

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



Proposal

The proposal is a plan change to the Auckland Unitary Plan (Operative in Part) to re-zone approximately 30.61 hectares of land in eastern Pukekohe, bounded by East Street to the north, Golding Road to the east, Ngahere Road to the west and Birch Road and rural/residential blocks to the south, from Future Urban Zone to Residential – Mixed Housing Urban Zone.

The plan change also seeks to introduce a new precinct that shows key movement connections and a proposed drainage reserve area inclusive of minimum 10m riparian buffers, and a potential future neighbourhood park.

This plan change is **APPROVED**. The reasons are set out below.

Private Plan Change:	76 - Kohe
Applicant:	Aedifice Development No.1 Limited
Hearing commenced:	29 November 2022, 9:30am
Hearing Panel:	Richard Blakey Bridget Gilbert Vaughan Smith
Appearances:	<p><u>For the Applicant:</u> Aedifice Development No.1 Limited represented by: Andrew Braggins, Legal Counsel Ian Munro, Urban Design Rob Pryor, Landscape/Visual Mark Delaney, Ecological Sam Blackbourn, Civil Engineering Balaji Karnan, Civil Engineering Todd Langwell, Transport Duncan Ross, Planning Bruce Green, Geotechnical (comments provided by email) Jordan Vaughn, Contamination (comments provided by email)</p> <p><u>For the Submitters:</u> Auckland Transport represented by: Rowan Ashton, legal counsel Ruby Taurau, legal counsel Catherine Absil-Couzins, Corporate</p>

	<p>Tim Segedin, Transport Chris Freke, Planning</p> <p><u>Tabled evidence:</u> Ashleigh Peti for Waka Kotahi Vicky Hu for the Ministry of Education Mark Iszard for Watercare Services Limited</p> <p><u>For the Council:</u> Craig Cairncross, Team Leader (via MS-Teams) Peter Reaburn, Planner (consultant) Martin Peake, Traffic Engineer (consultant) Bevan Donovan, Hearings Advisor</p>
Commissioners' site visit	25 October and 29 November 2022
Hearing adjourned	29 November 2022
Hearing Closed:	23 January 2023

INTRODUCTION

1. This decision is made on behalf of the Auckland Council (**the Council**) by Independent Hearing Commissioners Richard Blakey, Bridget Gilbert and Vaughan Smith (**the Panel**), appointed and acting under delegated authority under ss.34 and 34A of the Resource Management Act 1991 (**RMA**).
2. The Commissioners have been given delegated authority by the Council to make a decision on Plan Change 76 (**PC76**) to the Auckland Council Unitary Plan (Operative in Part) (**AUP(OP)**) after considering all the submissions, the s.32 evaluation, the reports prepared by the officers for the hearing and evidence presented during and after the hearing of submissions.
3. PC76 is a private plan change that has been prepared following the standard RMA Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).

THE SITE AND EXISTING PLAN PROVISIONS

4. The site is subject to the Future Urban Zone (**FUZ**) in the AUP(OP). The FUZ is a transitional zone applying to greenfield land that has been identified through the Pukekohe-Paerata Structure Plan as suitable for urbanisation. It is noted that land in the FUZ may be used for a range of general rural activities, with urban activities either enabled by a plan change that rezones the land for urban purposes, or which are authorised by a resource consent.
5. The land within the plan change area covers 30.61ha and comprises seven separate properties ranging in size from 0.8ha to 20.48ha. The land is bounded by East Street to the north, Golding Road to the east, a 2m-wide reserve strip adjoining Ngahere Road (northern part) and Ngahere Road (south) to the west and Birch Road and

rural/ residential blocks to the south. The bulk of the subject land is zoned FUZ, with the reserve strip adjoining Ngahere Road being in the Open Space – Conservation Zone.

6. The site is also subject to the following AUP(OP) overlays and controls (in whole or in part):
 - Natural Resources: High-Use Aquifer Management Areas Overlay – Pukekohe Kaawa Aquifer and Bombay Volcanic;
 - Natural Resources: Quality Sensitive Aquifer Management Areas Overlay – Franklin Volcanic Aquifer;
 - Controls: Macroinvertebrate Community Index – Rural; and
 - Controls: Pukekohe East Road is an Arterial Road.
7. It is noted that the land to the immediate south is also zoned FUZ, and land further to the south (south of Royal Doulton Drive) that fronts onto Golding Road and Station Road has been subject to a separate plan change process - Plan Change 74 (**PC74**). This Panel has heard evidence and submissions in respect of that plan change and made its decision to approve PC74 on 9 December 2022.

SUMMARY OF PLAN CHANGE

8. The proposed plan change is described in detail in the application materials and the Council's s.42A hearing report prepared by Peter Reaburn (Consultant Planner to the Council). In summary, the plan change seeks to apply the 'standard' Residential – Mixed Housing Urban Zone (**MHUZ**) under the AUP(OP) within an overall precinct ('I4XX Pukekohe East – Central Precinct'), which includes a Precinct Plan that illustrates indicative collector roads (and one local road), walking / cycling routes, drainage reserves and riparian areas, communal wetlands, key intersections and the extent of a proposed Significant Ecological Area (**SEA**).
9. The s.42A report advises that the approach taken in the proposed precinct provisions is that the MHUZ is adopted for the plan change and is cross-referenced.
10. The Applicant has proposed bespoke precinct provisions that:
 - (a) Specify particular standards for fencing of drainage reserve boundaries and the boundary of the reserve strip adjoining Ngahere Road (while that still exists);
 - (b) Set out specific requirements in relation to stormwater; and
 - (c) Require provision for reserves, roads, lanes and pedestrian connections in general accordance with a Precinct Plan.
11. It is noted that the plan change has occurred at the same time that changes have arisen as a result of mandated changes to the AUP(OP) under the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Amendment Act**), and in particular those relating to the Medium Density

Residential Standards (**MDRS**) that are contained in Schedule 3A of the RMA. Mr Reaburn's s.42A report advised in this regard that:¹

...this plan change has occurred at the same time that actions have been taken under the 2021 Amendment to the RMA which has mandated changes to the AUP, in particular in relation to the MDRS (Council Plan Change 78). Revisions are proposed in PC78, notably within the MHU Zone, which will become the primary new "relevant" residential zone across Auckland. This plan change request cross-references the MHU Zone and will therefore be subject to all of the relevant changes introduced by PC78.

12. The s.42A report also references the reasons for the plan change request, as set out in the application Assessment of Environmental Effects (**AEE**) report. This provides useful background as to the purpose and rationale for the plan change, and we therefore include it here:²

[PC76] gives effect to the Pukekohe-Paerata Structure Plan to enable urban development of the site, and is appropriate because:

- a. The proposed rezoning and precinct provisions strongly aligns with the Pukekohe-Paerata Structure Plan.*
- b. The timing of the proposed plan change would be able to align with the delivery of necessary infrastructure servicing.*
- c. The environmental effects of the proposed plan change have been assessed, and no significant adverse effects will result, with effects being acceptable overall.*
- d. The evaluation report has demonstrated that the proposed zoning, overlay and precinct provisions, together with the existing AUP provisions, are the most efficient and effect way of meeting the objectives of the proposed plan change, which achieve the purpose of the RMA.*
- e. The proposed plan change will also be in accordance with, and give effect to, the relevant planning documents.*

13. Specific amendments sought to the plan change following notification were summarised by Duncan Ross, the Applicant's planning consultant, as follows (excluding the cross-references to the evidence of Todd Langwell and Ian Munro):³

- (a) Amendment of the internal road from indicative local road to indicative collector road.*

¹ Section 42A report, at [44]

² Ibid, at [47], with reference to section 3 of the AEE

³ Ross, EV9A, at [3.15]

- (b) *Amendment of the alignment of the internal indicative collector road to ensure there is a fixed intersection at Birch Road opposite Youngs Grove.*
 - (c) *Changing the notation of the internal stream edge path from “Proposed Shared Path” to “Proposed Cycle and Pedestrian Paths”.*
 - (d) *Inclusion of an indicative Stream/Park Edge Road.*
14. Additional minor amendments referred to in the Applicant’s reply submissions are discussed later in this decision.

RELEVANT STATUTORY PROVISIONS CONSIDERED

15. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements were set out in the Applicant’s Plan Change Request (including an evaluation pursuant to s.32)⁴ and in section 2 of the s.42A report.
16. In particular, s.32(1)(a) requires an assessment of whether the objectives of a plan change are the most appropriate way to achieve the purpose of Part 2 of the RMA. Section 72 also states that the purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA. In addition, s.74(1) provides that a territorial authority must prepare and change its district plan in accordance with the provisions of Part 2. While this is a private plan change, these provisions apply as it is the Council that is approving the private plan change, which will in turn change the AUP(OP).
17. The Panel also notes that s.32 clarifies that analysis of efficiency and effectiveness of the plan change is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposed re-zoning. Having considered the evidence and relevant background documents, we are satisfied that PC76 has been developed in accordance with the relevant statutory requirements.
18. Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions. The decision must also include a further evaluation of any proposed changes to the plan change arising from submissions; with that evaluation to be undertaken in accordance with s.32AA. This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes, with those changes summarised by Mr Ross as set out above. In this regard, it was his view that:⁵

While there have been amendments to the precinct provisions and plan throughout the process to date and in response to submissions, these

⁴ ‘AEE and Section 32 Evaluation Report’, prepared by Civix and dated 21 November 2021

⁵ Ross, EV9A at [21.1]

amendments have been to improve and refine aspects already included in the provisions and not to fundamentally alter or add new aspects such that supplementary assessment under section 32 of the RMA is required by virtue of section 32AA of the RMA.

