, would achieve a well-functioning urban environment and the amended precinct provisions would ensure the integration of development with infrastructure planning and funding decisions.

Finding

249. While we have concerns regarding the loss of prime and highly productive soils which we discuss below, we are satisfied that, PC 73 is consistent with the NPS-UD and would achieve a well-functioning urban environment.

National Policy Statement – Highly Productive Land 2022

250. The NPS-HPL was approved by the Governor-General under section 52(2) of the Resource Management Act 1991 on 12 September 2022 and under section 1.2(1) it came into force on 17 October 2022. As a national policy statement, PC 73 must give effect to the NPS-HPL under section 75(3)(a) of the RMA.
251. We note that this national policy statement came into effect late in the process and by the time it had legal effect most of the design and assessment to support PC 73 had already been undertaken. We accept that this left the Requestor, submitters and

the Council little time to respond to the new provisions and we thank all the parties for their effort and diligence in addressing these matters at such short notice.

252. The relevant provisions of the NPS-HPL were set out to us by the various submitters and we also had access to the full document. The NPS-HPL has one primary objective which is set out in Part Two as follows:

2.1 Objective

Objective: Highly productive land is protected for use in land-based primary production, both now and for future generations.

This supported by 9 policies which we also set out below:

2.2 Policies

***Policy 1:** Highly productive land is recognised as a resource with finite characteristics and long-term values for land-based primary production.*

***Policy 2:** The identification and management of highly productive land is undertaken in an integrated way that considers the interactions with freshwater management and urban development.*

***Policy 3:** Highly productive land is mapped and included in regional policy statements and district plans.*

***Policy 4:** The use of highly productive land for land-based primary production is prioritised and supported.*

***Policy 5:** The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.*

***Policy 6:** The rezoning and development of highly productive land as rural lifestyle is avoided, except as provided in this National Policy Statement.*

***Policy 7:** The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.*

***Policy 8:** Highly productive land is protected from inappropriate use and development.*

***Policy 9:** Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land.*

253. All parties agreed that under clause 3.4 of the NPS-HPL that regional council must undertake mapping of highly productive land any land in its region that is:

- (a) *is in a general rural zone or rural production zone; and*
- (b) *is predominantly LUC 1, 2, or 3 land; and*
- (c) *forms a large and geographically cohesive area.¹⁰⁰*

That mapping is to be incorporated into a regional policy statement, by way of maps and following that, each relevant territorial authority must identify the highly productive land in its district, and must do so using maps that are exactly equivalent to those in the relevant regional policy statement.¹⁰¹

254. All parties also agreed that in the interim period clause 3.5(7) applies which requires:

(7) *Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:*

(a) *is*

(i) *zoned general rural or rural production; and*

(ii) *LUC 1, 2, or 3 land; but*

(b) *is not:*

(i) *identified for future urban development; or*

(ii) *subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.*

255. As set out in the various statements of evidence and legal submissions all parties agree that Clause 3.5(7) applies to PC 73 and the Rural - Mixed Rural Zone is an equivalent “general rural or rural production” zone in the Unitary Plan and therefore the plan change land meets this test. All parties also agree that approximately 91% of the plan change falls under the definition of “highly productive land” as set out section 1.3 of the NPS-HPL.

256. In his evidence, Mr Bradley provided some background to the policy statement. He stated that the development of the NPS-HPL was in response to the ‘Our Land’¹⁰² report in 2018 which outlined the scale of the loss of highly productive land in New Zealand to urbanisation and lifestyle block subdivision. He stated that in Auckland, of the 126,000ha originally mapped in the 1970s as LUC 1-3 land around 25% of it has been developed for urbanisation (13%), Countryside Living zoning (7%), and Future Urban zoning (5%). In his estimation, this leaves around 94,500ha of LUC 1-3 land remaining in Auckland.¹⁰³

¹⁰¹ NPS-HPL – Clause 3.5

¹⁰² Ministry for the Environment & Stats NZ (2018). New Zealand’s Environmental Reporting Series: Our land 2018.

¹⁰³ Para 4.5 Evidence of R Bradley

257. Mr Fuller and the three planning witnesses, agree that the tests for urbanisation of highly production land is set out in Clause 3.6 of the NPS-HPL and we set it out in full.

