

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



Proposed plan change

To:

- rezone 3 Brightside Road from Residential - Mixed Housing Suburban to Special Purpose - Healthcare Facility and Hospital Zone
- rezone 149, 151 and 153 Gillies Avenue from Residential - Single House Zone to Special Purpose - Healthcare Facility and Hospital Zone
- remove 149, 151 and 153 Gillies Avenue from the Special Character Areas Overlay - Residential
- apply the parking variation control to 3 Brightside Road, 149, 151 and 153 Gillies Avenue and amend Table E27.6.2.4 in Chapter E27 to specify the minimum parking rate of 1 space per 64m² for the Brightside Hospital

By a majority of the Commissioners, the plan change is **APPROVED WITH MODIFICATIONS**. The reasons of the Commissioners are set out below.

Plan Change No:	21
Site address:	3 Brightside Road, and 149, 151 and 153 Gillies Avenue, Epsom
Plan Change Requestor:	Southern Cross Hospitals Limited (SCHL)
Hearing commenced:	6 November 2019, 9.30am
Hearing panel:	Kitt Littlejohn (Chair) Kim Hardy Ian Munro Mark Farnsworth
Appearances:	<u>For the Plan Change Requestor:</u> Bianca Tree (counsel) Courtney Bennett (SCHL) Rob Henin (Nib NZ Limited) Luke Williams (EY – Hospital Demand) Stephen Havill (planning) Lindsay Mackie (design introduction) Reuben O’Halloran (architectural design, visual modelling) Richard Peers (arboriculture) Tracy Ogden-Cork (urban design) Rob Pryor (visual, landscape) Carolyn Hill (special character) John Brown (special character peer review)

	<p>Michael Martin (infrastructure) Fadia Sami (acoustics) Russell Brandon (traffic) Daniel Shaw (planning)</p> <p><u>Submitters:</u> Peter King Ian Wolfram Priya Narana Heritage New Zealand Pouhere Taonga John Kippenberger (for Julie Kippenberger) James Boyle Eden Epsom Residents Protection Association Inc Michael Savage (counsel) Robert Speer (for Hon A Randerson QC) Allen England (visual simulation methodology) Bridget Gilbert (visual/landscape) Jeremy Salmond (special character) Brian Putt (planning) Sandy Ormiston (geotechnical) Michael Lorimer Suzanne Speer Gemma Allen John Allen Virginia Chong Simon Lang Robert Speer Dr Stuart Rabone Victor Rabone Miranda Rabone Christine Fletcher Auckland Transport Kevin Wong Toi Phil Harrison</p> <p><u>For Council:</u> Trevor Mackie (urban design) Stephen Brown (visual/landscape) Rebecca Freeman (special character) Panjama Ampanthong (reporting officer/planning) Larissa Rew (hearings advisor)</p>
Hearing adjourned	14 November 2019
Commissioners' site visit	7 November 2019
Hearing Closed:	27 February 2020

INTRODUCTION

Background

1. PC21 is a proposed change to the Auckland Unitary Plan (**AUP**) requested by Southern Cross Hospitals Limited (**SCHL**) under cl 21 of Part 2 of Schedule 1 of the Resource Management Act 1991 (**Act**).¹ Its principal purpose is to amend the district plan provisions of the AUP to re-zone land so as to provide for the expansion of the existing Brightside Hospital at 3 Brightside Road, Epsom, including onto adjacent land at 149, 151 and 153 Gillies Avenue, Epsom. The existing hospital and the Gillies Avenue sites are all owned by SCHL.
2. The plan change request was made on 1 February 2019 and included information to satisfy the requirements of cl 22 of Schedule 1.² Following a request for further information about the proposed request under cl 23, proposed Plan Change 21 (**PC21**) was accepted by the Auckland Council (**Council**) on 5 March 2019. In accepting the request for processing, it can be assumed that the Council was satisfied that the change did not give rise to any of the grounds in cl 25(4) warranting its rejection.³
3. In accordance with Part 1, PC21 was publicly notified for submissions on 21 March 2019 with submissions closing on 18 April 2019. A summary of submissions was notified for further submissions on 30 May 2019. The date for further submissions closed on 13 June 2019.
4. As required by cl 8B, a hearing into PC21 and the submissions and further submissions received on it was held on 6, 7, 8, 13 and 14 November 2019. The hearing was conducted by Independent Commissioners K Littlejohn (Chair), K Hardy, I Munro and M Farnsworth by authority delegated to them for that purpose by the Council under s 34A.
5. This decision is also made pursuant to the delegation given to the Independent Commissioners by the Council. The decision to approve PC21 with modifications is made by a majority of the Independent Commissioners (Commissioners Littlejohn, Munro and Farnsworth). Their reasons for that decision are set out below. For reasons separately recorded at the end of this decision, Commissioner Hardy considers that PC21 should be declined.

¹ All references to sections, subsections, clauses, parts and schedules in this decision are references to sections, subsections, clauses, parts and schedules of the Resource Management Act 1991, unless otherwise stated.

² Explanation of the purpose and reasons for the proposed change; an evaluation report prepared in accordance with s 32; a description of the environmental effects anticipated by the proposed change in suitable detail.

³ Not frivolous or vexatious; substance not considered within the last 2 years; in accordance with sound resource management practice; would not make the AUP inconsistent with part 5; AUP operative for more than 2 years.

Decision requirements

6. A decision on the provisions of a plan change initiated under cl 21 and the matters raised in submissions must be prepared in accordance with cl 10 and cl 29 which provide:

10 Decisions on provisions and matters raised in submissions

- (1) *A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.*
- (2) *The decision—*
- (a) *must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to—*
- (i) *the provisions of the proposed statement or plan to which they relate; or*
- (ii) *the matters to which they relate; and*
- (ab) *must include a further evaluation of the proposed policy statement or plan undertaken in accordance with section 32AA; and*
- (b) *may include—*
- (i) *matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and*
- (ii) *any other matter relevant to the proposed statement or plan arising from the submissions.*
- (3) *To avoid doubt, the local authority is not required to give a decision that addresses each submission individually.*
- (4) *The local authority must—*
- (aaa) *have particular regard to the further evaluation undertaken in accordance*
- with subclause (2)(ab) when making its decision; and*

- (a) *give its decision no later than 2 years after notifying the proposed policy statement or plan under clause 5; and*
 - (b) *publicly notify the decision within the same time.*
- (5) *On and from the date the decision is publicly notified, the proposed policy statement or plan is amended in accordance with the decision.*

29 Procedure under this Part

- (4) *After considering a plan or change, undertaking a further evaluation of the plan or change in accordance with section 32AA, and having particular regard to that evaluation, the local authority—*
- (a) *may decline, approve, or approve with modifications the plan or change;*
 - and*
 - (b) *must give reasons for its decision.*

7. In considering PC21 we have taken into account:
- (a) the plan change request and supporting s 32 evaluation and environmental effect assessments;
 - (b) Council's s 42A report and the views of its numerous expert contributors expressed therein;
 - (c) the submissions and further submissions made on PC21; and
 - (d) the submissions, statements and evidence presented by SCHL and the submitters who appeared at the hearing.
8. Our decision includes our findings about PC21 and its provisions, and on the matters raised in submissions made on the proposed change. We have also undertaken a further evaluation of PC21 in accordance with s 32AA and had particular regard to that evaluation when making our decision.

Summary of submissions

9. Of the 176 submissions received on PC21, 174 sought that it be declined. The reasons set out in these submissions for that request, in summary, relate to concerns that development of the site made possible by the plan change: would have adverse effects on the existing residential amenity and special character of the locality; would result in a built form with impacts on adjoining properties (building dominance, loss of privacy, shading); and would have transport (parking, safety, congestion) and other effects arising from its non-residential use. Construction effects (traffic, noise and vibration) were also identified as a concern, especially due to the understanding that

a significant quantity of rock would need to be excavated from the site in order to create a 'below-grade' basement for any new hospital building.

10. Other arguments in opposition to the plan change included: that SCHL was obliged to consider alternative sites for its proposed hospital expansion and had not (therefore the proposal must fail); and that the proposed removal of the Special Character Area Residential (**SCAR**) overlay from three of the subject sites would have a precedent effect (of the negative type), that would lead to other proposals to remove the SCAR overlay elsewhere in the city, thereby undermining the integrity (and purpose) of that provision in the AUP.
11. We acknowledge that this summarised list cannot hope to capture the factual detail and sophisticated arguments presented in the submissions on PC21. We infer nothing by the fact that we have not recorded every reason or ground of opposition set out within them here. We record that we have considered all the submissions and further submissions made on PC21 in detail.
12. Three submissions were received from statutory agencies, namely:
 - (a) Auckland Transport (submitter 98) requested that PC21 be approved, but only if transport related concerns raised in its submission were acceptably resolved;
 - (b) Housing New Zealand Corporation (submitter 108) opposed PC21, but only sought relief in respect of that aspect of it seeking the removal of 149, 151 and 153 Gillies Avenue from the SCAR overlay, namely that this aspect be deleted *"or amended, so as to provide for the sustainable management of the Region's natural and physical resources and thereby achieve the purpose of the Act"*; and
 - (c) Heritage New Zealand Pouhere Taonga (**HNZ**) (submitter 161) made a submission on PC21 which did not indicate whether it opposed or supported the plan change. Its submission sought the following decision: *"That should the plan change be adopted that this is subject to the inclusion of appropriate plan provisions to ensure protection of the heritage and special character features as identified in the application in perpetuity."* HNZ appeared at the hearing and presented evidence, but on 5 December 2019, prior to the close of the hearing, advised the Council that it wished to withdraw its submission, advising that it considered its statement of relief was unclear.
13. Following notification of a summary of decisions requested by submissions on PC21 on 30 May 2019, 11 further submissions were received; eight from the Eden Epsom Residential Protection Society Inc (**EERPS**), one from Gemma Allen, one from John Allen and one from HNZ,⁴ all of whom were primary submitters.

⁴ HNZ's advice of 5 December 2019 confirmed that this further submission was not withdrawn.

PROPOSED PLAN CHANGE 21

Background

14. PC21 relates to four properties owned by SCHL at 3 Brightside Road and 149, 151 and 153 Gillies Avenue, Epsom, Auckland. The site has a combined total area of 9,273m².
15. 3 Brightside Road (5,245m²) has been used for healthcare related activities since the 1920s. Today it contains a modern hospital, known as Brightside hospital, which has operated there since the late 1990s. The site contains a three-storey hospital building with 5427m² gross floor area, 54 parking spaces, 38 inpatient beds and 4 surgical theatres. The site is pleasantly landscaped and integrates well into its surrounding residential neighbourhood. 3 Brightside Road is zoned Residential - Mixed Housing Suburban (**RMHS**).
16. 149, 151 and 153 Gillies Avenue adjoin 3 Brightside Road to the east. The properties are all zoned Residential – Single House (**RSH**) and are within the Special Character Areas Overlay – Residential (**SCAR**), specifically the Isthmus “B1” Mount Eden/Epsom subset.
17. 149 Gillies Avenue is square in shape and 2,208m² in area. It contains a two-storey building and is currently occupied by the Everdell Guest House. The site adjoins residential properties at 30, 30A, 32A Owens Road and 147 Gillies Avenue to the north.
18. 151 Gillies Avenue is 971m² in area and occupied by a two-storey dwelling located towards the rear of the site. 153 Gillies Avenue, 849m² in area and located at the corner of Brightside Road and Gillies Avenue, is also occupied by a two-storey dwelling. Both 151 and 153 Gillies Avenue have an old stone boundary wall interfacing Brightside Road and Gillies Avenue. The dwellings on both properties are currently vacant. They are also subject to demolition controls under the SCAR (refer Figure 2).
19. There are two notable trees located on 3 Brightside Road; a Pohutukawa located on the eastern side of the property near the road and an Australian Frangipani located near 32A Owens Road. These trees are listed in the Schedule 10 Notable Tree of the AUP (reference number - ID213).
20. The site is affected by the volcanic viewshafts and height sensitive area overlays. Viewshafts E14 (to Mount Eden) impose height restrictions between 12.5m on the western portion of 3 Brightside Road and up to 40m on Gillies Avenue properties. The underlying RMHS and RSH zones permit building heights of 8m.

Figure 2: Existing zoning of 3 Brightside Road, 149, 151 and 153 Gillies Avenue and the surroundings under the AUP



21. The properties in the surrounding area comprise a mix of residential dwellings of different styles and periods, including older character dwellings, more recent detached houses, and a number of multi-unit flats. The area to the south of the site, around Shipherds and Marama Avenue, is an established urban area characterised by large mature trees and predominantly occupied by detached dwellings.
22. There are several healthcare facilities located in the vicinity of the subject site, including medical facilities and specialists at 160, 162, 148 and 183 Gillies Avenue. Epsom Girls Grammar School is located around 300m north east of the subject site on Gillies Avenue.
23. Brightside Road is a short local road that runs between Gillies Avenue and Owens Road. It provides access to residential properties on Brightside Road and Shipherds Avenue. Gillies Avenue is an arterial road that connects Epsom to Newmarket and the City Centre.

Proposed Plan Change Request

24. In its notified form, PC21 seeks to:

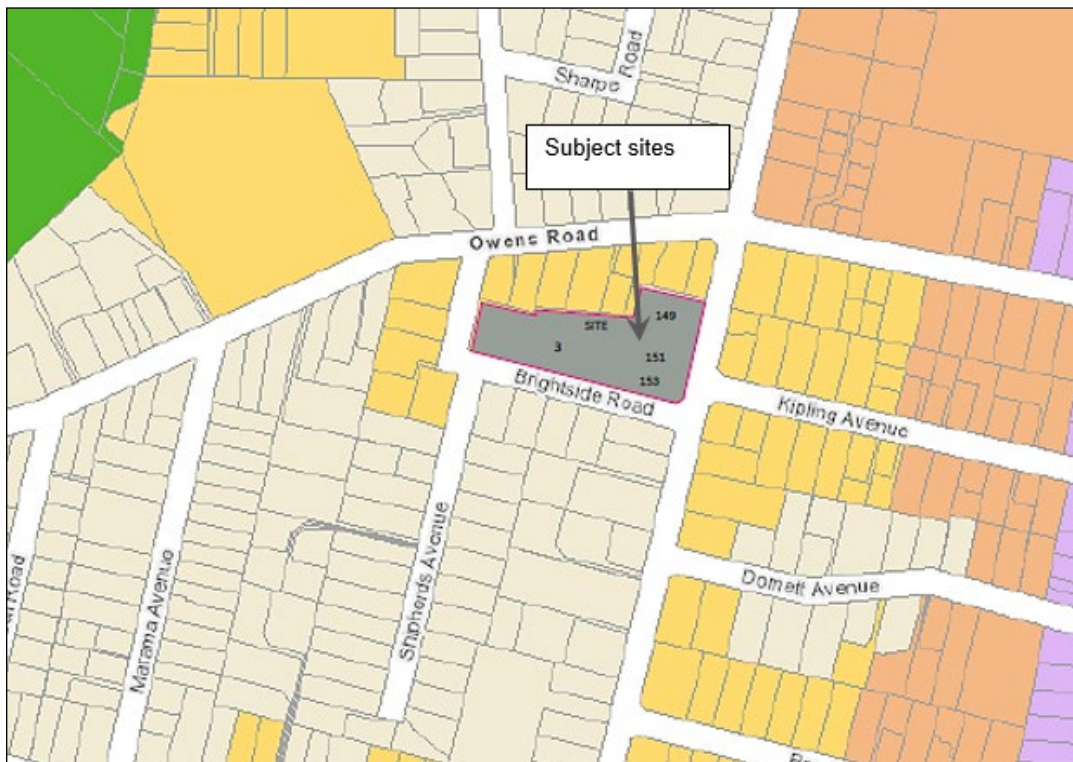
- rezone 3 Brightside Road from RMHS zone to Special Purpose - Healthcare Facility and Hospital zone (**SPHFH**).
- rezone 149, 151 and 153 Gillies Avenue from RSH zone to SPHFH zone.
- remove 149, 151 and 153 Gillies Avenue from the SCAR overlay.
- apply a parking variation control to 3 Brightside Road, 149, 151 and 153 Gillies Avenue and amend Table E27.6.2.4 in Chapter E27 to specify the minimum parking rate of 1 space per 64m² for the Brightside Hospital.

25. The stated purpose or objective of PC21 is: *to enable the efficient operation and expansion of the existing [Brightside] hospital, while managing the effects [of that expansion and operation] on the adjacent residential amenity.*⁵

26. The principal changes sought to the AUP to achieve this objective were the rezoning of the four sites in question to SPHFH zone and removal of three of the sites from the SCAR overlay. Additionally, an inclusion was sought in Table E27.6.2.4 in Chapter E27 to specify the minimum parking rate of 1 space per 64m² for the Brightside Hospital. All the changes sought by PC21 to the AUP are related to methods (district plan rules). No changes are sought to any operative objectives, policies, or other provisions of the AUP (refer Figure 3).

⁵ SFH Consultants – AEE – Jan 2019, p22.

Figure 3: Proposed zoning - Special Purpose – Healthcare Facility and Hospital Zone 3 on Brightside Road, 149, 151 and 153 Gillies Avenue



Special Purpose – Healthcare Facility and Hospital Zone

Potential Modifications to PC21 Identified by SCHL

27. In his pre-circulated planning evidence for the hearing, SCHL’s planner, Mr Shaw, advised that SCHL proposed to include some additional methods in PC21 to “assist in managing the amenity effects on adjoining sites, maintaining special character values, and providing greater certainty for neighbours”.⁶ The technique proposed for these additional methods was an “Outline Plan” (Figure H25.6.1.2 Brightside Hospital Plan), being a plan of the site with various indications marked on it and explained by way of a legend, together with changes to the standards of the SPHFH to work in conjunction with proposed Figure H25.6.1.2 applying only to the proposed plan change site.

28. The effect of these additional methods, if incorporated into PC21, would be to require a resource consent to be obtained for any development on the site:
 - (a) that did not retain certain identified trees and stone walls; and
 - (b) that proposed buildings in excess of 12m building height in Area 1 and 16m building height in Area 2.

⁶ SoE D L Shaw, para 4.

29. The relevance of these proposed additional activity standards is that the SPHFH zone in its unmodified form would not require any of the existing trees and stone walls on the site to be retained, and would permit new buildings anywhere on the site (provided they complied with the other standards) up to 16m in height. New buildings between 16m and 25m in height would require a restricted discretionary activity consent; and beyond 25m in height, a discretionary activity consent.
30. SCHL's suggested modifications to PC21 were the subject of considerable discussion at the hearing, both as to their validity and their effectiveness. Most submitters argued that the proposed amendments were beyond scope and that we were unable to consider them. SCHL rejected that argument and maintained that they were modifications that we could lawfully make to the provisions of PC21 if we wished to.
31. In its closing submissions of 4 December 2019, SCHL identified other potential changes that we could make to the SPHFH zone provisions in addition to those described in its pre-circulated hearing evidence. These changes were:
- (a) Additional standards to be included in the SPHFH zone for the Brightside Hospital (defined per Figure H25.6.1.2 Brightside Hospital Plan) incorporating an Area 2 building setback from northern and western boundaries or, in the alternative, a building line restriction adjacent the entire northern boundary of the site with an associated development standard (H25.6.7(2));
 - (b) A change to Table H25.6.1.1: Building heights so that any building over the proposed permitted heights of 12m and 16m would require a fully discretionary resource consent;
 - (c) An addition to Activity table H25.4.1 "(A22) - *New buildings or additions to existing buildings that increase the building footprint by more than 20 per cent, at Brightside Hospital – RD*", together with a new rule that any application under rule (A22) would be non-notified, and amendment to the Matters of discretion and Assessment criteria for restricted discretionary activities to indicate how they would apply to any application under rule A22.
32. The amendments were presented to us with three different colours of highlighting (yellow, green and blue).⁷ SCHL submitted that the most appropriate way to achieve the purpose of the Act and the objectives of PC21 was to approve PC21 with the modifications highlighted in yellow.⁸ This submission was based upon a further "Cost Benefit Assessment" undertaken by Mr Shaw which was also included with the closing submissions. In this document, Mr Shaw accepted that "*some additional controls would be appropriate*" to achieve the second part of the objective of PC21, but the extent of them needed to be carefully considered so as not reduce the efficiency and effectiveness of the first part of the objective of PC21. In that regard,

⁷ Included as Appendix A to this decision.

⁸ SCHL Closing Submissions, para 118.

the green and blue highlighted provisions were described as alternatives that were assessed, but which, in Mr Shaw's opinion, were not as effective or efficient at achieving both parts of the objective of PC21 as the yellow highlighted ones.