19. The Panel accepts Mr Ross' evidence in this regard and note that no party considered that further analysis under s.32AA in respect of the proposed changes was required.

NOTIFICATION PROCESS AND SUBMISSIONS

20. The plan change was publicly notified on 26 May 2022 following a feedback process involving Iwi, as required by cl.4A of Schedule 1. Notification involved a public notice as well as letters to directly affected landowners and occupiers alerting them to the plan change. The latter step was aimed at ensuring that landowners and occupiers of properties affected by potentially significant changes were made aware of the changes.
21. The submission period closed on 27 June 2022. A summary of submissions was notified for further submissions on 28 July 2022 and closed on 11 August 2022. A total of 12 submissions and five further submissions were made on the plan change.
22. The main topics raised by submissions (as summarised in the s.42A report) were as follows:⁶
- Transport
 - Road Network Funding
 - The extent of the Plan Change area
 - Zoning
 - Infrastructure
 - Ecology
 - Ngahere Road Reserve Strip
 - Other Matters
23. These topics reflect some of the issues that remained in contention at the time of the hearing, albeit that the range of matters not agreed had been narrowed considerably, with only minor differences between the parties and the relevant experts. Only one submitter party, Auckland Transport (**AT**), attended the hearing in support of their submission and evidence.
24. Three directions were issued by the Panel prior to the hearing as follows:
- (a) Direction #1 (10 August 2022) directed the Applicant to file a memorandum outlining what, if any, changes they recommend to the proposal and outline which changes were in response to which submissions. The Applicant filed an email and a revised set of provisions in response to this direction on 2 September 2022.

⁶ Agenda, at p.71

- (b) Direction #2 (5 September 2022) gave directions in relation to the staged provision of the s.42A report and evidence.
 - (c) Direction #3 (25 October 2022) was issued in response to a request made by the Applicant and directed facilitated conferencing after the circulation of expert evidence, along with an updated evidence timetable. It was envisaged the conferencing would take place in respect of transportation/planning, ecology/planning and planning matters generally.
25. An outline of the witness conferencing that occurred is provided in our summary of evidence below.

SUMMARY OF EVIDENCE

Introduction

26. Mr Reaburn's s.42A report was based on the plan change as notified and addressed the relevant statutory requirements, the relevant environmental effects and the issues raised by submissions. It was Mr Reaburn's overall recommendation that the plan change could be approved, subject to certain recommended amendments as set out in Appendix 8 to his report. As some of these were resolved by the time of his Addendum s.42A report (as foreshadowed by his acknowledgement as to the potential for further resolution through future discussions),⁷ we will focus on the outstanding matters that remained at the time of the hearing and summarise those as part of our summary of that addendum report.
27. The evidence presented by the Applicant at the hearing responded to the issues and concerns identified in the s.42A report (and Addendum), the application itself and the submissions made on the application. Overall, the Panel has had the benefit of a significant amount of information on which to consider this plan change request.
28. Given the information received and the point where we ended up prior to the hearing (i.e., with areas of contention being limited to the extent of the SEA and associated buffer provisions and certain transport-related matters) and in order to reduce repetition and noting our obligations under the RMA to reduce delays, we do not propose to provide a detailed summary of all of the evidence we received. All the information, evidence and submissions are available on the Council's internet site using the plan change reference and site address listed above. Other than setting out the Franklin Local Board comments in full, we have instead focussed our following summary on the evidence and legal submissions in respect of those matters that remained in contention at the time of the hearing, and the experts who appeared in respect of those matters.

⁷ Section 42A report, at [24]

Local Board Comments

29. The s.42A report included a summary of the comments received from the Franklin Local Board from its business meeting of 23 August 2022:⁸

- i) *do not object to the proposed plan change, noting that this land is already within the Future Urban Zone*
- ii) *request the applicant engage with the Supporting Growth Alliance programme, specifically in terms of Golding Road and the proposed Pukekohe Expressway, to ensure that possible future needs are considered when planning*
- iii) *note that the two-metre Ngahere Road strip of Reserve Land is in-service property, and that the Franklin Local Board would consider selling this land under Auckland Council's optimization policy for reinvestment in other local projects and to support success and effective development of this land by the developer*
- iv) *recommend that the proposed [SEA] area include the full area of vegetation noting that South Auckland, including Pukekohe, has a low percentage of tree canopy and that areas of established bush should be retained and protected as part of Auckland's Climate response*
- v) *recommend that a riparian strip of greater than the minimum 10m be retained, preferably the 20 metre strip envisaged by the Pukekohe-Paerata Structure Plan to better support stormwater management including impacts from up-stream environments*
- vi) *note and support Auckland Transport concerns, and consider that these could be mitigated if the developer were to enhance the walking and cycling environment/connections to the Pukekohe Train Station and Pukekohe Town Centre, including fit for purpose footpaths and cycleways, kerb and channel on both sides of Ngahere Road and Birch Road, and better pedestrian and cycle connections to local schools*
- vii) *note with concern that the proposed connector road between Birch Road and Golding Road has the potential to be used as an alternative route (from East Street) into and out of Pukekohe and could create pinch points at Ngahere and East Street and Golding and East Street*
- viii) *consider that water management and transport infrastructure must be addressed by the developer in order to support the establishment of a new community, noting that Auckland Council will not be in a position to provide necessary changes needed to accommodate the development outside of the development area i.e. to the adjacent environs*

⁸ Franklin Local Board Meeting 23 August 2022, Resolution FR/2022/120

viii) *make the comment that having the area between this plan change area and that of PC74 omitted is a lost opportunity to ensure contiguous and well planned development, including provision of infrastructure for this area of [FUZ] land.*

30. The Local Board declined the opportunity to appear at the hearing. However, the Panel confirms that it has had regard to its comments in considering the evidence and reaching its findings on the plan change.

Expert Conferencing

31. As previously noted, and following the receipt of the s.42A report and the evidence for both the Applicant and submitters, the Panel directed that expert conferencing be facilitated.⁹ This occurred as follows:

- Planning and Transport, 15 and 16 November 2022;
- Planning and Urban Design, 16 November 2022; and
- Planning, Ecology and Stormwater, 16 November 2022.

32. The outcome of the Planning and Urban Design expert conferencing included three Joint Witness Statements (**JWSs**) a revised set of precinct provisions (“Post-Caucusing Version 16 November 2022”) and associated Precinct Plan map, with those provisions not agreed shown in green highlight text.

33. The process of expert conferencing was extremely constructive in both narrowing and resolving various issues between the parties. We have, to a large extent, relied on the outcome of the respective JWSs and subsequent evidence to address a range of issues raised in submissions and to establish the precinct provisions that we have adopted, while noting that several topics remained at issue by the time of the hearing. We thank all of the participants who took part in the expert conferencing, which made the hearing and decision-making process much more efficient and effective.

Section 42A Addendum

34. Mr Reaburn prepared a s.42A Addendum report following expert conferencing, dated 23 November 2022 (the same date that the Applicant’s reply evidence was received). His addendum report also included a “Version 23 November 2022” revision to the Precinct provisions.

35. These amendments were advised to respond to the main issues addressed through the JWS process, being:

- Transport provisions;

⁹ Direction No.2, 5 September 2022

- Streamside roads and paths;
 - Stormwater;
 - Ecology (and the extent of protection of the existing bush area and whether a 5m buffer yard should apply); and
 - Other matters (question of mitigation/enhancement, status of stormwater devices and structures, land contamination buffer and significance of the Roosevelt Tuff Ring).
36. Through his addendum report, Mr Reaburn affirmed his earlier draft recommendation, and recommended that the plan change be approved, subject to his amendments to the Precinct provisions and resolution of those matters that remained outstanding.
37. The Panel notes at this juncture that we received a separate “Version 23 November 2022” set of the Precinct provisions as part of Mr Ross’ evidence. Any differences between the two versions were effectively resolved through provision of a further revised version prior to the hearing dated 29 November 2022, which identified the confined areas of disagreement between the parties.

Applicant evidence

38. Legal submissions were provided by Andrew Braggins, counsel for the Applicant. Mr Braggins addressed the legal framework and statutory matters relevant to a plan change request, and an overview of the primary matters to be addressed through the evidence. In this respect he highlighted that:¹⁰

Considering the section 42A report, pre-hearing processes and the exchange of evidence, it is submitted that PC76 is supported in principle by almost all parties and all expert witnesses, including by reference to the higher order planning instruments, FULSS and structure plan. As such, it is appropriate for PC76 to be approved, at least in some form.