- (1) *Tier 1 and 2 territorial authorities may allow urban rezoning of highly productive land only if:*
 - (a) *the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020; and*
 - (b) *there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and*
 - (c) *the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.*

258. Clause 3.6(2) and (3) provides some guidance with regard to an evaluation under Clause 3.6(1)(b) and states:

- (2) *In order to meet the requirements of subclause (1)(b), the territorial authority must consider a range of reasonably practicable options for providing the required development capacity, including:*
 - (a) *greater intensification in existing urban areas; and*
 - (b) *rezoning of land that is not highly productive land as urban; and*
 - (c) *rezoning different highly productive land that has a relatively lower productive capacity.*
- (3) *In subclause (1)(b), development capacity is within the same locality and market if it:*
 - (a) *is in or close to a location where a demand for additional development capacity has been identified through a Housing and Business Assessment (or some equivalent document) in accordance with the National Policy Statement on Urban Development 2020; and*
 - (b) *is for a market for the types of dwelling or business land that is in demand (as determined by a Housing and*

*Business Assessment in accordance with the National
Policy Statement on Urban Development 2020).*

259. Clause 3.6(4) is not relevant to this plan change as it relates to territorial authorities that are not Tier 1 or 2 but Clause 3.6(5) is relevant:
- (5) *Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.*
260. In our reading of the provisions, the policy framework is directive, especially Policy 5 (which relates to the rezoning of land) and states that *“the urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.”* Accordingly, rezoning of land can only occur where all of the three tests in Clause 3.6 have been met.
261. In legal submissions Mr Fuller submitted that PC 73 passes the recently gazetted threshold tests in the NPS-HPL, for the use of highly productive land. He submitted that there is housing demand that will not be met by intensification, including PC78, and there are no suitable alternatives to the use of LUC Class 2-3 land. He concluded that when weighed overall, the social, economic, and cultural costs and benefits, including the consideration of intangible values, of urbanisation, greatly outweigh the retention of the land for primary production.¹⁰⁴
262. This was also the conclusion of Mr Brown’s evidence where he concluded that all three criteria were met and that there are no reasonably practicable and feasible options within the same locality to provide for necessary growth while achieving a well-functioning urban environment.
263. The Council’s assessment of the plan change took a different view in the hearing report which was modified in the Council’s response to evidence presented. At the close of the hearing, while conceding that a number of matters had been addressed in the Requestor’s evidence, Ms Trenouth, supported by the evidence of Mr Foy, stated that the loss of highly productive land was contrary to the NPS-HPL. This conclusion was based on her opinion that all three tests had not been satisfied and that there is sufficient development capacity to achieve the NPS-UD, there are practicable and feasible alternatives to achieve a well-functioning urban environment, and the costs of rezoning the land outweigh the benefits.¹⁰⁵
264. Mr Bradley, as submitter for the Council was of the view that PC 73 failed all three tests.
265. The evidence on this aspect of the NPS-HPL was extensive and complex with regard to the first two components of Clause 3.6 and focussed heavily on the

¹⁰⁴ Para 10.25 – Legal submission P Fuller

¹⁰⁵ Para 3.1 Council Planning Response Memo C Trenouth

economic assessments provided by both the Requestor and the Council, especially with regard to the questions of:

- sufficient development capacity to meet demand for housing; and
- reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market.

We address these matters first.

Is there sufficient development capacity to meet demand for housing

266. In evaluating this matter the Requestor relied on the economics evidence of Mr Thompson.
267. Mr Thompson's assessment of development capacity is that under the PC78 MDRS provisions the reasonably expected to be realised development capacity in Waiuku is 536 dwellings. He said that this is sufficient to meet no more than 3.7 years of demand (excluding any future development associated with the requested plan change), assuming a future housing demand of 145 houses per year¹⁰⁶. The Statistics NZ forecast for housing demand for Waiuku for the period 2018-2038 is 35 houses per year¹⁰⁷.
268. Mr Foy's evidence was that the number of years supply was very sensitive to assumptions about projected growth and available capacity, and that it was unclear how Mr Thompson had calculated the reasonably expected to be realised capacity figures¹⁰⁸. This was explained in Mr Thompson's rebuttal evidence¹⁰⁹.
269. Mr Bradley's evidence provided development capacity figures significantly different from those of Mr Thompson. The capacity figures for Waiuku sourced from the HBA undertaken for Council in 2020 provided plan enabled and commercially feasible capacity numbers. From these numbers Mr Bradley opined that a reasonably expected to be realised capacity might be around 1657 dwellings¹¹⁰.
270. Mr Bradley also questioned Mr Thompsons' projected housing demand assessment noting that it was considerably higher than Statistics NZ projections and those of Watercare¹¹¹
271. Mr Bradley's evidence was that based on figures from the council's RIMU unit, there is currently around 11 years expected to be realised development capacity in Waiuku, with greater capacity under the PC78 MDRS provisions, even if Mr Thompson's higher future housing demand figures are used.¹¹² He considered that