33. In supplementary submissions dated 22 January 2020, counsel for EERPS reiterated his client's challenge to our ability to entertain SCHL's initially suggested modifications to PC21, as well as any of the further amendments now proposed by SCHL in its closing submissions, submitting that there was no scope to incorporate the provisions now sought.⁹ Furthermore, counsel submitted that even if there was scope, the suggested provisions are "*ineffective in providing any appropriate or additional relief in respect of the environmental effects raised by submitters in opposition to the plan change*".¹⁰
34. In plan change proceedings under the First Schedule the power to modify the proposed provisions after they have been notified for submissions rests solely with the local authority (or its delegate). Unlike a proceeding under Part 6, in which a resource consent applicant has inherent power to amend its application at any time (provided the change is within scope), no similar power of amendment exists for the proponent of a private plan change. While it is entitled to identify potential modifications that could be made to the plan change provisions, as SCHL has done in this case, the power to accept them (or not), and modify the plan change (or not), belongs to the appointed decision maker, subject, of course, to any modifications being within scope.
35. Despite that general principle, in practice there is no reason why modifications promoted to the provisions of a private plan change by its requester after it has been notified cannot be treated as de facto modifications to the plan change, provided they are within scope. In that way, the proponent's preferred provisions for its plan change, eventuating no doubt from its consideration of issues raised by submitters, are the ones that are considered for approval, rather than the provisions that were notified. It would be administratively unfair on the requester for the decision maker to consider the provisions of the plan change as notified, knowing that the requester has indicated its willingness to accept modifications to them.
36. The modifications to PC21 that SCHL has indicated its willingness to accept are the inclusion into the SPHFH zone to apply to the Brightside Hospital site of those additional methods highlighted in yellow in Appendix A of its closing submissions. We now turn to consider whether we have scope to modify PC21 as suggested by SCHL. As it will also assist us to understand the scope we have to make other modifications to PC21, we have decided to broaden our assessment to the green and blue highlighted changes as well.

⁹ Submissions of Counsel for EERPS, 22 January 2020, para 26.

¹⁰ Ibid, para 27.

Scope

37. The parties' submissions with respect to our ability to consider modifications to PC21 as notified were detailed and helpful. Fortunately, the law is well settled in this area. Whether a modification to a proposed plan change is within scope will depend on whether it was raised by, and is within, the ambit of what was reasonably and fairly raised in submissions.¹¹ This assessment should be approached in a realistic workable fashion rather than from the perspective of legal nicety.¹² This "*will usually be a question of degree to be judged by the terms of the proposed change and the content of the submissions*".¹³
38. The limitations on the scope to modify a plan change after it has been notified are also designed to ensure that, procedurally, there is an opportunity for the matter to be addressed in a further s 32 evaluation, and that there has been an opportunity for those potentially affected by the change to participate.¹⁴
39. It is not necessary for the submission "matter" in question to be identified as a form of relief in the submission for it to be able to provide scope to amend the planning document on which the submission was made. Provided a submission, read as a whole, effectively raises the issue in substance,¹⁵ and the proposed modification in response does not go beyond what was fairly and reasonably raised in the submissions,¹⁶ then the decision maker will have scope to entertain it, subject to the further obligation to comply with s 32AA.
40. It follows from the above analysis that we cannot accept the submission by EERPS that a specific request for relief seeking changes to PC21 of the type now promoted by SCHL is necessary for there to be scope to incorporate them into PC21 in the course of our decision making under cl 10. Nor do we agree that the matters raised in a submission in opposition to a plan change by a submitter who seeks that it be refused are legally 'out-of-bounds' when it comes to providing a foundation for scope. The legal position is that every submission can provide scope for modifications to a

¹¹ *Vernon v Thames-Coromandel District Council* [2017] NZEnvC 2, at [11], summarising *Environmental Defence Society v Otorohanga District Council* [2014] NZEnvC 070.

¹² *Vernon v Thames-Coromandel District Council*, at [11], summarising *Environmental Defence Society v Otorohanga District Council* and citing *Royal Forest and Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 (HC).

¹³ *Vernon v Thames-Coromandel District Council*, at [11], summarising *Environmental Defence Society v Otorohanga District Council* and citing *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150; [1994] NZRMA 145 (HC), at pages 171-172 and 166. This has been adopted in a number of cases including by the High Court in *Royal Forest and Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 (HC) and *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59 (HC).

¹⁴ *Vernon v Thames-Coromandel District Council*, at [11], summarising *Environmental Defence Society v Otorohanga District Council*, citing *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

¹⁵ See *Johnston v Bay of Plenty RC* EnvC A106/03

¹⁶ Eg *Atkinson v Wellington RC* EnvC W013/99

plan change, whether it supports or opposes the change, provided the modifications made do not go beyond what was fairly and reasonably raised.

41. The substance of the modifications to PC21 promoted by SCHL during the course of the hearing would all operate to reduce the potential scale of any development of the site and control the appearance of any building that could otherwise occur under the SPHFH zone. The modifications would ensure the retention of certain trees and stone walls, would limit the permitted building height and location on the site, and would provide more control over the appearance of any new building. None of the modifications seek greater development entitlement than what is provided for in the SPHFH. We find that none of the modifications put to us in SCHL's closing submissions go beyond PC21 as notified.
42. We are also satisfied that the modifications all logically follow as responses to issues with PC21 that were clearly raised in submissions. We acknowledge that they are opposed by those in opposition to the plan change, but this is likely to be because they have been promoted after it was notified, are designed to address concerns raised about its potential effects, and may improve its prospects of success. However, the fact that the changes may have been unexpected does not make them 'left field' and beyond scope. In this case the possibility of site specific controls being incorporated into the SPHFH zone to address local features and potential effects was signalled in the AEE prepared for the plan change, including its expert reports,¹⁷ and submissions clearly raised effects on special character and residential amenity, significance of trees and effects of permitted building bulk and location, as matters of concern.¹⁸
43. We find therefore that none of the modifications suggested by SCHL to PC21 as notified go beyond responding to what was fairly and reasonably raised as matters of concern with PC21 in submissions, or are otherwise beyond our jurisdiction to consider and incorporate into PC21. We also find that these submissions provide us with scope to make any other modifications to the provisions of PC21 to control further the effects of the use and development of the site on the special character of the area and on residential amenity generally, if we find that to be appropriate.

Covenant proposal

44. Mr Shaw also advised in his pre-circulated hearing evidence:¹⁹

5. *In the event that the Outline Plan is not preferred, Southern Cross proposes that the Outline Plan is simply used to show the maximum permitted height across the Site and a covenant is registered against the property titles protecting the identified trees and stone walls in perpetuity. It is also*

¹⁷ AEE – Section 32 assessment, pages 27, 33-36, 58, 59; Lifescapes Special Character Assessment, January 2019, pages 41 – 42; Motu Urban Design and Landscape Analysis, 21 January 2019, Appendix A, page 7.

¹⁸ See SCHL Reply Submissions, 7 February 2020, para 18(b) and Appendix A.

¹⁹ SoE D L Shaw, para 5.

proposed that the covenant will require the landowner to maintain planting where the stone walls are located along the frontage of the land on Gillies Avenue and Brightside Road to provide additional screening above the height of the stone walls.

45. SCHL's offer to restrict the future use of the site by way of private land covenant is not an offer that we are legally able to accept on behalf of the Council. Our delegation in respect of PC21, given by Council Regulatory Committee resolution (REG/2019/40), was "...to hear submissions and make decisions on Private Plan Change 21..." and the wording of s 34(8) does not operate to extend that power to being able to bind the Council as a party to a land covenant.²⁰
46. In its closing submissions, SCHL accepted that we would only have scope to consider this proposal in the course of determining PC21 if the Council had agreed to accept it. As we have received no advice of acceptance from the Council, we give the proposed covenant no further attention.

CONSIDERATION OF PC21

Framework

47. Sections 72 to 77D set out the matters that a territorial authority must have regard to when preparing and changing its district plan.²¹ We find it appropriate to refer to these matters when considering PC21 even though PC21 is a plan change initiated privately under cl 21. We therefore evaluate PC21²² and its proposed provisions having regard to:
- (a) The evaluation report prepared in accordance with s 32 (s 74(1)(e));
 - (b) The National Policy Statement on Urban Development Capacity (**NPS:UDC**) (s 74(1)(ea));
 - (c) The Auckland Plan (as a management plan or strategy prepared under another act whose content has a bearing on PC21) (s 74(b)(i));
 - (d) The regional policy statement for Auckland (Chapter B of the AUP) (**RPS**), being the 'highest-order' document of relevance to proposed changes to the AUP;
 - (e) Actual or potential effects on the environment, including adverse effects (s 76(3));
 - (f) The Council's functions under s 31 (s 74(1)(a)); and

²⁰ See document EV52 – Council – Legal Advice re Covenant.

²¹ *Gock v Auckland Council* [2019] NZHC 1603, at [29].

²² Specifically, PC21 as proposed to be modified by SCHL's yellow highlighted SPFH zone provisions (see Appendix A).

- (g) The requirement that a district plan must give effect to the NPS:UDC and RPS (s 75(3)(a) and (c)).

Part 2

48. We have not included “*the provisions of Part 2*” in our list of matters above. This is because caselaw has clearly established that when considering a plan change, including to a district plan, recourse to Part 2 is only appropriate where there is invalidity, incompleteness or uncertainty in relation to the statutory planning instrument being applied.²³ Absent those features, the only “higher order” principles, objectives and policies that have to be considered on a plan change are those in the operative plan being changed.²⁴ We would add to this list any “higher order” principles etc set out in a relevant national policy statement, because of the requirements of s 75(3)(a)).
49. We do not agree with SCHL that the RPS is incomplete because it “*fails to recognise the critical importance of healthcare facilities and hospitals and the role they play*” for the health, safety and well-being of people and communities and that this warrants resource to Part 2.²⁵ On the contrary, there being no dispute that hospitals and healthcare services are ‘social facilities’, we find that the RPS ‘covers the field’ in this case by:
- (a) Identifying the need to provide for new social facilities as one of eight key issues to be addressed to meet the requirements of Auckland’s growing population;²⁶
 - (b) Setting out “*social facilities that meet the needs of people and communities, including enabling them to provide for their social, economic and cultural well-being and their health and safety*” as a region-wide objective;²⁷ and
 - (c) Implementing policies to serve that objective which include enabling new social facilities that meet the needs of people and communities to establish in accessible locations and be intensively used and developed for that purpose.²⁸
50. In our view, these provisions encapsulate the intended approach to achieving the sustainable management purpose of the Act as it relates to providing for new hospitals and healthcare facilities to serve the Auckland region. They provide a more refined and useful ‘lodestar’ to evaluate the appropriateness of PC21 against than reference back to the more general provisions of Part 2.

²³ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38, [2014] NZLR 593, at [85] and [88]; *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51, at [34] and [35].

²⁴ *Appealing Wanaka Inc v Queenstown Lakes DC* [2015] NZEnvC 139

²⁵ SCHL Closing Submissions, at 115 – 116.

²⁶ AUP B2.1(4).

²⁷ B2.8.1(1).

²⁸ B2.8.2(1), (3). See B2.9 as well.

National Planning Standards

51. The first set of National Planning Standards were adopted²⁹ earlier this year and set mandatory requirements for district plans including standardised zones and zone descriptions. The obligation to implement the Standards rests on the Council, and to do so within 10 years. The purpose of the Standards is to achieve national consistency for the structure, format, and content of plans. In particular, the Standards provide that if an existing zone is consistent with the description of a zone in the planning standards, that existing zone must use that zone name.
52. Despite SCHL's submissions about the relevance of the Standards, we find that they are not a matter that we need to have regard to in our consideration of PC21. As far as we can tell, there is no duty on us to implement the Standards while determining PC21. We accept that at some point within the next 10 years the zoning of the existing Brightside Hospital site will need to be changed in order to bring it into line with the Standards, as would the Gillies Avenue properties if they were also developed for healthcare services. But a separate statutory process would be undertaken to achieve that. Beyond that, there is little more assistance that reference to the Standards can give us.

Regional Plans

53. We have also not made reference in our list at paragraph 36 to the requirement that a district plan must not be inconsistent with a regional plan for any matter specified in s 30(1) (s 75(4)(b)). This is because PC21 does not propose any changes to the regional plan provisions in the AUP. Furthermore, we did not receive any evidence that the regional plan provisions of the AUP were incomplete or inadequate with respect to the control of the actual and potential effects of development that would be enabled by the plan change (if approved), which might have raised a concern for us with respect to s 75(4)(b).

The basis of PC21 – demand for SCHL's healthcare services

54. The rationale for PC21 was set out in the plan change application and in evidence presented on behalf of SCHL at the hearing. We summarise the key aspects here.
55. Mr Courtney Bennett, Chief of Property & Development for SCHL, described the company's role in providing surgical services to a wide range of New Zealanders and its important role in the New Zealand health sector as a result. He stated that:³⁰

Southern Cross is facing increased demand for its services throughout New Zealand, and particularly in Auckland. Over the next 20 years, as New Zealand's population grows and ages, significant growth of elective surgical procedures per year is predicted. The demand growth trends that Southern Cross is experiencing at its Auckland Hospitals are increased demand for operating theatres, demand for

²⁹ The National Planning Standards were gazetted on the 5th of April 2019.

³⁰ SoE C J Bennett, para 2.

more complex surgery and operating theatre usage being extended to evenings and weekends.

56. Mr Bennett noted that there is presently no land zoned SPHFH in Auckland that could be used to expand any of Southern Cross' hospitals and that such a zoning was "critical to recognising the scale and complexity of these facilities".³¹ He advised that:³²

After careful consideration of our expansion options, including the required location for new facilities and the level of investment in existing hospitals, Southern Cross reached the conclusion that expansion of existing facilities was the only feasible option.

57. Of SCHLs three hospitals in central Auckland, its Brightside facility was identified as the one with the least constraints for expansion. Expansion of Brightside Hospital as proposed by SCHL would enable the number of elective surgeries able to be performed there to be doubled to around 8000 per annum, as well as enabling Brightside Hospital to support an intensive care unit.³³ In Mr Bennett's view, this expansion would have a number of positive benefits for the local community and wider Auckland region including: increasing the efficiency of an existing, well-located surgical facility; economic benefits through more employment opportunities and competition generally; and social well-being and health benefits, through increased capacity to meet demand for elective surgery.³⁴

58. Mr Robert Henin provided further evidence in support of the rationale for PC21. Mr Henin is CEO and Director of Nib NZ Limited, the second largest health insurer in New Zealand and a user of SCHL's elective surgery services. Mr Henin's evidence was that "New Zealand's healthcare system is under increasing pressure due to population growth, an aging population, as well as an increase in the number of patients suffering from chronic conditions that require intensive and specialised medical care."³⁵ As a result, in his view:³⁶

... the public healthcare system is struggling to keep up with New Zealand's growing and unmet demand for elective surgery (for example joint replacement surgery). This unmet demand for elective surgery has a significant negative impact on the quality of life for those that have a disability that can be corrected by surgery. This has contributed to an increase in the number of people purchasing private healthcare insurance and an increase in private health insurance claims.

59. Mr Henin noted that private hospitals have an important role in helping to meet the growing demand and easing the burden on the public healthcare system by

³¹ SoE C J Bennett, para 3.

³² Ibid.

³³ SoE C J Bennett, para 6.

³⁴ SoE C J Bennett, para 8.

³⁵ SoE R Henin, para 3.

³⁶ SoE R Henin, para 4.

“providing both baseline and peak demand elective services”, and that approximately half of the 350,000 New Zealanders who have elective surgery each year do so in private hospitals.³⁷

60. Mr Luke Williams, an Associate Director at EY with postgraduate qualifications in public policy and health management, provided evidence as to growth in the demand for health care services generally. He advised that metro-Auckland is projected to be the fastest growing region of New Zealand over the next 20 years, particularly in the population aged 65 years and over, and as such, additional investment in healthcare infrastructure will be needed to enable Aucklanders to access healthcare in a timely way.³⁸ Mr Williams’ evidence was that:³⁹

A key health service that provides benefit to Aucklanders is timely access to elective surgery. Access to this care is provided by both the public health system and the private sector, with the private sector providing direct access for patients who pay privately (either fully or via health insurance) and for publicly funded patients (when their local public hospitals are unable to provide timely care).

61. Based on demand projections, Mr Williams considered that elective surgery volumes will grow significantly over the next 20 years. Accordingly, in his view, the public and private health sectors will need to develop additional operating theatre and hospital beds to maintain timely access to services,⁴⁰ and SCHL’s proposal to expand Brightside Hospital would provide an important contribution to that demand and provide various other benefits.⁴¹
62. The corporate and other evidence provided by SCHL in relation to the rationale behind PC21 was comprehensive and persuasive. We find SCHL’s decision to expand its hospital facilities in the face of the projected demand for elective healthcare services to be entirely rational and not undermined by submitters’ criticisms of its corporate structure or business model. On the issue of demand for services in particular, we prefer the evidence of Mr Williams and SCHL.

Section 32 evaluation

63. Under s 74(1)(e) we are required to “have particular regard” to the s 32 evaluation report prepared by SCHL and submitted with its proposed plan change request. The direction to “have regard to” means to give “material consideration”⁴², or “genuine attention and thought” to the matters set out.⁴³ The addition of the adjective “particular” has been said to indicate a difference in emphasis rather than one of substance (when compared to the phrase “have regard to”⁴⁴), and in the case of s

³⁷ SoE R Henin, para 5.

³⁸ SoE L E Williams, para 1.

³⁹ SoE L E Williams, para 2.

⁴⁰ SoE L E Williams, para 3.

⁴¹ SoE L E Williams, paras 54 – 63.

⁴² *Winstone Aggregates Ltd v Papakura DC EnvC A096/98*

⁴³ *Foodstuffs (South Island) Ltd v Christchurch CC* (1999) 5 ELRNZ 308; [1999] NZRMA 481 (HC).

⁴⁴ *Marlborough Ridge Ltd v Marlborough DC* [1998] NZRMA 73

74(1), that the s 32 evaluation report must be given a higher weighting than the other matters listed.⁴⁵

64. The s 32 evaluation requires an examination of two distinct, but related matters.⁴⁶

Objective most appropriate to achieve purpose of Act

65. The first examination required is as to the extent to which the objective of PC21 is the most appropriate way to achieve the purpose of the Act (s 32(1)(a)). As PC21 proposes no objectives (of the type contemplated under the Act), the “objective” being examined is the stated purpose of PC21,⁴⁷ namely: “*to enable the efficient operation and expansion of the existing [Brightside] hospital, while managing the effects [of that expansion and operation] on the adjacent residential amenity*”.
66. Evaluating whether that objective is the most appropriate requires a value judgement as to what, on balance, is the most appropriate when measured against the relevant purpose.⁴⁸ In its examination of this aspect, SCHL’s evaluation report focussed on Part 2 of the Act. At a high level, we can readily conclude that the dual purpose of PC21 (enablement of operation and expansion of a healthcare facility/management of effects on residential amenity) is consistent with the sustainable management purpose of the Act as defined in s 5(2), and that it is a more appropriate purpose for the use and development of the resources at 3 Brightside Road and 149, 151 and 153 Gillies Ave than the purpose currently enabled by its residential zonings. This is principally because of the health and well-being benefits that more people and communities would obtain access to if the site were enabled for use and development as a healthcare facility, especially in circumstances where the services offered by such facilities are in demand.
67. Examined through the more refined lens of the RPS, which we consider better expresses how the purpose of the Act will be achieved in respect of the Auckland region, we are also satisfied that the purpose of PC21 is a more appropriate one for this site. When measured alongside its objectives, most notably those in B2. Tāhuhu whakaruruhau ā-taone – Urban growth and form, PC21’s dual purposes will assist in addressing the issues arising from the growth of Auckland in a way that is consistent with the envisaged outcome. This outcome fundamentally seeks to ensure that there are accessible social facilities available to meet the needs of people (B2.8.1) and that the adverse effects of use and development are mitigated through appropriate design (B2.3).

Provisions most appropriate to achieve objective

⁴⁵ Brookers Resource Management Commentary, A74.03

⁴⁶ *Golf (2012) Limited v Thames-Coromandel District Council* [2019] NZEnvC 112.

⁴⁷ s 36(6).

⁴⁸ *Rational Transport Soc Inc v New Zealand Transport Agency* [2012] NZRMA 298 (HC).

68. Second, the s 32 evaluation must examine the extent to which the provisions in PC21 are the most appropriate way to achieve its objective (s 32(1)(b)), including assessing their efficiency and effectiveness by:
- (a) Identifying other reasonably practicable options for achieving the objectives.
 - (b) Assessing the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for economic growth and employment that are anticipated to be provided or reduced, and, if practicable, quantifying the “benefits and costs” (s 32(2)(a) and (b)).
 - (c) Assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions (s 32(2)(c)).
69. As PC21 proposes to change an existing plan (i.e., the AUP), the examination required by s 32(1)(b) must relate to its proposed provisions and the objectives of the AUP, but only to the extent that those latter objectives are relevant to PC21 and would remain if PC21 were to take effect.⁴⁹ We understand this to mean that we should not evaluate PC21 against provisions of the AUP that would no longer apply to the site if PC21 were approved, even if they currently do so. This would include the provisions of the RMHS and RSH zones, as well as the provisions in D18 – Special Character Areas Overlay.
70. SCHL’s s 32 evaluation identified the following options for achieving the objective of PC21:⁵⁰
- (a) *Relocate the hospital elsewhere*: SCHL considered whether it was feasible to find a different site where it could develop a new standalone hospital in Central Auckland, but concluded this was not a feasible option due to floor area requirements, high land prices and scarcity in central locations, and in proximity to other medical facilities. SCHL also had significant investment in its existing hospitals and a new standalone hospital would be an inefficient use of its resources.
 - (b) *Expand Brightside Hospital using the existing planning framework*: Under this option, a non-complying resource consent would be needed to expand the hospital due to the rules applying to healthcare facilities, building demolition and new buildings under the RSH and RMHS zones and the SCAR overlay. The nature of the statutory assessment that would apply to any proposed hospital expansion caused SCHL to have concern as to the impracticality of being able to achieve its objective in this manner. That is, the application would potentially have to reduce the scale and capacity of any new facility to ensure its adverse effects on the environment were no more than minor, in

⁴⁹ s 32(3).

