

Variation 3 to Proposed Plan Change 59 Albany 10 Precinct

Variation 3 (VAR 3) to Proposed Plan
Change 59 (PC59) to the Auckland Unitary
Plan (Operative in part)

**SECTION 32; SECTION 77J and SECTION 77L
EVALUATION REPORT**

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Executive Summary

This combined s32, s77J and s77L report evaluates Variation 3 (**VAR3**) to Private Plan Change 59 (**PC59**) to the Auckland Unitary Plan (Operative in Part) (**AUP**). Variation 3 is required by Clause 34 of Schedule 12 of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021. This report also considers whether there are any relevant qualifying matters under s77I, O or L and whether these matters result in a need to make the MDRS or density requirements under Policy 3 of the NPS-UD less enabling of development.

Variation 3 is recommended as the most appropriate means of achieving the implementation of policies 3 and 4 of the NPS-US and the MDRS within PC59. In this regard, the Albany 10 Precinct is located just outside this defined walkable area, based on a measurement along main roads which would be the primary walking route. However, the PC59 proposed Residential – Terrace Housing and Apartment Building zoning remains feasible for the land given its location on the Albany Highway, an identified arterial road with public transport availability. The land is also proximate to open space and social facility opportunities.

There are four site-specific qualifying matters under s77I(j) and s77L, that have been identified within the provisions of the Albany 10 Precinct. These relate to the following:

- limiting building height within an area of the land identified to be used for open space;
- limiting development and/or the timing of development to ensure the safe and efficient movement of people in and out of the Precinct, particularly along Albany Highway and at peak traffic hours;
- precinct specific landscaped area, frontage landscaping and building setback standards to ensure adverse stormwater, amenity, traffic and associated traffic amenity effects are managed and mitigated.

These site-specific qualifying matters are considered appropriate as they mitigate the effects of the overall Precinct development on important transport infrastructure and the environment. Furthermore, they have been developed as part of a master planned development proposal with integrated planning provisions; and development capacity is still able to be maximised in accordance with the NPS-UD.

Introduction

This report is prepared as part of the evaluation required by Section 32 and Sections 77J and 77L of the Resource Management Act 1991 ('the Act') for proposed Variation 3 (**VAR3**) to Plan Change 59 (**PC59**) to the Auckland Unitary Plan (Operative in Part) (**AUP**).

Section 32 Evaluation

Section 32 of the Act requires that before adopting any objective, policy, rule or other method, the Council shall carry out an evaluation to examine:

- The extent to which each objective is the most appropriate way to achieve the purpose of the Act, and
- Whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objective.

The evaluation must also take into account:

- The benefits and costs of policies, rules, or other methods; and
- The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.

Section 77J Requirements

Section 77J Requirements in relation to an evaluation report requires that in addition to s32, the Council must consider, in relation to the proposed amendment to accommodate a qualifying matter the Council must:

- demonstrate why the Council considers:
 - that the area is subject to a qualifying matter; and
 - that the qualifying matter is incompatible with the level of development permitted by the Medium Density Residential Standards (**MDRS**) (as specified in Schedule 3A) or as provided for by policy 3 for that area; and
- assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity; and
- assess the costs and broader impacts of imposing those limits.

Furthermore, the evaluation report must include, in relation to the provisions implementing the MDRS:

- a description of how the provisions of the district plan allow the same or a greater level of development than the MDRS;
- a description of how modifications to the MDRS as applied to the relevant residential zones are limited to only those modifications necessary to accommodate qualifying matters and, in particular, how they apply to any spatial layers relating to overlays, precincts, specific controls, and development areas, including
 - any operative district plan spatial layers; and

- any new spatial layers proposed for the district plan.

The requirements above apply only in the area where Council is proposing to make an allowance for a qualifying matter.

The evaluation report may describe any modifications to the requirements of section 32 necessary to achieve the development objectives of the MDRS.

Section 77L requirements

Section 77L sets out further requirements about the application of s771(j) being qualifying matters that makes higher density, as provided for by the MDRS or Policy 3 of the NPS-UD, inappropriate in an area. Section 77L states that a matter is not a qualifying matter under s771(j) unless the s32 evaluation report also:

- (a) *identifies the specific characteristic that makes the level of development provided by the MDRS (as specified in Schedule 3A or as provided for by policy 3) inappropriate in the area; and*
- (b) *justifies why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD; and*
- (c) *includes a site-specific analysis that—*
 - (i) *Identifies the site to which the matter relates; and*
 - (ii) *evaluates the specific characteristic on a site-specific basis to determine the geographic area where intensification needs to be compatible with the specific matter; and*
 - (iii) *evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 while managing the specific characteristics.*

The evaluation approach

This section outlines how Variation 3 has been evaluated. The rest of this report will follow the evaluation approach described in the table below. In accordance with section 32(6) of the RMA and for the purposes of this report:

- i. the 'proposal' means Variation 3; and
- ii. the 'objectives' means the purpose of the MDRS and Variation 3; and
- iii. the 'provisions' means PC59 as amended by Variation 3.

Sections of this report	Evaluation Approach
Section 2: Issues and Objectives	This part of the report will explain the resource management issues and why there is a need to resolve them. It will also outline the purpose of the MDRS and Variation 3.