39. In this regard, Mr Braggins submitted that the issues that remain in contention (or which require to be addressed in submissions) were limited to the following matters:¹¹

- (a) *The extent of the boundary of PC76;*
- (b) *Whether the site should be rezoned to MHU or Residential – Mixed Housing Suburban (“MHS”);*

¹⁰ Applicant legal submissions, EV1 at [1.16]

¹¹ Ibid, at [1.17]

- (c) *The protection of green spaces/flora (in particular the proposed area of SEA and need for a buffer around that);*
- (d) *The need to include a timeframe within which the future status of Golding Road should be determined; and*
- (e) *Provision for educational facilities within the precinct provisions.*

40. Mr Braggins outlined the evidence on all matters that had been prepared by the Applicant's experts, and made the concluding submission that:

...PC76 will facilitate and enable high quality residential development, in a manner consistent with and that realises the intended use of the land as set out in the structure plan. This development will also appropriately integrate and connect with its surrounding environment (both existing and planned), while ensuring potential environmental effects are well managed.

41. Evidence had been prepared by a number of witnesses for the Applicant that addressed various areas of expertise and topics to be addressed as part of the plan change. As outlined above, as a number of topics were no longer in contention by the time of the hearing, and in terms of the issues remaining before us, it was not necessary for a number of witnesses to attend the hearing. Our overview of the evidence below is therefore limited to that provided by Mr Munro (urban design), Rob Pryor (landscape), Mark Delaney (ecology), Sam Blackbourn (engineering) and with respect to the reply evidence of Messrs Langwell (transportation) and Ross (planning) that was received prior to the hearing. These latter statements addressed the evidence of submitters with reference to the joint witness conferencing and incorporated a further version of the precinct provisions.¹²

42. Mr Munro provided evidence in respect of urban design considerations, including those related to the identification of stream-side roads and pedestrian linkages and the effect of the proposed protection of the bush area on overall site connectivity. In respect of stream interfaces from adjacent roads, and following consideration of the Council's concerns on this matter, his evidence concluded that:¹³

I have worked alongside the Applicant's other experts to identify, on the assumption that the Council will take at least most of the indicative storm water facility as drainage reserve, the extent of park-edge road that could be safely committed to and thus depicted on the Precinct Plan. This is now attached to the evidence of Mr. Ross. This reflects my analysis of the slope condition adjacent to the streams and where I consider it would be generally plausible to achieve a park edge road solution, which would also account for a majority of the proposed north-south pedestrian / cycle link already shown on the Precinct Plan and of concern to the officers. Noting that such a requirement should only be triggered in the event that the Council takes the adjoining land

¹² This was Version 9, which was further amended (Version 10) as part of Mr Reaburn's s.42A Addendum report

¹³ Munro, EV4 at [8.3(f)]

as a reserve, I am confident that something akin to what is now shown on the Precinct Plan could be achieved.

43. Mr Munro responded to matters raised during the hearing regarding the way in which a road could be provided through the proposed SEA, although his preference was for dwellings to front this road rather than bush from a passive surveillance perspective. He also responded to our queries relating to the accessibility of the dwellings to be provided for within the plan change area to local commercial facilities. He considered this would be met through the subsequent plan change relating to land to the immediate east, or alternatively a confined plan change for the present site could be envisaged along Golding Road to accommodate such facilities.
44. Mr Munro's evidence also included an indicative subdivision layout¹⁴ which was broadly in alignment with a concept masterplan prepared by Phillips & Associates included as Appendix D in the Civix Infrastructure Report.¹⁵ This provided a useful basis to consider the potential connections, including the link road and possible adjacent residential development, that were described by Mr Munro. Having said that, we also take note of his comment that this Panel should not approach these concept designs as a subdivision proposal, and that *"there are many alternative ways that the land could be developed and still provide for the key outcomes identified on the Precinct Plan"*.¹⁶
45. Mr Pryor's evidence addressed the landscape effects of the proposed plan change, noting that, while future urbanisation enabled by the plan change would *"significantly change its current semi-rural landscape character"*, such development *"is consistent with the site being zoned FUZ, with urban expansion envisaged in the AUP and PPSP"*.¹⁷ His evidence concluded that:
- ...PC76 would fulfil the need for residential and urban intensification and provide an opportunity for an innovative and environmentally sustainable urban development. PC76 would be largely consistent with regional growth strategies for the area and would result in a high-quality urban development with a range of positive landscape and environmental outcomes.*
46. Mr Langwell's EIC addressed the potential vehicle trip generation and transport effects of PC76 and issues raised by submitters and the Council's s.42A report, and it was his conclusion that the *"potential development of the PC76 area is feasible from a transportation perspective"* and *"is largely consistent what is anticipated in the PPSP and the road network that is proposed to surround the site"*.¹⁸ He noted that changes have been made to both the precinct provisions and plans to address the concerns expressed by AT and that witness caucusing would be likely to resolve any outstanding matters.

¹⁴ Ibid, at Attachment 6

¹⁵ Appendix 7 of the Plan Change Application

¹⁶ Munro, EV4 at [5.10]

¹⁷ Pryor, EV5 at [9]

¹⁸ Langwell, EV6A at [7.1]

47. Mr Langwell's reply evidence, which followed that caucusing, commented on the remaining issue with AT, relating to the status of Golding Road and the question of whether AT should issue a notice of requirement prior to a specified date. He advised in this regard that his assessment of transport effects associated with PC76 has not relied upon Golding Road being upgraded to arterial standard.¹⁹
48. Mr Blackburn's evidence set out the engineering Code of Practice framework relevant to his assessment and described the civil engineering and infrastructure-related effects of the plan change. He also responded to submitter concerns regarding the capacity of infrastructure networks, and those matters raised by Watercare. His evidence concluded that:²⁰
- (a) *The proposed urbanisation of the PC76 land is feasible from a civil engineering perspective;*
 - (b) *Provision has been made to fully service the site with all infrastructure required to support the urbanisation of the PC76 land, in accordance with the requirements of Auckland Council, the AUP and all service providers; and*
 - (c) *Stormwater and flooding issues can be appropriately and adequately addressed by conventional engineering measures.*
49. It was therefore his view that PC76 can be approved from a civil engineering perspective.
50. Mr Blackburn also provided an overview, in illustrative form, of the topographical constraints associated with the existing bush and the area of land needed on either side of any proposed road through this bush and which would impact on the area of SEA that could be provided in the event that such a road was enabled in this location.
51. Mr Delaney's evidence described the existing ecological environment and the potential ecological effects associated with the plan change and addressed issues raised by submitters and the Council in respect of the classification of the wetland and the extent of the existing bush that is proposed to be protected by way of a SEA overlay. It was his conclusion that PC76 is appropriate for the site in ecological terms, and that, "*with the implementation of riparian plantings and the protection of 0.9 ha of mature native vegetation*", there is "*potential for an overall net ecological benefit across the PC76 area*".²¹
52. We have previously outlined some aspects of Mr Ross' EIC in respect of the relevant statutory tests for consideration of this plan change, and in this regard he concluded that PC76 would implement "*the outcomes sought under the PPSP and aligns strongly with the current planning framework including the current focus on delivery*

¹⁹ Langwell, EV6 at [2.2]

²⁰ Blackburn, EV7 at [8]

²¹ Delaney, EV8 at [10.1]

of additional housing as set out in the NPSUD, as well as the Council's policy documents".²² His EIC went on to conclude inter alia:

22.2 *PC76 presents the opportunity to implement this additional housing supply for in the order of 850-900 dwellings earlier rather than later through enabling development of the land under the MHUZ, including infrastructure construction such that this benefits not just the site, but the wider existing and planned residential catchment – as would be an expected outcome for development that implements a structure planned area.*

22.3 *PC76 has been prepared on the basis of seeking to provide significant additional housing, while also responding to the natural features on the site, including the preservation of 9000m² of bush, and the retention and enhancement of riparian margins.*

53. Mr Ross' reply evidence also addressed the status of Golding Road, along with the issues of protection against road noise, the need for a pedestrian pathway to Ngahere Road, and the extent of the proposed SEA (and buffer). On the last matter he also made reference to the Deep Soil Offset Requirements set out in the Council's Proposed Plan Change 78 (**PC78**). His view was that "*it remains appropriate for the precinct provisions to include a deadline for AT to issue a NoR regarding the need to widen Golding Road to an arterial road*", and he advised that the Council's proposed requirement for a buffer around the SEA was not agreed.²³

Submitter evidence

54. The Panel received tabled evidence as follows:

- (a) Ashleigh Peti (Planner for Waka Kotahi), provided a letter²⁴ which advised that the matters addressed "*within the 42A report, and the applicant's evidence are generally consistent with the Waka Kotahi submission*". Waka Kotahi was therefore neutral with respect to the plan change, while noting that it "*supports AT's position and the changes they seek to the provisions if the plan change is approved*".
- (b) Mark Iszard (Head of Major Development at Watercare Services Ltd) provided a statement of evidence²⁵ which contained an overview of the wastewater and water supply servicing strategy for the plan change area; commented on the Applicant's proposal for servicing the area and responded to the s.42A report and the Applicant's evidence. He stated that:

5.2 *Connecting to the transmission network ensures that the water and wastewater servicing requirements of the Plan Change will be*

²² Ross, EV9A at [22.1]

²³ Ross, EV9 at [6]

²⁴ Peti, EV13

²⁵ Iszard, EV14

adequately met, and the above matters are addressed such that water and wastewater related effects are appropriately managed.