⁵⁰ SoE D L Shaw at [196]-[212]; and AEE dated January 2019, at pp 29-38.

circumstances where that environment was categorised by the level of development anticipated by the existing zones and overlays.

- (c) *Apply the SPHFH zone without modification and remove the SCAR Overlay:* This option was seen as the simplest way to achieve SCHL's objective for the site as it would provide for its use and development utilising the same special purpose zone already employed in the AUP for healthcare facilities and hospitals. However, SCHL considered that applying the SPHFH without modification and removing the SCAR overlay would not enable the effects of the development of the site on the surrounding neighbourhood to be adequately managed (e.g., height restriction and retention of identified trees and stone walls), or for the parking control variation to be incorporated.

71. We have considered this assessment of other options in detail and agree with SCHL that, although they may be practicable - in a 'can do' sense, they are not the most appropriate, effective or efficient way to achieve the objective of PC21.
72. We agree that there is little realistic prospect of SCHL being able to establish expanded healthcare facilities on this site using the provisions in the existing zones, and while being constrained by the SCAR overlay. The policy framework provides limited support for the development of a new hospital facility, and the effects thresholds for approval are simply too high. We find that retaining the status quo zones and the SCAR overlay would not be a reasonably practicable option, or an efficient and effective way to achieve PC21's objective.
73. In our view, the SPHFH zone is the most appropriate zone to achieve the objective of PC21. It is one of only two AUP zones that provide for the development of such social facilities as a permitted activity and was designed with that purpose in mind, acknowledging their region-wide importance.⁵¹ We also agree with SCHL that changing the zoning, but leaving the SCAR overlay in place, would not be the most appropriate way to achieve the objective of PC21. The SCAR provisions are too constraining in our view to accommodate the development of a modern healthcare facility on this site of the scale and complexity that we understand to be required.
74. In reaching this conclusion we accept SCHL's evidence that it would not be able to achieve a viable hospital outcome in the context of the RSH zone/SCAR framework because it cannot achieve sufficient building mass to meet operational needs and efficiencies. The SCAR provisions do allow a resource consent opportunity to demolish the existing buildings as a restricted discretionary activity, and the walls and vegetation as a permitted activity. Assuming that SCHL was able to pass that barrier (we have no view either way on whether that would be the case), the planning requirement for new development is to achieve a compatible scale, form, and aesthetic. That would limit replacement buildings to a scale and form similar to the existing ones. In our view, that is the principal constraint over the future use of the

⁵¹ Supplementary Evidence, D L Shaw, 7 February 2020, paragraph 9; Check; see also IHP Report to Auckland Council Hearing topic 055 Social facilities, July 2016.

land, as it fundamentally prevents a development outcome of the scale necessary to meet the objective of the plan change and SCHL's needs.

75. In the result, we consider that SCHL's chosen approach of proposing specific modifications to the SPHFH zone to mitigate the effects of removing the existing zones and SCAR overlay, and to manage the actual and potential effect of the use and development of the site in accordance with the SPHFH zone provisions, to be the most appropriate way to achieve PC21's objective. Doing so provides an opportunity to implement the region-wide enablement provisions for social facilities, while ensuring that the new use and building integrates into the existing urban fabric in a way that mitigates effects and maintains important features.
76. This is not to say that we necessarily accept, at this point in our consideration of PC21, that the mix of specific modifications proposed to the provisions of the SPHFH zone for the Brightside Hospital site are the most appropriate to achieve the objective of PC21, or the objective of the SPHFH zone for that matter. In our view, whether a balance can be struck and if so, what it looks like, are critical issues in contention with PC21. Appropriately, SCHL has acknowledged these issues throughout the processing of PC21 and its response to them has changed accordingly, in each case suggesting additional controls to apply to any new development on the site in order to better achieve the second part of the objective of PC21.
77. When the s 32 report was prepared for PC21, no specific modifications were proposed to the SPHFH zone to apply to Brightside Hospital. The s 32 evaluation considered the inclusion of a "Development Outline Plan" that would identify the location of any new buildings on the site and the trees and stone walls to be retained,⁵² but this was not pursued, we were told, in the face of opposition from the Council on the grounds that it was not a method used elsewhere in the SHHFH zone.
78. As detailed earlier, after submissions were received and in preparing its evidence for hearing, SCHL reconsidered its earlier position and suggested the inclusion of an "Outline Plan" that protected the trees and stone walls and limited permitted building heights. Mr Shaw explained that this change of view arose following his "*review of submissions and evidence of expert consultants*"⁵³ that led to him considering the inclusion of the Outline Plan would "*enable a more appropriate planning outcome for the site and surrounding environment*" by enabling "*the scale of development which is required by Southern Cross ... while better managing the potential amenity effects...*".⁵⁴
79. At the end of the hearing, SCHL promoted further modifications to the provisions of the SPHFH zone to apply to the Brightside Hospital site and we have set these out earlier. A further assessment accompanied them.

⁵² PC21 AEE, SFH Consultants, pages 34, 35.

⁵³ SoE D L Shaw, para 209.

⁵⁴ Ibid.

80. Our reason for identifying these successive modifications is to make the point that the extent of modification to the provisions of the SPHFH zone necessary to ensure they are the most appropriate to achieve the objective of the plan change must ultimately derive from our findings about the effects on the environment of the plan change and our review of any further modifications that might be appropriate to address them through the lens of s 32 (via our duty under s 32AA). We return to this later in our decision following our consideration of PC21 taking into account all other relevant matters.

Consideration of alternatives

81. A number of submitters complained that SCHL's s 32 evaluation was flawed, or did not meet the requirements of the Act, because it did not identify and discount other alternative sites where new healthcare facilities could be developed. Mr Putt, a witness for EERPS, for example, considered that an important aspect of any private plan change is "*to establish that there is no alternative for the land use sought other than the subject site*",⁵⁵ and that the test in s 32(1)(b)(i) effectively addresses the question of "need" i.e. does SCHL reasonably need to use the subject site as proposed by the plan change?⁵⁶ We agree with counsel for SCHL that neither approach to the evaluation required by s 32 is correct.
82. The Supreme Court has held that s 32(1):⁵⁷
- "does not contemplate that determination of a site-specific proposed Plan Change will involve a comparison with alternative sites ... It is also logical that the assessment should be confined to the subject site. Other sites would not be before the Court and the Court would not have the ability to control the zoning of those sites."*
83. Our understanding of the law is that the requirement under s 32(1)(b) is to examine whether the provisions are the most appropriate way to achieve the objectives of the plan change by identifying other reasonable practicable options for achieving the objectives and by considering the effects of the provisions and the risk of not acting (if there is uncertain or insufficient information). This does not require an analysis of all possible alternative locations for the proposal, or that the proposal be the only way to achieve the objective. We are satisfied that the evaluation completed by SCHL meets the requirements of s 32.

Level of detail

84. The level of detail and number of options considered under s 32(1)(b) must correspond to the scale and significance of the environmental, economic, social, and

⁵⁵ SoE B Putt (22 October 2019), at 2.2.

⁵⁶ SoE B Putt (22 October 2019), at 3.16.

⁵⁷ *Environmental Defence Society v King Salmon Company Ltd*, citing *Brown v Dunedin City Council* [2003] NZRMA 420 (HC) at [16].

cultural effects that are anticipated from PC21.⁵⁸ We do not agree that the analysis completed by SCHL “*is too limited and omits essential assessment references*”.⁵⁹ In our assessment, the level of detail included is appropriate and corresponds to the scale and significance of the potential effects of the plan change.

Section 32 - summary

85. We have reviewed the evaluation report prepared by SCHL in detail. We have also had the benefit of considerable evidence about the plan change as well as the ability to question the various planning and other experts about aspects of it. We are satisfied that the evaluation report prepared for PC21 meets the requirements of s 32(1) and reasonably supports the request by SCHL that PC21 be approved, subject to its specific provisions being appropriate to achieve its objective.
86. In summary, we find that:
- (a) The stated objective of PC21 is the most appropriate way to achieve the purpose of the Act, as expressed through s 5 and the RPS. The objective seeks to enable an existing hospital resource to be used efficiently, including by way of expansion, to meet the healthcare needs of people and communities and is a better use of this land resource than its current purpose. It follows from this conclusion that we consider that the objectives of the SPHFH zone are more appropriate for the land than the objectives of the RSH and RMHS zones and the SCAR overlay.
 - (b) The proposed provisions of PC21 (i.e., rezoning and applying a modified SPHFH zone) are the most appropriate way to achieve that objective. There are no other reasonably practicable zoning options available for the site that could realistically achieve the objective of enabling an expanded hospital facility, and subject to ensuring that effects on residential amenity can be managed, an effective way to achieve that outcome.
 - (c) The information about the subject matter is not uncertain or insufficient warranting a risk assessment.

NPS:UDC

87. The NPS:UDC provides direction to decision-makers under the Act on planning for urban environments and is relevant to our consideration of PC21. The NPS:UDC recognises the national significance of well-functioning urban environments and the importance of enabling growth, change and intensification within them.
88. We consider the following objectives and policies of the NPS:UDC to be directly applicable to the objective of PC21:

⁵⁸ s 32(1)(c).

⁵⁹ SoE B W Putt, (22 October 2019), at 2.12.

Section	Matters
Objective Group A Outcomes for planning decisions	OA1: Provide efficient urban environments that enable people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing.
Objectives Group C Responsive planning	<p>OC1: Planning decisions should enable urban development that provides for the social, economic, cultural and environmental wellbeing of people and communities and future generations in the short, medium and long term.</p> <p>OC2: Local authorities adapt and respond to evidence about urban development, market activity and the social, economic, cultural and environmental wellbeing of people and communities and future generations, in a timely way.</p>
Objective Group D Coordinated planning evidence and decision making	OD1: Provide for urban environments where land use, development, development infrastructure and other infrastructure ⁶⁰ are integrated with each other.
Policies Outcomes for planning decisions	PA2: Ensure that other infrastructure required to support urban development are available.
	<p>PA3: Provide for the social, economic, cultural and environmental wellbeing of people and communities and future generations, whilst having regard to: (b) promoting the efficient use of urban land and development infrastructure and other infrastructure.</p> <p>PA4: When considering the effects of urban development, decision makers shall take into account: (a) The benefits that urban development will provide with respect to the ability for people and communities and future generations to provide for their ... wellbeing...</p>

89. We find that PC21 is in accordance with the relevant provisions of the NPS:UDC and would assist the Council to give effect to it. This is because PC21 enables the development of important social infrastructure to support urban development and in doing so provides for the social, economic, cultural and environmental wellbeing of people and communities.

⁶⁰ Other infrastructure includes social infrastructure such as schools and healthcare (interpretation section, page 8).

90. Recent dicta from the Environment Court about the inter-relationship between the NPS:UDC and the AUP are also worthy of note before we leave our consideration of the NPS:UDC.
91. In *Summerset Villages (St Johns) Limited v Auckland Council*,⁶¹ the Court noted that both the NPS:UDC and AUP “stress [that] compact urban form in the context of the existing urban areas requires intensification”.⁶² This means that the changes anticipated and provided for in an area by the AUP are relevant to considering the appropriateness of a proposed activity on a site. In the Court’s view, the change envisaged under the NPS:UDC and AUP “can [not] be countermanded by reference to the existing residential amenity without a reference to the plan changes that are envisaged” in terms of the NPS:UDC and AUP. To determine the residential character without reference to both documents would be a failure to properly administer both the AUP and the NPS:UDC.⁶³
92. Overall, the Court noted that the clear theme of the NPS:UDC is change. It said:
- “In our view, the inescapable conclusion is apparent: the UPS [NPS:UDC] gives direction to decision-makers to have regard to urban growth outcomes which have previously be under-emphasised in favour of local environment or amenity considerations”.*⁶⁴
93. The Court found that the NPS:UDC requires evaluation in the context of “national significance” within which planning endeavours are to be undertaken and which will allow urban environments to develop and change. It was the Court’s conclusion that a “more future-oriented, outcome-focused conclusion” is envisaged.⁶⁵
94. The AUP became operative in part two months before the NPS:UDC came into effect, and therefore was not considered in preparing or deciding the AUP. However, the Court commented that the AUP embraces the focus on enabled intensification and should be read in this way.

The Auckland Plan

95. Prepared under s 79 of the Local Government (Auckland Council) Act 2009, The Auckland Plan is a relevant strategy document to which regard must be given when considering PC21.
96. Under s 74(2)(b)(i), The Auckland Plan 2050 is a strategy prepared under the Local Government (Auckland Council) Act 2009, the content of which we find to have relevant bearing on the resource management issues of the Auckland district. The Plan was adopted in June 2018 and provides a long-term spatial plan which sets out

⁶¹ [2019] NZEnvC 173

⁶² *Ibid.*, at [17].

⁶³ *Ibid.*, at [18].

⁶⁴ *Ibid.*, at [49].

⁶⁵ *Ibid.*, at [49] and [50].

how Auckland will address its key challenges over the next 30 years. These include high population growth, shared prosperity, and environmental degradation.

97. The following sections of the Auckland Plan 2050 have some bearing on the issues raised for consideration by PC21.

Outcomes	Relevant Matters
Homes and Places	<p>Direction 1 Develop a quality compact urban form to accommodate Auckland's growth</p> <p>Auckland's population will increase significantly over the next 30 years and its urban form will continue to develop and change as a result. Auckland will follow a quality compact urban form approach to growth to realise the environmental, social and economic benefits and opportunities this approach brings.</p>
Belonging and participation	<p>Focus Area 2 Provide accessible services and social and cultural infrastructure that are responsive in meeting people's evolving needs</p> <p>Population growth and demographic change will put pressure on existing services and facilities. Ageing population will increase and require services and social infrastructure that enable older people to fully participate.</p>
Environment and Cultural Heritage	<p>Direction 1 Ensure Auckland's environment is valued and cared for</p> <p>Direction 3 Use Auckland's growth and development to protect and enhance the environment</p> <p>Focus area 2 Focus on restoring environments as Auckland grows</p>

98. We find that PC21 supports these outcomes of The Auckland Plan because it will enable important social infrastructure (a healthcare facility) to establish in an accessible location within the established urban footprint of Auckland.
99. Following our assessment of the actual and potential effects of PC21, we agree with the views of Ms Ampanthong and various other experts and submitters we heard from, that PC21 in its originally requested form does not sufficiently value or care for Auckland's environment because it enabled built development of a potentially

inappropriate design and scale.⁶⁶ But, after careful consideration of evidence, we consider that this outcome can be achieved with modifications to its provisions.

The Regional Policy Statement

100. There are number of provisions of the RPS that are relevant to the changes proposed by PC21. We note that Chapter B11 – Monitoring and environmental results anticipated, requires that the objectives and policies of the RPS are to be read as a whole.⁶⁷ We confirm that we have approached our consideration of PC21 in relation to the RPS in this way. For the purpose of this decision we intend to focus our discussion on the two chapters agreed as being of most relevance to the changes proposed by the plan change, namely Chapter B2 – Urban growth and form and Chapter B5 – Historic heritage and special character.⁶⁸
101. We find that PC21 is consistent with Chapter B2 and would therefore assist in the management of region-wide growth issues. In particular:
- (a) **B2.2 Urban Growth and Form.** PC21 will achieve objectives 1, 2, and 3 and policies 1 and 7 of B2.2 Urban growth and form by intensifying an existing hospital facility within the urban area, on an arterial route, and near other social facilities. This optimises the efficient use of existing urban areas, encourages the efficient use of existing social facilities, and provides for new social facilities in proximity to areas of residential intensification.
 - (b) **B2.3 Quality Built Environment.** PC21 will achieve objectives 1, 2 and 3 and policies 1, 2, 3, 4, and 5 of B2.3 Quality Built Environment by enabling an innovative design response to the needs of the hospital expansion while managing effects through development controls and assessment criteria.
 - (c) **B2.8 Social Facilities.** PC21 will achieve the objectives and policies within B.2.8 Social Facilities, which acknowledges the need for new and expanded social facilities in response to growth to meet the needs of people and provide for their health and wellbeing. It enables the expansion of Brightside hospital in a location where it is accessible by a range of transport modes.
102. Chapter B5.3 Special character is relevant to the consideration of PC21 because one aspect of PC21 seeks to remove the SCAR overlay from the three Gillies Ave properties. This removal would allow the demolition of the buildings on those sites and their redevelopment as part of an expanded hospital facility, albeit subject to the proposal within the Outline Plan promoted by SCHL, that certain significant trees and the existing stone walls be retained.
103. The objectives and policies in B5.3 are focused on identifying, maintaining, and enhancing the character and amenity values of special character areas in the city. It

⁶⁶ S42A report, para 45.

⁶⁷ See B11.1.

⁶⁸ Joint Witness Statement of expert planners, 31 October 2019.

is because of an historic identification process that the Gillies Ave properties have been included within the Mount Eden/Epsom Residential: Isthmus B Special Character Area. The evidence is that, together, the properties account for 1% of all the properties within this much larger character area.⁶⁹

104. At one level, the proposal to remove properties already identified as having special character and thus being worthy for inclusion with the SCAR overlay, neither of which facts is in dispute,⁷⁰ seems clearly inconsistent with the objectives and policies of B5.3. However, we are not persuaded that we can apply B5.3 in that way. To do so would be to treat the SCAR overlay as an immutable provision in the AUP, which outcome conflicts with the administrative law principle that a local authority can never write a plan that prohibits its own amendment. In our view, B5.3 must be read as being equivalent in statutory importance to the other RPS objectives in Chapter B, and subject to the prospect that the areas that it promotes the identification and maintenance of may alter, or need to be altered, over time. In that way, factors such as the reason for the alteration and the outcome of its statutory evaluation will be brought to bear on the appropriateness of amending the extent of an existing overlay to the extent sought.
105. We also observe that the provisions of B5.3 are not focussed on the retention of every property identified within each overlay area mapped at the date the AUP became operative. Rather, the focus is on the “areas” of special character: their maintenance and enhancement. It follows therefore that provided any appropriate proposal to remove the SCAR overlay from a property is accompanied with methods to ensure that the overall character of the affected area is maintained (as a minimum), then such removal will not be inconsistent with B5.3 in our view.
106. In this case we are satisfied that the amendment to the SCAR overlay proposed by PC21 is appropriate, principally because of the nature of the use to be enabled by its removal and the importance of that use to the outcomes sought by the RPS (and the Act) as a whole. We also find that the methods proposed by SCHL’s proposed Outline Plan, whereby the most visible character-providing features of the properties (trees, stone walls) are retained in any development, are suitable to ensure that the identified special character of the Mount Eden/Epsom Residential: Isthmus B Special Character Area is maintained, even though the properties are to be substantially redeveloped. Accordingly, we conclude that PC21 is not inconsistent with B5.3, to the extent that requires the SCAR overlay to be retained over the Gillies Avenue properties, because the special character values of the relevant special character area will, overall, be appropriately maintained.

Actual and potential effects of activities on the environment

107. We heard considerable evidence about the actual and potential effects on the environment of the use and expansion of the Brightside Hospital that would be

⁶⁹ SoE J E Brown, paragraph 134.

⁷⁰ Joint Witness Statement of expert special character witnesses, 1 November 2019.

enabled under the provisions of PC21. We have not found it necessary to make findings about all of the matters raised in this evidence, however, because the scope of our effects assessment is limited to a significant degree by the proposed provisions of PC21 in two important ways.

108. First, PC21 proposes introducing only a limited number of district rules relating to land use and building development; all other Auckland-wide regional and district rules that regulate, by way of example, land disturbance, water management, noise and vibration, are unaffected by PC21 and would continue to apply (as they do now) to activities that might be undertaken on these properties. Put another way, it is only the potential effects arising from the proposed land use and development activities that would be put in place by PC21 that we need to consider.
109. Second, it is only the effects that would arise from activities permitted by the land use and development rules proposed by PC21 that we need to consider. This is because the effects of any activities not permitted on the site would require a resource consent, which may or may not be granted. We accept that reliance on a resource consent process to manage the effects of activities that are not permitted is only appropriate if consent process in question can in fact achieve management of the effects to the standard considered appropriate. We return to that issue later in this decision in our s 32AA evaluation where we look at the various modifications that we could incorporate into PC21 to ensure appropriate effects management beyond the threshold for permitted activities. For present purposes though, we focus on the actual and potential effects, including adverse effects, of the activities permitted by the proposed rules of PC21.

Effects arising from the development of expanded healthcare facilities on the site

110. Based on uncontested evidence presented in support of PC21 we find that development of additional healthcare facilities on the site of the type and scale proposed by SCHL will have a range of positive effects. These will include:
 - (a) Positive efficiency effects by allowing the expansion and use of existing physical resources and infrastructure;
 - (b) Positive social effects through the provision of additional capacity to assist with meeting a growing demand for healthcare;
 - (c) Human health and well-being benefits from a health and patient risk management perspective;
 - (d) Positive economic benefits.

Effects of development of the Gillies Ave properties on the special residential character values of the locality

111. In this section we focus on the effect that removal of the houses at 151 and 153 Gillies Avenue would have on the special character values of the area. We have

addressed the associated planning issues of whether PC21 is consistent with B5.3 of the RPS or will cause a precedent elsewhere in this decision. We consider the visual amenity, character and urban design effects of new built development on the sites as a separate topic below.