Section 3: The development and evaluation of options	In accordance with sections 32(1)(b) and (2) and sections 77J and L of the RMA, this section examines whether the options appropriately achieve the objectives of the AUP, the MDRS and the sustainable management purpose of the RMA. The options are assessed by their efficiency and effectiveness, costs, benefits and risks to resolve the RMA issue.
Section 4: Reasons for the proposed plan change	In accordance with subsections 32(1)(a) and (1)(b)(iii) of the RMA, this part of the report examines the extent to which the objectives of the proposal (Variation 3) are the most appropriate way to achieve the purpose of the RMA. This section outlines the reasons for Variation 3 and the scope of Variation 3.
Section 5: Statutory evaluation	This part of the report evaluates the relevance of Variation 3 to Part 2 (sections 5-8) and other relevant parts / sections of the RMA.
Section 6: National and local planning context	This part of the report evaluates the relevance of Variation 3 against the national and local planning context.
Section 7: Development of the plan change	This part of the report outlines the methodology and development of Variation 3, including the information used and consultation undertaken in preparing Variation 3. This section includes a summary of all advice received from iwi authorities on Variation 3 (as required by section 32(4)(a) of the RMA).
Section 8: Evaluation of provisions	This part of the report outlines the evaluation conducted on individual issues contained within Variation 3.
Section 9: Conclusion	This part of the report concludes that Variation 3 is the most efficient, effective and appropriate means of addressing the resource management issues identified.

This section 32 evaluation report will continue to be refined in response to any consultation feedback provided to the council, and in response to any new information received.

Section 2: Issues and Objectives

1. The Auckland Unitary Plan ('Unitary Plan') became operative on 15 November 2016. This included the Albany 9 Precinct and its sub-precinct C over the land at 461 and 473 Albany Highway, Albany. The Albany 9 Precinct and specifically sub-precinct C applied to the Massey University Albany Campus which was established in 1993. Albany 9, Sub-precinct C, had an underlying zoning of Residential – Mixed Housing Suburban Zone. The purpose of the Albany 9 Precinct was to enable tertiary education and the development and operation of a range of activities to cater for the diverse requirements of the student population, employees and visitors. Community use of the facilities was also provided for. The wider precinct also allowed for business, offices, research and laboratory facilities which are increasingly co-locating within these campuses, to the benefit of the tertiary institution, students and the economic development of Auckland. Furthermore, the precinct enabled new tertiary education facilities, new activities, access and physical connections within the site.
2. Plan Change 59 (**PC59**) is a private plan change requested by Bei Group Limited which sought to rezone 13.72 hectares of land at 461 and 473 Albany Highway from Residential – Mixed Housing Suburban Zone to Residential – Terrace Housing and Apartment Buildings Zone and to apply a new precinct, the Albany 10 Precinct, over the land to guide the form of subdivision, use and development on the land. The purpose of PC59 is to enable the comprehensive and integrated development of a new residential community of up to 1,800 homes, including a small community hub and a privately managed central park, within a unique landscape setting while protecting and enhancing the ecological, landscape and amenity values of the area.
3. A hearing for PC59 was held on 1 and 2 November 2021 and then adjourned pending written reply, which was received on 5 November 2021. The hearing was closed on 10 November 2021. The decision to approve PC59 was made on 28 February 2022. This decision has subsequently been appealed and the appeal is yet to be heard or decided.
4. The Resource Management Act 1991 ("**the Act**") was amended by the introduction of the Resource Management (Enabling Housing Supply and Other Matters Amendment Act) 2021 and came into effect on 21 December 2021, after the submission period for PC59 had ended and a hearing had been held, but before a decision on PC59 had been made.
5. As required by s34 of Schedule 12, Part 5 of the Transitional, savings, and related provisions of the Act, if a plan change was notified before the commencement date of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021, but the decisions on submissions had not been notified and the plan change had not been withdrawn and the MDRS were not incorporated through any proposed rules, then the Council must notify a variation to incorporate the MDRS as required by s77G(3) of the Act and give effect to policies 3 and 4 of the NPS-UD. Such a variation does not merge with the Council's intensification planning instrument (**IPI**) but must be processed at the same time as the IPI, using the Intensification Streamlined Planning Process (**ISPP**).

6. Furthermore, in accordance with Policy 4 of the NPS-UD the Council may make the MDRS and the relevant building height or density requirements under Policy 3 of the NPS-UD less enabling of development in relation to an area within a relevant residential zone or urban non-residential zone but only to the extent necessary to accommodate one or more of the qualifying matters listed in 77I or 77O or a specified, site-specific qualifying matter under s77L.
7. To give effect to the NPS-UD and the MDRS, PC59 requires variation including consideration of the zoning of land based on its locational characteristics, whether there are any relevant qualifying matters and amendments to the Albany 10 Precinct provisions. It is noted however, that the majority of the provisions of the new Albany 10 Precinct are consistent with or more lenient than the MDRS.

Section 3: Development of Options

Description of options

1. The range of options available to the Council are limited due to the directive nature of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021, the NPS-UD and MDRS. However, it is considered that the following three options best describe the range of actions open to Council. The following options were considered in the preparation of Variation 3.
2. Option 1 is the status quo or do nothing option. Under this option PC59 would not be varied and the requirements of the Resource Management (Enabling Housing Supply and Other Matters Amendment Act) 2021, NPS-UD and MDRS may not be sufficiently met. As a result, PC59 could not likely be adopted by Council.
3. Option 2 is to introduce Variation 3 as proposed. This would maintain the PC59 suggested rezoning of the land from Residential – Mixed Housing Suburban Zone to Residential – Terrace Housing and Apartment Buildings Zone, but would rely on the Council’s revised version of this zone as proposed by plan change 78 to give effect to the MDRS. This also recognises that the land is located outside of a walkable catchment as defined by the Council. Option 2 would also amend some of the PC59 new Albany 10 Precinct provisions, where necessary, to be consistent with and give effect to the MDRS. Furthermore, Option 2 identifies four site specific qualifying matters under s77I(j) and s77L, which result in a lesser development capacity than anticipated by the MDRS, relating to the following:
 - limiting building height within an area of the land identified to be used for open space;
 - limiting development and/or the timing of development to ensure the safe and efficient movement of people in and out of the Precinct, particularly along Albany Highway and at peak traffic hours;
 - precinct specific landscaped area, frontage landscaping and building setback standards.
4. Option 3 is to propose a variation that removes the Albany 10 Precinct entirely. The underlying zone would apply without the additional layer of provisions provided by the

Precinct. Under this option the change in the underlying zone would be managed through the IPI process for the AUP in general.