5.3 *Watercare considers that there are no water or wastewater servicing reasons to decline the Plan Change.*

- (c) Vicky Hu (Planner for the Ministry of Education) provided a letter²⁶ which noted that the Ministry “*supports the adoption of either the policy wording outlined in the original submission, or the policy wording suggested by Mr Reaburn in the s42A report, and in Mr Ross’ evidence, as they will both enable educational facilities to support the development of PPC76*” and that:

The Ministry also supports the adoption of the Ministry’s proposed objective (adopted by the applicant). The Ministry confirms that if the above provisions are adopted (the proposed objective and either policy), the Ministry’s submission points are adequately resolved.

55. AT were represented by Rowan Ashton and Ruby Taurau (legal counsel), Catherine Absil-Couzins (Corporate), Tim Segedin (Transport) and Chris Freke (Planning). AT’s overall position by the time of the hearing was summarised in Mr Ashton’s legal submissions, which advised that:²⁷

Following the exchange of all evidence and expert witness conferencing, AT confirms that it no longer opposes PPC 76, subject to the revised provisions attached to Mr Reaburn’s section 42A addendum report being confirmed and incorporated into the Precinct (with some minor amendments addressed below). These provisions are largely agreed, with the one outstanding matter as between AT and the Applicant being whether the Road Widening Setback along Golding Road should include a ‘sunset date’. AT opposes this standard being subject [to] a sunset date.

56. While AT’s primary position was that no sunset clause should apply to the road widening setback along Golding Road (pending a decision on a Notice of Requirement to develop the road to an arterial standard), Mr Ashton advised that:²⁸

If notwithstanding AT’s position and Mr Reaburn’s advice, the Panel does consider that some form of longstop lapse date for the provisions is warranted, 1 February 2024 is simply far too early. AT has enquired with [the Strategic Growth Alliance] and, if a lapse date were to be included, then 30 January 2026 would be more appropriate. This outcome would be preferable to the Applicant’s latest proposal tabled today.

57. Following AT’s presentation Mr Braggins advised the Panel that this alternative date was acceptable to the Applicant. As the other minor changes proposed in respect of

²⁶ Hu, EV12

²⁷ AT legal submissions, EV10 at [1.3]

²⁸ AT supplementary submissions, EV10C at [5]

the wording of an advice note regarding transportation infrastructure requirements²⁹ and the assumptions of future predicted noise monitoring were accepted by the Applicant, it was apparent that by the close of the hearing no matters of contention (substantive or otherwise) remained between AT and the Applicant. However, two transport-related matters did arise at the reply stage which we address later in this decision.

58. In this respect we note AT's 'residual concern', as expressed by Ms Absil-Couzins, that there is no funding in place for the transport works required to support growth in this area, but that AT does not oppose PC76 on this basis.³⁰

Reply evidence and submissions

59. The Panel heard from Council officers in reply to the evidence heard, being Mr Peake (traffic) and Mr Reaburn. No changes to their recommendations or to the proposed Precinct provisions were made as part of those responses. Mr Reaburn spoke to his s.42A Addendum and associated appendices.

60. The Applicant's reply was provided to the Panel on 9 January 2023. This incorporated reply submissions prepared by Mr Braggins (dated 23 December 2022)³¹ along with:

- (a) A cross-section plan through the proposed SEA associated with the construction of a possible road;³²
- (b) A copy of a High Court decision *Shotover Park Ltd v Queenstown Lakes District Council* [2013] NZHC 1712, in respect of the issue as to the relevance of a resource consent to plan change considerations;³³
- (c) A copy of the relevant provisions of the RPS (from Chapters B2, B3 and B7);³⁴
- (d) A track change version of the December 2022 changes to the National Policy Statement on Freshwater Management;³⁵
- (e) Three versions of the Precinct provisions (and corresponding plans) which address possible outcomes in respect of the extent of SEA and any associated buffer, summarised as follows:³⁶
 - "Retained SEA", which is the Applicant's proposal and which links with the Applicant's proposed SEA provisions which do not include a buffer or a Special Yard;

²⁹ AT legal submissions, EV10 at [3.12], with reference to Segedin, EV19B at [8.13]

³⁰ Ibid, at [3.15], with reference to Absil-Couzins, EV10A at [10]

³¹ Applicant reply, EV21

³² Ibid, EV21A

³³ Ibid, EV21B

³⁴ Ibid, EV21C

³⁵ Ibid, EV21D

³⁶ Ibid, EV21E – EV21J

- “Full SEA” which has the full SEA, but no buffer shown. This plan works with the Council’s proposed plan provisions which include I4XX.6.5 ‘Special Yard Adjoining Significant Ecological Area’; and
 - “SEA Buffer” which has the full SEA and buffer shown.
61. Mr Braggins’ submissions also referred to comments during the hearing with respect to the aforementioned concept masterplan that formed part of the application documents that depicted approximately 850-900 dwellings. He advised, on the basis of further analysis, that the actual yield is likely to be materially reduced, by approximately 100 dwellings, due to a number of factors.³⁷
62. Following the Panel’s requests for clarification regarding aspects of the reply memorandum, a further memorandum was provided by Mr Braggins on 20 January 2023.³⁸ We refer to this second memorandum where necessary as part of our discussion regarding the Applicant’s reply.
63. Mr Braggins’ reply memoranda addressed the matters arising during the hearing and the questions raised by this Panel. As these remained the only matters of contention, we discuss these further in the following section of this decision.

FINDINGS AND REASONS FOR APPROVING THE PLAN CHANGE

Introduction

64. The following section addresses the Panel’s overall findings on PC76, having heard and considered all of the material and evidence before us. In this regard, we acknowledge the submission point made by Mr Braggins in his reply that, in reiterating his opening submissions, little opposition remained to the plan change and that based on the *“limited range of any evidence presented at the hearing highlights that the overall re-zoning of the land is not contentious and only a very limited number of provisions are in dispute”*.³⁹
65. The matters of contention as addressed in the Applicant’s reply relate primarily to the following:
- The extent of protection of the existing bush (as SEA); and
 - The extent of buffer, if any, around the area to be classified as SEA; and
 - The timing of road widening protection and the extent of frontage upgrades.
66. By way of overview, we record our acceptance of the evidence for both the Applicant and the Council that the proposed extent and level of residential density is appropriate for the plan change area. We also agree that the position reached between the Applicant and AT on the plan change provisions in respect of the establishment of transport infrastructure will enable the plan change to develop in a

³⁷ Ibid, EV21 at [2.6]

³⁸ EV22

³⁹ Applicant reply submissions, EV21 at [1.3]

way that will not adversely impact on the surrounding road network (as separate to the issue relating to those provisions relating to the future status of Golding Road).

67. Overall, we accept Mr Reaburn's recommendation that PC76 should be adopted, and that the plan change and associated change in the zoning of the land will:

- assist the Council in achieving the purpose of the RMA;
- give effect to the NPS-UD;
- be consistent with the RPS; and
- be consistent with the Auckland Plan.

Findings with respect to the matters in contention

Extent of protection of the existing bush (as SEA)

68. The site includes an area of existing bush with an area of approximately 1.4ha. The edges of this area are delineated by way of stock-proof fencing but the bush is not otherwise subject to any formal or legal protection by way of any restrictions on the property titles or under the existing provisions of the AUP(OP). A supplementary question arising with respect to the extent of bush to be protected as SEA is whether provision should be made for a road to be developed across part of it (if we determine that all of the existing bush should be protected). We address these aspects below.

69. The Applicant obtained a Certificate of Compliance (**CoC**) on 24 May 2022⁴⁰ "[t]o fell up to 16,000m² of indigenous vegetation with all vegetation material to be left on the site as felled" (Council reference CER70020631). We note here that the various descriptions of this area ranged between 1.4ha⁴¹ and 1.6ha as described above, but in response to questions during the hearing it appeared to be generally accepted that the actual figure was the lower of the two. Whatever the actual measurement, the subject area is sufficiently described and understood by reference to the plan attached to the CoC, and the additional survey (and buffer) plan provided prior to the hearing.⁴²

70. The essence of the issue was explained in the s.42A Addendum report:⁴³

The original s42A report recommended that the whole of the 1.4ha bush area be identified as SEA. In his evidence Mr Ross maintains the same position as was put forward in the original application AEE, i.e. in brief, that the area is not currently SEA, there is a CoC to remove it and the proposed 5000m² bush removal is required for development purposes.

