

**IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV – 2017 – AKL

IN THE MATTER of the Local Government Act (Auckland Transitional Provisions) Act 2010 of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under section 156(3) of the Local Government (Auckland Transitional Provisions) Act 2010

AND

IN THE MATTER of Proposed Plan Hearing Topic 081 - Rezoning and Precincts (Geographic areas)

BETWEEN **C N BARBOUR FAMILY TRUST**

Appellant

AND **AUCKLAND COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT BY
C N BARBOUR FAMILY TRUST**

12 OCTOBER 2017

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CHAMBERS

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CN BARBOUR FAMILY TRUST (Barbour Trust) appeals against part of the decision of the Auckland Council (**Council**) in respect of the Auckland Unitary Plan (**Unitary Plan**).

1. The Independent Hearing Panel issued a recommendation, which was accepted by Council, that provided for an amended Precinct Plan (**Recommendation**). Relevant to the Barbour Trust, that amended Precinct Plan altered the alignment of certain key transport routes through the Precinct and amended their classification from collector to arterial. The Barbour Trust appeals this aspect of the Recommendation, including any incidental or consequential changes.
2. Another submitter sought judicial review of the Recommendation. The High Court issued its judgment on the judicial review application on 6 September 2017, setting aside the Recommendation in relation to the amended Redhills Precinct plan: *Bunnings Limited v The Auckland Unitary Plan Independent Hearing Panel* [2017] NZHC 2141 at [24] and [68].
3. A right of appeal to the Environment Court is now available under section 156(3) of the Local Government (Auckland Transitional Provisions) Act 2010. In terms of s 156(3)(c), the Barbour Trust will be unduly prejudiced by the inclusion of the amended Precinct Plan for the reasons set out in this appeal.
4. The Barbour Trust is not a trade competitor for the purpose of s 308D of the Resource Management Act 1991.

Grounds for appeal

5. The Barbour Trust's grounds for appeal are that the amended Redhills Precinct plan:
 - (a) will not promote the sustainable management of resources, will not achieve the purpose of the RMA, and is contrary to Part 2 and other provisions of the RMA;
 - (b) will not meet the reasonably foreseeable needs of future generations;
 - (c) does not manage the use of resources in a way that enables the community to provide for their social and economic well-being;
 - (d) does not represent an efficient use and development of natural and physical resources;
 - (e) does not avoid, remedy or mitigate the adverse effects on the environment; and
 - (f) does not represent the most appropriate way to achieve the objectives of the Unitary Plan in terms of section 32 of the RMA.

6. Without limiting the generality of the above, the specific grounds of appeal are set out below:
- (a) The Barbour Trust owns an extensively developed “lifestyle” property comprising 6.56 ha of land a dwelling and outbuildings at 156 Nixon Road, Taupaki. The Land is Zoned Countryside Environment under the notified Unitary Plan.
 - (b) The Barbour Trust and its immediate neighbors identified on the plans attached as **Appendix 5** own extensively developed lifestyle holdings that are longstanding family homes. Those families have been concerned as to how the urban zoning in the Redhills area would affect their properties and lifestyle amenity as they are now effectively at the front line of Auckland’s urban rural boundary. To this end they have monitored the Unitary Plan process and attended the various public consultation processes in relation to planning and infrastructure.
 - (c) The public position of Auckland Transport with regards future roading in the “North west” to date has been that roading options were at an early stage of analysis and thorough processes, including consultation and option/alignment, a thorough analysis would be undertaken prior to any roading solutions or alignments being further advanced.
 - (d) Relying on that commitment, when the “structure plan” for Redhills was submitted (**Appendix 1**) as part of the Unitary Plan process with indicative locations shown for collector roading they were accepted as being just that “indicative”. In the area of particular concern, Henwood Road was expected to be linked to Fred Taylor Drive to the East, and a new collector road was to intersect with Henwood Road.
 - (e) It was on this basis that neither the Barbour Trust nor any of the other adjacent residential neighbours participated in the hearing of the submissions on the Redhills Precinct.
 - (f) However, when the Unitary Plan Decision was released the Redhills Area had effectively been “live zoned” and correspondingly a precinct plan (**Appendix 2**) depicting a roading hierarchy and locations was proposed that differed significantly from that originally sought. In particular, the amended Precinct Plan reclassified the collector road to an arterial and changed its alignment moving its intersection eastward

along Henwood Road approximately 200m so that it is now directly in line with a number of established residential homes.