Evaluation of options

5. Table 1 below describes the criteria used to evaluate the options; and provides and evaluation of options.

Table 1

	Option 1: Status Quo (do nothing)	Option 2: VAR3 (preferred option)	Option 3: Delete Albany 10 Precinct
Appropriateness	This option is not considered to be appropriate as it is contrary to the direction within the RMA to notify a variation.	This option is considered to be appropriate as it adjusts the provisions within PC59 to allow for the implementation of the MDRS. At the same time, it retains the other parts of the Albany 10 Precinct that will assist in guiding development of land within the Precinct consistent with the existing provisions and MDRS.	This option will be appropriate in respect of the implementation of the MDRS. However, it is not considered to be appropriate to remove the guiding provisions of the Albany 10 Precinct which have been developed in order to achieve integrated and co-ordinated development that avoids and mitigates adverse effects, particularly traffic effects.
Effectiveness	This option is not likely to be effective as PC59 is unlikely to be able to be adopted by the Council given it would not give effect to the MDRS.	This option is likely to be effective in that it will give effects to the MDRS while retaining the other guiding provisions of PC59 as outlined in the Albany 10 Precinct.	This option will be effective in giving effect to the MDRS. Under this option the change in the underlying zone would be managed through the IPI process for the AUP in general. However, it will be less effective in providing other direction and guidance to achieve more integrated subdivision, land use and development as the Albany 10 Precinct otherwise would.
Efficiency	This option would not be efficient as it would not enable more intensive residential	This option is likely to be relatively efficient in the use of land as it incorporates the MDRS, subject to a limited number of site-specific	This option will result in the efficient use of land in accordance with the MDRS where the underlying zone would

	development of the land.	qualifying matters. It also provides for provides for additional Residential – Terrace Housing and Apartment Building zoned land, allowing for additional development.	be managed through the IPI process for the AUP in general. This option may result in some inefficiencies and adverse effects, particularly in terms of how the land is developed (i.e. building setbacks and heights and timing of development as they relate to transport and other infrastructure matters) if the guiding provisions within PC59 are removed.
Costs	<p>There are likely to be litigation and other costs associated with pursuing an option not provided for in the Act.</p> <p>The cost to the owners and developers of the land within the Precinct will be mainly around delays in achieving certainty and the inability to develop the land as they seek to.</p> <p>There are unlikely to be any significant environmental or amenity costs compared to the existing situation.</p>	<p>The amenity / environmental costs of this option will be commensurate with the costs imposed by the MDRS.</p> <p>The costs to land owners or developers will likely be reduced through reduced resource consent requirements and greater development opportunities.</p>	<p>The amenity / environmental costs of this option will be commensurate with the costs imposed by the MDRS.</p> <p>The costs to land developers will likely be reduced though reduced resource consent requirements and greater development opportunities.</p>
Benefits	The Council is required to review the land zoning through the IPI process; and it is likely that the zone will enable increased intensity / density over and above the current Residential -	This option has the benefit of retaining the integrated development and guiding provisions of the Albany 10 Precinct, but still giving effect to an increased development capacity as required by the	The incorporation of the MDRS will create the benefits of increased housing with fewer restrictions and resource consent costs. However this option would result in fewer benefits as a result of

	Mixed Housing Suburban zoning but not to the extent of the PC59 approved Residential – Terrace Housing and Apartment Buildings Zone intensity. A lesser intensity zoning may result in an amenity benefit for adjacent properties.	MDRS, albeit reduce in some areas due to a limited number of qualifying matters.	deleting the integrated and guiding provisions of the Precinct.
Risks	There are considerable legal risks with this option. The amendment to the Act require that the Council notifies a variation to give effect to the MDRS.	The risks of not proceeding with this option is that the MDRS and the identified, site-specific, qualifying matters will not be appropriately applied to the Precinct in accordance with the Act.	There is considerable risk in respect of this option that the benefits arising from the Precinct provisions would be lost.

6. In summary it is considered that Option 1, doing nothing, is not appropriate as this would not result in the implementation of the MDRS and carries considerable risk of litigation in respect of failure to implement the requirements of the Act.
7. Option 3, removing the Albany 10 Precinct is not favoured. While this will effectively implement the MDRS it will remove what can be described as the guiding provisions within the Precinct that will manage the effects of the higher intensity development envisaged for the land. This is likely to remove the considerable benefits of the master planning that has been undertaken and that underpins the Albany 10 Precinct.
8. The preferred option, Option 2, is a variation to PC59 that amends the plan change so that it enables a higher intensity zoning (Residential – Terrace Housing and Apartment Buildings Zone) outside a walkable catchment, which will incorporate the MDRS to the same or a more lenient level than the underlying zone may enable. Albeit, with a limited number of site-specific matters which will reduce building height around an identified open space area; and/or or increase building setbacks and landscape area requirements where in proximity to a busy transport route; and/or limit development until infrastructure and transport upgrades are provided to avoid adverse effects. But which enable the integrated development of the Precinct as intended and increased development capacity.