⁴⁰ Attached to Mr Ross' evidence EV9A as Appendix 4, replacing an earlier and more restrictive version dated 4 April 2022 (reference CER70019249), included in the application material as Attachment L

⁴¹ E.g., Delaney EV8 at [2.1]

⁴² EV17A

⁴³ Reaburn, EV11 at [23]

71. Mr Reaburn noted as part of his s.42A Addendum that he disagrees with the Applicant's position for the reasons set out in his original s.42A report. In summary, these reasons were that:⁴⁴
- (a) Protection of the subject area would give effect to a matter of national importance, per s.6(e) of the RMA, and that the provisions of B7.2 of the RPS are clear in what they require, i.e., that areas that meet the criteria for an SEA are to be identified as SEA; and
 - (b) If the identification of a SEA creates problems in accommodating development, that should be considered through a later resource consent process.
72. As a point of discussion during the hearing the Panel noted that the CoC included certain limitations that appeared to counter the assumption that some or all of the bush could be removed as-of-right and the land subsequently made available for development. These restrictions, which we understood to be based on a precautionary basis that the bush may include Kauri trees (and in the absence of site inspections to determine the same at the time of the application for the CoC), included:
- (a) That no vegetation could be removed within 10m of the adjacent stream bank;
 - (b) All tree stumps would need to be left in-situ and all vegetation be left on site as felled;
 - (c) No earthworks or soil disturbance would occur; and
 - (d) Kauri dieback protocols would need to be implemented.
73. Given these restrictions, it seemed doubtful to the Panel that removal of some or all of the vegetation could be undertaken without leaving a significant reduction in the amenity of at least its immediate surrounds when considered in the context of it being a prominent component of a new area for residential housing.
74. However, it was the Applicant's view, as further described in Mr Braggins' reply, that *"there is no uncertainty regarding the standing of the CoC or the Applicant's intention to exercise its right to remove the specified 5,000m² of vegetation in accordance with its development plans"*.⁴⁵ This was because:
- (a) There is no evidence that there is any Kauri in the bush area (and that Mr Delaney confirmed that he had reviewed site photographs and had not seen any), and that even if Kauri were present, there are simple procedures that allow this to be disposed of at a suitable landfill facility without triggering any further consenting requirements.

⁴⁴ Section 42A Report, at [192]-[194]

⁴⁵ Applicant reply, EV21 at [8.19]

(b) The need for an earthworks consent would not preclude the felling of trees “at which point the relevant area would not qualify as SEA”.

75. Mr Braggins went on to say that “[i]t is not the case that a resource consent could never be obtained to remove the tree stumps and resource consent has been applied for earthworks”, and therefore, there is no basis to conclude “that the CoC is unlikely to be implemented (and therefore Hawthorn⁴⁶ should not be applied) in relation to the area that the Applicant proposes to implement it”.

76. The Panel was somewhat surprised that the existence or otherwise of Kauri trees had not been established at the time that the application for a CoC was being considered by the Council, as the terms of the CoC are specific and require the additional consents referred to by Mr Braggins to be obtained to enable development as envisaged by the Applicant. Because we expressed some hesitation during the hearing to speculate beyond the terms of the CoC as provided to us, Mr Braggins addressed the matter in further detail in his reply with reference to the relevant caselaw, and we return to that aspect shortly.

77. Aside from that matter, there was a legal consideration as to the extent that the existence of a CoC, as a resource consent, could be taken into account in the assessment of a plan change. Mr Reaburn provided a summary of his view in this regard, drawing on advice received from the Council’s Senior Solicitor, Felicity Wach, as follows:⁴⁷

I acknowledge that the weight to be given, if any, to the CoC is primarily a legal matter. In my original [s.42A report] I stated my view that that what should happen in relation to applying the AUP provisions, notably the RPS objectives in B.7.2.1 and RPS Policies B.7.2.2 (1) and (2), was a separate matter to whether the bush area can be removed, under a CoC. I have since had that view confirmed by Council’s legal department. In summary, the Council was obliged to issue the CoC in accordance with its statutory function under s139 of the RMA. That statutory task was limited to whether the removal of the vegetation was an activity that could be done lawfully in a particular location without a resource consent on the date on which the authority received the request (s139(7)). The consent authority’s statutory task under ss31 and 32 is much wider and requires a consideration of “the most appropriate” plan provision to apply to the vegetation. The identification of the vegetation as an SEA is not in conflict with the issue of the CoC because the Applicant will be able to exercise its CoC whether or not the vegetation is identified as an SEA or not.

⁴⁶ Being a reference to what the Panel understood to be the Court of Appeal decision *Queenstown-Lakes District Council v Hawthorn* (CA 45/05, 2006)

⁴⁷ *Ibid*, at [24]

78. A further point made in Ms Wach's legal advice was that the rights under the CoC will lapse if the Applicant does not exercise them within five years (per ss.125 and 139(12)).⁴⁸
79. In essence, it was the Council's view that the position in *Hawthorn* regarding the future environment does not apply in a plan change context and may be ignored, as a broader set of considerations apply under a ss.31 and 32 analysis than when assessing a resource consent application.
80. The issue in this case was further complicated by considerations as to whether further consents that may be required in conjunction with the CoC would be required and granted. Mr Braggins' reply submissions addressed the relevant caselaw in some detail (along with the matters that we have noted above). In doing so, he noted the two questions on which we need to make findings in this regard are that:⁴⁹
- (a) *whether Hawthorn is binding authority in relation to decisions on plan changes; and*
 - (b) *whether, when making decisions on plan changes, existing unimplemented consents should be taken into account.*
81. It was Mr Braggins' submission that, having regard to the decision of the High Court in *Shotover Park Ltd v Queenstown Lakes District Council* (NZHC 1712, 2013), which was subject to some uncertainties given other proceedings in play with respect to the consents in question, "*that existing resource consents are relevant if the decision-maker considers them likely to be implemented*".⁵⁰ As previously noted, Mr Braggins advised in this regard that there is no uncertainty about the CoC or the Applicant's intent to remove part of the existing bush as part of its development proposals.
82. However, we remained concerned as to the need for further consents to be obtained to properly give effect to the CoC in the event that the area did not include any Kauri. On that basis, the proposal would be analogous to findings made in *Shotover* as quoted within Mr Braggins' reply where the High Court stated:
- [122] In a plan change proceeding, a grant of consent may be relevant to an assessment of the environment, which we find would include the future environment as it may be modified by the implementation of resource consents held at the time the plan change request is determined and in circumstances where those consents are likely to be implemented...*
- [123] The likelihood of the consents being implemented is a question of fact and this is difficult to determine, but not because these particular consents are contingent upon the gaining of other consents and*

⁴⁸ Wach, EV15 at [9]

⁴⁹ Applicant reply, EV21 at [8.3]

⁵⁰ Ibid, at [8.4]

approvals. (While this will take time we were told of no compelling reason why these would not ultimately be forthcoming).

83. We observe in this regard that at the time the CoC was being considered by the Council that it had cause to specify the aforementioned restrictions to the terms of the CoC, and the only information to the contrary before us is that Mr Delaney has not sighted any Kauri in his review of photographs of the subject area. While the Panel did not find that evidence to be suitably definitive (i.e., informed by an actual inspection of the bush area) we accept Mr Braggins' supplementary point that if there are Kauri present, then there are simple procedures that allow the felled vegetation to be disposed of at a suitable landfill facility and that this would not trigger any further consenting requirements.⁵¹
84. Notwithstanding the above, we consider that the point made by the Council in respect of the applicability of RPS policies, which we need to give effect to, is an important consideration and may differentiate the situation that the aforementioned High Court and Court of Appeal cases were dealing with. Alongside that is the fact that a CoC (or resource consent) has a limited term, as compared with the longer timeframes inherent in any plan change provisions. On that basis, while recognising the ability for the Applicant to implement its CoC (alongside such other permissions or procedures that may be necessary), we find that the subject bush merits the classification of a SEA and should be notated within the plan change accordingly.
85. In making this finding the Panel recognises that the Applicant could, should it so wish, remove all of the subject bush. The case for the Applicant was that it proposes to remove 5,000m² as part of its development plans. Overall, however, it is our view that all of the bush should be classified as SEA, particularly while any development plans are not yet proposed by way of consent documents (and noting that the masterplans presented to us are only concepts) and the CoC is subject to a five year lapse date.
86. Having concluded that all of the existing bush is to be retained as SEA as part of the Precinct, a supplementary question is whether provision should then be made for a local road connection through the eastern part of the bush between the north-western part of the site and areas to the south. It was Mr Munro's view that such a connection was of particular importance, stating that:⁵²

If an SEA extension had the effect of foreclosing that connectivity, I would regard that as a regrettable outcome noting that because of the SEA and the steep topography south of that (the 'triangular' area of existing public reserve), the next-best location for a road access would be much further (440m+) south, approximately opposite 24 and 30 Ngahere Road.

87. Mr Reaburn advised, through both his s.42A and Addendum reports, that a road connection was acceptable (albeit as part of identifying all of the bush area as SEA, as noted above), noting the concurrence of the Council's ecologist Mille Ahlstrom,

⁵¹ Ibid

⁵² Munro, EV4 at [7.37]

“particularly if that road was required or at least an important component in development of the precinct”.⁵³ Mr Reaburn prepared a plan to outline his expectation of the area of land needed to facilitate such a road, noting that “[e]ven with the road, and ignoring the bush area east of the road, an extra 2,700m² of bush could remain...”.⁵⁴ Mr Reaburn considered that suitable provisions could be included in the Precinct (comprised of an objective, policy and additional matter of discretion/assessment criterion) to provide confidence to the Applicant that this would be able to be assessed as part of a future development proposal. He noted that another option would be to simply include on the road area within the SEA but considered that because the road position is only indicative, the preferred starting point was that the whole of the existing bush area is included in the SEA.⁵⁵

88. Such provisions were set out in Version 6A of the post-hearing Precinct provisions, as follows:⁵⁶

Objective I44X.2

- (4) *A safe, efficient and integrated transport network that provides legible connections through the Precinct, encourages walking and cycling and the use of public transport, encourages roads adjacent to the drainage reserve, enables consideration of road access through the Significant Ecological Area and the effective management of stormwater within the drainage reserve as shown on the Precinct Plan, provides necessary upgrades to the road network adjoining the Precinct and recognises the needs that will arise from development within the Precinct for minimum upgrades necessary to the wider road network and connections to the Pukekohe Rail Station.*
- (3) *Require that new buildings and development do not compromise the purpose of the drainage reserve and Significant Ecological Area as shown on Pukekohe East-Central Precinct Plan 1, except as necessary within the Significant Ecological Area to provide for stormwater management or road access and connectivity.*

89. An addition to the roading standards was also proposed by Mr Reaburn as follows:

Note 2: These standards may be modified to enable a road design through the Significant Ecological Area that minimises adverse effects on indigenous vegetation.