112. Under the AUP presently, all of the trees, vegetation and stone walls on the Gillies Avenue properties can be removed as of right, demolition of the houses at 151 and 153 Gillies Avenue requires resource consent, as do new buildings on all of the sites.⁷¹ Under PC21, removal of certain identified significant trees on the sites and any of the existing stone walls would require resource consent (per the proposed Outline Plan), but the demolition of the houses would be permitted, as would the construction of new buildings, provided they complied with the applicable development standards, failing which resource consent would be required.
113. At expert witness caucusing it was agreed⁷² that:
- Special character is not the same thing as historic heritage and PC21 was not threatening the latter.
 - The special character of the sites arises from a number of interrelated qualities and characteristics that should be considered holistically.
 - The houses at 151 and 153 Gillies Avenue have special character values consistent with the special character area.
 - Demolition of the houses at 151 and 153 Gillies Avenue would have adverse effects on the special character area (but the level to which the area would be affected by their removal was not agreed).
114. We accept that special character arises from several interrelated qualities and characteristics⁷³ that should be considered holistically when assessing the degree of adverse effect that removal of the two houses would have on the special character values of the area. In adopting a holistic consideration, we accept that the demolition of the houses at 151 and 153 will have adverse effects on the special character of the area; the houses are an integral part of the special character of the sites.
115. If avoidance of any change at all to, or any loss of, any of the physical features that contribute to the special character values identified in a SCAR overlay area was the policy outcome to be achieved, then retention of the status quo (and rejection of PC21) would likely be the only option for us. It strikes us that the AUP would also likely include a more directive policy framework, such as to “avoid” building demolition rather than to “discourage” it if that was its objective. However, avoidance of all adverse effects on special character areas is not the overarching policy framework that applies in this case. Rather, we are required to ensure that adverse

⁷¹ Table D18.4.1 (A3) & (A5).

⁷² Joint Witness Statement of expert special character witnesses, 1 November 2019.

⁷³ The special character values are summarized in Schedule 15.1.7.3.2 of the AUP.

effects from development are mitigated⁷⁴ and that the character and amenity values of the special character area in question are maintained and enhanced by ensuring that any cumulative effect of the loss of identified special character values is avoided, remedied or mitigated.⁷⁵

116. In this regard, we consider it also relevant to repeat that the SCAR overlay does not seek to prohibit demolition or prevent substantial change to existing buildings. In addition to permitting the demolition of boundary walls and vegetation, demolition of buildings is in some instances permitted, and in others a restricted discretionary activity within the SCAR overlay. We received no evidence that retaining the SCAR would necessarily mean that an application for demolition of the Gillies Ave dwellings would be refused, such that their perpetual existence was guaranteed. Rather, we received evidence that dwelling demolition consents within the SCAR overlay had been granted by the Council and, we understand, not appealed on the grounds of being an incorrect use of the SCAR provisions. These facts tend to weaken the argument that retention of the SCAR overlay would inherently protect the dwellings from demolition.
117. We agree with specialist heritage architect Carolyn Hill that although the houses at 151 and 153 Gillies Avenue have architectural merit that aligns with the identified character values of the area, the area's visual coherence and amenity derives more from its urban landscaping than its building stock. At the sites in question, it is the urban landscaping features that are dominant to the point of rendering the houses almost invisible to most passers-by. For this reason, we find that the loss of the buildings alone would not have a discernible, cumulative, or erosive effect on the collective special character values of the immediate area or the wider Mt Eden/Epsom special character area.
118. In the end, we did not find the arguments that the dwellings' intrinsic special character values (i.e. it did not matter that people might not see them) warranted retention of the overlay, to be persuasive. We also found the evidence supporting the claim that removing the properties from the SCAR overlay would result in an unacceptable direct or cumulative effect on the special character values of the area to be lacking, to the point where we needed to repeatedly question some of the relevant experts simply to identify exactly what area they had assessed the sites in question to be a part of. We instead found the evidence that the properties to be removed from the overlay were a discrete part of the wider special character area and that their demolition would not detrimentally undermine that area's special character values, to be better substantiated.
119. As noted above, PC21 proposes to protect the majority of the significant landscape trees on the sites and their stone boundary walls by way of specific development control (i.e., Outline Plan). In so doing it will maintain the features of the properties that contribute most significantly to the visual coherence and amenity of the special

⁷⁴ B2.3.2(5).

⁷⁵ B5.3.2(4)(d).

character area and mitigate the impact of the removal of the houses on the area as well.

120. We find therefore that the demolition of the houses at 151 and 153 Gillies Avenue in the circumstances proposed by PC21 will not give rise to unacceptable adverse effects on the special character values of the Isthmus “B1” Mount Eden/Epsom special residential character area.

Effects of new built development on the site

121. PC21 would enable the development of buildings on the site as a permitted activity, provided certain development standards were complied with. These development standards effectively define the bulk and location of permitted building development on the sites and, consequently, the potential effects of building development on adjoining properties and the neighbourhood generally.
122. By reference to SCHL’s modified PC21 provisions (i.e., the yellow highlighted version presented with its closing submissions), the following key building bulk and location standards would need to be met for buildings to be permitted:⁷⁶
- Building height (H25.6.1) – 12m in Area 1; 16m in Area 2
 - Height in relation to boundary (H25.6.2) – 2.5m + 45°
 - Front, Side & Rear Yards (H25.6.3.1) – 3m
 - Brightside Hospital Plan (H25.6.7) – Identified Trees and Stone Walls to be Retained (Figure H25.6.1.2)
123. We also note that under Table H25.4.1 (A20), “*new buildings ... that are visible from and located within 10m of a public road...*” require restricted discretionary resource consent. We consider that this would operate as a further de facto 10m road boundary set-back.
124. In assessing the potential effects of built development on the site to this scale we have been assisted by visual simulations prepared by SCHL and EERPS that model the permitted bulk and location envelope for the site. We also found the detailed architectural perspectives of a hypothetical hospital building on the site included with SCHL’s visual assessment materials to be helpful as they presented what we consider to be a more realistic impression of what development of the site in accordance with PC21 might look like, albeit acknowledging that they cannot be relied on in the same way as if they were promoted by an applicant in the course of a resource consent application.

⁷⁶ Note, this assumes no Auckland-wide or Overlay consent requirements are triggered by the building proposal.

125. Based on these materials, the detailed expert assessments we were presented, and our own site inspection we have reached the view that:
- (a) a hospital activity of the scale enabled by PC21 would not be incompatible with the local environment, subject to further modification of the PC21 to incorporate suitable controls on the design of new buildings on the site;
 - (b) development enabled by PC21 has the potential to adversely affect the amenity values, including visual and special character, of the streets that it fronts and the wider neighbourhood, to an inappropriate extent, but that this can be addressed through further modification to PC21; and
 - (c) development enabled by PC21 has the potential to adversely affect the amenity values of immediately adjacent neighbours to an inappropriate extent, but that this can also be addressed through further modification to PC21.
126. Our reasons for these findings are set out below.

Compatibility

127. Compatibility of a new activity in an established locality is a function of several factors. Can the local environment accommodate the physical presence of the activity at the scale and design expected? Is the proposed use discordant with the activities of its neighbours? Can the local environment service the new activity? And can the new activity provide a service to the local community and fit into of the urban matrix of the area?
128. At the permitted extent of building proposed by PC21, with maximum heights of 12m and 16m and setbacks from street and adjacent private property boundaries, we have no fundamental concern with the compatibility of what is proposed, provided it is designed to 'fit-into' the neighbourhood. Built form of this scale is not excessively large and is commonplace throughout the Isthmus, including amongst and adjacent to established areas of 1 and 2 storey dwellings. When considered in the context of the surrounding zoning pattern, and what that heralds for future development in this neighbourhood, it will be entirely acceptable and compatible.
129. The design of built form of this scale is also important to its overall compatibility and we are satisfied that an appropriate design outcome can be achieved for this site, even though we acknowledge that the function of a hospital building will dictate its design and appearance to a certain extent. This is because one of the functions of a hospital is to accommodate people for short stays and as is plainly evident from the existing Brightside hospital building, and our experience with other such facilities, this function expresses itself in a residential-like façade. In this case as well, the proposal to retain significant trees and the stone boundary walls will further assist to integrate any new building into its local setting.
130. Overall, we are satisfied that a hospital building at the permitted scale allowed under PC21 can be designed to achieve compatibility in its neighbourhood.

131. However, we are concerned that allowing a building of that scale to be developed as a permitted activity is not appropriate in this setting, which is predominantly residential in character. While we have no doubt that SCHL, as a good corporate citizen, would be motivated to achieve a building as compatible as possible with its surroundings, there is a potential that it may not. For this reason, we consider that some external review and control of its design and materials use (if needed) will be important to achieve that overall compatibility and that further modification to PC21 to provide for that control over new buildings is necessary. We return to this matter later in this decision.
132. We have no concern that the proposed healthcare activity enabled by PC21 would be discordant with the activities already established in this area. We discuss potential operational effects below and based on the evidence we are satisfied that, much like the existing hospital, an expanded facility will be an appropriate resident in this neighbourhood.
133. The evidence also satisfies us that the site is well located for a healthcare facility of the scale proposed and can be efficiently accessed and serviced by existing infrastructure, including by an established passenger transport network. Relevant to this finding is our assessment of the existing and future planned environment, and that Gillies Avenue is a major arterial route that carries tens of thousands of Aucklanders per day and accommodates several community and other uses. We agree with Ms Ogden-Cork's view that the site's location on Gillies Ave supports its intensification for activities that serve the community from an urban design perspective.⁷⁷ The 'flip-side' of this finding, which follows from the inherent nature of the healthcare function that the site would provide, is that the activity will provide a valuable service to the community and fit into the urban matrix of the area well.

Neighbourhood amenity values

134. PC21's proposal to ensure that various significant trees on site and the existing stone boundary walls will be retained is an important feature of the plan change that will go a considerable way towards ensuring that the amenity values, including visual and special character, of the streets that it fronts or the wider neighbourhood, will be maintained to a significant extent. The existing street frontages of the Gillies Avenue properties are visually dominated by these existing rock walls and trees. Such features are prevalent throughout the Mt Eden/Epsom special character area and identified as a feature of value within the character statement for this special character area. Their retention at the site, which we find is not otherwise provided by the AUP, is a positive feature of PC21.
135. Combined with the retention of these trees and walls, we find that the proposed street boundary setback and maximum building heights proposed by PC21 will also assist to maintain the amenity values of the neighbourhood generally, including its special

⁷⁷ SoE T Ogden-Cork, paragraph 126.

character values. It will also provide visual interest and passive safety benefits for both road frontages.

136. Taking into account the different zones that apply on different sides of the street in the neighbourhood, and the very different zones that face each other across streets in Auckland more generally, we do not consider there to be any resource management imperative to force a similarity in building heights across streets. Put another way, we do not consider that the maximum permitted building heights proposed by PC21 will have any adverse effect on amenity values generally. We have interpreted the zone pattern we observe along Gillies Avenue and across Auckland to routinely provide fluctuations in built form scale and activity type, and that this is therefore an acceptable resource management outcome.
137. However, we are concerned that the design of a building of this scale will be important to maintain neighbourhood amenity values and the special character values of the area. Allowing new buildings as a permitted activity is therefore not appropriate in this setting. For this reason, we have found it necessary to consider further modification to PC21 to provide greater control over the design and form of new buildings. We return to this matter later in this decision.

Adjacent neighbour amenity values

138. The potential effects of new building development on the amenity values presently enjoyed by the most adjacent neighbours along the northern boundary of the site were a matter of considerable concern for those property owners. Having visited the site and viewed the relationship of it with adjoining properties, including from within those properties, we accept that built development of a large scale, or within close proximity to those properties could have significant adverse effects on the existing open sky views to the south, and the relative sense of privacy presently enjoyed by those properties.
139. For most of the properties that presently sit adjacent to the existing hospital site on Owens Road, we do not consider that development at the scale permitted by PC21 would have any appreciable effect that could be considered adverse. In combination the maximum permitted height limits, yard and height in relation to boundary standards, retained vegetation on site and extensive vegetation to the rear of these residential properties will all operate to minimise the visible extent of built form that could be experienced from these sites. Any proposal by SCHL to deviate from these bulk and location standards for new building development on the site would require resource consent, to which the normal tests for notification under the Act would apply. We find this to be an appropriate outcome to maintain the amenity of these adjacent neighbours.
140. However, the potential effects on 32A Owens Road, owned by Mr and Mrs Allen, are of particular concern to us, as the absence of any significant built development on adjacent land to the south and east is one of the features of the existing environment that contributes to the amenity able to be enjoyed at this property. We heard detailed

and helpful evidence from several experts about the potential amenity effects of development in accordance with PC21 on this property, including from the Allens. We agree that the simulated mass of a 25m building envelope on the hospital site experienced from 32A Owens Road presents an intimidating and concerning proposition. However, for reasons we have set out above, we cannot place weight on that image as it does not represent an effect that is enabled by PC21. Our focus in that regard has been on the building mass that could be developed as a permitted envelope. Under the provisions of PC21, anything beyond that would require consent, an assessment of effects and potential notification.

141. In this case, we are satisfied that the proposed permitted building height of 16m as it would apply to Area 2 is appropriate, but that the building setback proposal in SCHL's modified PC21 will not provide the certainty of building set back from 32A Owens Road that we consider to be necessary to maintain the amenity enjoyed by that property to a reasonable level. Under SCHL's provisions, buildings could still be built 3m from the boundary with 32A Owens Road, albeit subject to the height in relation to boundary standard and the 12m height limit. We find that a minimum building set back of 6m from the boundary with Mr and Mrs Allens' property to be necessary to maintain the amenity of that property to a reasonable level. We also consider that control over the design of any new building, to ensure that it is of a suitable character for the neighbourhood and specifically addresses overlooking (to avoid loss of privacy), to be appropriate as well.
142. Finally, we do not wish to ignore that there are other adjacent landowners, on the southern-side of Brightside Road, who would also experience any new building. However, we are comfortable that the width of the street and landscaping within the street will be sufficient to manage the transition in built form scale between each side of the street.

Operational effects – effects of non-residential activity

143. Operation of a hospital on the site would be a permitted activity under PC21. Due to the potential scale of the activity and the fact that it is not wholly residential, this activity could give rise to adverse operational and/or reverse sensitivity effects.
144. The two potential operational effects of most concern to neighbouring submitters were those arising from traffic associated with the hospital and noise.

Traffic and Transport

145. Mr Russell Brandon presented evidence for SCHL in relation to transport and traffic matters.⁷⁸ His key conclusions were:

⁷⁸ SoE R Brandon.

- (a) the additional vehicle traffic that could be generated by a development enabled by PC21 can be accommodated by the surrounding road network without any noticeable adverse effects;
- (b) based on surveys of the parking demand generated by the existing hospital on the site, a parking rate of 1:60m² for any additional hospital GFA developed on the site is recommended. In his view, parking provided at this rate for any hospital activities will be adequate to ensure that the parking demand generated can be accommodated within the site.
- (c) development enabled by the PPC will not adversely affect road safety on the surrounding road network, will not generate the need for any mitigation in relation to walking and cycling accessibility, and that the safe design of vehicle access will be addressed at the time of development.

146. The Council's reviewing traffic specialist agreed with these conclusions.

147. In his evidence to the hearing, Mr Phil Harrison for Auckland Transport, confirmed that the effects of PC21 on the transport network have "*largely been appropriately assessed*" and that the provision of 1 space per 60m² of development "*is appropriate to meet the operational needs*". He also agreed "*that the walking demand generated by the expanded hospital will not require new or upgraded pedestrian facilities.*"⁷⁹

148. We understand that in reaching their conclusions about these transport related matters all of the traffic specialists have used a hypothetical expanded hospital comprising a total of 10,700m² GFA as their baseline, considering that to be the extent of total GFA enabled by PC21.⁸⁰ Mr Kevin Wong-Toi, a witness for Auckland Transport, considered that even though SCHL's traffic assessment was conservative, if development of the site was larger in scale or different in character to that, it would be appropriate to confirm any change in the level of effects on the transport network and the potential need for mitigation.⁸¹

149. In his conclusions, Mr Harrison advised that there were several issues that would need "*to be covered off during any subsequent resource consent application*"⁸² namely:

- (a) A travel plan for any completed hospital to reduce the number of single occupant car trips to and from the site, which both he and Mr Wong-Toi considered would be "beneficial" and would reduce single car mode use by 10 – 20%;⁸³

⁷⁹ SoE P N Harrison, Section 4.

⁸⁰ See Flow Transport Assessment, December 2018, SFH Consultants AEE, Attachment D, section 5.1. This represents 5,200m² within the existing hospital and a further 5,500m² in an extension to the hospital developed within the 16m permitted height limit. See SoE K R Wong-Toi.

⁸¹ SoE K R Wong-Toi, paragraph 6.19.

⁸² SoE P N Harrison, paragraph 6.4.

⁸³ P Harrison & K Wong-Toi, answers to questions from Commissioners.

- (b) Additional transport modelling of the Brightside/Owens Road intersection arising from any access onto Gillies Avenue;
 - (c) A safety and operational assessment of any access onto Gillies Avenue;
 - (d) A Construction Traffic Management Plan.
150. It was generally accepted by the traffic specialists that items (b), (c) and (d) would invariably be required in a future consent process for development of the site. We understand this to be because development of an access onto Gillies Ave, to which a Vehicle Access Restriction applies, will require a restricted discretionary activity consent and the relevant matters for discretion and assessment criteria for that consent contain sufficient scope for the consent authority to require assessment of these matters and have the ability to impose conditions about them.⁸⁴ If no access is proposed to Gillies Avenue in any future development, then these issues do not arise.
151. A similar situation appears to exist for item (d). This is on the basis that earthworks exceeding 2500m² on the site would require a restricted discretionary consent under AUP Chapter E12, and the matters for discretion would enable the imposition of conditions relating to construction traffic management, including a management plan.
152. Mr Wong-Toi considered that the relevant criteria in the AUP would not allow a condition to be imposed to address item (a).⁸⁵ It was for this reason that he pressed us to modify PC21 to include a site specific requirement for such a plan to be provided on development of the site. Ms Bates, Council's transport specialist agreed with this proposal. Mr Brandon disagreed with Mr Wong-Toi and considered that such a requirement would be likely.⁸⁶ We have reviewed the relevant consent requirements in E27 and consider that the matters for discretion provide ample scope for a Travel Demand Plan (**TDMP**) to be required in the event that the effects of the specific activity require mitigation by such a method. We agree with Mr Wong-Toi that the assessment criteria do not make specific reference to such matters, but that is not required. In combination, matters for discretion E27.8.1(12) and s 104C(3) would operate to enable this issue to be addressed if necessary.
153. This then leaves us to consider whether, in the event development of an expanded hospital at the site did not require consent under Chapter E27, we should still modify PC21 to include a requirement for a TDMP. After considering all of the evidence, including that presented by submitters as to the current state of the parking environment adjacent to the Brightside Hospital, we find that such a modification would not be unreasonable. We accept that SCHL's transport analysis is conservative, but on the understanding that PC21 would potentially enable the doubling of GFA on the site, we consider that whatever measures that may be

⁸⁴ AUP Chapter E27; SOE K Wong-Toi, Attachment A.

⁸⁵ SoE K Wong-Toi, paragraph 6.9.

⁸⁶ Summary Statement, R Brandon, paragraph 19.

possible to reduce single car mode use to the site, even if it is only by 10 – 20%, ought to be employed.

154. The last transport related matter concerns the traffic effects of any development of the site that exceeds what is otherwise provided for. We are satisfied that this matter is already covered in Chapter E27. In Table E27.4.1 “Any activity that exceeds the trip generation standards set out in Standard E27.6.1” requires a restricted discretionary activity consent. Standard E27.6.1. Trip generation says that consent will be required if the development exceeds the threshold of “100 v/hr (any hour) for activities not specified in Table E27.6.1.1 requiring a controlled or restricted discretionary land use activity consent in the applicable zone where there are no requirements for an assessment of transport or trip generation effects.” As any development of the site providing for more than 10,700m² GFA is likely to exceed this threshold⁸⁷ and require consent, consent under this rule will also be required. The need to assess traffic effects even if they did not exceed this threshold is also a matter that would arise in any proposal to develop a vehicle access onto Gillies Avenue in any event.

Noise

155. Ms Fadia Sami presented evidence in relation to operational noise effects. Her key conclusions were that:
- (a) PC21 would not result in any change to the noise limit requirements applicable at neighbouring receivers (including for construction activities. The noise limits at all receivers remain the same under the SPHFH zone, and for both the current zone and proposed HFH zone of the Site; and
 - (b) Based on predictive modelling, cumulative noise from traffic and mechanical plant that would be enabled under the SPHFH zone would be able to comply with the AUP noise level requirements for neighbouring receivers. Practicable mitigation measures and management procedures can be implemented to meet the applicable noise limits.
156. We heard no evidence contrary to this.
157. Together, the evidence supports our finding that the proposed hospital use will not be incompatible with the adjacent residential land uses, a fact we observed during our visit and our observations of the existing hospital and the activity associated with it. This existing facility is well presented and integrated into the fabric and character of this established residential neighbourhood. We have no concern that an expanded healthcare activity on this site would be incompatible with the surrounding land uses or lead to any reverse sensitivity effects given the nature of activities that would take place there.

⁸⁷ SoE K Wong-Toi, paragraph 6.17; Summary Statement R Brandon, paragraph 22.