Section 5: Reasons for the proposed variation

1. Variation 3 seeks to amend PC59 as follows;

- (a) The land within the precinct continues to be zoned Residential – Terrace Housing and Apartment Buildings Zone but noting that the land is considered to be located outside of a walkable catchment. Furthermore, the Residential – Terrace Housing and Apartment Buildings Zone has the MDRS applied to via Council’s proposed IPI plan changes.
 - (b) Objectives and policies approved under PC59 are retained but amended to include reference to the Albany 10 Precinct being located outside of a walkable catchment. In addition, site-specific qualifying matters under s77L with regard to building height in proximity to an identified open space area, landscaped area, building setbacks, transportation and infrastructure matters are identified. Furthermore, amendments to text are recommended in the proposed revised Precinct text to ensure that the Precinct and the underlying Residential – Terrace Housing and Apartment Buildings Zone operate in conjunction with each other, and without conflicting provisions.
 - (c) Revised provisions enabling new buildings containing 1, 2 or 3 dwellings; external additional and alterations to existing buildings containing 1, 2 or 3 dwellings; and accessory buildings associated with 1, 2 or 3 dwellings complying with standards are proposed to give effect to MDRS requirements.
 - (d) Revised provisions, to ensure subdivision provisions in E38 Subdivision – Urban can be considered, as updated by Council’s plan changes to give effect to the MDRS, are proposed.
 - (e) Notification provisions for buildings containing dwellings are proposed to be revised to give effect to the MDRS requirements.
 - (f) The wording within standards is proposed to be revised to reflect and be consistent underlying zone re-wording and give effect to MDRS requirements.
 - (g) Standards which are considered to be site-specific qualifying matters under S77L (i.e. for building height, building setbacks, landscaped area, infrastructure and transport matters) are identified.
 - (h) Amendments to standards are also recommended to ensure these operate in conjunction with other parts of the AUP as intended.
 - (i) Amendments to matters of discretion and assessment criteria are recommended to give effect to the MDRS requirements.
 - (j) Special information requirements which are linked to the site-specific qualifying matters under S77L (i.e. for building height, building setbacks and landscaped area) are identified.
2. The reasons for Variation 3 relate to the requirement of the RMA, as amended by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021, to notify a variation to give effect to policies 3 and 4 of the NPS-UD and incorporate the MDRS in to PC59 zoning and provisions. As noted in the options assessment above, proposed Variation 3 does this, but with recognition of four site-specific qualifying matters identified under s77L and while retaining the guidance for more intensive development currently provided for in the Albany 10 Precinct provisions.

3. More specifically, Albany 10 Precinct Standard I554.6.1 Building height identifies a range of building heights. The Area 1 height limit is 11m plus 2.0m for roof form. This is more lenient than the MDRS building height requirement given the additional roof form portion of the standard. This height is applied to areas along the edges of the precinct to enable better integration of heights with adjoining areas and zones.
4. A limit on the height of buildings in Area 4 to 4.5m high plus 1.0m for roof form is also proposed. Area 4 is identified on Precinct Plan 1 as being a central park and open space area. The proposed building height does not comply with the MDRS 11m height requirement. In this instance, it is considered that the reduced height proposed in Area 4 can be considered a site-specific qualifying matter as the Albany 10 Precinct has undergone a master planning exercise in order to create an integrated and planned area, with options for recreation located within the centre of the precinct. The restricted building height enables a maximisation of sunlight and amenity to the Precinct Plan identified open space area. Recognising also that the open space area / Area 4 is not intended to be developed with dwellings. The reduced height in Area 4 does not adversely affect the additional development capacity that can be achieved over the remainder of the Precinct.
5. Standard I554.6.3 Maximum building coverage, impervious area and landscaping includes a minimum landscaped area requirement for detached to attached housing of 15% per individual lot. This is less than the 20% per developed site required by the MDRS. This reduced landscaped area standard is considered to be a site-specific qualifying matter as it is intended to assist with the management of stormwater infrastructure and amenity within the precinct. Furthermore, the Albany 10 Precinct has undergone a master planning exercise in order to create an integrated and planned area and even with a reduced landscaped area requirement the Precinct can still achieve a high level of development capacity, in accordance with the NPS-UD.
6. Standard I554.6.10 Special frontage, height and vehicle access restrictions contains requirements for building setbacks from front boundaries adjoining the Albany Highway and any new roads or commonly owned access ways within the Precinct. It also contains a requirement for a minimum number of storeys for a building and a requirement for frontage landscaping which are more restrictive than the MDRS building setback, landscaped area and building height requirements. The purpose of the standard is described as:

“To ensure a quality interface between buildings and key street edges to ensure streetscape and pedestrian amenity, to support the safe and efficient operation of the road network, and to maintain passive surveillance and outlook to the street.”
7. This standard is considered a site-specific qualifying matter and the more restrictive nature of the standard when compared to the MDRS provisions is considered justified noting that part of the is to function to support the safe and efficient operation of the road network, including the Albany highway which is an important arterial road. Furthermore, as outlined for other standards above, the Albany 10 Precinct has undergone a master planning exercise in order to create an integrated and planned area and even with a

reduced MDRS requirements the Precinct can still achieve a high level of development capacity, in accordance with the NPS-UD.

8. Standard I554.6.12 Transport assessment and upgrade thresholds requires the development of dwellings and non-residential activities to provide certain mitigation and/or roading upgrades at varying points in time, based on dwelling numbers and/or gross floor area. This is considered to be an important standard to be retained as it is intended to mitigate the transport and traffic effects of the Albany 10 Precinct's development. As such, it is considered to be an appropriate site-specific qualifying matter.
9. As the purpose of Variation 3 is to implement policies 3 and 4 of the NPS-UD and the MDRS in the Albany 10 Precinct and ensure the provisions integrate with the provisions of the wider AUP, as amended by Council's plan changes to give effect to the NPS-UD and MDRS. Any other changes to PC59 not achieving that purpose are likely to be out of scope.