- (g) In making its decision to amend the road alignment and change its classification, the Independent Hearing Panel failed to identify the impacts of the revised precinct plan beyond the Precinct boundary, and the decision has effectively pre-empted the public consultation and submission process, and analysis, that was intended to inform the final alignment and classification. The new alignment has an immediate and direct impact on the underlying zoning pattern, as the arterial roads form logical zone boundaries within the precinct.
- (h) The amended alignment and classification of the (now) arterial roads:
 - (i) if confirmed in their present location, will to all intents and purposes define the future route of the arterial road to the north of Henwood Road;
 - (ii) has significantly prejudiced those landowners immediately adjacent to the Precinct to the north of Henwood Road, who now face the prospect of a major arterial road effectively terminating “on the boundary” of their property and in all likelihood severing their property in future;
 - (iii) has pre-empted the usual and appropriate consultation and submission process, and analysis, in order to define the best overall route of arterial roads; it is unrealistic to expect that the arterial road will permanently terminate at Henwood Road;
 - (iv) has not been supported by any overall assessment of alternative routes, or how the current route will ultimately link up with other arterial routes in the North West.

7. The Barbour Trust requests that the Precinct plan be amended so that the road alignment is returned to the location shown on the structure plan submitted as part of the Unitary Plan hearing process (**Appendix 1** attached). The amended alignment would:

- (a) Avoid an arterial road connecting immediately opposite dwellings, and remove the long uncertainty that such a connection would bring to those adjacent landowners;
- (b) Avoid the Arterial if constructed destroying or severely impacting 5 lifestyle properties unnecessarily

- (c) Provide a more cost effective roading corridor option for Auckland transport
 - (d) Enable the identification of the future alignment through largely undeveloped rural land to give certainty to residents
 - (e) Align the Arterial road with High Voltage power lines under which future urban development would not occur.
8. The impact of the revised alignment on the properties concerned is depicted on the plan (**Appendix 5**): Alignment A is that which would be anticipated under the plan as submitted, whilst Alignment B is the outcome under the Proposed Precinct Plan.

Relief sought

9. The Barbour Trust respectfully requests:
- (a) that the Redhills Precinct Plan is amended to revert back to that shown in the Structure Plan as shown in **Appendix 1**; or
 - (b) alternatively, that the Redhills Precinct Plan is amended so that the roading layout does not include an arterial (or other) road which terminates at Henwood Road in any location East of that depicted on the Redhills Structure Plan as shown in **Appendix 1**; and
 - (c) such consequential or related relief as may be necessary to give effect to its concerns;
 - (d) costs

Service

10. An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz. Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons.

Attachments

11. Copies of the following documents are attached to this notice:
- (a) The relevant parts of the Recommendation - Appendix 6
 - (b) The relevant parts of the Decision - Appendix 7

C N BARBOUR FAMILY TRUST, by its counsel Bal Matheson:



Signature:

BJ Matheson

Date:

12 October 2017

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TO:

The Registrar of the Environment Court at Auckland.

AND TO:

Auckland Council.