¹⁰⁶ Para 54 Primary evidence A. Thompson

¹⁰⁷ Para 107 Primary evidence A. Thompson

¹⁰⁸ Para 4.40-4.41, Economic Assessment peer review D Foy.

¹⁰⁹ Para 33 Rebuttal evidence A. Thompson

¹¹⁰ Para 4.22 Primary evidence of R. Bradley

¹¹¹ Para 4.25 Ibid

¹¹² Para 4.26 Ibid

the assessment of housing capacity should take in a wider area than Waiuku alone¹¹³.

272. Mr Thompson referred to the absence of infill development to date within existing urban areas as evidence to support the need for planned urban expansion as sought by PC 73.
273. Mr Thompson also looked at other urban areas within Waiuku to consider whether there are any other “reasonably practical and feasible options” locations for additional development capacity and in particular looked at the Residential - Large Lot Zone to the east and south of Waiuku which, conceivably, could be further intensified. He estimates that there are 540 properties in this zone with an average lot size of 4,200m². In his opinion, redevelopment of large lot zoned land was problematic and he stated that land for intensification would require a plan change to a more intensive zoning and extensive co-ordination between multiple properties. If the Council decided to include it within the PC 78 process, Mr Thompson opined that there would be at least a 19 year delay (2032) to allow for the provision of infrastructure, planning approval and consenting. Mr Thompson also referred to the evidence of Dr Finnigan with regard to geotechnical and infrastructural constraints on the Large Lot zoned land. In Mr Thompson’s view this was not a viable option and the PC 73 land was the preferred option to meet demand for housing in Waiuku.
274. In concluding that there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market (3.6(1)(b)), Mr Thompson took a narrower interpretation of what the “same locality and market” meant. In his view, supported by Mr Colgrave and other witnesses for the Requestor, Waiuku was seen as its own locality and market given its historical provision of independent infrastructure and employment and the planned water supply and wastewater infrastructure growth proposed by Watercare.
275. In response, Mr Foy agreed that greenfields development can provide a large amount of capacity quickly but is of the view that Waiuku was not its own housing market but part of a wider Franklin based market. This position was also supported by the planning evidence of Mr Bradley where they both saw Waiuku as part of a broader demand catchment, encompassing most of Franklin west of State Highway 1. On this matter Mr Bradley states:

However, I consider that the applicant has taken a very narrow interpretation of the “same locality and market” in their analysis. Localities and markets are wider than just single settlements. As mentioned in the above section, I consider that other rural settlements in the south of Auckland have comparable offerings to Waiuku.

If the locality and market were interpreted as the applicant argues then it would logically follow that every single town, village, and suburb in Auckland should

¹¹³ Para 4.30 Ibid

*be assessed as its own market and locality and greenfield growth options must be found for all of them.*¹¹⁴

276. Mr Foy also questioned whether Waiuku can realistically be seen as its own housing market, if Waiuku was also attracting people to live there from other areas outside of Waiuku including the wider rural catchment and metropolitan Auckland.¹¹⁵

277. In a similar vein, Ms Trenouth saw that the key issue for Clause 3.6(1)(a) rested on whether Waiuku is considered its own local housing market or whether it is part of a broader local housing market (including Pukekohe, and the settlements of south-west Franklin, such as Clarks Beach, Glenbrook and Kingseat). Ms Trenouth states:

*While I accept that Waiuku is fairly self-sufficient, I agree with Mr Foy that growth to the scale proposed by PC 73 would attract people from a wider area that could choose to live in other locations within the broader local housing market with similar benefits in terms of lifestyle and access to jobs. Importantly, these other areas have both 'live' and Future Urban zones which provide existing development capacity. In addition, there is development capacity within the existing urban area of Waiuku*¹¹⁶