Section 6: Statutory Evaluation under the RMA

1. Variation 3 is a requirement of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021. Clause 34 of Schedule 12 states that:

34 Status of partly completed proposed plan changes modifying relevant residential zone

- (1) *This clause applies to any plan change that is proposing or requesting changes to a relevant residential zone or a new residential zone if—*
 - (a) *the plan change has been notified by a specified territorial authority before the commencement date, but decisions on submissions on that plan change have not been notified in accordance with clause 10 of Schedule 1 before that date; and*
 - (b) *the plan change has not been withdrawn; and*
 - (c) *the MDRS is not already being incorporated through any proposed rules.*
- (2) *The specified territorial authority must notify a variation to the plan change at the same time that it notifies the IPI to incorporate the MDRS as required by section 77G(3).*
- (3) *However, the variation does not merge with the specified territorial authority's IPI but must be processed at the same time as the IPI, using the ISPP.*
- (4) *The variation must incorporate the MDRS into all areas within the scope of the plan change that are a relevant residential zone or a new residential zone.*
- (5) *The variation may only include those uses referred to in section 80G(1)(b).*

- (6) *The variation may be declined or withdrawn only if it is no longer required for the plan change to meet the requirements of section 77G(1).*
- (7) *The variation must use the ISPP to incorporate the MDRS.*
- (8) *For the avoidance of doubt,—*
 - (a) *section 86B does not apply to any rules notified in the variation:*
 - (b) *this clause applies only in relation to the district of a specified territorial authority.*

77J Requirements in relation to evaluation report

- (1) *This section applies if a territorial authority is amending its district plan (as provided for in section 77G).*
- (2) *The evaluation report from the specified territorial authority referred to in section 32 must, in addition to the matters in that section, consider the matters in subsections (3) and (4).*
- (3) *The evaluation report must, in relation to the proposed amendment to accommodate a qualifying matter,—*
 - (a) *demonstrate why the territorial authority considers—*
 - (i) *that the area is subject to a qualifying matter; and*
 - (ii) *that the qualifying matter is incompatible with the level of development permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 for that area; and*
 - (b) *assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity; and*
 - (c) *assess the costs and broader impacts of imposing those limits.*
- (4) *The evaluation report must include, in relation to the provisions implementing the MDRS,—*
 - (a) *a description of how the provisions of the district plan allow the same or a greater level of development than the MDRS:*
 - (b) *a description of how modifications to the MDRS as applied to the relevant residential zones are limited to only those modifications necessary to accommodate qualifying matters and, in particular, how they apply to any spatial layers relating to overlays, precincts, specific controls, and development areas, including—*
 - (i) *any operative district plan spatial layers; and*
 - (ii) *any new spatial layers proposed for the district plan.*

- (5) *The requirements set out in subsection (3)(a) apply only in the area for which the territorial authority is proposing to make an allowance for a qualifying matter.*
- (6) *The evaluation report may for the purposes of subsection (4) describe any modifications to the requirements of section 32 necessary to achieve the development objectives of the MDRS*
2. Submissions on PC59 had closed and a hearing had been held before the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 came into effect on 21 December 2021. However, a decision on PC59 had not been made. Therefore, PC59 meets the requirements of clause 34 and a variation must be prepared and notified accordingly. As also specified in clause 34(7), the process that Variation 3 to PC59 must go through is to use the Intensification Streamlined Planning Process (ISPP) at the same time as the Council's intensification planning instrument (IPI) which will introduce the MDRS into the AUP.
 3. As outlined in section 1 above, sections 77J of the Act requires the s32 report to demonstrate why the Council considers that an area is subject to a qualifying matter; that the qualifying matter is compatible with the level of development permitted by the MDRS or provided for by Policy 3 for the area; and assess the impact that limiting development capacity, building height or density will have on the provision of development capacity and assess the costs and broader impacts of imposing the limits. Furthermore, section 77L requires the s32 report to identify the specific characteristic and justify why that characteristic makes that level of development inappropriate given the national importance of urban development.
 4. As outlined in section 5 above, site-specific qualifying matters are identified within the Precinct that could otherwise reduce the application of the MDRS over varying parts of the Precinct. As also outlined in section 5 above, these site-specific qualifying matters are considered appropriate as they mitigate the effects of the overall Precinct development on important transport infrastructure and the environment; and they have been developed as part of a master planned development proposal with integrated planning provisions, where development capacity is still able to be maximised in accordance with the NPS-UD.
 5. Table 2, below, outlines the relevance of Variation 3 to PC59 to sections 5, 6, 7, and 8 of the Act.

Table 2

RMA 1991	Relevant section	Relevance to Variation 3
S5 Purpose	All	Variation 3 will assist people to provide additional housing while maintaining a level of residential amenity set out in the Act.
S6 Matters of national importance	All	Variation 3 does not impact on matters of national importance. However, the retention of some less enabling provisions is discussed in the assessment above.

S7 Other matters	(b) the efficient use and development of natural and physical resources: (c) the maintenance and enhancement of amenity values:	Variation 3 supports the efficient use of land as required by the MDRS. Variation 3 supports the residential amenity provided by the MDRS and in addition maintains the amenity as far as practicable existing within the PC59 / Albany 10 Precinct provisions.
S8 Treaty of Waitangi	All	TBC

6. It is considered that overall Variation 3 to PC59 is consistent with Part 2 of the Act as it recognises site-specific qualifying matters where relevant but incorporates the necessary MDRS changes.

Section 7: National and Regional Planning Context

1. Variation 3 has been assessed in respect of the following national and regional planning documents.

National Policy Statements

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

2. The NPSUD provides national direction on urban development. Of particular relevance are policies 3 and 4 which require Councils to enable prescribed levels of development throughout the city, by which MDRS is a means of implementing the policies, subject to the identification of qualifying matters under ss77I, O or L which may result in MDRS building height or density requirements being less enabling.
3. It is considered that aligning PC59 with the MDRS is consistent with giving effect to the NPSUD.