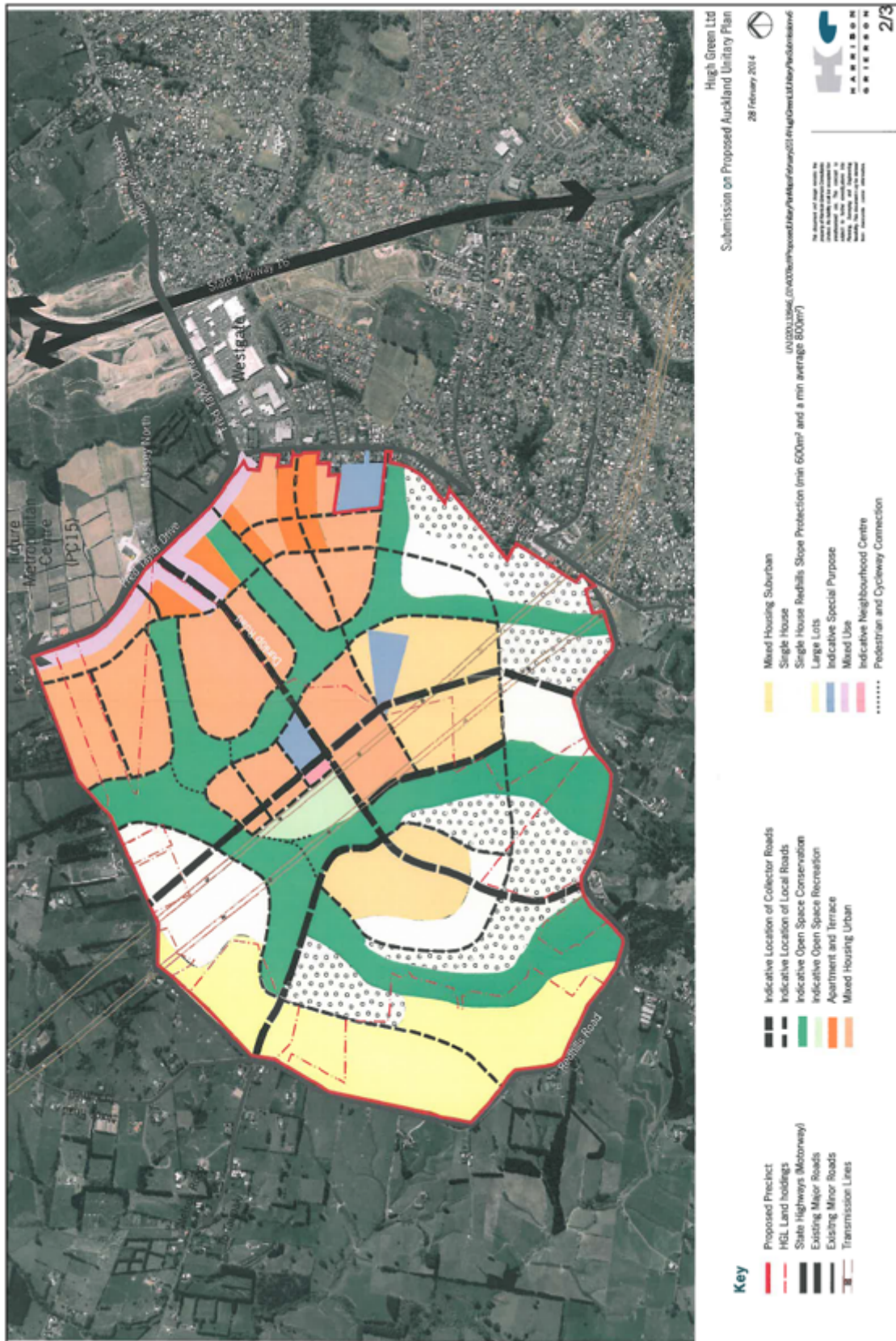
Advice to recipients of copy of notice of appeal*How to become a party to proceedings*

1. If you wish to be a party to the appeal, as per the requirements in Environment Court decision [2016] NZEnvC 153, within 15 working days after the period for lodging a notice of appeal ends you must:
 - (a) lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court by emailing unitaryplan.ecappeals@justice.govt.nz;
 - (b) serve copies of your notice on the Auckland Council on unitaryplan@aucklandcouncil.govt.nz; and
 - (c) serve copies of your notice on the appellant electronically.
2. Service on other parties is complete upon the Court uploading a copy of the notice onto the Environment Court's website.
3. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).
4. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