278. Mr Foy, Mr Bradley and Ms Trenouth all appear to agree that the starting point for the consideration of whether there is sufficient development capacity is that enabled in the Unitary Plan. In that regard, with PC78 enabled development included in capacity estimates (enabling up to three dwellings per site to three storeys in height) the Council experts concluded that there was more than sufficient plan enabled capacity for residential development. Whereas the evidence of Mr Thompson and Mr Colgrave is based on their assessment of commercially viable development. The Council experts and the Requestor's experts ended up being far apart in terms of plan enabled capacity and commercially feasible capacity.

Finding

279. We have spent considerable time reviewing the evidence on these matters and are cognisant of the bearing these have on PC 73's ability to satisfy Clause 3.6 of the NPS-HPL. We note the parties have reached some fundamentally different conclusions on these matters and that both sets of competing evidence on development capacity within Waiuku rely on assessments.

280. On the matter of Clause 3.6(1)(a) and 3.6(1)(b), which are somewhat interlinked, we prefer the evidence of the Council (both as submitter and assessor of the plan change) that there is sufficient existing and planned development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020. We reach this conclusion partly on the finding that Waiuku is part of a wider locality and market than just its defined urban extent. We accept the evidence of Mr Foy and Mr Bradley that, while this does not include metropolitan Auckland, it does include those areas in Franklin and Southern Auckland east of the motorway. In making that finding we accept that there is other

¹¹⁴ Paras 4.73 and 4.74 Evidence of R Bradley

¹¹⁵ Para 15 Council reply statement of D Foy

¹¹⁶ Para 2.19 Council reply statement of C Trenouth

planned capacity (including greenfield development opportunities) to meet the demand for housing.

281. We also find that, based on the evidence provided, there is likely to be sufficient capacity within the existing urban area of Waiuku to meet housing demand, while also acknowledging that the proposed greenfield development sought by PC 73 may achieve faster and more affordable results, at least in the short term. However, while there are challenges to providing for urban development within the existing urban areas of Waiuku, we do not consider these to be insurmountable and if achieved, has the added substantial benefit of avoiding the further loss of productive land. We also acknowledge that the wider locality has FUZ land areas where the opportunities for greenfield development can still be realised. While this may be cold-comfort to the Requestor, it is our view that part of the purpose and likely outcome of the NPS-HPL is that it requires a refocus away from greenfield development as the primary method of enabling growth and a fresh look at existing urban areas. While it may prove more difficult in some aspects, we are of the view that this approach has the potential to also deliver quality urban outcomes while avoiding the further loss of productive land.
282. We are also mindful of the wording of 3.6(1)(b) and its use of the words “same locality and market”. In our reading of this phrase the term “same locality” suggests to us that it is intended to be viewed broader than the extent of an existing urban boundary or urban settlement. If the NPS-HPL intended a narrower focus, it could have used the words “same urban area”, “same township” or “same settlement”. In that regard we interpret the term “same locality or market” to be broader than the urban extent of Waiuku.
283. The Requestor has presented credible evidence that there are limitations to other options for residential development, namely infill development and/or rezoning and development within the Residential - Large Lot Zone. While we accept that there may be challenges to providing for residential growth within existing urban areas, we are not convinced that there are no practicable or feasible options to achieve this.
284. Finally, while we accept that there are clear benefits in terms of urban design, economies of scale, affordability and speed of delivery to market, it is our finding that the clear direction in the NPS-HPL is that the burden of proof necessary to meet Clauses 3.6(1)(a) and (b) is high and has not been met in this case.

Future Urban Zone

285. There was considerable evidence on the issue of why Waiuku did not have any land zoned FUZ when other rural communities including Pukekohe, Clarks Beach and Glenbrook did and we sought evidence on why this was the case. This matter is relevant to the NPS-HPL as all land identified for future urban development (including FUZ land) is exempt from being classified highly productive land. It is also relevant to the assessment under the RPS with regard to the protection of prime soils under a rural zoning.
286. It was put to us that the former Franklin District Council was in the process of identifying future urban land at Waiuku, as part of its plan change processes, which had already identified and notified a plan change to provide for further

business/industrial land at Waiuku. Mr Fuller submitted that land previously identified by the former Franklin District Council for future residential zoning was the next step in what was a two-step process.