National Policy Statement for Freshwater Management 202 (NPS-FM)

4. Variation 3 does not amend any of the PC59 provisions relating to freshwater management. Variation 3 will continue to give effect to the NPS-FM.

New Zealand Coastal Policy Statement (NZCPS)

5. Variation 3 does not amend any of the PC59 provisions relating to stormwater management in terms of flow rates before being discharged into the Hauraki Gulf. Variation 3 will continue to give effect to the NZCPS.

Other Acts

6. Variation 3 will; be consistent with the Hauraki Gulf Marine Park Act.
7. The Waitakere Ranges Heritage Area Act is not relevant to the consideration of Variation 3.

Regional Documents

Auckland Plan

8. It is considered that Variation 3 is consistent with the Auckland Plan. In respect of providing for housing the plan contains directions to develop a quality compact urban form to accommodate Auckland's growth and accelerate the construction of homes that meet Aucklanders changing needs and preferences.

Auckland Regional Policy Statement (RPS)

9. The relevant objectives and policies of the RPS are set out and assessed in Table 3 below.

Table 3

RPS Chapter	Relevant objective/policy	Relevance to Variation 3
B2. Tāhuhu whakaruruhau ā-taone - Urban growth and form	Objective B2.2.1(1) A quality compact urban form that enables all of the following: (a) a higher-quality urban environment; (b) greater productivity and economic growth; (c) better use of existing infrastructure and efficient provision of new infrastructure; (d) improved and more effective public transport; (e) greater social and cultural vitality; (f) better maintenance of rural character and rural productivity; and (g) reduced adverse environmental effects.	The Albany 10 Precinct will continue to give effect to this objective. A more compact urban form will be enabled at higher residential densities as required by the MDRS.
	Objective B2.2.1(2) Urban growth is primarily accommodated within the urban area 2016 (as identified in Appendix 1A).	Variation 3 enables residential growth within the urban area.
	Objective B2.2.1(3) Sufficient development capacity and land supply is provided to accommodate residential, commercial, industrial growth and social facilities to support growth.	Variation 3 will provide more efficient use of the existing urban land resource.
	Policy B2.2.2 (4) (4) Promote urban growth and intensification within the urban area 2016 (as identified in Appendix 1A), enable urban growth and intensification within the Rural Urban Boundary, towns, and rural and coastal	Variation 3 enables residential growth within the urban area.

	towns and villages, and avoid urbanisation outside these areas.	
	<p>Objective B2.3.1 A quality built environment where subdivision, use and development do all of the following:</p> <p>(a) respond to the intrinsic qualities and physical characteristics of the site and area, including its setting;</p> <p>(b) reinforce the hierarchy of centres and corridors;</p> <p>(c) contribute to a diverse mix of choice and opportunity for people and communities;</p> <p>(d) maximise resource and infrastructure efficiency;</p> <p>(e) are capable of adapting to changing needs; and</p> <p>(f) respond and adapt to the effects of climate change.</p>	The particular aspects of the Albany 10 Precinct will be retained with the exception of those aspects required to be amended to implement the MDRS.
	Objective B2.4.1(1) Residential intensification supports a quality compact urban form.	A more compact urban form will be enabled at higher residential densities as required by the MDRS.
	Objective B2.4.1(2) Residential areas are attractive, healthy and safe with quality development that is in keeping with the planned built character of the area.	Development will be enabled in keeping with the MDRS.
	Objective B2.4.1(3) Land within and adjacent to centres and corridors or in close proximity to public transport and social facilities (including open space) or employment opportunities is the primary focus for residential intensification.	This location adjacent to the Albany Highway, but outside of a walkable catchment to the Albany Metropolitan Centre, is appropriate for the application of the MDRS in accordance with this objective.
	Objective B2.4.1(4) An increase in housing capacity and the range of housing choice which meets the varied needs and lifestyles of Auckland's diverse and growing population.	Variation 3 will provide more efficient use of the existing urban land resource.
	Policy B2.4.2(1) Provide a range of residential zones that enable different housing type	The range of residential zones is not proposed to be altered by Variation 3, however, the underlying Residential – Terrace Housing and Apartment Building Zone and the Albany 10 Precinct provisions, albeit with site-specific

		qualifying matters applied, will enable the implementation of the MDRS.
	Policy B2.4.2(3) Provide for medium residential intensities in area that are within moderate walking distance to centres, public transport, social facilities and open space.	The location of the land / Albany 10 Precinct is outside of walkable catchment to a Metropolitan Centre as identified in Council's IP plan change 78. However, the land is located adjacent to an identified arterial road with available public transport connections and has good proximity to public transport, social facilities and open space. As a result, the higher intensity Residential – Terrace Housing and Apartment Building Zone and the proposed revised Precinct with variable building heights are considered to be appropriate for the land.
	<p>Policy B2.4.2(5) Avoid intensification in areas:</p> <p>(a) where there are natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage or special character; or</p> <p>(b) that are subject to significant natural hazard risks;</p> <p>where such intensification is inconsistent with the protection of the scheduled natural or physical resources or with the avoidance or mitigation of the natural hazard risks.</p>	There are no scheduled areas within the land. The Precinct provisions recognise the relationship to the adjacent stream and significant ecological areas. The precinct provisions also take into consideration the need to manage stormwater and manage natural hazard risks.
	Policy B2.4.2(6) Ensure development is adequately serviced by existing infrastructure or is provided with infrastructure prior to or at the same time as residential intensification	The increased intensity of zoning and the application of the MDRS will increase demand for transport and other infrastructure. This has resulted in site-specific provisions relating to the timing of development and the need for traffic infrastructure upgrades; and for the need to manage stormwater. These are recognised as site-specific qualifying matters under s77L and proposed to be retained in Variation 3.
	Policy B2.4.2(8) Recognise and provide for existing and planned neighbourhood	The proposed zoning and Precinct provisions recognise that an increased intensity / density can be achieved on the land and that the existing character of the