Advice

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

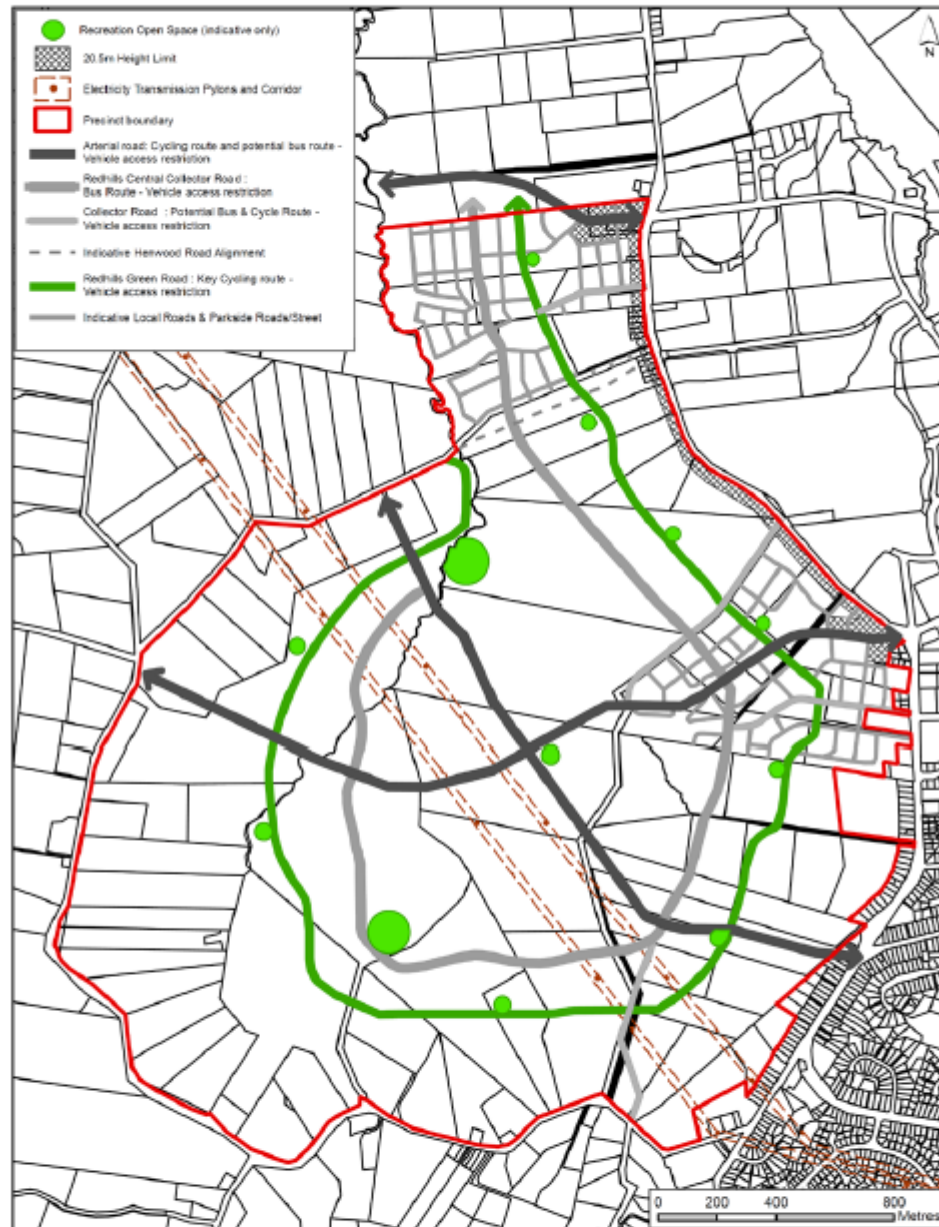
Appendix 1 Structure Plan as submitted



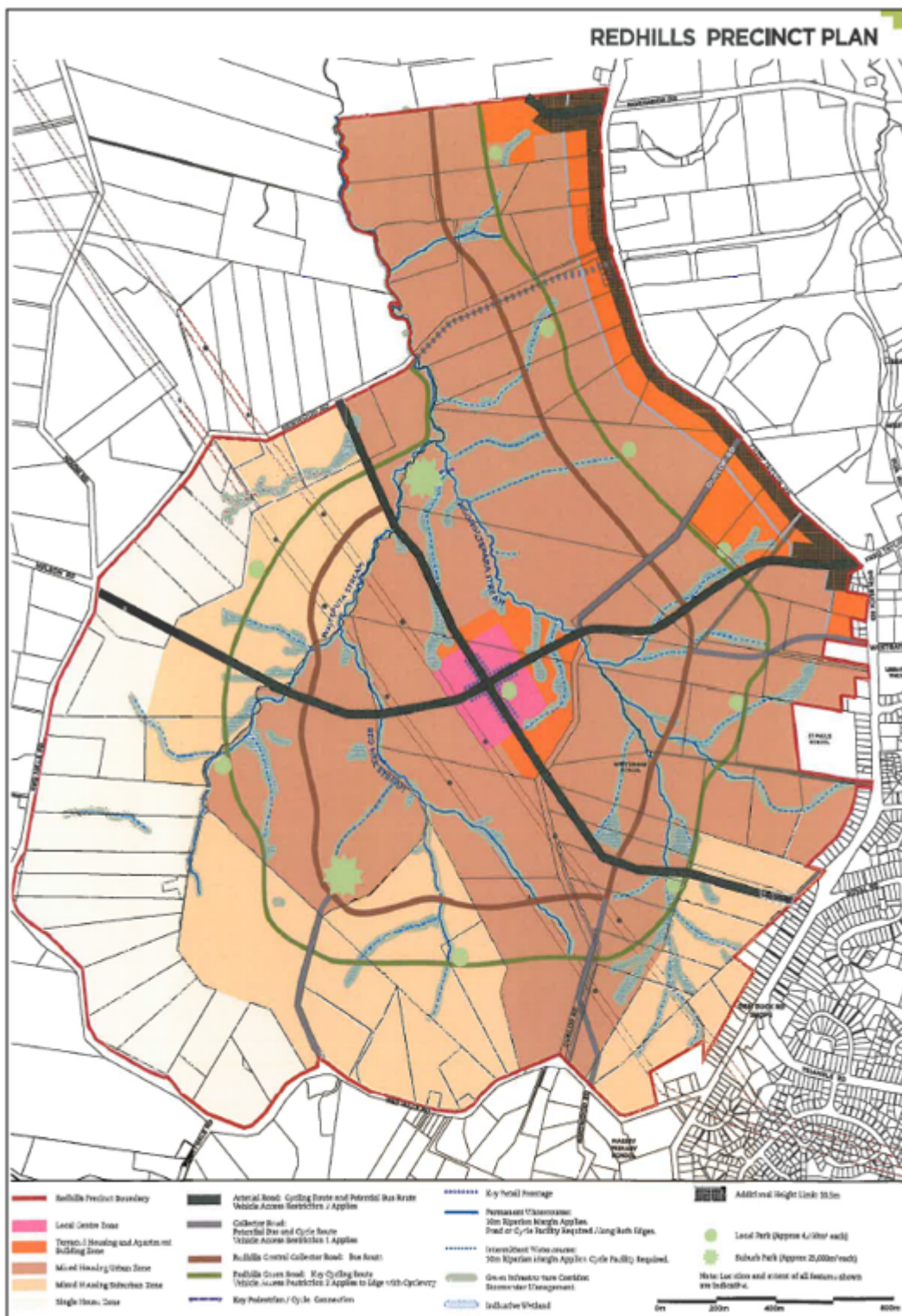
Appendix 2 Precinct Plan

I610 Redhills Precinct

I610.10.1. Redhills Precinct: Precinct plan 1

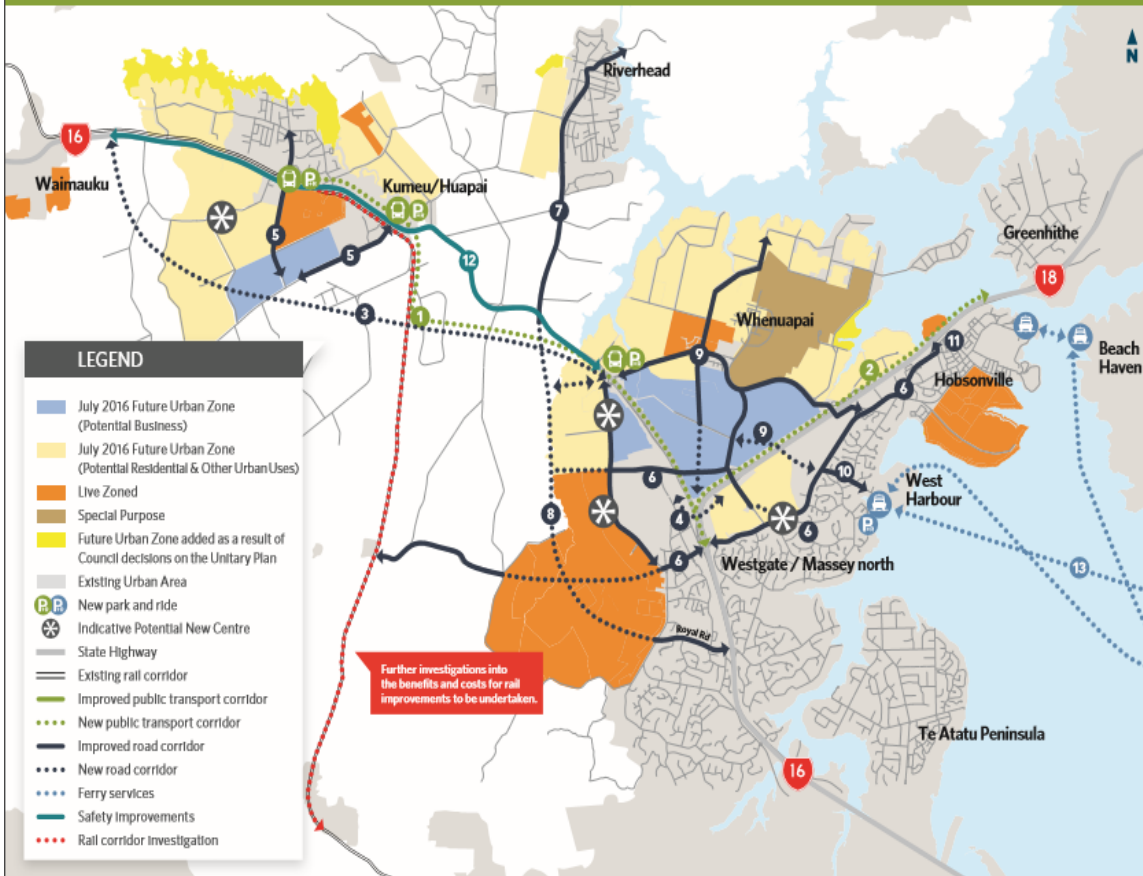


Appendix 3 Redhills Precinct Plan



Appendix 4 North West Transport Network Plan

Supporting Growth - Delivering Transport Networks NORTH WEST



Projects

NEW OR IMPROVED PUBLIC TRANSPORT CORRIDOR

1. Rapid Transit Network route connecting Huapai and Kumeu to Westgate
2. Rapid Transit Network connecting Westgate to Albany

NEW OR IMPROVED ROAD CORRIDOR

3. Alternative corridor parallel to State Highway 16
4. A more direct connection from State Highway 16 to State Highway 18
5. Kumeu improved connections
6. Improved east-west connections
7. Improved connections to Coatesville, Riverhead and North Shore
8. New Redhills north-south connection
9. Whenuapai new and improved connections
10. Improved connections to ferry services
11. Squadron Drive interchange improvements

SAFETY IMPROVEMENTS

12. Safety improvements on State Highway 16

FERRY IMPROVEMENTS

13. Higher frequency on Hobsonville and West Harbour Ferries

CYCLING AND WALKING

- Implement cycle network