Effects not considered

158. For the reasons noted above we confirm that we have not found it necessary to make findings about the detailed evidence we were presented relating to potentially adverse construction related effects, in particular noise and vibration. Management of these effects is already provided for by rules in the AUP and the evidence before us is that changing the zoning of the properties to SPHFH would not change the construction noise and vibration controls in E25.6.27 of the AUP that would apply to any future construction activities.⁸⁸

Council's functions under s 31 of the RMA

159. Under s 74(1)(a), a territorial authority may only change its district plan in accordance with its functions under s 31. That is, any change to a district plan should be designed to accord with and assist the Council to carry out its functions so as to achieve the purpose of the Act.⁸⁹ In this regard, we consider the functions set out in s 31(1)(a) and (b) to be the most relevant to consider, namely:

(a) *The establishment, implementation and review of objectives, policies and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district;*

(b) *The control of any actual or potential effects of the use, development or protection of land; ...*

160. If approved, PC21 would apply the SPHFH zone to the 9,273m² of land located at 3 Brightside Road and 149, 151 and 153 Gillies Avenue. In doing so, it would provide for the ongoing use and expansion of an existing hospital facility at 3 Brightside Road.
161. We are satisfied that such a change to the AUP would accord with and assist the Council to achieve the integrated management of the effects of the use and development of land in the district for urban residential activities, by enabling the provision of healthcare services for people from that location. In doing so, it will also assist the Council to implement its region-wide objective of ensuring that "*social facilities that meet the needs of people and communities, including enabling them to provide for their social, economic and cultural well-being and their health and safety*" are provided for.
162. A number of the actual and potential effects on the environment of the development and use of the land that would be enabled by PC21 are already controlled at this location by other provisions (methods, including rules) of the AUP and these would continue to apply to any use or development of the land.⁹⁰ Specific additional

⁸⁸ SoE F Sami, paragraph 36.

⁸⁹ *Colonial Vineyards Ltd v Marlborough DC* [2014] NZEnvC 55.

⁹⁰ Regional, noise, etc

methods to control other actual and potential effects, notably on the built environment and adjoining land uses, are also proposed by PC21.

163. Following our assessment of the effects on the environment of new built development that would be permitted by PC21, we have found that further modifications are necessary to control its potential effects. With these modifications incorporated we are satisfied that, in combination with the existing methods, PC21 will assist the Council to control the effects of the expansion and use of the Brightside land for a hospital to an appropriate extent, having regard to those effects. Accordingly, we find that PC21 will also accord with this function.

Section 75(3)

164. Section 75(3) requires that a district plan must “give effect to”, in this case, the NPS:UDC and the RPS. The Supreme Court has held that the phrase “give effect to” means simply ‘to implement’, on the face of it a strong directive, creating a firm obligation on the part of those subject to it,⁹¹ but noted that the implementation of such a directive will be affected by what it relates to, that is, what must be given effect to.⁹² The Supreme Court also observed that the requirement to give effect to a policy framed in a specific and unqualified way may be more prescriptive than a requirement to give effect to a policy that is worded at “a higher level of abstraction”.⁹³ Where policies are expressed in clearly directive terms (e.g. to protect or to avoid), a decision-maker may have no option but to implement them.⁹⁴
165. The objectives of the NPS:UDC are not directive, but require us to act in a way that is effective and efficient, and enables urban environments to change and provide for the social, economic, cultural and environmental wellbeing of people and communities. The policies are directive in the sense that they specify actions that we “shall” do.⁹⁵ We refer in particular here to policy PA3, which directs us (as decision makers) to “provide” for certain outcomes. We are satisfied that PC21 provides outcomes of the type sought by the NPS:UDC and that by approving it we will be ensuring that the AUP gives effect to it.
166. We have considered the relevant provisions of the RPS earlier in this decision and found that, overall, PC21 was consistent with them. Under s 75(3) we need to go further than that and ensure that if the AUP was amended in the manner proposed by PC21, that it would continue to give effect to the RPS provisions.
167. For reasons set out earlier, we find that PC21 would give effect to the objectives and policies in B2.2, B2.3, B2.8 and B5.3 of the RPS. It would enable the development of an important social facility in an accessible location and in a manner that achieves a

⁹¹ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38, [2014] NZLR 593, at [77].

⁹² *Ibid.*, at [80].

⁹³ *Ibid.*

⁹⁴ *Ibid.*, at [129].

⁹⁵ Policies PA1, PA2, PA3, PA4 in the NPS: UDC.

quality compact urban form and built environment. Furthermore, it will maintain key site features that contribute to the special character values present in an identified special character area.

MATTERS RAISED IN SUBMISSIONS

168. We have addressed the matters raised in submissions that related to effects on the environment earlier in this decision. We have also expressed our findings on the complaint about SCHL's failure to consider alternatives: that is, that the Act does not require an applicant for a private plan change to complete an assessment of alternative sites for its proposal. One remaining matter we consider it important to comment on is precedent; specifically, the concern by submitters that the removal of the SCAR overlay from the Gillies Ave properties could create an adverse precedent and undermine the integrity of the AUP.
169. Counsel for SCHL submitted that "*precedent is not a relevant consideration for the [plan change]. District plans are dynamic and need to be changed over time,*"⁹⁶ and cited several authorities in support.⁹⁷ Reference was also made to the decision of the court in *Bell Farms Limited and Another v Auckland City Council*, where the same conclusion was reached, and the Court held:⁹⁸

Precedent is thus linked to the integrity of the Plan as it would apply to a resource consent application. This being a Proposed Plan Change, the integrity of the planning instruments are addressed by the statutory provisions and the need to be consistent with the plan's objectives and policies.

170. With respect, we are bound by these statements of law and can give no weight to arguments about precedent effects or integrity in our consideration of PC21. Every proposal to zone or re-zone land will involve a contest as to the merits of alternative zones, precincts, overlays and other management instruments. Over time the intensity enabled on some sites will increase and for others it will decrease. That is a matter of every-day planning procedure and the evidence and facts in each case. It cannot be precedent-setting to find in favour of one management approach ahead of another, as that is the very purpose of the Act's plan-making processes.
171. In this case, we have also found that although PC21 seeks to remove certain worthy properties from within a SCAR overlay area, it still preserves the consistency of the AUP and its RPS provisions, because:
- (a) the removal is in order to enable the development of a social purpose that is of considerable importance for the future of Auckland and identified as such in the same tier of resource management policy for Auckland as the provisions that

⁹⁶ SCHL Closing Submission, paragraph 84.

⁹⁷ Board of Inquiry, *New Zealand King Salmon Requests for Plan Changes and Applications for Resource Consents*, 22 February 2013 at [1163]; *Canterbury Fields Management Limited v Waimakiriri District Council* [2011] NZEnvC199

⁹⁸ *Bell Farms Limited and Another v Auckland City Council* [2011] NZEnvC 37, at [107].

emphasise the importance of maintaining and enhancing special character areas; and

- (b) PC21 proposes specific provisions to ensure that the most visible character-providing features of the properties (trees, stone walls) are retained in any development, and these provisions will ensure that the identified special character of the Mount Eden/Epsom Residential: Isthmus B Special Character Area is maintained.

172. Analysed in this way, we do not accept that removing the SCAR overlay in this instance will either lead to a 'rush' of proposals to remove the overlay elsewhere; or influence whatever decision may be reached on future proposals to remove the SCAR overlay that may be made in due course – including by the Council itself in its future plan review work.

SECTION 32AA EVALUATION

173. We have considered PC21 and its proposed provisions, and the matters raised in submissions and now summarise our conclusions:

- (a) The stated objective of PC21 is the most appropriate way to achieve the purpose of the Act, as expressed through s 5 and the RPS. The objective seeks to enable an existing hospital resource to be used efficiently, including by way of expansion, to meet the healthcare needs of people and communities and is a more appropriate use of this land resource than its current use;
- (b) The provisions in PC21 (modified SPHFH zone for the site) are the most appropriate way to achieve that objective and the objectives of the SPHFH zone. There are no other reasonably practicable zoning options available for the site that could realistically achieve the objective of enabling an expanded hospital facility. Subject to the ability of the provisions to manage effects on adjoining residential amenity, the provisions will be the most efficient and effective way to achieve that outcome;
- (c) PC21 is consistent with the NPS:UDC and will assist the AUP to give effect to its objectives when compared to the status quo;
- (d) PC21 supports the outcomes of The Auckland Plan 2050, subject to being able to manage its effects in an appropriate manner;
- (e) PC21 is consistent with the RPS and will assist the AUP to give effect to its objectives when compared to the status quo;
- (f) The actual and potential adverse effects on the environment of PC21 can be managed to an acceptable level with appropriate modifications to the provisions of the SPHFH zone to apply to the site;

- (g) With appropriate modifications to assist Council to control effects on the environment, PC21 is in accordance with and will assist the Council to achieve its functions under ss 31(a) and (b).
174. Based on these conclusions we are satisfied that we can and should approve PC21 in the form lodged and notified. That is, to rezone the properties at 3 Brightside Road and 149, 151 and 153 Gillies Avenue to SPHFH zone, remove the latter three properties from the SCAR overlay and include the parking variation control as sought. Our reasons for that decision, and our further evaluation of these aspects of PC21 pursuant to s 32AA, are set out in detail above.
175. We have decided though that it is necessary to modify the plan change request to ensure that its provisions achieve its objective. In considering the modifications that we find to be necessary we have reviewed the range of options presented to us by SCHL⁹⁹ and the evaluation of them in accordance with s 32.¹⁰⁰ We have given this analysis particular regard and adopt it as our own for the purposes of cl 29, albeit subject to our further analysis below.
176. We are satisfied that the “Outline Plan” approach and associated inclusion of additional building related controls for new building development at the Brightside Hospital site is the most appropriate way to achieve the control we consider to be necessary to mitigate adverse effects on the environment to an acceptable level and achieve the second part of PC21’s objective: “*managing the effects [of that expansion and operation] on the adjacent residential amenity*”. In response to the arguments put to us at the hearing that this approach was not appropriate or valid, we record that we also considered simply adding the content of the proposed outline plan into the SPHFH zone directly as additional narrative standards, which would also have been a suitable approach in our view. We favoured the outline plan because we find it is the more efficient and effective of the two approaches.
177. The first modification we intend to make is to provide for the retention of the significant trees and stone boundary walls as identified on proposed Figure H25.6.1.2, using the method of an additional zone standard as proposed by SCHL (i.e., H25.6.7 Development in accordance with Brightside Hospital Plan). As we understand it, any failure to comply with this standard would trigger a restricted discretionary activity consent under Rule C1.9(2) of the AUP. We are satisfied that the matters that would be triggered for assessment on such an application would ensure a robust assessment of any proposal not to retain these features. This modification is promoted by SCHL and is appropriate and necessary, in our view, to achieve the purpose stated in the standard: “*To manage adverse effects on adjacent areas including streetscape character and amenity*”.
178. The second modification we intend to make is to provide for permitted building height limits of 12m in Area 1 and 16m in Area 2, and the building setback, both of which

⁹⁹ See attached Appendix A.

¹⁰⁰ Attachment B to SCHL’s Closing Submissions.

are shown on the green highlighted version of proposed Figure H25.6.1.2 in Appendix A. Associated with these modifications will be:

- Inclusion of a new row in Table H25.6.1.1: Building heights for “Brightside Hospital buildings” and the inclusion of “Up to the height specified in Figure H25.6.1.2” in the column “Permitted activity standard”.
- Inclusion of Figure H25.6.1.2 Brightside Hospital Plan (the green highlighted version) after Figure H25.6.1 and the statement “(3) The permitted building heights in in Figure H25.6.1.2 Brightside Hospital Plan for Areas 1 and 2 are measured as per the Plan definition of height”.
- Inclusion of the green highlighted version of additional proposed zone standard H25.6.7 Development in accordance with Brightside Hospital Plan.

179. In our view, the permitted building height limits and building setback standards are appropriate and necessary to ensure that new built development is of an acceptable scale for the locality and located in a way that will reasonably maintain the amenity of adjacent residential properties, 32A Owens Road in particular. We support the purpose statement for the building setback line in SCHL’s proposed standard. Again, we understand that any failure to comply with this standard would trigger a restricted discretionary activity consent under Rule C1.9(2) of the AUP. We are satisfied that the matters that would be triggered for assessment on such an application would ensure a robust assessment of any proposal not to comply with the building setback requirement.

180. The third modification we consider to be necessary is to amend Activity table H25.4.1 to include the following new activity:

(A22) - New buildings or additions to existing buildings that increase the building footprint by more than 20 per cent, at Brightside Hospital – C

181. We also propose a new rule, under s 77D, that any application under rule (A22) will be non-notified. This would be achieved by the blue highlighted addition at H25.5(1)(c) shown in Appendix A.

182. H25.7 will require modification to correlate with controlled activity (A22) as follows:

The Council will reserve its control to the following matters when assessing a controlled activity resource consent application:

- (1) effects on the privacy of immediate residential neighbours;*
- (2) building design and appearance; and*
- (3) site travel management.*

183. Following the approach taken generally within the AUP, the assessment criteria will be:
- (1) *For H25.7(1):*
 - (a) *Policy 25.3(4);*
 - (2) *For H25.7(2):*
 - (a) *the extent to which building design and appearance is visually compatible with and complementary to the residential and special character of the surrounding neighbourhood; and*
 - (b) *Policies 25.3(2)(b), 25.3(3), 25.3(6) and 25.3(7); and*
 - (3) *For H25.7(3):*
 - (a) *the extent to which single use vehicle trips to and from the site are minimised with travel management measures; and*
 - (b) *Policy 25.3(2)(b).*
184. We consider that this modification, to introduce a controlled activity rule requirement for new buildings in the SPHFH zone as it applies to Brightside Hospital, is necessary and appropriate to ensure that any new hospital building will be compatible with the local environment, and maintain amenity values of the neighbourhood and adjoining residential neighbours. Controlled criterion (c) and associated assessment criteria follow from our findings at paragraph 152 above.
185. We acknowledge SCHL's submissions that the SPHFH zone is a special purpose zone designed for hospitals and that, in essence, we should treat its provisions as complete and appropriate for all healthcare facilities regardless of where they are and resist modifying them in any way. However, we are not persuaded that we should accede to that request for two reasons.
186. The first is that SCHL has itself promoted deviations from the general provisions of the SPHFH zone. These proposed amendments respond to submitter concerns it has quite properly identified as to the actual and potential adverse effects of PC21 at this location so as to ensure that it achieves its objective. This is an important concession and confirms our view that we should not be shy to modify this special purpose zone to fit the location to which it is proposed to apply.
187. The second is that, although identified as a special purpose zone designed specifically for hospitals, we cannot escape the fact that it only applies to healthcare facilities that were in existence at the date the AUP became operative. The ability of its development standards to achieve objective H25.2(3) and policy H25.2(4) would only have been assessed for sites proposed to be subject to the zone. This means that any proposal to rezone a site as SPHFH necessarily needs to demonstrate that

the standards are appropriate to manage its effects on adjacent activities. It follows that modifications to the zone standards may be necessary to ensure the objectives and policies of the zone are able to be achieved at that location. That is what has occurred in this case.

188. To be clear, we support the SPHFH zone for this site, but consider further modifications to its development standards and related provisions are required to ensure that the objectives and policies of the SPHFH and the plan change itself are achieved. As noted above, we have determined that, in this case, a controlled activity rule for new buildings and other bulk and location standards is required to manage potential effects on the special character of the area and the amenity of established residential neighbours over and above the standards of the SPHFH zone. The controlled activity status recognises the importance of the SPHFH zone in enabling hospital activities by ensuring that the objective of PC21 to enable the expansion of the Brightside hospital can be achieved in an efficient and effective manner.
189. There is one other modification that has been suggested to us that we have considered in detail. This is whether we further modify Table H25.6.1.1: Building heights to classify any building that exceeds the permitted height level as fully discretionary activity. If this change was not adopted, any proposal to exceed the permitted height limit would fall to be considered as a restricted discretionary activity under Rule C1.9 up to 25m (on SCHL's proposal), and then fully discretionary beyond that height.
190. We have decided that it is neither appropriate nor necessary to make this further modification to the SPHFH zone specifically for Brightside Hospital. We are satisfied that, with one small modification, the restricted discretionary consent pathway for building height¹⁰¹ between 12m/16m and 25m is appropriate at Brightside given the purpose of the zone and our assessment of the existing and planned future character of the Gillies Avenue locality. This categorisation also fits better in our view with the AUP's expectations for activities of a restricted discretionary classification.¹⁰²
191. The one further modification we intend to make is to include a specific purpose statement for the permitted height controls to apply for the Brightside Hospital site. We consider the purpose should be stated as: "*Purpose of the Brightside Hospital building height limits: to manage adverse effects of building dominance on the amenity of adjacent residential properties*".
192. We are satisfied that all of the modifications we intend to make to PC21 are within the scope of submissions and PC21 as notified.

¹⁰¹ See SCHL Closing Submissions, paragraph 91.

¹⁰² See AUP A1.7.3 and A1.7.4.

DECISION ON SUBMISSIONS

193. Following our conclusion that PC21 meets all applicable statutory requirements to be approved as a change to the AUP and our s 32AA evaluation, including of the modifications we have decided to make to it, we approve PC21 with the modifications described above at paragraphs 177 to 183 and paragraph 191 above and as shown in Appendix C.
194. Accordingly, our decision on the submissions made on PC21 is that:
- A. Submissions 1, 3 – 107, 109 – 160 and 162 – 176 are accepted in part;
 - B. Submission 108 is rejected.



Commissioner K Littlejohn (Chair)



Commissioner I Munro



Commissioner M Farnsworth, MNZM

Date: 12 May 2020

DECISION OF COMMISSIONER HARDY

Introduction

1. The decision above represents the majority view of the three Commissioners. The following section sets out my dissenting view. The Commissioners and I do not agree on the suitability of the subject site for the proposed Special Purpose Healthcare Facility and Hospital Zone (SPHFH Zone). This difference of opinion arises from our findings in relation to the evidence on:
 - the site context and AUP planning framework including the SP- HFH Zone, the existing Residential Zoning of the site and neighbourhood character and amenity;
 - the Special Character Area Residential (SCAR) Overlay;

- the effects of the healthcare activities enabled by the plan change on the residential environment; and
- the effects of the institutional and commercial hospital building form and scale enabled by the plan change on the residential environment.

Special Purpose Healthcare Facility and Hospital Zone (SPHFH Zone)

2. The SP HFH Zone description ‘... *applies to several of Auckland’s hospitals and healthcare facilities. These are generally large, land extensive facilities with a range of activities related to their primary function. The sites generally consist of extensive and highly visible buildings and substantial parking areas. The zone enables a range of healthcare related and supporting activities to cater for the diverse requirements of the users, employees and visitors to the hospitals and healthcare facilities.*’¹⁰³
3. We received evidence from Ms Ampanthong, the Council Reporting Planner, that the AUP applied the SPHFH zone to existing hospital facilities, most of which are of significant scale, consistent with the zone description.¹⁰⁴
4. The healthcare and hospital activities enabled by the zone are described in the Activity Table and definitions. These activities are consistent with the anticipated scale and intensity of landuse set out in the zone description. The Activity Table includes Care Centres, Community and Education Facilities, Healthcare Facilities and Hospitals as Permitted Activities¹⁰⁵. The definition of Hospital confirms that a hospital is an intensive landuse comprising a broad range of healthcare and hospital accessory commercial activities and services. Hospital is defined as a ‘*Facility that provide[s] for the medical, or surgical, or psychiatric care and treatment of persons. Includes: accessory offices; accessory retail including pharmacies, food and beverage and florists; accessory commercial services including banks and drycleaners; ambulance facilities and first aid training facilities; conference facilities; helicopter facilities, hospices; hospital maintenance and service facilities including kitchens and laundries; medical research and testing; mortuaries; rehabilitation facilities; supported residential care; and training.*’¹⁰⁶
5. Mr Putt (Planning Witness for the Eden Epsom Residents Protection Association) undertook a planning analysis of the SPHFH zone including the zone objectives. He drew our attention to objective H25.2(3): ‘*The adverse effects of hospital and healthcare activities, buildings and infrastructure, and accessory buildings and activities on adjacent sites are avoided, remedied or mitigated.*’ Mr Putt concluded that the proposed scale of development enabled by the plan change was

¹⁰³ AUP SPHFH Zone Description H25.1

¹⁰⁴ At attachment 5 of her s42A report Ms Ampanthong includes a list of all the healthcare and hospital facilities in SPHFH Zone. They include for example the Mercy Ascot Hospital in Mountain Road and Auckland City Hospital. There are 20 listed in total.

¹⁰⁵ AUP SPHFH Table H25.4.1 Activity Table

¹⁰⁶ AUP J 1 Definitions page 58.

inappropriate and that *'The physical outcome intended for this zone is simply not available on the subject site.'*¹⁰⁷

6. Ms Ampanthong concluded that *'... PC 21 is likely to have adverse effects on the environment relating to incompatibility of built form, visual dominance and privacy issues and potential erosion of the residential amenity. She also considered that 'Non residential development enabled by the plan change is likely to be of a scale and intensity that is not in keeping with the existing and planned built character of the area, particularly the special residential character and surrounding built environment.'*¹⁰⁸

7. Mr Trevor Mackie, the Council Reporting Urban Designer, reviewed the zone provisions and his conclusion supported Ms Ampanthong's view:

'.. the zone is an enabling zone that would allow a greater level of adverse effects on adjacent residential properties than would be considered acceptable within the residential zone. The urban design relevance of the SPHFH zone provisions is intended for a large site to manage relevant effects of large scale and intense hospital development of the site boundaries. The scale of development on the subject site under the SPHFH Zone is unlikely to be compatible with the neighbourhood character.'