	character through the use of place-based planning tools.	neighbourhood will change to align with the revised character planned under PC59 and Variation 3.
	Policy B2.4.2(9) Manage built form, design and development to achieve an attractive, healthy and safe environment that is in keeping with the descriptions set out in placed-based plan provisions.	The Albany 10 Precinct provisions, as amended, are in accordance with this policy.
	Policy B2.4.2(9) Enable a sufficient supply and diverse range of dwelling types and sizes that meet the housing needs of people and communities, including: (a) households on low to moderate incomes; and (b) people with special housing requirements.	The implementation the MDRS will enable an increase in the supply of housing.
B3. Ngā pūnaha hanganga, kawekawe me ngā pūngao - Infrastructure, transport and energy	B3.2.1(3) Development, operation, maintenance, and upgrading of infrastructure is enabled, while managing adverse effects on: (a) the quality of the environment and, in particular, natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage and special character; (b) the health and safety of communities and amenity values.	The increased intensity of zoning and the application of the MDRS will increase demand for transport and other infrastructure. This has resulted in site-specific provisions relating to the timing of development and the need for infrastructure upgrades; and for the need to manage stormwater. These are recognised as site-specific qualifying matters under s77L and are proposed to be retained in Variation 3.
	B3.2.1(4) The functional and operational needs of infrastructure are recognised.	
	B3.2.1(5) Infrastructure planning and land use planning are integrated to service growth efficiently.	
	B3.2.1(6) Infrastructure is protected from reverse sensitivity effects caused by incompatible subdivision, use and development.	
	B3.2.2(1) Enable the efficient development, operation, maintenance and upgrading of infrastructure.	

	B3.2.2(4) Avoid where practicable, or otherwise remedy or mitigate, adverse effects of subdivision, use and development on infrastructure.	
	<p>B3.3.1(1) Effective, efficient and safe transport that:</p> <ul style="list-style-type: none"> (a) supports the movement of people, goods and services; (b) integrates with and supports a quality compact urban form; (c) enables growth; (d) avoids, remedies or mitigates adverse effects on the quality of the environment and amenity values and the health and safety of people and communities; and (e) facilitates transport choices, recognises different trip characteristics and enables accessibility and mobility for all sectors of the community. 	These objectives and policies continue to be met by Variation 3, noting that site-specific provisions relating to the timing of development and the need for traffic infrastructure upgrades are retained as a site-specific qualifying matter under s77L to ensure adverse traffic effects are managed.
	B3.3.2(2) Enable the movement of people, goods and services and ensure accessibility to sites.	
	<p>B3.3.2(4) Ensure that transport infrastructure is designed, located and managed to:</p> <ul style="list-style-type: none"> (a) integrate with adjacent land uses, taking into account their current and planned use, intensity, scale, character and amenity; and (b) provide effective pedestrian and cycle connections. 	
	<p>B3.3.2(5) Improve the integration of land use and transport by:</p> <ul style="list-style-type: none"> (a) ensuring transport infrastructure is planned, funded and staged to integrate with urban growth; (b) encouraging land use development and patterns that reduce the rate of growth in demand for private vehicle trips, especially during peak periods; 	

	<p>(c) locating high trip-generating activities so that they can be efficiently served by key public transport services and routes and complement surrounding activities by supporting accessibility to a range of transport modes;</p> <p>(d) requiring proposals for high trip-generating activities which are not located in centres or on corridors or at public transport nodes to avoid, remedy or mitigate adverse effects on the transport network;</p> <p>(e) enabling the supply of parking and associated activities to reflect the demand while taking into account any adverse effects on the transport system; and</p> <p>(f) requiring activities adjacent to transport infrastructure to avoid, remedy or mitigate effects which may compromise the efficient and safe operation of such infrastructure.</p>	
	B3.3.2(6) Require activities sensitive to adverse effects from the operation of transport infrastructure to be located or designed to avoid, remedy or mitigate those potential adverse effects.	
B7. Toitū te whenua, toitū te taiao – Natural resources	B7.2.1(2) Indigenous biodiversity is maintained through protection, restoration and enhancement in areas where ecological values are degraded, or where development is occurring.	This policy continues to be met by Variation 3.
	<p>B7.4.2(1) Integrate the management of subdivision, use, development and coastal water and freshwater, by:</p> <p>(a) ensuring water supply, stormwater and wastewater infrastructure is adequately provided for in areas of growth; and</p> <p>(b) requiring catchment management planning as part of structure planning;</p> <p>(c) controlling the use of land and discharges to minimise the adverse</p>	These objectives and policies continue to be met by Variation 3.

	<p>effects of runoff on water and progressively reduce existing adverse effects where those water are degraded; and</p> <p>(d) avoiding development where it will significantly increase adverse effects on water, unless these adverse effects can be adequately mitigated.</p>	
	<p>B7.4.2(9) Manage stormwater by all of the following:</p> <p>(a) requiring subdivision, use and development to:</p> <p>(i) minimise the generation and discharge of contaminants; and</p> <p>(ii) minimise adverse effects on freshwater and coastal water and the capacity of the stormwater network;</p> <p>(b) adopting the best practicable option for every stormwater diversion and discharge; and</p> <p>(c) controlling the diversion and discharge of stormwater outside of areas serviced by a public stormwater network.</p>	

Section 8: Development of Variation

Methodology

1. This methodology section is about how Variation 3 was developed. As noted in the discussion above, Variation 3 is a direct requirement of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 and the requirement to incorporate the MDRS. As PC59 has just recently been heard and decided, the approach taken in developing this variation is to do what is necessary to implement the MDRS and no more.
2. This has involved reviewing PC59 and the Albany 10 Precinct provisions and making decisions on whether and how zoning and the Albany 10 Precinct provisions should be amended; and to identify if there are any qualifying matters applicable that would limit the density of development within the Albany 10 Precinct.