Projects within the programme will be prioritised for delivery over the next 30 years, subject to funding approvals. Projects will require statutory approvals and will be subject to Resource Management Act and Land Transport Management Act public participation processes. Land use is subject to further investigation, as well as resolution of appeals and statutory process arising from the Unitary Plan process.

Appendix 5 Road Alignment Impact Plan



49. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the WEST)”

Panel recommendations accepted:

49.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the WEST), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 49.2.

Panel recommendations rejected:

49.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the WEST) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) No mechanisms within the Redhills precinct relating to the provision of transport infrastructure

Reasons	
(i) While the urban zoning and the creation of a precinct is accepted, the specific provisions relating to transport infrastructure provision need to be revised, and associated text amended to clarify the transport requirements for Redhills, both within the area and in the context of the wider transport networks	
Alternative solution	See Attachment A

- (b) **No indicative roading pattern required to achieve an effective transport network in the Westgate Precinct.**

Reasons	
(i) While the Council supports the removal of sub-precinct F, its removal has had the effect of deleting the indicative roading pattern for this part of Westgate.	
(ii) The indicative roading pattern is vital to achieve an efficient and effective transport network, and should therefore be re-included in the precinct.	
(iii) As a consequence, text in the precinct requires amendment to correctly reference the re-instated indicative roads.	
Alternative solution	See Attachment A

610 Redhills Precinct

1. Summary of recommendations

The Panel supports a new precinct and operative zoning and recommends the changes proposed by submitters including Hugh Green Limited, Mr and Mrs S Nuich Trust, Westgate Partnership, Peter Bolam, Orchid Plant Trust and Plantarama.

This precinct was heard in Topic 081.

2. Precinct description

The Redhills Precinct is a new suburb (some 600ha) forming a significant part of the north western extent of Auckland's wider metropolitan area, approximately 18km northwest of Auckland's CBD, 4.5km north west of Waitākere City, 3km south west of Whenuapai and adjacent to the suburb of Massey West, and west of Fred Taylor Drive and the Westgate/Massey North Metropolitan Centre.