90. We note that while the area for a road would not appear significant in a two-dimensional view (as shown in Mr Reaburn’s plan), the topography of the subject area is such that measures to accommodate level differences on either side of a road reserve would require additional areas of bush to be removed. The initial sketch prepared by Mr Blackburn during the hearing to explain this matter was formalised

⁵³ Reaburn, EV11 at [26]

⁵⁴ Ibid, at [27]

⁵⁵ Ibid, at [29]

⁵⁶ Version 6A, EV 21E

by cross-section drawings provided as part of the Applicant's reply.⁵⁷ The outcome of that analysis was that battered slopes would remove approximately 1,870m² of land (thus accounting for a significant portion of the 2,700m² area calculated by Mr Reaburn) in addition to that required for the road itself, and the area of bush able to be retained would equate to that area shown in the Applicant's preferred version of the Precinct plan, being approximately 0.9ha.

91. However, we consider that the detailed design of a road can be addressed at subsequent resource consent stage in accordance with the revised provisions proposed within Version 6A above (supplemented by additional wording to give guidance for modifications to the standard road design), notwithstanding that the area of vegetation that may need to be removed could be larger than that envisaged by the Council. Other factors that may affect this outcome would include the potential for narrower road sections or retaining structures instead of batters (if acceptable to AT and/or the relevant road constructions standards), and modifications to the standard provisions for footpaths and cycleways, with the eventual solution to be determined at resource consent stage.
92. Overall, we agree that a roading connection is desirable, but the need for such, and its dimensions, will not be confirmed until resource consent stage. We are also conscious that residential development within and proximate to the connection may or may not eventuate or be approved (and may be influenced by the level differences between the road and the adjacent land). As set out above, we have determined that the appropriate starting point is to identify all of the bush as SEA. However, we have incorporated the provisions as proposed by the Council and subject to our further amendments so as to enable a careful and considered approach at the consent stage to establishing a roading connection and possible residential development through this area.
93. There is one further matter to address under this topic, and that is in respect of a note to the Version 6A provisions, being an additional clause under Standard I4XX.6.4.5 proposed by the Applicant, but was signalled as being opposed by the Council:
 - (5) *The on-going protection of the SEA via an appropriate legal mechanism can be recognised as providing environmental benefits relating to climate change resilience, carbon sequestration, permeable areas and urban heat management.*
94. Mr Reaburn in his reply statement opposed this clause on the basis that it would provide for the SEA to be used as an offset, in relation to the proposed 'Deep Soil' standard in PC78. In his opinion this would be inconsistent with the approach within the AUP(OP), being to consider mitigation ahead of offsetting, and also relates to a proposed standard that may change through submissions on PC78.

⁵⁷ Applicant reply, EV21A

95. This addition was referred to in Mr Braggins' reply memorandum as relating inter alia to Policy 2 "*relating to encouraging the legal protection of vegetation within the SEA*".⁵⁸ He submitted that the AUP(OP) already "*includes provision for the benefit of legal protection of SEA areas to justify rural lots, so the AUP already includes precedent for having provisions to incentivise legal protection of SEA areas*".⁵⁹
96. We note that, to some extent, this intent was already provided for by Standard I4XX.6.4.5(4)(e), which required buffer planting to be legally protected and maintained to establishment for a period of five years. However, on further review we interpret that clause to require legal protection for just the buffer planting and not the SEA as a whole. As an associated matter, we also consider that Standard I4XX.6.4.5(3) requires an amendment to reflect that the buffer will only apply to the area of SEA that has not been affected by the development of a local road under Note 2 to Standard I4XX.6.4.2.1 (if that option is pursued through a resource consent application).
97. While any reference to the proposed Deep Soil standard and PC78 has been removed from the proposed Precinct provisions, we remain unconvinced as to the need for the identification within Standard I4XX.6.4.5 of the environmental benefits of the SEA as a possible future offsetting factor. We have determined that the subject bush merits protection as a SEA on its own terms and given the enabling nature of the zoning for the remainder of the plan change area we are of the view that there is no requirement to provide for potential offsetting of this SEA as part of any future development proposal.
98. The clause originally in question, I4XX.6.4.5(5), has therefore been reworded to give effect to Policy 2, but in a way that incorporates both the SEA and the buffer and on a perpetual basis, and separately to the requirements for the establishment of the buffer (and maintenance thereof) under I4XX.6.4.5(4)(e).

Extent of buffer, if any

99. Having determined that the Precinct plan is to include identification of the existing area of bush as SEA, we also acknowledge, as set out above, that the eventual area of bush to be retained may be reduced by a not insignificant amount, depending on the eventual road and batter design adopted. The further question and matter of contention that arises is whether the SEA overlay should also incorporate a buffer component. The original form that such a buffer could take was described as a 5m set-back, as adopted in PC74.
100. Mr Ross' rebuttal evidence advised of his opposition to a provision requiring a 5m buffer for the SEA, on the basis that it is not scientifically based and is not a standard requirement of the AUP(OP) for SEAs.⁶⁰

⁵⁸ Ibid, at [3.1]

⁵⁹ Ibid, at [11.5]

⁶⁰ Ross, EV9 at 5.2, by reference to Delaney, EV8 at [9.7]

101. Mr Reaburn's s.42A Addendum report advised that this concern had been responded to by Ms Ahlstrom, who commented that while the 5m buffer is not, strictly speaking, scientifically based, "*that is the situation that applies with any arbitrary buffer*". It was Ms Ahlstrom's view that a 5m buffer would provide ecological benefits, stating that:⁶¹

It is my understanding that this width is a trade-off between providing a buffer and not reducing the areas available for development. The larger the buffer, the more benefit it will provide to the existing SEA. However, a five-metre buffer has merit and will provide benefits to the SEA on site.

102. Mr Reaburn also highlighted that a 5m buffer was (ultimately) agreed between the experts involved in PC74, in similar circumstances (and we note formed part of this Panel's decision on that plan change). He acknowledged that while a 5m buffer is not a standard requirement for SEAs, "*it is the nature of Precinct provisions that there will be provisions that are bespoke to the precinct area*". On the basis of Ms Ahlstrom's views, Mr Reaburn continued to support this provision.⁶²
103. Mr Delaney did not support provision for a 5m buffer, stating that this would not be the most effective tool to mitigate a potential increase in edge effects (such as an increased abundance of pest plant species), and that other measures such as weed control would be likely to be more effective.⁶³
104. We note on this point that while active weed management within the SEA would no doubt be beneficial, no measures were advanced within the plan change to indicate how such weed control would be implemented, or where responsibility for this control would lie.
105. Mr Braggins' reply sought to provide some context to the potential area of land in question, advising that the SEA perimeter (excluding the interface to Ngahere Road) is approximately 500 - 550m, resulting in a buffer area of 2,500 - 2,750m².⁶⁴
106. As further context, we observe the larger figure of 2,750m² equates to just 0.9% of the overall site, while provision for a local road through the bush (as illustrated in EV21A) would reduce the perimeter dimension by approximately 50%, and the area of a buffer to 1,250 - 1,375m².
107. Through the hearing reference was made to an alternative 6m special yard that includes 3m of planting and 3m of space excluding buildings which could be used for outdoor living space etc, as adopted in Plan Change 40 (Warkworth - Clayden Road) (**PC40**). This approach was incorporated into the Council's proposed Version 6A of the Precinct provisions as a new standard I4XX.6.5 'Special Yard Adjoining Significant Ecological Area' as a replacement to the 5m buffer proposed in s.42A report:

⁶¹ Ahlstrom, EV11B at [7]

⁶² Reaburn, EV11 at [32]

⁶³ Delaney, EV8 at [9.7]

⁶⁴ Applicant reply, EV21 at [10.2]

Purpose

- to provide a buffer adjacent to areas identified as Significant Ecological Area (SEA).

(1) A building or parts of a building must be set back from the SEA boundary by 6m.

(2) A 3m wide strip measured from the boundary of the SEA (except where the SEA adjoins a road) shall be planted with indigenous vegetation that attain a height of at least 5m when mature.

(3) Where the 3m wide strip of the Special Yard is in private ownership it shall be legally protected by a covenant or consent notice providing for the maintenance and protection of the landscaped area, the prevention of dumping of rubbish and garden waste, and the management of noxious weeds.