Information Used

1. Table 4 below lists the reports, documents, evidence, plan versions et al that have been used to assist with the development of Variation 3 to PC59.

Table 4

Name of document, report, plan	How did it inform the development of the plan change
PC59 Notification Documents	Provided assessment of matters of concern.
S42A Report for PC59	Provided assessment of matters of concern
PC59 Decision	Provided assessment of matters of concern

Section 9: Evaluation of provisions

1. As noted above Variation 3 has been developed in response to the requirements of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021. To this end Variation 3 does not aim to achieve any other purpose.
2. The main components of the variation relate to the identification of whether the Albany 10 Precinct is within or outside a walkable catchment; what zoning should apply to the land, whether there are any qualifying matters applicable; and what amendments to the Albany 10 Precinct provisions are required to give effect to MDRS requirements.
3. More specifically:
 - (a) In Council's IPI Plan Change 78 a walkable catchment is identified as 800m from a Metropolitan Centre. The Albany 10 Precinct is just outside this defined walkable area, based on a measurement along main roads which would be the primary walking route.
 - (b) With regard to zoning, the PC59 proposed Residential – Terrace Housing and Apartment Building zoning as approved under PC59 remains feasible for the land given its location on the Albany Highway, an identified arterial road with public transport availability. The land is also proximate to open space and social facility opportunities. The Council's IPI Plan Change also provides amendments to the underlying Residential – Terrace Housing and Apartment Building Zone to give effect to the MDRS; and the Albany 10 Precinct provisions are generally consistent with or more enabling than the MDRS, with four exception as outlined below.
 - (c) Four site-specific qualifying matters under s771(j) and s77L, have been identified on the land at 473 Albany Highway and within the provisions of the Albany 10 Precinct. These relate to the following:
 - limiting building height within an area of the land identified to be used for open space;
 - limiting development and/or the timing of development to ensure the safe and efficient movement of people in and out of the Precinct, particularly along Albany Highway and at peak traffic hours;
 - precinct specific landscaped area, frontage landscaping and building setback standards to ensure adverse stormwater, amenity, traffic and associated traffic amenity effects are managed and mitigated.

The specific precinct provisions and how they interact with the MDRS, as well as the justification for including them as a site-specific qualifying matter are outlined more fully in Section 5 above.

4. Overall, it is considered that the Residential – Terrace Housing and Apartment Buildings zoning approved under PC59 should be retained for the Albany 10 Precinct. Furthermore, it is considered that the Precinct provisions are generally consistent with or more enabling than the MDRS, with the exception of four matters, which can be considered to be site-specific qualifying matters and noting that the master planned and integrated nature of planning provisions proposed in the Albany 10 Precinct still ensure that development capacity is increased in accordance with the NPS-UD.

Consultation

1. In accordance with clause 3 of Schedule 1 of the Act, during the preparation of a proposed policy statement or plan, the local authority shall consult:
 - (a) *the Minister for the Environment; and*
 - (b) *those other Minister of the Crown who may be affected by the policy statement or plan; and*
 - (c) *local authorities who may be so affected; and*
 - (d) *the tangata whenua of the area who may be so affected, through iwi authorities; and*
 - (e) *any customary marine title group in the area.*

A local authority may consult anyone else during the preparation of a proposed policy statement or plan.

2. No community consultation has been specifically undertaken with regard to Variation 3.
3. For Variation 3 consultation with Mana whenua / iwi authorities is being undertaken in accordance with clauses 3B and 4A of Schedule 1 and s32(4A).
4. No other disciplines were consulted as Variation 3 is not considered to raise any specific technical matters.

Section 10: Conclusion

Overall, it is concluded that Variation 3 is the most appropriate means of achieving the implementation of policies 3 and 4 and the MDRS within PC59. Variation 3 is recommended as the most appropriate means of achieving the implementation of policies 3 and 4 of the NPS-US and the MDRS within PC59. In this regard, the Albany 10 Precinct is located just outside this defined walkable area, based on a measurement along main roads which would be the primary walking route. However, the PC59 proposed Residential – Terrace Housing and Apartment Building zoning remains feasible for the land given its location on the Albany Highway, an identified arterial road with public transport availability. The land is also proximate to open space and social facility opportunities.

There are four site-specific qualifying matters under s771(j) and s77L, that have been identified within the provisions of the Albany 10 Precinct. These relate to the following:

- limiting building height within an area of the land identified to be used for open space;

- limiting development and/or the timing of development to ensure the safe and efficient movement of people in and out of the Precinct, particularly along Albany Highway and at peak traffic hours;
- precinct specific landscaped area, frontage landscaping and building setback standards to ensure adverse stormwater, amenity, traffic and associated traffic amenity effects are managed and mitigated.

These site-specific qualifying matters are considered appropriate as they mitigate the effects of the overall Precinct development on important transport infrastructure and the environment. Furthermore, they have been developed as part of a master planned development proposal with integrated planning provisions; and development capacity is still able to be maximised in accordance with the NPS-UD.

List of Attachments

Attachment	Name of Attachment
A1	Albany 10 Precinct Provisions
A2	Zoning Plan

Attachment 1 – Albany 10 Precinct Provisions

Attachment 2 – Zoning Plan