287. All parties agreed that the creation of Auckland Council occurred before that process could be concluded and that no FUZ land was identified in the Proposed Auckland Unitary Plan (**PAUP**) when it was notified.
288. Both Mr Brown and Ms Trenouth advised us that submissions were lodged seeking that land (including land within the PC 73 area) be zoned FUZ but the hearing concluded prior to a determination being made on the merits of the zoning. We were advised that the Auckland Unitary Plan hearing panel recommended further investigation by the Council Plans and Places policy team with regard to any further FUZ zoning at Waiuku. We were advised that since this time no further Council initiated policy investigation has taken place.
289. In his closing submissions Mr Fuller provided extensive comment and tabled a number of documents pertaining to that process under the PAUP and concluded that:

It is clear that the omission of Waiuku receiving any FUZ/live zoning through the PAUP process was not deliberate. On the contrary, the IHP recognised that greenfield growth was necessary for the wellbeing of rural and coastal settlements and provided an assessment framework to enable that form of development.

290. In her reply statement Ms Trenouth essentially agreed with Mr Fuller and stated:

I concur with those witnesses that described the consideration of rezoning requests through the Unitary Plan hearings. Whereby there was insufficient time or resources to consider the scale of requests, and any legacy future urban zones were rolled over. Those submitters that provided a structure plan at the Unitary Plan hearings were generally successful in obtaining the rezoning that they requested. Otherwise, the requests were generally rejected and in the case of expansions to rural settlements consideration was deferred to a future investigation referred to as the Stage 4 RUB.¹¹⁷

291. Ms Trenouth goes on to state that nonetheless the policy framework for considering urban expansion at Waiuku has changed since the Franklin District Growth Strategy, and it cannot be assumed that just because it was identified previously for future growth that it is still appropriate. While urban expansion of Waiuku is not specifically anticipated by the Auckland Plan or the Unitary Plan, some growth of rural settlements in general is anticipated.¹¹⁸
292. We found it odd that almost every rural town and settlement in the Auckland region has at least one identified area of FUZ and that the exclusion of Waiuku begged the question as to whether this was deliberate. We accept the submissions from Mr Fuller and further statements from Ms Trenouth on this matter and find that its

¹¹⁷ Para 2.5 Council Reply Statement C Trenouth

¹¹⁸ Para 2.6 Council Reply Statement C Trenouth

exclusion was not deliberate and that PC 73 could be assessed on its merits. We also accept Ms Trenouth's evidence that while the exclusion of FUZ land at Waiuku was not deliberate as part of the PAUP process, we cannot assume that urbanisation is appropriate under the current Unitary Plan policy environment either.

293. We have some sympathy for the Requestor on this issue, on the basis that if the PAUP hearing process had been able to hear evidence on the future growth at Waiuku, that parts or all of the PC 73 land may have been zoned FUZ and excluded from the NPS-HPL. In any event that did not occur and we have to evaluate the plan change Request under the current zoning and national policy provisions that apply.

The environmental, social, cultural and economic benefits of rezoning

294. The third criterion that must be met in Clause 3.6 relates to the environmental, social, cultural and economic benefits of rezoning outweighing the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land. As set out in this subclause we have to turn our mind to both tangible and intangible values.
295. The evidence presented referred to a number of positive benefits of PC 73 and these were summarised in paragraph 1.5 of Mr Fullers legal submissions. We agree that these are tangible and intangible economic, social and cultural benefits to the proposed plan change. This includes benefits of increased housing supply and affordability, increased economic activity, the urban design benefits of a planned greenfield development (including walking and cycling), improved transport linkages, provision of a retirement village, support from mana whenua and reduced flooding risk to dwelling in the adjoining resident catchment of Breaker Grove.
296. Mr Fuller also refers to the tangible and intangible benefits should the plan change be declined which include ongoing pastoral farming activity and potential for horticulture, limited employment growth and protection of rural open space.
297. We also do not refute any of these benefits but we are also mindful of the consideration of future generations and the issue of food security and the dynamic challenges New Zealand society faces in that sphere including climate changes (including increased frequency and intensity of droughts, flooding and storm events) and changes to the technology and economics associated with food production. The objective of the NPS-HPL is that highly productive land is protected for use in land-based primary production, both now and for future generations and that must be factored in when considering tangible and intangible costs of losing highly productive land. In that light, we are mindful of the need to protect the productive potential of land, even if the economics supporting its productivity may be marginal under current circumstances. In our view, the loss of productive land is greater than that acknowledged by the Requestor.
298. The Requestor has also placed emphasis on the provision of a retirement village within PC 73 and it is also shown on the precinct plan as "indicative retirement village". While we do not dispute the clear benefits of providing a place for elderly Waiuku residents to retire within their own urban community close to family, friends and places that they are familiar with, the benefits of this needs to be tempered with the fact that a retirement village is only indicative. The final precinct plan provisions