8. I find that the scale and intensity of the landuse activities in combination with the building scale and form enabled by the plan change would adversely affect and erode residential character and amenity to such a degree that the plan change should not be approved. I do not agree with my fellow Commissioner's that *'When considered in the context of the surrounding zoning pattern and what that heralds for future development in this neighbourhood, it will be entirely acceptable and compatible'*¹⁰⁹. I find that the surrounding zoning pattern is residential and that the activities, scale and form of development enabled by the proposed plan change is incompatible in this context. I do not agree with my fellow Commissioners that the amendments proposed by the applicant to PC21 and by the Commissioners result in plan change that is acceptable and compatible in the site and zoning context.

Residential Zoning of the Site, Neighbourhood Character and Amenity

9. Both Ms Ampanthong and Mr Shaw (Planner for Southern Cross Hospital Ltd) provided us with comprehensive assessments of the site and planning context. The site subject to the proposed plan change and the entire block on which it's located is zoned Mixed Housing Suburban. All of the properties within Brightside Road and Shipherds Ave and those bounded by Mt Eden to the west, Glenfell Place to the north, Owens Road and Epsom Ave to the south are zoned residential (either Single House or Mixed Housing Suburban). All of the properties fronting Gillies Ave from Alpers Ave to King George Ave are zoned residential with the majority being

¹⁰⁷ Statement of Evidence of B Putt para 3.23.

¹⁰⁸ S42A report para 242 page 54.

¹⁰⁹ Decision Report para 109.

occupied as residential dwellings. I find that the dominant landuse in the area including along Gillies Ave from Alpers Ave to King George Ave is residential¹¹⁰. The existing medical facilities facing Gillies Ave are all located on sites zoned residential and (with the exception of Southern Cross hospital (a single story building) and the medical facility at 148 Gillies Ave (a two storey building)) are all located in buildings of residential scale, character and appearance.

10. In their submissions, statements of evidence and during questions from Commissioners the residents described in detail the residential character, amenity and function of their immediate and wider neighbourhood. They described their investment in both the physical and community character and amenity of the area and their perceptions, experiences and appreciation of their neighbourhood as being predominantly a residential community. In the landscape witnesses caucusing Ms Gilbert (Landscape Architect for the ERPA) and Mr Brown (Landscape Architect for the Council) agreed that the area to the west of Gillies Ave is a long established residential area. Ms Gilbert also sees the area as being largely dominated by residential uses.¹¹¹
11. I find that the neighbourhood character and amenity is dominated by and derived from the predominantly residential landuse activities including as described by Ms Byron (expert witness on behalf of Heritage New Zealand) '*...the interrelationship between the houses and their landscape, by the subdivision pattern that was established historically, by property boundary definitions, lot size, set backs, density of house to garden, era and style of house and gardens(Garden Suburb), aspect (vis-à-vis how the dwellings address the street etc), and the interstitial spaces that exist between the built structures and the open spaces which separates them*'¹¹². Whilst I do however accept that the existing hospital on Brightside Road and the medical facilities fronting Gillies Ave are part of the existing character, I do not find them to be determinant of it. The scale, character and intensity of the use of these existing healthcare and hospital facilities is more compatible with the exiting Brightside Hospital and differs substantially from the scale and intensity of health care facilities and related commercial activities enabled by the plan change. I do not agree with my fellow Commissioners' interpretation of the zone pattern along Gillies Ave and their conclusion that the plan change is therefore an acceptable outcome in Brightside Road.¹¹³

Special Character Area Residential (SCAR)

12. I find that character is not solely determined by buildings, structures (such as walls and fences, trees) and vegetation but that landuse activity is an intrinsic determinant of the character of the area. I find that the neighbourhood and area within the vicinity of the site as described to us by the Council Experts, the Residents and their Experts

¹¹⁰ Epsom Girls Grammar School is located north of Alpers Ave and Brightside Road.

¹¹¹ Joint Statement on Expert Witness Caucusing – landscape Wed 30th October 2019.

¹¹² Statement of Evidence of Ms Byron para 4.1 page 2.

¹¹³ Paragraph 135 page 36.

is inherently residential and that this dominant residential landuse activity is also a key determinant of the special character of the area.

13. I do not support removal of the Special Character Overlay (SCAR (Residential)). The expert witnesses agreed during caucusing that 'The site's special character arises from a number of interrelated qualities and characteristics that should be considered holistically'. The SCAR provides for such assessments. I find that it is a relevant part of the planning framework and should be retained as one of the tools for assessing the effects of landuse and development within the AUP Character Areas. I do accept the evidence of the experts during caucusing that '*...if the site is rezoned HFH zone, the SCA overlay must be removed. We also concur that rezoning to HFH and maintaining the SCAR is not an option.*'¹¹⁴ I find that this position of the experts further reinforces the incompatibility of the site for the proposed plan change and the change in zoning from residential to SPHFH.

Objective of the Plan Change

14. The stated purpose [objective] of the plan change is to:

'...enable the efficient operation and expansion of the existing {Brightside} hospital, while managing the effects [of that expansion and operation] on the adjacent residential amenity.

15. I do not agree with my fellow Commissioners that the 'objective' of the plan change can be met.
16. I was convinced by the evidence presented on behalf of the submitters and by the Council officers that the effects of the healthcare and hospital activities and buildings enabled by the plan change does not support rezoning of the site. Whereas the Commissioners consider that with the amendments proposed by both the applicant and Commissioners the plan change can be approved.

¹¹⁴ Expert Witness caucusing Statement – Character page 6.

Conclusion

17. Unlike the majority decision I do not find that the proposed plan change with modifications is compatible with the site context and the AUP planning framework. The subject site is not the most appropriate location to achieve the objective of Plan Change 21. I do not agree with my fellow Commissioners that the proposed plan change is consistent with the existing and planned future residential landuse, amenity and character of the area.
18. My conclusion is that the plan change request should be declined.



Commissioner Hardy

Date: 12 May 2020

PC21 DECISION - APPENDIX A

H25 Special Purpose – Healthcare Facility and Hospital Zone

Option 1 modifications: Proposed modifications to the Outline Plan in response to issues identified in submissions and raised during the hearing. These amendments are relatively restrained.

Alternative modifications: Alternative modifications to the Outline Plan in response to issues identified in submissions and raised during the hearing. These amendments would substitute for those proposed as Option 1.

Additional modifications: Additional options for modifying the Outline Plan in response to issues identified issues identified in submissions and raised during the hearing.

H25. Special Purpose – Healthcare Facility and Hospital Zone

H25.1. Zone description

The Special Purpose – Healthcare Facility and Hospital Zone applies to several of Auckland’s hospitals and healthcare facilities. These are generally large, land-extensive facilities with a range of activities related to their primary function. The sites generally consist of extensive and highly visible buildings and substantial parking areas.

The zone enables a range of healthcare related and supporting activities to cater for the diverse requirements of the users, employees and visitors to the hospitals and healthcare facilities.

H25.2. Objectives

- (1) The efficient operation and development of hospitals and healthcare facilities to support the community’s healthcare needs is enabled.
- (2) A comprehensive range of hospital and healthcare activities, buildings and infrastructure, and accessory buildings and activities are provided for.
- (3) The adverse effects of hospital and healthcare activities, buildings and infrastructure, and accessory buildings and activities on adjacent areas are avoided, remedied or mitigated.

H25.3. Policies

- (1) Enable a range of hospital and healthcare facilities to meet the health and well-being needs of the community.
- (2) Enable for a range of non-healthcare activities provided they:
 - (a) do not compromise the efficient use of the zone for hospital and healthcare activities; and
 - (b) avoid, remedy or mitigate significant adverse effects, including traffic effects.
- (3) Minimise the effects of supporting activities and services on the amenity values of the adjacent land.
- (4) Minimise significant adverse effects of overshadowing, visual dominance and loss of visual privacy on adjacent properties by use of graduated building heights and by locating higher buildings away from the zone boundary.

H25 Special Purpose – Healthcare Facility and Hospital Zone

- (5) Provide for additional building height in identified locations, where it:
- (a) enables the efficient operation of the hospital or healthcare facility; and
 - (b) can be accommodated without significant adverse effects on adjacent properties
- (6) Require new buildings and significant additions to buildings that adjoin streets and public open spaces to be designed to contribute to the maintenance and enhancement of amenity values while enabling the efficient use of the site.
- (7) Encourage new buildings to be designed to provide a high standard of amenity and safety.

H25.4. Activity table

Table H25.4.1 specifies the activity status of land use and development activities in the Special Purpose - Healthcare Facility and Hospital Zone pursuant to section 9(3) of the Resource Management Act 1991.

Table H25.4.1 Activity Table

Activity		Activity status
Use		
Accommodation		
(A1)	Boarding houses	RD
(A2)	Visitor accommodation	RD
(A3)	Dwellings accessory to healthcare facilities	P
(A4)	Supported residential care	P
(A5)	Dwellings not specified above	D
(A6)	Retirement villages	D
Community		
(A7)	Care centres	P
(A8)	Community facilities	P
(A9)	Education facilities	P
(A10)	Healthcare facilities	P
(A11)	Hospitals	P
(A12)	Informal recreation and leisure	P
(A13)	Organised sport and recreation	P
(A14)	Information facilities	P
(A15)	Public amenities	P
(A16)	Artworks	P
(A17)	Tertiary education facilities accessory to healthcare	P
Development		
(A18)	Buildings, alterations, additions and demolition unless otherwise specified below	P

H25 Special Purpose – Healthcare Facility and Hospital Zone

(A19)	Conversion of buildings or part of buildings to dwellings	D
(A20)	New buildings or additions to existing buildings that increase the building footprint by more than 20 per cent, that are visible from and located within 10m of a public road or an open space zone	RD
(A21)	New parking buildings visible from and located within 10m of a public road or a residential zone or open space zone	RD
(A22)	New buildings, or additions to existing buildings that increase the building footprint by more than 20 per cent, at Brightside Hospital	RD

H25.5. Notification

(1) Any application for resource consent for any of the following activities will be considered without public or limited notification or the need to obtain the written approval from affected parties unless the Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991:

- (a) new buildings or additions to existing buildings that increase the building footprint by more than 20 per cent that are visible from and located within 10m of a public road or open space zone; and
- (b) new parking buildings visible from and located within 10m of a public road or a residential zone or open space zone.

(c) new buildings, or additions to existing buildings that increase the building footprint by more than 20 per cent, at Brightside Hospital.

(2) Any application for resource consent for an activity listed in Table H25.4.1 Activity table and which is not listed in H25.5(1) above will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.

(3) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

H25.6. Standards

All activities listed as a permitted or restricted discretionary activity in Table H25.4.1 Activity table must comply with the following standards.

Where a healthcare facility comprises multiple adjoining sites zoned Special Purpose – Healthcare Facility and Hospital Zone, the sites will be treated as a single site for the purposes of applying the following standards.

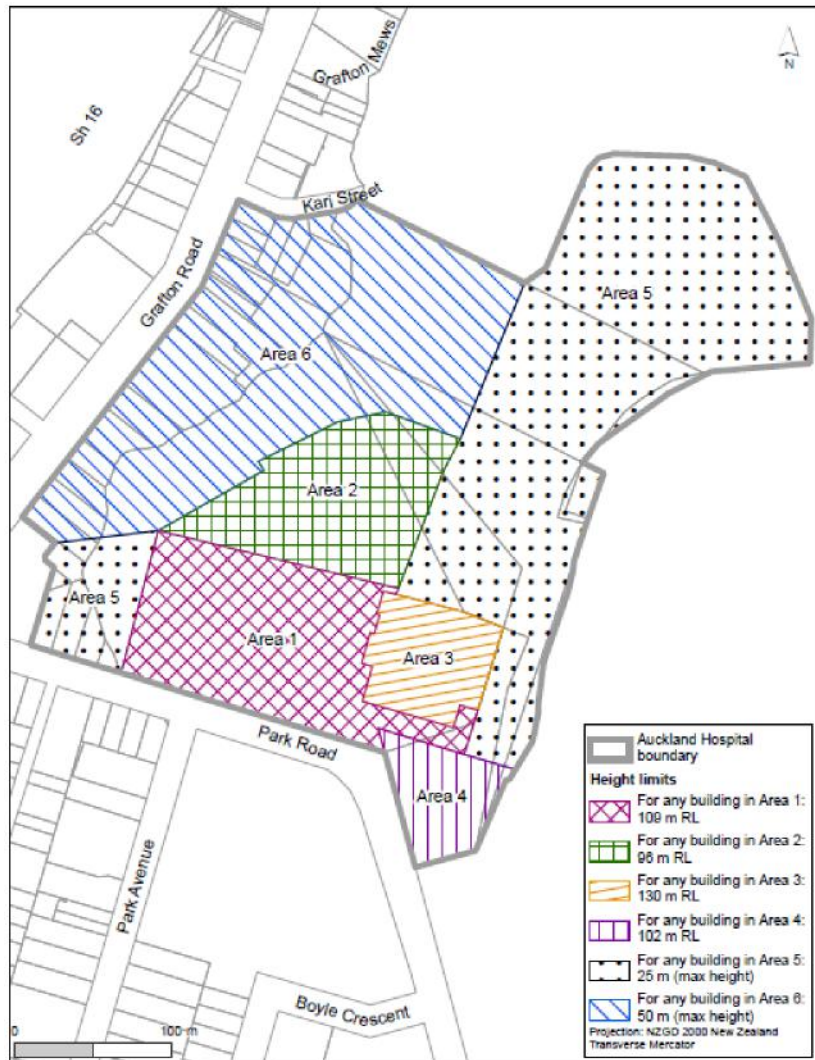
H25.6.1. Building height

- (1) Buildings heights are specified in Table H25.6.1.1 Building heights and Figure H25.6.1.1 Auckland Hospital permitted building heights.

Table H25.6.1.1: Building heights

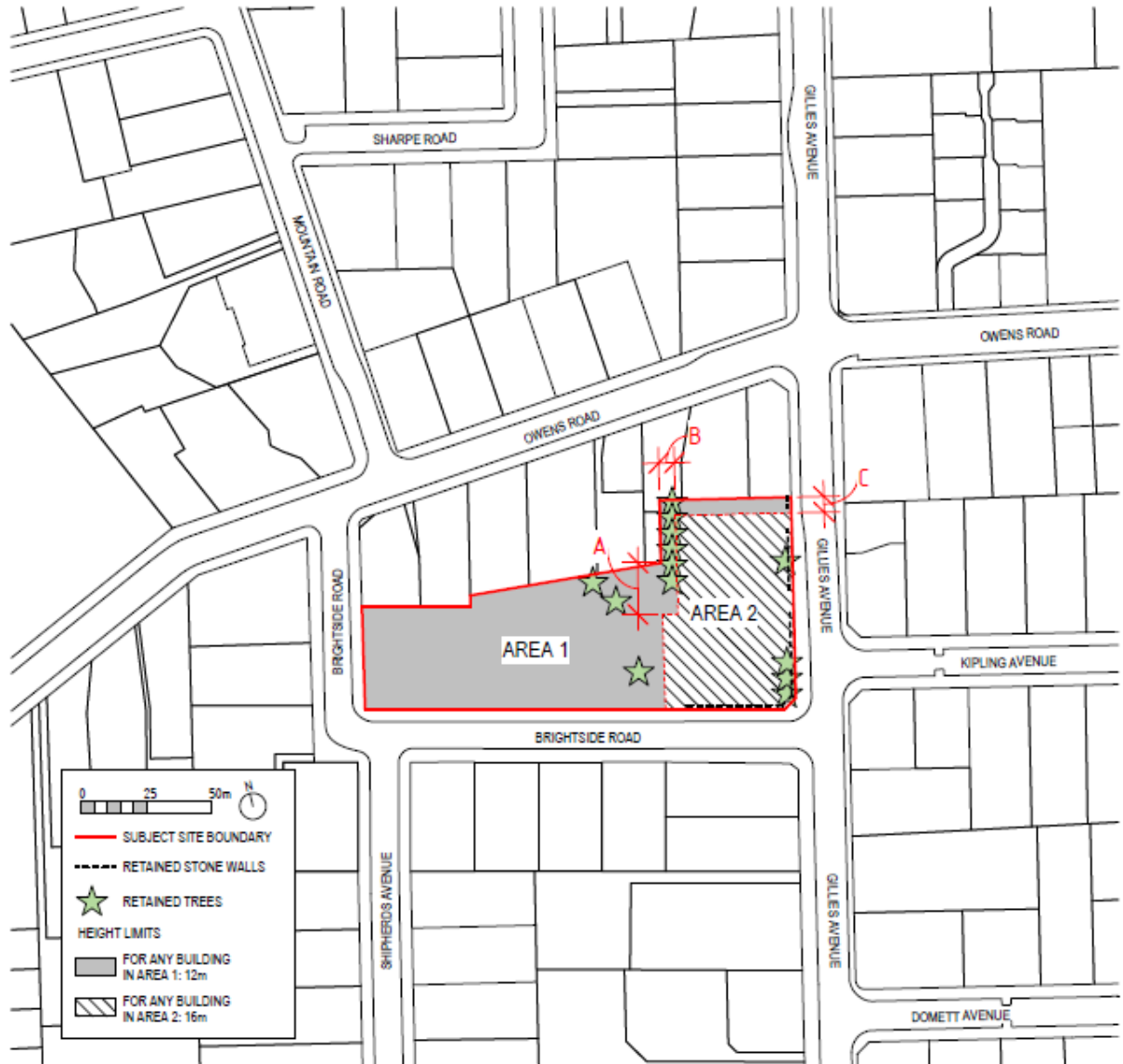
Site area	Permitted activity standard	Restricted discretionary activity standard	Discretionary activity standard
Sites with a total site area up to 4ha	Up to 16m	Between 16m and up to 25m	Greater than 25m
Sites with a total site area greater than 4ha	Up to 26m	Between 26m and up to 35m	Greater than 35m
Sites subject to the Height Variation Control	Up to the height specified on the Height Variation Control	Infringements to the Height Variation Control and up to 35m	Infringements to the Height Variation Control and greater than 35m
Auckland Hospital buildings	Up to the height specified in Figure H25.6.1.1	Buildings infringing the height specified in Figure H1.6.2.1 and up to 35m	Buildings infringing the height specified in Figure H25.6.1.1 and greater than 35m
Brightside Hospital buildings	Up to the height specified in Figure H25.6.1.2	Buildings infringing the height specified in Figure H25.6.1.2 and up to 25m	Buildings infringing the height specified in Figure H25.6.1.2 and greater than 25m
Brightside Hospital buildings	Up to the height specified in Figure H25.6.1.2		Buildings infringing the height specified in Figure H25.6.1.2

Figure H25.6.1.1 Auckland Hospital permitted building heights



(2) The building heights in Figure H25.6.1.1 Auckland Hospital permitted building heights for Areas 1 to 4 are measured using Reduced Levels (RL). Areas 5 and 6 are measured as per the Plan definition of height.

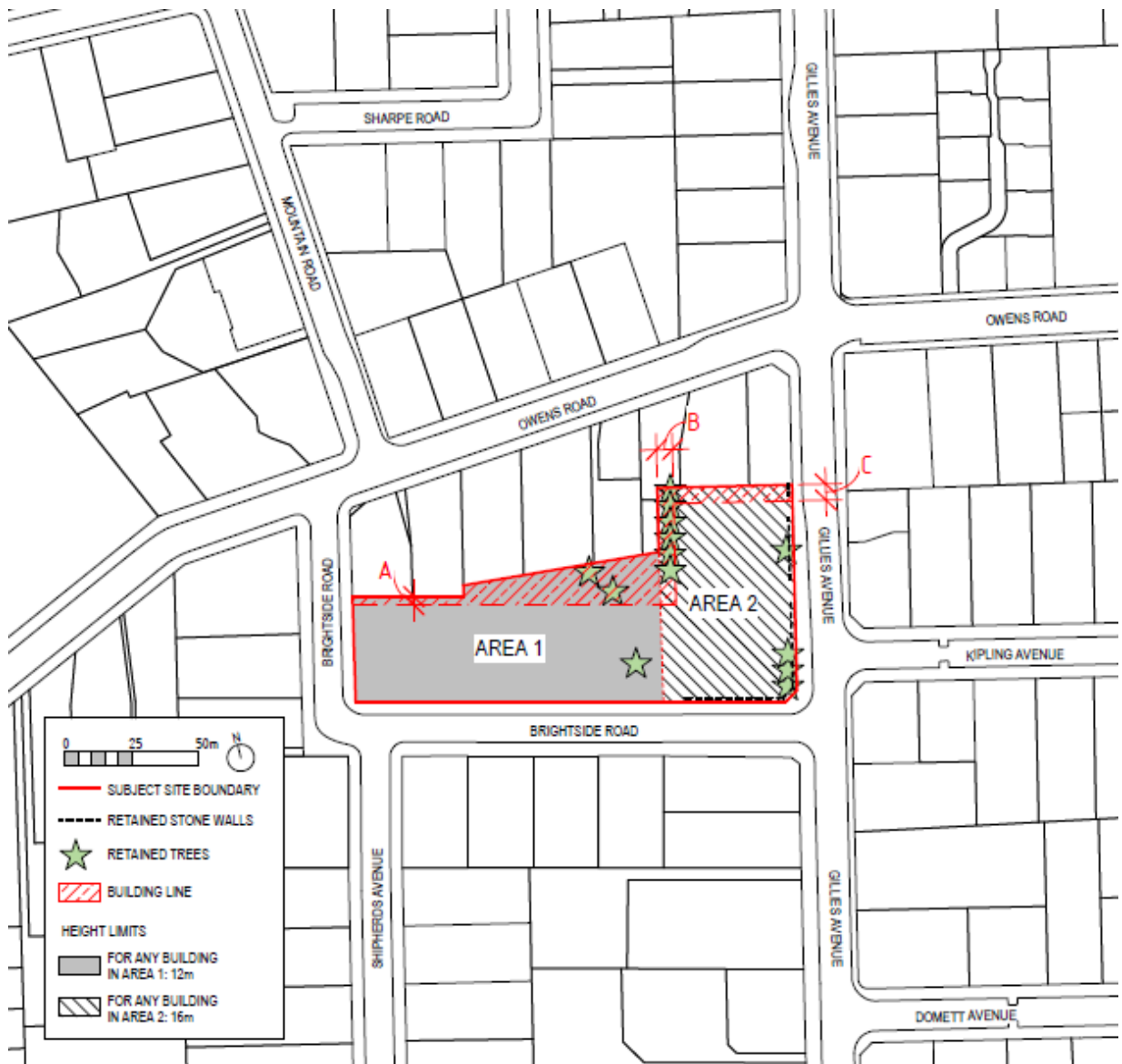
Figure H25.6.1.2 Brightside Hospital Plan



(3) The permitted building heights in Figure H25.6.1.2 Brightside Hospital Plan for Areas 1 and 2 are measured as per the Plan definition of height.