The precinct is bordered by Fred Taylor Drive and Don Buck Road to the east, Redhills Road to the south and west and Henwood Road to the north, with the exception of a small portion that extends north of Henwood Road, between the Ngongotepara Stream and Fred Taylor Drive up to the northern cadastral boundary of 132-140 Fred Taylor Drive (opposite Northside Drive)

The purpose of the Redhills Precinct is to implement the Redhills Precinct Plan to ensure that the precinct creates high-quality residential development with a local centre established centrally within the precinct to provide a heart and focal point for the Redhills community.

The precinct is zoned Residential - Single House Zone, Residential - Mixed Housing Suburban Zone, Residential - Mixed Housing Urban Zone, Residential - Terrace Housing and Apartment Buildings Zone, Business - Local Centre Zone and Special Purpose – School Zone.

As notified by Council this area was proposed to be zoned Future Urban Zone. Council opposed a live zoning.

Furthermore, Council's planner, Ms Wickham, noted in her evidence in chief that the Redhills special housing area is located on a smaller portion of this larger area of Future Urban Zone. The Redhills special housing area was gazetted under the Housing Accords and Special Housing Areas Act 2013 in September 2014 as part of Tranche 4 and covers 200ha. Ms Wickham further noted that the evidence from Westgate Joint Venture, Nuich Trust, Peter Bolam, and the Orchard Plant Trust related to the rezoning and application of a precinct to the area of land that is subject to the Redhills special housing area (as opposed to the wider area zoned Future Urban Zone that Hugh Green Limited has sought to be rezoned). That special housing area was limited notified on 13 June 2016, with a hearing anticipated early in September 2016.

3. Key issues

Council opposed the precinct primarily because of:

- i. unresolved agreement on the funding of water and wastewater infrastructure;
- ii. different approaches being taken to stormwater management by the two main proponents;
- iii. incomplete agreement on strategic road alignments and cross-sections;
- iv. late lodgement of information on traffic effects and precinct provisions;
- v. miscellaneous issues relating to location of parks and urban design;
- vi. insufficiently detailed review by Council of the Redhills Structure Plan; and
- vii. uncertainty about the extent of consultation undertaken.

These issues were discussed in the evidence of Ms Wickham.

3.1 Stormwater

The submitters' stormwater evidence (Mr Michael Chapman) was that there was nothing inherently or practically incompatible between the management approaches proposed; that the draft stormwater management plan was aligned with Council practice and principles; and that communication between the respective stormwater consultants was ongoing to align rule provisions. Mr Chapman also advised of his familiarity working with Council's stormwater unit on stormwater management plans over time as well as since the proposed Auckland Unitary Plan was notified.

While the Panel accepts that final stormwater provisions are yet to be agreed, and applications progressed, it does not accept this issue as a basis for not proceeding with a precinct. It appears to the Panel that sufficient work has been undertaken over many years such that the baseline for addressing stormwater issues is now well understood and agreed. What remains is the fine-grained detail that can and will emerge through the application process based, as the Panel understands, on agreed management principles and the provisions of this Plan.

3.2 Water Infrastructure

The submitter advised, by Memorandum of Counsel on 3 June 2016, that Watercare and the relevant submitter parties had agreed to prepare and sign a Memorandum of Understanding regarding a process to conclude wastewater funding arrangements for the Redhills special housing area; that this would be followed by a detailed service agreement; and confirming that Watercare agreed to work on a wider servicing strategy for the Redhills area taking into account Watercare's bulk infrastructure requirements. In addition the precinct requires wastewater infrastructure to be in place as a prerequisite for certain dwelling numbers to be exceeded.

That memorandum included an attachment to the above effect signed by Marion Bridge, General Manager Retail, Watercare Services Limited dated 26 May 2016.

The Panel is satisfied that provides sufficient ground for progressing the precinct.

3.3 Rooding

All parties accept that roading and traffic issues are significant matters that need to be addressed. In addition to the submitters and Council, the Panel also heard from Auckland

Transport and the New Zealand Transport Agency on wider strategic issues (such as access through the Northside Drive extension).