enable a retirement village however, there is no guarantee that one will ever be established. On that basis the benefits of this need to be viewed and weighted in that light.

299. Lastly, Mr Fuller places emphasis on the increased economic activity and an increase in full time equivalent jobs created through urbanisation on the land compared with the economic activity and jobs created by retaining the land for rural production. While this analysis is not disputed, it appears to us that the process of urbanisation, including land development activity, construction of buildings and related infrastructure will almost always significantly outweigh the economics of rural production. If significant weight were to be placed on this factor alone, then urbanisation would surely trump the protection of productive land almost every time.
300. Associated with this is the relative efficiencies of developing greenfield land versus the redevelopment of existing urban areas. Like our finding above, we are of the view that greenfield development on flat land such as PC 73 will almost always present as a more economically efficient option to redevelopment of existing urban areas, and this is perhaps a contributing factor as to why Auckland has developed in the sprawling manner it has over the years. In that regard, and in combination with the emphasis in the RPS on a providing a compact urban form, we see the NPS-HPL as sending a signal that the economic benefits of urbanising land that involves the loss of land classed as highly productive have to be re-evaluated.
301. That brings us to our finding on the third criterion of 3.6(1) of the NPS-HPL. We are of the view that this aspect of Clause 3.6 is as important as the proceeding two as it looks at whether those non-financial or economic costs and benefits of urbanisation of land meet residential demand versus retention of highly productive land for future generations. We are generally satisfied that we have identified the principal social, cultural and economic costs and benefits of the Request but, we have concerns that these have not been sufficiently evaluated and weighted to give us any certainty one way or another that this criterion has been met.
302. Given the importance of this evaluation to the merits of the request under the NPS-HPL we would have thought that a more robust and thorough evaluation, such as a social impact assessment, would have been presented. Such an assessment would apply accepted evaluation and assessment methodologies including a weighting between cost/benefit factors. We accept that the Requestor had little time to undertake such an assessment given that the NPS-HPL only came into force on 17 October 2022. However, that does not reduce the importance of such an evaluation in our view. We also note that the Requestor could have sought an adjournment to address this matter in more detail.

Finding

303. We therefore find that under an assessment of Clause 3.6(1)(c) of the NPS-HPL the Requestor has not sufficiently demonstrated that the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for

land-based primary production, taking into account both tangible and intangible values.

304. It may be that further expert evaluation, as discussed above, may address this shortcoming, but based on the evidence presented to us, we are unable to find that this criterion has been satisfied.
305. Lastly, we make a comment on Clause 3.6(5). This matter was not extensively canvassed at the hearing but is nonetheless relevant in our view. We heard evidence from Dr Singleton and agreed by Dr Hill, that approximately 46.3% of the land within PC 73 was “prime land” and that other productive land was approximately 47.9% with the remain non-productive land being 5.8%. We were not presented with an option that protected the 46.3% of prime land with the remaining land being proposed for urbanisation. We are unable to speculate whether a development option that minimises the loss of the most versatile soils within the plan change area is feasible.

Overall Finding on the NPS-HPL

306. Overall, while the Requestor has identified the demand for additional residential development in Waiuku and that the proposed plan change will generally be consistent with the NPS-UD in terms of being a well functioning urban environment however, it does not satisfy all the directive criteria of Clause 3.6 and as such PC 73 fails under objective 1 and policy 5.