Note: Area 2 is 19.5m from the northern boundary at point A, 6m from the northern and western boundary at Point B, and 6m from the northern boundary at point C.

Figure H25.6.1.2 Brightside Hospital Plan



(3) The permitted building heights in Figure H25.6.1.2 Brightside Hospital Plan for Areas 1 and 2 are measured as per the Plan definition of height.

H25.6.2. Height in relation to boundary

- (1) Where a site in the Special Purpose – Healthcare Facility and Hospital Zone directly adjoins a site in another zone, the height in relation to boundary standard that applies in the adjoining zone applies to the adjoining Special Purpose - Healthcare Facility and Hospital Zone boundary.
- (2) Where a site in the Special Purpose – Healthcare Facility and Hospital Zone directly adjoins a site in another zone that does not specify a height in relation to boundary standard, the yard and/or setback standard in the adjoining zone applies to the adjoining the Special Purpose – Healthcare Facility and Hospital Zone boundary.
- (3) Where a site in the Special Purpose – Healthcare Facility and Hospital Zone adjoins a site in an open space zone, buildings must not project beyond a 45

H25 Special Purpose – Healthcare Facility and Hospital Zone
degree recession plane measured from a point 8.5m vertically above ground level along the open space zone boundary.

H25.6.3. Yards

- (1) The yards in Table H25.6.3.1 must be provided.

Table H25.6.3.1 Yards

Yard	Dimension
Front yard, except where the properties adjoining the zone on that road frontage are in the Business – Mixed Use Zone or one of the business centre zones	3m
Side and rear yards - where the site adjoins a site in a residential zone, open space zone or the Future Urban Zone	3m
Riparian yard	5m from the edge of permanent and intermittent streams
Lake side yard	20m
Coastal protection yard	25m, or as otherwise specified in Appendix 6

H25.6.4. Maximum impervious area

- (1) The maximum impervious area must not be greater than 80 per cent.

H25.6.5. Screening

- (1) Any outdoor storage or rubbish collection areas that directly face and are visible from a residential zone or public open space adjoining a boundary with, or on the opposite side of the road from, a Special Purpose – Hospital and Healthcare Facility Zone, must be screened from those areas by a solid wall or fence at least 1.8m high.

H25.6.6. Dwellings accessory to a healthcare activity

- (1) Detached dwellings accessory to a healthcare facility must comply with the following Residential – Mixed Housing Suburban Zone standards:
- (a) H4 Residential – Mixed Housing Suburban Zone – Standard H4.6.11;
 - (b) H4 Residential – Mixed Housing Suburban Zone – Standard H4.6.12; and
 - (c) H4 Residential – Mixed Housing Suburban Zone – Standard H4.6.13.
- (2) Attached dwellings accessory to a healthcare facility must comply with the following Residential – Terrace Housing and Apartment Buildings Zone standards:
- (a) H6 Residential – Terrace Housing and Apartment Buildings Zone – Standard H6.6.13;
 - (b) H6 Residential – Terrace Housing and Apartment Buildings Zone – Standard H6.6.14; and

- H25 Special Purpose – Healthcare Facility and Hospital Zone
(c)H6 Residential – Terrace Housing and Apartment Buildings Zone –
Standard H6.6.15.

H25.6.7. Development in accordance with Brightside Hospital Plan

(1) To manage adverse effects on adjacent areas including streetscape character and amenity, development at Brightside Hospital must retain the following identified features on Figure H25.6.1.2 Brightside Hospital Plan:

(a) Retained Trees; and

(b) Retained Stone Walls.

H25.6.7. Development in accordance with Brightside Hospital Plan

(1) To manage adverse effects on adjacent areas including streetscape character and amenity, development at Brightside Hospital must retain the following identified features on Figure H25.6.1.2 Brightside Hospital Plan:

(a) Retained Trees; and

(b) Retained Stone Walls.

(2) To manage adverse effects of building scale and location on adjacent residential properties, any building at Brightside Hospital must be set back to the building line identified on Figure H25.6.1.2 Brightside Hospital Plan as follows:

(a) At Point A, new buildings or additions to buildings must be setback 3m from the northern boundary; and

(b) At Point B, new buildings or additions to buildings must be setback 6m from the western boundary.

(c) At Point C, new buildings or additions to buildings must be setback 6m from the northern boundary.

H25.7. Assessment – controlled activities

There are no controlled activities in this section.

H25.8. Assessment – restricted discretionary activities

H25.8.1. Matters of discretion

The Council will restrict its discretion to the following matters when assessing a restricted discretionary resource consent application.

(1) Visitor accommodation and boarding houses:

(a) effects on adjoining properties, especially residential properties including effects of overshadowing and loss of privacy; and

(b) on-site amenity.

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- (2) New buildings or additions to buildings that increase the building footprint by more than 20 per cent, that are visible from and located within 10m of a public road or an open space zone:
 - (a) the effects of the building design and external appearance on the adjoining streetscape and adjoining land zoned open space.
- (3) New parking buildings visible from and located within 10m of a public road or a residential zone or open space zone; and new buildings, or additions to buildings that increase the building footprint by more than 20 per cent, at Brightside Hospital:
 - (a) the effects of the building design and external appearance on the adjoining streetscape and adjoining land zoned open space; and
 - (b) the adverse effects on amenity values of adjoining land zoned residential.

H25.8.2. Assessment criteria

The Council will consider the relevant assessment criteria below for restricted discretionary activities:

- (1) Visitor accommodation and boarding houses:
 - (a) whether the development complies with H6 Residential - Terrace Housing and Apartment Buildings Zone – Rule H6.6.13 or meets the purpose of the standard.
- (2) New buildings or additions to buildings that increase the building footprint by more than 20 per cent, that are visible from and located within 10m of a public road or an open space zone:
 - (a) the extent to which design features can be used to break up the bulk of the building by, for example varying building elevations, setting parts of the building back, and the use of architectural features without compromising the functional requirements of the use of the building;
 - (b) the extent to which the visual effects of the building can be softened by landscaping; and
 - (c) the extent to which any service elements (roof plant, exhaust and intake units and roof equipment) that could be viewed from the road or public open space zone can be integrated as part of the façade or roof of the building.
- (3) New parking buildings visible from and located within 10m of a public road or a residential zone or open space zone; and new buildings, or additions to buildings that increase the building footprint by more than 20 per cent, at Brightside Hospital:
 - (a) the extent to which design features can be used to break up the bulk of the building by, for example varying building elevations, setting parts of

H25 Special Purpose – Healthcare Facility and Hospital Zone
the building back, and the use of architectural features without
compromising the functional requirements of the use of the building;

(b) the extent to which the visual effects of the building can be softened by
landscaping; and

(c) the extent to which any service elements (roof plant, exhaust and intake
units and roof equipment) that could be viewed from the road or public
open space zone can be integrated as part of the façade or roof of the
building.

H25.9. Special information requirements

There are no special information requirements in this section.



Cost Benefit Assessment of new controls for potential inclusion in the HFH Zone

The options for additional controls within the zone that relate only to the subject site were discussed at the hearing and are assessed in greater detail within this assessment and the following table.

The additional controls reduce the efficiency and effectiveness of the first part of Southern Cross' request for a private plan change (PPC) purpose which is to enable the efficient use and expansion of the existing hospital. This is because the options would introduce greater restrictions and a greater burden of assessment for development at the subject site compared to the existing HFH zone sites which are similarly sized and located.

However, additional controls increase the efficiency and effectiveness of the second part of the PPC purpose which is to manage amenity effects on the adjacent residential areas.

It is acknowledged that some additional controls would be appropriate, but at a certain point the efficiency of the site for hospital development and the integrity of the zone would be compromised (noting the recommendations of the PAUP Hearings Panel, which Auckland Council accepted).

The costs of the additional controls largely fall on the site owner (Southern Cross) as a result of the development potential and flexibility of the site for permitted hospital development being diminished as well as from a potentially longer consenting process. However, there would also be costs on the wider community. As noted during the Plan Change hearing and within the PPC request documents, the facility will provide for surgical treatment of a wider proportion of the community and not solely Southern Cross members. The additional potential delays created by additional controls will have an impact on the wider community in terms of access to additional surgical procedures at a rate of around 4,000 procedures per year. This would have social, economic and health costs on those people from delays in their treatment, recovery and return to health and work.

Conversely, the benefits of the additional controls go mainly to the adjoining residents in terms of better managing potential adverse amenity effects at the zone interface, ensuring greater building setbacks, more robust assessment of buildings, and potentially more robust assessment of increased height.

Options for additional controls have been prepared and are attached. The Option 1 range of controls provides for a restrained revision to the H25 chapter, while the alternative options provide for more extensive changes in line with those discussed at the hearing. An additional option which relates to a new restricted discretionary activity for any new building or substantial addition to an existing building at the Brightside Hospital site is also assessed. Option 1 is the preferred option as it represents a balanced outcome in that it enables Hospital development to address a community need, while also providing greater certainty and amenity for adjacent neighbours.

The costs to the applicant of additional standards are acceptable, because they will still enable hospital expansion which fits well within the permitted height limit identified on the height diagram. e.g. development enabled within the controls outlined in Option 1 provides for the efficient use of the site for hospital activities as identified by the applicant, while better managing potential adverse effects on the adjacent area in particular the adjacent residential properties.

It is considered that Option 1 is the most appropriate and is an effective and efficient way of achieving the objective of Private Plan Change 21, and to achieve the purpose of the Resource Management Act 1991.

Control	Costs:	Benefits:
<p>New Buildings: Requiring a restricted discretionary activity status for any new building, or additions to an existing building exceeding 20% gfa, at the Brightside Hospital site, with associated matters of discretion and assessment criteria, plus non-notification presumption.</p>	<p><i>Southern Cross:</i></p> <ul style="list-style-type: none"> • This would create a new requirement for resource consent and potentially additional delays in the consenting process. • There would be increased uncertainty for the developer, and loss of the control of the design and layout of the hospital. • A loss of hospital capacity and efficiency is expected due to potential design requirements imposed by Auckland Council which might hinder the functional requirements of the hospital. • The consent authority would have control over the matters that may impact the function and efficiency of the hospital which requires specialist knowledge. <p><i>Auckland Council:</i></p> <ul style="list-style-type: none"> • This would introduce additional controls into the zone relating to new buildings treating one hospital differently than all other hospitals. <p><i>Neighbours:</i> Nil</p> <p><i>Wider Community:</i></p> <ul style="list-style-type: none"> • This would delay the community's access to increased capacity at the hospital due to a requirement for resource consent whereas previously a development might have been a permitted activity. This will delay the treatment of patients which has social, economic and health costs. 	<p><i>Southern Cross:</i> Nil</p> <p><i>Auckland Council:</i></p> <ul style="list-style-type: none"> • Council would have greater control of hospital development, layout and design and consideration of the effects associated with that matter. <p><i>Neighbours:</i></p> <ul style="list-style-type: none"> • This would provide more certainty to neighbours that the hospital design would be of a high quality, confidence that Auckland Council would undertake a robust assessment, and more certainty that potential effects of building design on streetscape and residential amenity would be avoided, remediated and mitigated. <p><i>Wider Community:</i></p> <ul style="list-style-type: none"> • There may be more certainty that the hospital design would be of a high-quality design.

Effectiveness / Efficiency	<p>This would be an effective way to manage the potential effects of hospital design, development and site layout, but the additional control is not effective in enabling hospital development. This option would enable more control of hospital development, site layout and design as a result of the restricted discretionary activity status and associated matters of discretion/ assessment criteria. However, as noted within the IHP recommendation to Auckland Council on topic 055, given the specialist nature of hospitals those who operate them are best placed to assess the needs and functions of their developments and it is only at the edge of the sites (zone interface) where design should be assessed by Council. Notwithstanding that this would effectively manage potential effects of new buildings, I consider this option to be an inefficient and ineffective way to enable hospital development, and the existing (and proposed) HFH zone controls of permitted height, height to boundary and yard setbacks are appropriate.</p>	
Control	Costs	Benefits
<p>Permitted Height Diagram: Permitted height controls over different areas of the Brightside hospital Site through height controls for Area 1 (12m) and Area 2 (16m).</p>	<p><i>Southern Cross:</i></p> <ul style="list-style-type: none"> Theoretically, this would reduce the development potential of the site for hospital development. However, Southern Cross is able to design a hospital development that would fit well within the different height limits of the two areas. Therefore, the costs would only occur if there was an unexpected need to breach the permitted height control. <p><i>Auckland Council:</i></p> <ul style="list-style-type: none"> This would introduce additional controls into the zone treating one hospital differently than other hospitals. However, this already occurs for Auckland Hospital. <p><i>Neighbours:</i> Nil</p> <p><i>Wider Community:</i> Nil</p>	<p><i>Southern Cross:</i> Nil.</p> <p><i>Auckland Council:</i> Nil.</p> <p><i>Neighbours:</i></p> <ul style="list-style-type: none"> Greater certainty for neighbours about where taller buildings are to be located, and reduced potential for redevelopment of the existing hospital site at 3 Brightside Road. Better protection of resident amenity effects. <p><i>Wider Community:</i> Nil</p>
Effectiveness / Efficiency	<p>The permitted height diagram is effective in providing for hospital development on the site, while limiting development capacity beyond what Southern Cross requires. This reduction in development capacity is effective in reducing the potential effects on adjacent properties. Moreover, this diagram is an efficient and clear way to enable different permitted heights in the two areas.</p>	

	This option would enable Council, neighbours and other Plan users to easily identify the permitted height of the two areas at the Brightside Hospital.	
Controls	Costs	Benefits
<p>Alternative Permitted Height Diagram: The Alternative Permitted height controls over different areas of the Brightside hospital Site through height controls for area 1 (12m) and Area 2 (16m).</p> <p>Note: This alternative diagram has the reduced extent of Area 2 (16m) and increased the extent of Area 1 (12m).</p>	<p><i>Southern Cross:</i></p> <ul style="list-style-type: none"> Theoretically, this would reduce the development potential of the site for hospital development. However, Southern Cross is able to design a hospital development that would fit well within the different height limits of the two areas. Therefore, the costs would only occur if there was an unexpected need to breach the permitted height control. <p><i>Auckland Council:</i></p> <ul style="list-style-type: none"> This would introduce additional controls into the zone treating one hospital differently than other hospitals. However, this already occurs for Auckland Hospital. <p><i>Neighbours:</i> Nil</p> <p><i>Wider Community:</i> Nil</p>	<p><i>Southern Cross:</i> Nil</p> <p><i>Auckland Council:</i></p> <ul style="list-style-type: none"> This would result in a simplified Outline Plan, which would reduce complexity of the zone. <p><i>Neighbours:</i></p> <ul style="list-style-type: none"> Greater certainty for neighbours about where taller buildings are to be located, and reduced potential for redevelopment of the existing hospital site at 3 Brightside Road, and reduced potential for taller buildings adjacent to all residential boundaries. Better protection of resident amenity effects. <p><i>Wider Community:</i> Nil</p>
Effectiveness / Efficiency	This option closely resembles the previous height diagram; however, the diagram is more effective and efficient because it provides more certainty of reduced height adjoining all residential boundaries. The Area 1 height combined with the existing yard, HIRB control as well as the proposed standard relating to the retention of the identified trees, work efficiently in combination to control development close to the adjoining residential zoned properties.	

Controls	Costs	Benefits
<p>Activity Status of Height: Altering the activity status of height above the permitted height noted in figure H25.6.1.2. as a discretionary activity status for any exceedance of permitted height shown in figure H25.6.1.2.</p>	<p><i>Southern Cross:</i></p> <ul style="list-style-type: none"> Because Southern Cross has been able to design a hospital development within the identified permitted height limits of Area 1 and Area 2, costs would only occur if there was an unexpected need for a building that exceeded the permitted height. <p><i>Auckland Council:</i></p> <ul style="list-style-type: none"> The introduction of another height control which is site specific, reducing consistency of the zone applied in the Plan. <p><i>Neighbours:</i></p> <ul style="list-style-type: none"> There may be additional and relevant matters that support greater height, which could be considered in a discretionary activity application but not in a restricted discretionary activity application. These additional factors may work against opponents to a resource consent application for greater height. <p><i>Wider Community:</i> Nil</p>	<p><i>Southern Cross:</i></p> <ul style="list-style-type: none"> There may be additional and relevant matters that support greater height, which could be considered in a discretionary activity application but not in a restricted discretionary activity application. <p><i>Auckland Council:</i></p> <ul style="list-style-type: none"> The Council's assessment will be unrestricted. <p><i>Neighbours:</i></p> <ul style="list-style-type: none"> Better signal that taller buildings are less appropriate. <p><i>Wider Community:</i> Nil</p>
<p>Effectiveness / Efficiency</p>	<p>The option provides a full assessment of any proposal to exceed the permitted height limits applying to the site. This is effective in providing for a broad assessment of taller buildings should they be applied for.</p> <p>The altered activity status is efficient in terms of providing Auckland Council with full discretion to assess an application for greater height at this location, however, the AUP already outlines wide ranging matters that applications for restricted discretionary height need to consider in any application. As such, it would be more efficient to rely on the status quo in terms of activity status for infringing permitted height at this site.</p> <p>Although this option may send a signal that taller buildings are less appropriate in this location, compared to the current situation which would have a permitted, restricted discretionary and discretionary height, the full discretionary activity status may have the unintended consequence of supporting additional height as the assessment also takes into the account the need for hospital</p>	

	development rather than being focussed on the effects of the height infringement. This approach to building height is also not consistent with the existing HFH zoned sites even though they are located in similar or more sensitive areas.	
Control	Costs	Benefits
<p>Purpose Statement: The introduction of a purpose statement within the new standard H25.6.7 explaining the purpose of the standard</p>	<p><i>Southern Cross:</i> Nil</p> <p><i>Auckland Council:</i></p> <ul style="list-style-type: none"> Introducing a purpose statement for one standard within an existing zone that does not contain any purpose statements for any other standards. This creates inconsistency in the zone. <p><i>Neighbours:</i> Nil</p> <p><i>Wider Community:</i> Nil</p>	<p><i>Southern Cross:</i> Nil.</p> <p><i>Auckland Council:</i></p> <ul style="list-style-type: none"> Ensuring the purpose of the zone is recorded explicitly within the standard. This will help to inform any assessment under clause C1.9 for any application to infringe the standard. <p><i>Neighbours:</i></p> <ul style="list-style-type: none"> Ensuring the purpose of the standard is recorded explicitly within the zone. This will help to inform any assessment under clause C1.9 for any application to infringe the standard. <p><i>Wider Community:</i> Nil</p>
Effectiveness / Efficiency	Including a purpose statement has no particular bearing on either enabling hospital development or managing effects. The purpose statement would clarify the reason for the standard, but a purpose statement is not necessary to ensure the standard is effective or efficient as evidenced by the lack of purpose statements within the HFH zone generally.	