Rather than detail that considerable evidence, helpfully captured in Mr Ian Clark's powerpoint presentation to the Panel on 14 April 2016, the Panel records it accepts that those issues are now well identified, understood and will need to be addressed not just for this proposed precinct but also for the wider development areas of Hobsonville, Massey and beyond. Furthermore, while the critical east-west arterial road alignment (from the Fred Taylor Drive/Don Buck Road intersection to the Nelson/Nixon /Red Hills Road intersection) is not yet precisely anchored (although indicated on the precinct plan) it is clear that this, and the other key arterials, must be resolved before significant actual development within the precinct can occur – and provisions proposed ensure that. In addition the precinct provisions require defined transport issues to be resolved as a prerequisite for certain dwelling numbers to be exceeded.

The Panel is therefore satisfied that sufficient consideration has been given to these matters to enable their detailed resolution to proceed to the next stage.

3.4 Other

Beyond those key issues the Panel is not persuaded that the other matters raised by Council are incapable of resolution through the normal processes of development application. Furthermore it is not unusual with an area of this size for a series of subsequent plan changes to be promoted as developments are refined and circumstances change. That prospect is not a reason for further delay for an area that has been heralded for urban development for some considerable time – and the Panel did not understand Council to dispute that future.

The Panel also notes that any decision on the special housing area, if that were to become operative before this Plan, could well require changes to the precinct plan in the event that different road alignments, for example, are required. However, it would not be appropriate to defer the precinct pending that outcome.

The main differences between the Redhills Precinct as proposed and the relevant overlays, zone, and Auckland-wide rules are:

- i. a comprehensive suite of objectives and policies to reflect the structure and purpose of the precinct;
- ii. detailed development control and activity provisions; and
- iii. contingency provisions for the relationship between infrastructure and the staging of development.

The precinct otherwise employs the zone structure of the Plan.

The Panel recommends a consequential change to the zoning proposed by the submitters to increase the extent of the Residential - Terrace Housing and Apartment Buildings Zone that borders Fred Taylor Drive and is close to the Westgate/Massey North Metropolitan Centre. The Panel considers this change to be more consistent with the centres and corridors strategy it has taken with the Plan more widely.

In summary, the Council's position in relation to the Redhills Precinct is set out in the evidence in chief of Ms Jarette Wickham, the evidence in rebuttal of Mr Derek Foy and Mr Gregory Akehurst, and Mr Ian Clark's (transportation) presentation.

Multiple statements of evidence were made on behalf of Hugh Green Limited, Mr and Mrs S Nuich Trust, Westgate Partnership, Peter Bolam, Orchid Plant Trust and Plantarama. These are summarised in the legal submissions and Memorandum of Counsel of Ms Asher Davidson and Ms Sue Simons, their joint Memorandum of Counsel and the summary and supplementary statements of planning evidence of Mr Russell Baikie and Ms Emma Bayley, Ms Karen Joubert and Mr David Haines. Those statements were supported by further technical evidence on transportation, water, wastewater and stormwater, geotechnical and civil engineering, ecology, and urban design.

Council and the submitters did not resolve their respective differences.

Having considered the relevant evidence presented, the Panel prefers the overall evidence of the submitter and supports a precinct and operative live zoning.

4. Panel recommendations and reasons

The Panel supports a new precinct and recommends the changes proposed by submitters including Hugh Green Limited, Mr and Mrs S Nuich Trust, Westgate Partnership, Peter Bolam, Orchid Plant Trust and Plantarama, for the reasons set out above. Furthermore the Panel is satisfied that an operative live zoning as recommended gives effect to the regional policy statement.

5. Reference documents

Auckland Council

[081d Ak Cncl - West - Precincts \(Redhills\) - \(G Akehurst\) - Economics - REBUTTAL](#) (1 April 2016)

[081d Ak Cncl - West - Precincts \(Redhills\) - \(D Foy\) - Economics - REBUTTAL](#) (12 April 2016)

[081d Ak Cncl - West - Precincts \(Redhills\) - \(J Wickham\) - Planning](#) (12 April 2016)

[081 Ak Cncl - West - Precincts \(Redhills\) - \(I Clark\) - Transport - HEARING PRESENTATION](#) (14 April 2016)

Refer to [hearings webpage](#) for other evidence documents logged on behalf of Hugh Green Limited – Redhills (081 Rezoning and Precincts (Geographical Areas) - IHP DOCUMENTS AND SUBMITTERS EVIDENCE)