STATUTORY PROVISIONS

307. The RMA sets out a range of matters that must be addressed when considering a plan change, as identified in the section 32 report accompanying the notified plan change. We note that the plan change included a detailed section 32 analysis which addressed the relevant matters.
308. We also note that section 32 clarifies that analysis of efficiency and effectiveness 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.
309. Section 32AA of the RMA requires a further evaluation for any changes that are proposed to the notified plan change after the section 32 evaluation was carried out. This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes. This decision has considered the modifications to the proposed plan change including those changes throughout the hearing to address evidence presented as suggested by the Requestor and agreed to (on a without prejudice basis) by Council officers.
310. The hearing report has set out the relevant policy framework which must be considered and provided a summary analysis of the proposal against the relevant provisions. The plan change Request also provided an analysis of the applicable statutory documents. Where relevant we have referred to these documents in our

evaluation above. As stated in the hearing report, the relevant provisions are found in:

- The National Policy Statement on Urban Development 2020 (NPS-UD);
- The National Policy Statement on Freshwater Management 2020 (NPS-FM);
- The National Policy Statement for Highly Productive Land 2022 (NPS-HPL);
- National environmental standards or regulations (NES);
- Auckland Regional Policy Statement (RPS); and
- The Auckland Plan.

311. Section 5(1) RMA provides that the purpose of the Act is to promote the sustainable management of natural and physical resources. Sustainable management is defined as: managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

- c. sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- d. safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- e. avoiding, remedying, or mitigating any adverse effects of activities on the environment.

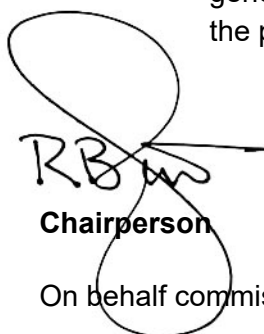
312. Having considered the evidence and relevant background documents, we find that there is merit to the proposal particularly in terms of its urban design, provision for infrastructure and potential economies of scale. However, we have significant concerns regarding the permanent loss of prime and highly productive soils and the impact this will have for the production of food not only at present but for future generations.

313. In our view, the introduction of the NPS-HPL, in combination with existing provisions in the RPS relating to avoiding the loss of prime soils, sets a substantial threshold to be achieved in order to allow urban rezoning of highly productive land to occur. In this case, despite the merits of this proposal discussed above, the threshold criteria in 3.6 of the NPS-HPL have not all been sufficiently met. It may that further analysis and/or refinement of the proposal may be able to address this strict criteria. However, based on the evidence presented to us at the hearing, we find that the criteria was not met.

314. Overall, we find that proposed plan change PC 73 has not been developed in accordance with the relevant statutory and policy matters with regard to the protection of prime soils and highly productive land now and for future generations.

DECISION

315. That pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, that Proposed Plan Change 73 to the Auckland Unitary Plan (Operative in Part) be **declined**.
316. Submissions on the plan change are accepted and rejected in accordance with this decision being: all those submissions and further submissions seeking that PC 73 be approved are rejected and all those submissions and further submissions seeking it be declined are accepted. In general, these decisions follow the recommendations set out in the Council's section 42A report, Council's reply to evidence and closing statement.
317. The reasons for the decision are that Plan Change 73:
- a. Will not, overall assist the Council in achieving the purpose of the RMA and in particular with regard to the protection of prime soils and highly productive land now and for future generations;
 - b. Is not consistent with the Auckland Regional Policy Statement and in particular with the regard to avoiding where practicable prime soils which are significant for their ability to sustain food production;
 - c. While the proposal is consistent with the NPS-UD with regard to being able to achieve a well-functioning urban environment it is not consistent with the NPS-HPL with regard to the protection of highly productive land. The NPS-HPL has strict criteria which all have to be met in order to allow urban rezoning of highly productive land. In this case, and notwithstanding PC 73's other merits, these have not been met.
 - d. The proposed plan change is not consistent with Part 2 of the RMA and in particular the proposal, while providing people and communities to provide for their social, economic, and cultural well-being does not adequately sustain the potential of natural and physical resources (i.e. prime soil and highly productive land) to meet the reasonably foreseeable needs of future generations; and will not, overall, help with the effective implementation of the plan.



Chairperson

On behalf commissioners Helen Mellsop and Nigel Mark-Brown

Date: 24 February 2023

APPENDIX D
LIST OF PARTIES TO BE SERVED

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Please see **attached** Excel Spreadsheet

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