Control	Costs	Benefits
<p>Building Line Setback: The introduction of a building line setback from the adjoining residential boundaries to provide for a setback from the retained trees identified on the Brightside diagram.</p>	<p><i>Southern Cross:</i></p> <ul style="list-style-type: none"> This would be an additional control that Southern Cross would need to comply with that would reduce the development potential of the site for hospital development. <p><i>Auckland Council:</i></p> <ul style="list-style-type: none"> The introduction of another control which is site specific, reducing consistency of the zone applied in the Plan. <p><i>Neighbours:</i> Nil</p> <p><i>Wider Community:</i> Nil</p>	<p><i>Southern Cross:</i> Nil.</p> <p><i>Auckland Council:</i> Nil.</p> <p><i>Neighbours:</i></p> <ul style="list-style-type: none"> This provides greater certainty of building setback from the boundary with adjoining residential neighbours which assists in reducing potential shading, visual privacy, dominance, and overlooking effects of hospital development. Greater setback from the retained trees, providing more certainty for their health and growth. <p><i>Wider Community:</i> Nil</p>
<p>Effectiveness / Efficiency</p>	<p>The control is an effective way to ensure a greater setback of buildings and managing their effects. However, this is an additional control which secures setback from the boundary which is already generally provided by the proposed new standard for retained trees as buildings would need to be setback from identified trees to provide for their health, growth and root systems. Additionally, it is most likely that this area would be used for parking and/or vehicle manoeuvring around the building, and therefore a similarly sized building setback would need to be practically provided for. It also duplicates the setback associated with the HIRB and side/rear yard controls.</p> <p>Moreover, amenity effects are likely to be more effectively controlled by modifications to Area 1 and Area 2. e.g. by including the building line setback in Area 1 (which provides for 12m in height only). The HIRB control is also more effective at controlling the set back of taller buildings from the boundary noting that lower buildings have less effects on adjacent properties when closer to the boundary.</p>	

Amendments to H25 and E27, Auckland Unitary Plan (Private Plan Change 21)

Black text – Existing H25 Special Purpose – Healthcare Facility and Hospital Zone and E27 Transport provisions

Red text – The Hearing Panel’s modifications shown in ~~strikethrough~~ and underline

H25. Special Purpose – Healthcare Facility and Hospital Zone

H25.1. Zone description

The Special Purpose – Healthcare Facility and Hospital Zone applies to several of Auckland’s hospitals and healthcare facilities. These are generally large, land-extensive facilities with a range of activities related to their primary function. The sites generally consist of extensive and highly visible buildings and substantial parking areas.

The zone enables a range of healthcare related and supporting activities to cater for the diverse requirements of the users, employees and visitors to the hospitals and healthcare facilities.

H25.2. Objectives

- (1) The efficient operation and development of hospitals and healthcare facilities to support the community’s healthcare needs is enabled.
- (2) A comprehensive range of hospital and healthcare activities, buildings and infrastructure, and accessory buildings and activities are provided for.
- (3) The adverse effects of hospital and healthcare activities, buildings and infrastructure, and accessory buildings and activities on adjacent areas are avoided, remedied or mitigated.

H25.3. Policies

- (1) Enable a range of hospital and healthcare facilities to meet the health and well-being needs of the community.
- (2) Enable for a range of non-healthcare activities provided they:
 - (a) do not compromise the efficient use of the zone for hospital and healthcare activities; and
 - (b) avoid, remedy or mitigate significant adverse effects, including traffic effects.
- (3) Minimise the effects of supporting activities and services on the amenity values of the adjacent land.

- (4) Minimise significant adverse effects of overshadowing, visual dominance and loss of visual privacy on adjacent properties by use of graduated building heights and by locating higher buildings away from the zone boundary.
- (5) Provide for additional building height in identified locations, where it:
- (a) enables the efficient operation of the hospital or healthcare facility; and
 - (b) can be accommodated without significant adverse effects on adjacent properties.
- (6) Require new buildings and significant additions to buildings that adjoin streets and public open spaces to be designed to contribute to the maintenance and enhancement of amenity values while enabling the efficient use of the site.
- (7) Encourage new buildings to be designed to provide a high standard of amenity and safety.

H25.4. Activity table

Table H25.4.1 specifies the activity status of land use and development activities in the Special Purpose - Healthcare Facility and Hospital Zone pursuant to section 9(3) of the Resource Management Act 1991.

Table H25.4.1 Activity Table

Activity		Activity status
Use		
Accommodation		
(A1)	Boarding houses	RD
(A2)	Visitor accommodation	RD
(A3)	Dwellings accessory to healthcare facilities	P
(A4)	Supported residential care	P
(A5)	Dwellings not specified above	D
(A6)	Retirement villages	D
Community		
(A7)	Care centres	P
(A8)	Community facilities	P
(A9)	Education facilities	P
(A10)	Healthcare facilities	P
(A11)	Hospitals	P
(A12)	Informal recreation and leisure	P
(A13)	Organised sport and recreation	P
(A14)	Information facilities	P
(A15)	Public amenities	P
(A16)	Artworks	P

(A17)	Tertiary education facilities accessory to healthcare	P
Development		
(A18)	Buildings, alterations, additions and demolition unless otherwise specified below	P
(A19)	Conversion of buildings or part of buildings to dwellings	D
(A20)	New buildings or additions to existing buildings that increase the building footprint by more than 20 per cent, that are visible from and located within 10m of a public road or an open space zone	RD
(A21)	New parking buildings visible from and located within 10m of a public road or a residential zone or open space zone	RD
(A22)	<u>New buildings, or additions to existing buildings that increase the building footprint by more than 20 per cent, at Brightside Hospital</u>	<u>C</u>

H25.5. Notification

- (1) Any application for resource consent for any of the following activities will be considered without public or limited notification or the need to obtain the written approval from affected parties unless the Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991:
- (a) new buildings or additions to existing buildings that increase the building footprint by more than 20 per cent that are visible from and located within 10m of a public road or open space zone; and
 - (b) new parking buildings visible from and located within 10m of a public road or a residential zone or open space zone.
 - (c) new buildings, or additions to existing buildings that increase the building footprint by more than 20 per cent, at Brightside Hospital.
- (2) Any application for resource consent for an activity listed in Table H25.4.1 Activity table and which is not listed in H25.5(1) above will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (3) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

H25.6. Standards

All activities listed as a permitted, controlled or restricted discretionary activity in Table H25.4.1 Activity table must comply with the following standards.

Where a healthcare facility comprises multiple adjoining sites zoned Special Purpose – Healthcare Facility and Hospital Zone, the sites will be treated as a single site for the purposes of applying the following standards.

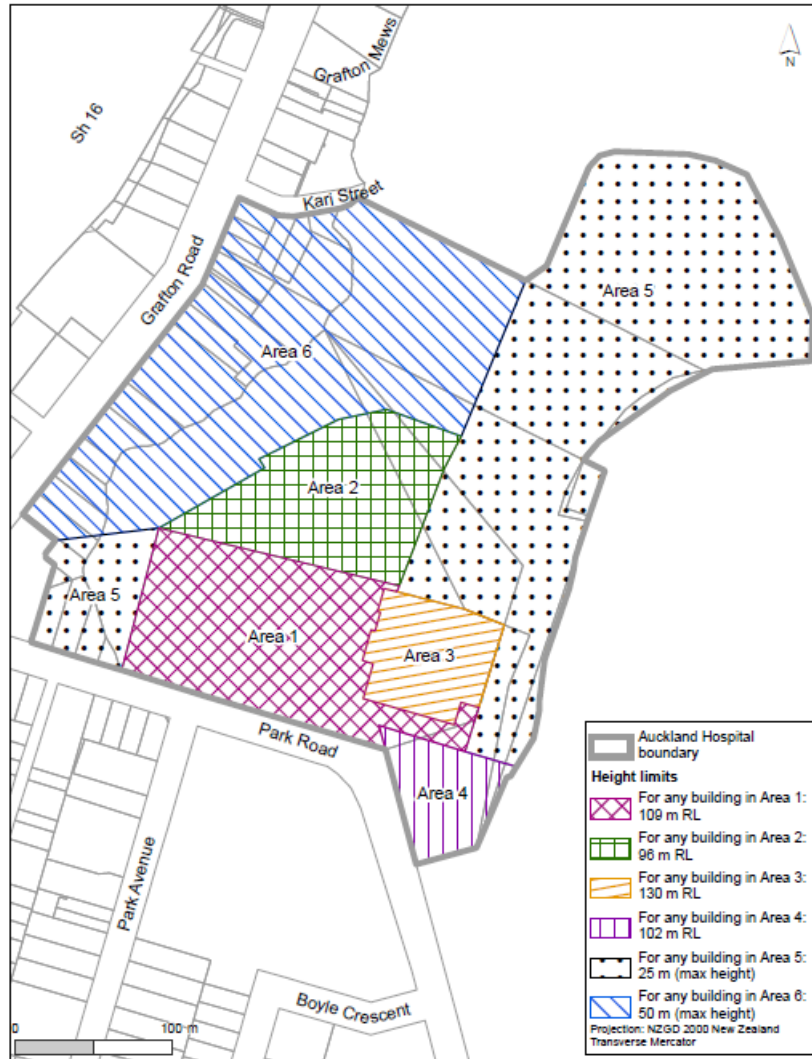
H25.6.1. Building height

- (1) Building heights are specified in Table H25.6.1.1 Building heights and Figure H25.6.1.1 Auckland Hospital permitted building heights.

Table H25.6.1.1: Building heights

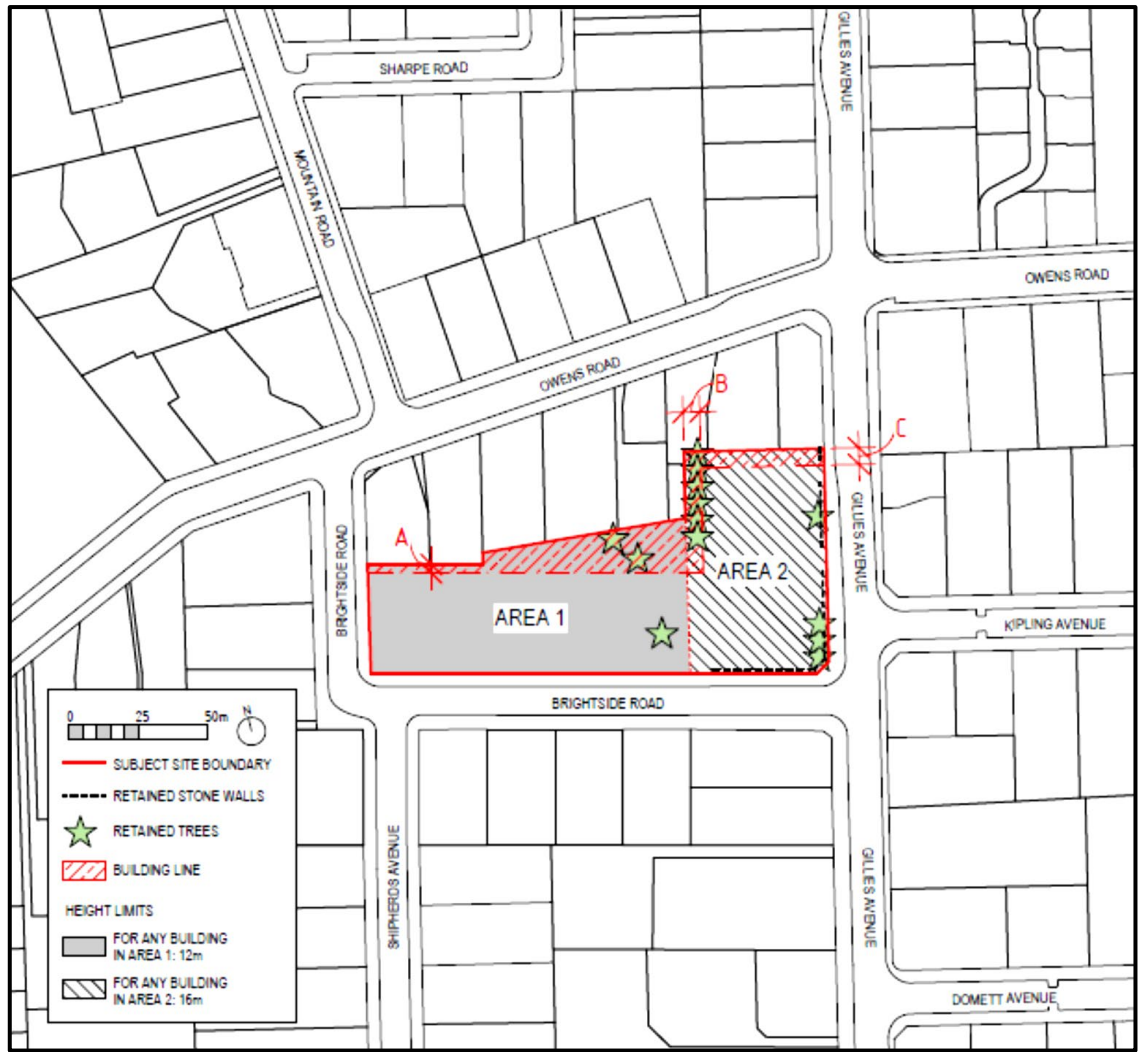
Site area	Permitted activity standard	Restricted discretionary activity standard	Discretionary activity standard
Sites with a total site area up to 4ha	Up to 16m	Between 16m and up to 25m	Greater than 25m
Sites with a total site area greater than 4ha	Up to 26m	Between 26m and up to 35m	Greater than 35m
Sites subject to the Height Variation Control	Up to the height specified on the Height Variation Control	Infringements to the Height Variation Control and up to 35m	Infringements to the Height Variation Control and greater than 35m
Auckland Hospital buildings	Up to the height specified in Figure H25.6.1.1	Buildings infringing the height specified in Figure H25.6.2.1 and up to 35m	Buildings infringing the height specified in Figure H25.6.1.1 and greater than 35m
<u>Brightside Hospital buildings</u>	<u>Up to the height specified in Figure H25.6.1.2</u>	<u>Buildings infringing the height specified in Figure H25.6.1.2 and up to 25m</u>	<u>Buildings infringing the height specified in Figure H25.6.1.2 and greater than 25m</u>

Figure H25.6.1.1 Auckland Hospital permitted building heights



(2) The building heights in Figure H25.6.1.1 Auckland Hospital permitted building heights for Areas 1 to 4 are measured using Reduced Levels (RL). Areas 5 and 6 are measured as per the Plan definition of height.

Figure H25.6.1.2 Brightside Hospital Plan



(3) The permitted building heights in Figure H25.6.1.2 Brightside Hospital Plan for Areas 1 and 2 are measured as per the Plan definition of height.

Purpose of the Brightside Hospital building height limits: to manage adverse effects of building dominance on the amenity of adjacent residential properties.

H25.6.2. Height in relation to boundary

- (1) Where a site in the Special Purpose – Healthcare Facility and Hospital Zone directly adjoins a site in another zone, the height in relation to boundary standard that applies in the adjoining zone applies to the adjoining Special Purpose - Healthcare Facility and Hospital Zone boundary.
- (2) Where a site in the Special Purpose – Healthcare Facility and Hospital Zone directly adjoins a site in another zone that does not specify a height in relation to boundary standard, the yard and/or setback standard in the adjoining zone applies to the adjoining the Special Purpose – Healthcare Facility and Hospital Zone boundary.

- (3) Where a site in the Special Purpose – Healthcare Facility and Hospital Zone adjoins a site in an open space zone, buildings must not project beyond a 45 degree recession plane measured from a point 8.5m vertically above ground level along the open space zone boundary.

H25.6.3. Yards

- (1) The yards in Table H25.6.3.1 must be provided.

Table H25.6.3.1 Yards

Yard	Dimension
Front yard, except where the properties adjoining the zone on that road frontage are in the Business – Mixed Use Zone or one of the business centre zones	3m
Side and rear yards - where the site adjoins a site in a residential zone, open space zone or the Future Urban Zone	3m
Riparian yard	5m from the edge of permanent and intermittent streams
Lake side yard	20m
Coastal protection yard	25m, or as otherwise specified in Appendix 6

H25.6.4. Maximum impervious area

- (1) The maximum impervious area must not be greater than 80 per cent.

H25.6.5. Screening

- (1) Any outdoor storage or rubbish collection areas that directly face and are visible from a residential zone or public open space adjoining a boundary with, or on the opposite side of the road from, a Special Purpose – Hospital and Healthcare Facility Zone, must be screened from those areas by a solid wall or fence at least 1.8m high.

H25.6.6. Dwellings accessory to a healthcare activity

- (1) Detached dwellings accessory to a healthcare facility must comply with the following Residential – Mixed Housing Suburban Zone standards:
- (a) H4 Residential – Mixed Housing Suburban Zone – Standard H4.6.11;
 - (b) H4 Residential – Mixed Housing Suburban Zone – Standard H4.6.12; and
 - (c) H4 Residential – Mixed Housing Suburban Zone – Standard H4.6.13.
- (2) Attached dwellings accessory to a healthcare facility must comply with the following Residential – Terrace Housing and Apartment Buildings Zone standards:
- (a) H6 Residential – Terrace Housing and Apartment Buildings Zone – Standard H6.6.13;

- (b) H6 Residential – Terrace Housing and Apartment Buildings Zone – Standard H6.6.14; and
- (c) H6 Residential – Terrace Housing and Apartment Buildings Zone – Standard H6.6.15.

H25.6.7. Development in accordance with Brightside Hospital Plan

(1) To manage adverse effects on adjacent areas including streetscape character and amenity, development at Brightside Hospital must retain the following identified features on Figure H25.6.1.2 Brightside Hospital Plan;

- (a) Retained trees; and
- (b) Retained stone walls.

(2) To manage adverse effects of building scale and location on adjacent residential properties, any building at Brightside Hospital must be set back to the building line identified on Figure H25.6.1.2 Brightside Hospital Plan as follows:

- (a) At Point A, new buildings or additions to buildings must be setback 3m from the northern boundary; and
- (b) At Point B, new buildings or additions to buildings must be setback 6m from the western boundary.
- (c) At Point C, new buildings or additions to buildings must be setback 6m from the northern boundary.

H25.7. Assessment – controlled activities

~~There are no controlled activities in this section.~~

H25.7.1 Matters of control

The Council will reserve its control to the following matters when assessing a controlled activity resource consent application:

- (1) effects on the privacy of immediate residential neighbours;
- (2) building design and appearance; and
- (3) site travel management.

H25.7.2 Assessment criteria

The Council will consider the relevant assessment criteria below for controlled activities:

- (1) For H25.7.1(1):
 - (a) Policy 25.3(4);

(2) For H25.7.1(2):

(a) the extent to which building design and appearance is visually compatible with and complementary to the residential and special character of the surrounding neighbourhood; and

(b) Policies 25.3(2)(b), 25.3(3), 25.3(6) and 25.3(7); and

(3) For H25.7.1(3):

(a) the extent to which single use vehicle trips to and from the site are minimised with travel management measures; and

(b) Policy 25.3(2)(b).

H25.8. Assessment – restricted discretionary activities

H25.8.1. Matters of discretion

The Council will restrict its discretion to the following matters when assessing a restricted discretionary resource consent application.

- (1) Visitor accommodation and boarding houses:
 - (a) effects on adjoining properties, especially residential properties including effects of overshadowing and loss of privacy; and
 - (b) on-site amenity.
- (2) New buildings or additions to buildings that increase the building footprint by more than 20 per cent, that are visible from and located within 10m of a public road or an open space zone:
 - (a) the effects of the building design and external appearance on the adjoining streetscape and adjoining land zoned open space.
- (3) New parking buildings visible from and located within 10m of a public road or a residential zone or open space zone;
 - (a) the effects of the building design and external appearance on the adjoining streetscape and adjoining land zoned open space; and
 - (b) the adverse effects on amenity values of adjoining land zoned residential.

H25.8.2. Assessment criteria

The Council will consider the relevant assessment criteria below for restricted discretionary activities:

- (1) Visitor accommodation and boarding houses:
 - (a) whether the development complies with H6 Residential - Terrace Housing and Apartment Buildings Zone – Rule H6.6.13 or meets the purpose of the standard.

- (2) New buildings or additions to buildings that increase the building footprint by more than 20 per cent, that are visible from and located within 10m of a public road or an open space zone:
 - (a) the extent to which design features can be used to break up the bulk of the building by, for example varying building elevations, setting parts of the building back, and the use of architectural features without compromising the functional requirements of the use of the building;
 - (b) the extent to which the visual effects of the building can be softened by landscaping; and
 - (c) the extent to which any service elements (roof plant, exhaust and intake units and roof equipment) that could be viewed from the road or public open space zone can be integrated as part of the façade or roof of the building.
- (3) New parking buildings visible from and located within 10m of a public road or a residential zone or open space zone:
 - (a) the extent to which design features can be used to break up the bulk of the building by, for example varying building elevations, setting parts of the building back, and the use of architectural features without compromising the functional requirements of the use of the building;
 - (b) the extent to which the visual effects of the building can be softened by landscaping; and
 - (c) the extent to which any service elements (roof plant, exhaust and intake units and roof equipment) that could be viewed from the road or public open space zone can be integrated as part of the façade or roof of the building.

H25.9. Special information requirements

There are no special information requirements in this section.

Chapter E27. Transport

Table E27.6.2.4 Parking rates – area 2

Activity			Applies to zones and locations specified in Standard E27.6.2(5)	
			Minimum rate	Maximum rate
(T67)	Medical facilities	Hospitals not shown on the Parking Variation Control planning maps	1 per 50m ² GFA	No maximum
(T68)		Grafton Hospital 2 Park Road, Grafton	No minimum	1 per 50m ²
(T69)		Greenlane Clinical Centre 210 Green Lane West, Epsom	1 per 55m ² GFA	No maximum
(T70)		Mt Albert, 50 Carrington Road, Mt Albert	1 per 60m ² GFA	No maximum
(T71)		Mercy Hospital, 98 Mountain Road, Epsom	1 per 40m ² GFA	No maximum
<u>(T71A)</u>		<u>Brightside Hospital</u> <u>3 Brightside Road and 149, 151 and 153 Gillies Avenue</u>	<u>1 per 64m² GFA</u>	<u>No maximum</u>