Note: The SEA buffer may be utilised for establishing compliance with other rules of the AUP to the extent that the relevant requirements are met, such as but not limited to landscaping and impervious surfaces

108. Mr Braggins' reply advised that this approach has been considered in order "to address the inability to provide a buffer around road boundaries (e.g., Ngahere Road), and the difficulty arising if land subject to a covenant is to be vested, see ss 238 and 239 RMA".⁶⁵
109. The issues that Mr Braggins saw with respect to a buffer or yard requirement are summarised as follows:⁶⁶
- Mr Delaney's evidence was that small buffer areas for smaller parcels of bush have not been shown to achieve a noticeable ecological benefit.
 - The bush area in question has been surviving without a buffer for an extended period of time, although it was acknowledged that establishing the road, and possibly housing will have new effects on the bush.
 - For PC40, a buffer seems to have been proposed initially by the applicant's ecologist, but no source establishing the efficacy of such a recommendation seems to have been provided.
 - A buffer would also be inconsistent with Chapter A of the AUP(OP), particularly where no change to a SEA boundary (i.e., where buffer effects already occur) is proposed and there is nothing particularly special about the SEA which would justify provisions different to the standard provisions, noting that the SEA applies from the tree canopy – resulting in a separation distance from the edge of the SEA to the tree trunks.

⁶⁵ Ibid, at [10.3]

⁶⁶ Ibid, at [10.4] – [10.6]

- (e) The desire for a buffer does not appear qualified, other than it has been applied elsewhere (e.g., PC74). On this basis, it is the Applicant's opinion that if required, this can be better achieved through the use of private yard planting / setback controls via a special yard.
110. We consider that the Council's approach, and the evidence of Ms Ahlstrom, is to be preferred in this regard, but on the basis of the proposed 5m yard discussed in her addendum memorandum (rather than the approach used in PC40). We have observed a lack of understorey in the existing bush and consider that the implementation of a 5m planted buffer (excluding any boundary to a road), consistent with the approach adopted nearby as part of PC74, will provide some ecological benefits to that area of bush to be retained as part of any future development or subdivision proposal. This also responds to the potential effects acknowledged in the Applicant's reply associated with a potential new road or housing immediately adjacent to the bush.

Timing of road widening protection

111. An area of contention in respect of the proposed transport provisions was in respect to the confirmation of the status of Golding Road as an arterial road or a collector. The submission by AT sought provisions which provide for the future Pukekohe arterial network, and this was addressed through proposed standard I4XX.6.4.7 (Road Widening Setback along Golding Road) by requiring a 2m setback in which no buildings, structures or parts of a building may be constructed along the Golding Road frontage.
112. As observed in Mr Ashton's legal submissions for AT:⁶⁷

The resource management issue that this standard addresses is providing for the potential future required widening of Golding Road as an arterial road in circumstances where a private plan change is sought prior to an arterial road designation or notice of requirement (NoR) confirmed.

113. Mr Braggins' reply submissions set out the issue in the following terms:⁶⁸

The Applicant understands AC and AT's desire to protect the ability to establish Golding Road as an arterial. This plan change can only achieve that outcome to a limited extent because it does not apply to the full length of Golding Road adjoining the wider [PC76] area (due to multiple owners fronting Golding Road), nor does it apply to both sides of Golding Road, nor the full length to the PC74 area. Therefore, unless AT takes prompt action (by way of a designation), it will not be 'protecting' this potential future arterial (AT is presently consulting on that plan).

⁶⁷ AT submissions, EV10 at [3.5]

⁶⁸ Applicant reply, EV21 at [6.2]

114. Mr Ross' evidence was that certainty needs to be provided, with inclusion of a date by which AT must decide on the status of the road, with this being proposed in the relevant provisions as 1 February 2024.
115. Mr Reaburn's s.42A Addendum report advised that it was his experience that setting dates in plan provisions "*almost invariably fails because there are many variables which affect the achievement of specified dates*".⁶⁹ He therefore supported two options, being simply applying an arterial road status for Golding Road, or including wording within the proposed road widening standard (I4XX.6.4.7) that provides for the set-back standard to not apply "*if and when Auckland Transport advises that Golding Road will have collector road status only*".
116. The evidence of Chris Freke for AT advised of his preference that the provisions relating to Golding Road are drafted so that these apply unless AT advises that Golding Road will have collector road status only, and so supported Mr Reaburn's position in this regard. He opposed the sunset date proposed by Mr Ross, advising that:⁷⁰

The Pukekohe arterial NoR's are a package and need to go through a number of internal and external approval processes including a business case which requires endorsement by both the AT board and Waka Kotahi in their capacity as future co funder. Past experience indicates that this can sometimes be an iterative and lengthy process which is dependent on available Board dates. Setting a date therefor risks the protection of the future Pukekohe arterial network if NoRs are not lodged by the nominated lapse date.

117. Mr Freke further noted that similar setback arterial provisions have been included in Plan Changes 52, 58, 69 and 74 (and possibly others) without any sunset date.⁷¹ The Panel was not, however, presented with a detailed comparison of recent plan changes in the Pukekohe-Paerata or Drury areas, including with respect to the current and potential status of adjacent roads, for this observation to be sufficiently persuasive. We can say that in the case of PC74, the requirement for the adjacent section of Golding Road to be upgraded to an urban collector standard (per I4XX.6.1.1(T5)) was not a matter of contention, with the focus of evidence being in respect of its formation north of Royal Doulton Drive (i.e., north of the plan change area). That is consistent with the identification of that part of Golding Road adjacent to the PC76 area forming part of the 'Pukekohe South East Arterial', up to Royal Doulton Drive, as shown in the Indicative Strategic Transport Network map included in the evidence of Ms Absil-Couzins.⁷²
118. Mr Ashton's submissions stated that unless AT confirms collector road status for Golding Road (adjacent to the plan change area), "*the default position should apply that Golding Road will be an arterial*", as this would best give effect "*to the higher order provisions that require development, especially that associated with growth in*

⁶⁹ Reaburn, EV11 at [14]

⁷⁰ Freke, EV10B at [16]

⁷¹ Ibid, at [17]

⁷² Absil-Couzins, EV10A at [7.4] and Figure 1

greenfield areas, to be integrated and co-ordinated with the provision of infrastructure and the extension of networks".⁷³ As previously noted, however, Mr Ashton submitted that if some form of lapse date to confirm an arterial status is considered warranted by this Panel, then 1 February 2024 "is simply far too early", but offered that "if a lapse date were to be included, then 30 January 2026 would be more appropriate".

119. This proposal was adopted by Mr Braggins on behalf of the Applicant prior to the adjournment of the hearing. However, noting that AT's suggestion of a later date was its least favoured option, Mr Braggins provided further analysis of the provisions as set out in the s.42A report in his reply submissions as follows:

- (a) *They imposed a restriction on the landowner for a purpose connected to a future notice of requirement to provide infrastructure associated with a wider demand for services (an arterial road), but **without** any provision for compensation or for AT to fund their share of the work required.*
- (b) *That approach is inconsistent with even AT's evidence, see Ms Absil-Couzins evidence at paragraph 8.3 where she says that collector and local roads are to be constructed by developers, but in relation to arterials only some of the construction is required (e.g. collector carriageway); i.e. increased road width and carriageway width is to be paid by AT.*
- (c) *Mr Freke at paragraph 6.3(c) indicated that Golding Road is planned to accommodate 15,000 – 18,000 VPD, i.e. much more traffic than is generated by the plan change – see page 20 of the ITA which predicts the daily peak private car trips at 6,000 per day, only a portion of which will use Golding Road).*

120. Having regard to all of the above evidence and submissions, we have reached a view that the situation with respect to Golding Road is different to that for PC74 and warrants its own particular response. We consider that setting a date of 30 January 2026 for AT to confirm its intention, by way of notification of a notice of requirement, is an appropriate balance between the need for some certainty for the Applicant and providing sufficient time for AT to complete its further studies and funding arrangements and prepare its NOR. We have therefore adopted the wording of Policy I4XX.3(5)(a) and Standard I4XX.6.4.7 as set out in Version 6A as follows:

Policy I4XX.3(5)(a)

- (viii) *~~future proofing~~ providing for East Street's role as an arterial and the possibility that Golding Road will be developed as an aArterial if Auckland Transport decides to do so before 30 January ~~2024~~2026, through setbacks and vehicle access restrictions for*

⁷³ AT submissions, EV10 at [3.8]

sites adjoining Golding Road and road and vehicle access restrictions to East Street.

Standard I4XX.6.4.7 – Road Widening Setback along Golding Road

Purpose:

- To provide for the potential future required widening of Golding Road as an arterial road if Auckland Transport issues a notice of requirement to do so prior to ~~1 February 2024~~ 30 January 2026.
 - (1) ~~Until 1 February 2024~~ 30 January 2026 a 2m-wide road widening setback must be provided along that part of the frontage of the land adjoining Golding Road.⁷⁴
 - (2) The setback must be measured from the legal road boundary that existed as at 1 February 2022. No buildings, structures or parts of a building shall be constructed within this 2m wide setback, prior to ~~1 February 2024~~ 30 January 2026 except where such buildings or structures are intended to be vested in Auckland Council.

This standard shall not apply if and when Auckland Transport advises that Golding Road will have collector road status only.

121. An associated matter of contention was suggested by Mr Braggins in his reply with respect to AT's preference for a combined cycleway/walkway along Birch Road from the PC76 area to the train station.⁷⁵ The Panel notes that the specific plan provisions relating to this road and other frontage upgrades were agreed within the JWSs and Mr Braggins states that the Applicant relied on those provisions in the preparation of its evidence. While the Panel questioned aspects of those upgrades during the hearing, it accepts that no expert evidence was presented in dispute with the JWS and the Panel confirms that those provisions are appropriate.
122. The question posed with respect to Golding Road (in addition to the question of the timing of upgrades) was the extent of control that the Applicant has over this road (being 205m over a frontage length of 600m). The issue raised in this regard related the changes set out in I4XX.6.4.2 (Transport), with the underlined wording set out below being opposed by the Applicant:

Note 1: Development relevant to any of the Standards T2 to T8 only apply to the section of the road adjacent to the development or subdivision area. The effects of any gaps in frontage upgrades on active mode connectivity or safety will be considered under matter of discretion I44X.7(4) and the assessment criteria in I44X.7.2(4)(g).

⁷⁴ We have amended the date from 1 February 2026 proposed in Version 6A to 30 January 2026 for consistency

⁷⁵ Applicant reply, EV21 at [6.6]

120. Mr Braggins advised that the Applicant's concern with the above wording was that:⁷⁶

AT's further proposed changes to the precinct provisions are an attempt (or will have the effect of) requiring it to upgrade all of the frontage of Golding [Road] in circumstances where:

- (a) the Applicant has limited control over the Golding Road frontage; and*
- (b) the Applicant will be providing the east-west connector road (which will have provision for cyclists) and the stream edge road (which also has provision for cyclists)*
- (c) the collector and park edge road together provide a good connection through to East St; see the Precinct Plan and Table I44X.6.4.2.1 Transport Infrastructure Requirements: note 1 and matter of discretion I44X.7.(4)(a) and assessment criterion I44X.7.2.(4)(g).*

121. We have formed a view that the Applicant's concerns in respect of these provisions appear to be overstated. While the Applicant presently has control over only a third of the Golding Road frontage, the plan change area applies to the whole of the frontage, save for that aspect owned by the Council (adjacent to the intersection with East Street). From our reading of the proposed provisions, they are clear that development under Standards (T2) to (T8) "*only apply to the section of road adjacent to the development or subdivision area*". That area may or may not abut the full length of Golding Road adjacent to the plan change area. If it does not, then the note is also clear that the effect of resulting gaps on connectivity and safety will be considered under the relevant matter of discretion and associated assessment criteria. Matter of discretion I4XX.7(4) includes:

- (a) Transport including development of an integrated road network, road(s), connections with neighbouring sites, access, walking and cycling networks and infrastructure, connections to the existing pedestrian and/or cycle connections including those associated with the Pukekohe train station, design and sequencing of upgrades to the existing road network, and traffic generation.*

122. In the Panel's view, the wording of the standard anticipates that gaps in connectivity may arise, and this matter of discretion would require an applicant to consider how its provision of infrastructure will integrate with current and future connections. We do not read these provisions as providing a basis for AT to seek that an applicant complete an upgrade of additional sections of the Golding Road frontage in a manner that is contrary to the express wording of the standard(s).

⁷⁶ Ibid, at [6.9]

Decisions on submissions

123. It is also necessary for us to set out our decisions with respect to the submissions received on the plan change. In terms of the particular topics raised in submissions (but were not the subject of evidence at the hearing), we adopt the assessment provided by Mr Reaburn in his s.42A report and addendum, and the comments provided in Mr Braggins' opening submissions. With reference to those submissions, we agree that:
- (a) Based on the relevant caselaw, those submissions that seek to extend the boundaries of PC76 beyond the site are not 'on' the plan change and are therefore 'out of scope'. The relief sought by those submissions would potentially amend the AUP(OP) without real opportunity for participation by all those affected and raise matters that would need to have been addressed in a s.32 evaluation (but have not been). It is therefore not necessary (or permissible) for the Panel to consider those submissions (or the relevant aspect of them) further.⁷⁷
 - (b) The Amendment Act requires (and provides the rationale for) the site to be rezoned MHU in accordance with PC76, not MHS. Given the mandatory nature of the Amendment Act's requirements, the Panel does not have scope to rezone the site to MHS rather than MHU, even if we considered that it may be appropriate to do so.⁷⁸
124. We have set out our decision on the submissions, and the relief sought in those submissions, at **Attachment 1** and these are based our findings set out above in respect of those matters addressed at the hearing, and our overall decision to approve the plan change. For the purposes of our Attachment 1, and in accordance with cl.10(2) of the RMA, we have grouped the submissions together under the headings that were used in the s.42A report for consistency (and in the same order).
125. We also highlight in this regard that further submissions can only support or oppose an initial submission. Our decisions on the further submissions reflect our decisions on those primary submissions having regard, of course, to any relevant new material provided in that further submission. For example, if a further submission supported a submission(s) that opposes the plan change and we have recommended that the initial submission(s) be rejected, then it follows that the further submission is also rejected.
126. We also note that, at the time of preparing and finalising this decision, the Auckland region had been affected by an unusually severe rain event (27 January 2023) and the more widespread effects of further rain and floods associated with Cyclone Gabrielle (13/14 February 2023). While geotechnical stability and the provisions for flood mitigation were not matters of contention at the hearing (although the latter was indirectly the subject of submissions relating to the provision of infrastructure⁷⁹),

⁷⁷ Applicant opening submissions, EV1 at [13.7]

⁷⁸ *Ibid*, at [3.20]

⁷⁹ Refer submissions 7.1, 11.2 and 12.1

the plan change area is affected by overland flow paths, flood zones and areas of steeper topography, and so we have undertaken a further review of the Applicant's (and Council/Healthy Waters) uncontested evidence with respect to these matters.⁸⁰

127. Mr Blackbourne's evidence in respect of flooding was that:

5.10 The modelling found that the increase in proposed impervious cover can be offset by retention tanks, proposed drainage reserve areas, and communal wetlands in order to increase water storage so that neighbouring properties will have no new or additional flooding and that there will be no increased risk within the development site.

5.11 The TuFlow model was sent to Healthy Waters who have completed the review and confirmed their satisfaction.

5.12 All buildings are proposed to be placed outside of the 1% AEP flood extent, with building levels set to ensure required freeboard is provided for each dwelling.

128. The Precinct Plan also identifies that the overland flow paths and flood zones will accommodate a communal wetland, drainage reserve, stream/riparian areas and a potential future park, as well as the northern extent of the SEA. These areas will not provide for residential development.

129. Bruce Green's evidence for the Applicant in respect of geotechnical matters and in terms of potential natural hazards was that:⁸¹

No natural geotechnical hazards were identified that are considered an undue impediment to subdivision/construction (respectively) or that cannot be reasonably addressed by typical engineering design and construction...

130. Accordingly, the Panel records that it is satisfied that the plan change will not result in nor exacerbate any known hazards with respect to site stability and flooding, and that appropriate provision for these matters (including with respect to s.106 of the RMA) can be made as part of the future consenting and development stages.

Findings with respect to Part 2

131. For all of the reasons set out in this decision, we are also satisfied the matters set out in ss.6, 7 and 8 of the RMA have been addressed. PC76 and its provisions, as amended, have recognised and provided for, have had particular regard to and taken into account those relevant ss.6, 7 and 8 matters.

132. In terms of s.5 of the RMA, it is our finding that the provisions of PC76 are consistent with, and are the most appropriate way, to achieve the purpose of the RMA. PC76 will enable the efficient development of the site for residential activities while also

⁸⁰ Eseta Maka-Fonokalafi (Healthy Waters, Agenda pp167-171 and Blackbourne, EV7 at [5.8]-[5.12])

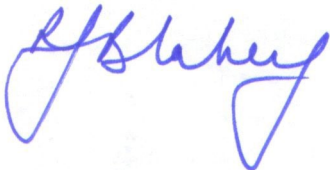
⁸¹ Green, EIC at [5.11]

protecting certain existing ecological and hydrological values as well as avoiding, remedying, or mitigating any adverse effects on the environment.

133. Having considered all the evidence and relevant background documents, we are satisfied, overall, that PC76 has been developed in accordance with the relevant statutory and policy matters with regard to ss.32 and 32AA and Part 2 of the RMA. The plan change will clearly assist the Council in its effective administration of the AUP(OP).

DECISION

- I. That, pursuant to Schedule 1, clause 10 of the Resource Management Act 1991, Proposed Plan Change 76 to the Auckland Unitary Plan (Operative in Part) be **approved**, generally on the basis of Version 6A of the Plan Change and associated maps as provided with the Applicant's reply, subject to those amendments that we have described in this decision.
- II. Submissions on the plan change are accepted and rejected in accordance with Attachment 1 to this decision. In general, these decisions follow the recommendations set out in the Council's s.42A report, except as otherwise identified in the joint witness conferencing statements and our decision above in relation to the matters in contention.
- III. In addition to the reasons set out above, the overall reasons for the decision are that Plan Change 76:
 - (a) will assist the Council in achieving the purpose of the RMA;
 - (b) is consistent with the Auckland Regional Policy Statement;
 - (c) is supported by necessary evaluation in accordance with s.32; and
 - (d) will help with the effective implementation of the Auckland Unitary Plan.



Richard Blakey

Chairperson



Bridget Gilbert



Vaughan Smith

16 February 2023

ATTACHMENTS

Attachment 1 Table of Decisions on Submissions

Attachment 2 I4XX Pukekohe East - Central Precinct

Attachment 3 I4XX Precinct Plan