I hereby give notice that an ordinary meeting of the Planning Committee will be held on:

Date:  Tuesday, 5 February 2019  
Time:  9:30am  
Meeting Room:  Room 1  
Venue:  Level 26, 135 Albert Street

Komiti Whakarite Mahere / Planning Committee
OPEN AGENDA

MEMBERSHIP

Chairperson  Cr Chris Darby  
Deputy Chairperson  Cr Richard Hills  
Members  Cr Josephine Bartley  
Cr Dr Cathy Casey  
Deputy Mayor Cr Bill Cashmore  
Cr Ross Clow  
Cr Fa’anana Efeso Collins  
Cr Linda Cooper, JP  
Cr Alf Filipaina  
Cr Hon Christine Fletcher, QSO  
Mayor Hon Phil Goff, CNZM, JP  
IMSB Member Hon Tau Henare  
Cr Penny Hulse  
Cr Mike Lee  
Cr Daniel Newman, JP  
IMSB Member Liane Ngamane  
Cr Greg Sayers  
Cr Desley Simpson, JP  
Cr Sharon Stewart, QSM  
Cr Sir John Walker, KNZM, CBE  
Cr Wayne Walker  
Cr John Watson  
Cr Paul Young

(Quorum 11 members)

Kalinda Gopal  
Senior Governance Advisor

31 January 2019

Contact Telephone: (09) 367 2442  
Email kalinda.gopal@aucklandcouncil.govt.nz  
Website: www.aucklandcouncil.govt.nz

Note: The reports contained within this agenda are for consideration and should not be construed as Council policy unless and until adopted. Should Members require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.
Terms of Reference

Responsibilities

This committee guides the physical development and growth of Auckland through a focus on land use planning, housing and the appropriate provision of infrastructure and strategic projects associated with these activities. Key responsibilities include:

- Relevant regional strategy and policy
- Infrastructure strategy and policy
- Unitary Plan
- Spatial plans
- Plan changes to operative plans
- Housing policy and projects
- Special Housing Areas
- City centre development
- Tamaki regeneration
- Built heritage
- Urban design
- Environmental matters relating to the committee’s responsibilities
- Acquisition of property relating to the committee’s responsibilities and within approved annual budgets
- Activities of the following Council Controlled Organisations:
  - Panuku Development Auckland
  - Auckland Transport
  - Watercare Services Limited

Powers

(i) All powers necessary to perform the committee’s responsibilities, including:
   (a) approval of a submission to an external body
   (b) establishment of working parties or steering groups.

(ii) The committee has the powers to perform the responsibilities of another committee, where it is necessary to make a decision prior to the next meeting of that other committee.

(iii) The committee does not have:
   (a) the power to establish subcommittees
   (b) powers that the Governing Body cannot delegate or has retained to itself (section 2).
Exclusion of the public – who needs to leave the meeting

Members of the public

All members of the public must leave the meeting when the public are excluded unless a resolution is passed permitting a person to remain because their knowledge will assist the meeting.

Those who are not members of the public

General principles

- Access to confidential information is managed on a “need to know” basis where access to the information is required in order for a person to perform their role.
- Those who are not members of the meeting (see list below) must leave unless it is necessary for them to remain and hear the debate in order to perform their role.
- Those who need to be present for one confidential item can remain only for that item and must leave the room for any other confidential items.
- In any case of doubt, the ruling of the chairperson is final.

Members of the meeting

- The members of the meeting remain (all Governing Body members if the meeting is a Governing Body meeting; all members of the committee if the meeting is a committee meeting).
- However, standing orders require that a councillor who has a pecuniary conflict of interest leave the room.
- All councillors have the right to attend any meeting of a committee and councillors who are not members of a committee may remain, subject to any limitations in standing orders.

Independent Māori Statutory Board

- Members of the Independent Māori Statutory Board who are appointed members of the committee remain.
- Independent Māori Statutory Board members and staff remain if this is necessary in order for them to perform their role.

Staff

- All staff supporting the meeting (administrative, senior management) remain.
- Other staff who need to because of their role may remain.

Local Board members

- Local Board members who need to hear the matter being discussed in order to perform their role may remain. This will usually be if the matter affects, or is relevant to, a particular Local Board area.

Council Controlled Organisations

- Representatives of a Council Controlled Organisation can remain only if required to for discussion of a matter relevant to the Council Controlled Organisation.
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1 **Apologies**

An apology from Cr E Collins has been received.

2 **Declaration of Interest**

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a member and any private or other external interest they might have.

3 **Confirmation of Minutes**

That the Planning Committee:

a) confirm the ordinary minutes of its meeting, held on Tuesday, 27 November 2018, including the confidential section, as a true and correct record.

4 **Petitions**

At the close of the agenda no requests to present petitions had been received.

5 **Public Input**

Standing Order 7.7 provides for Public Input. Applications to speak must be made to the Governance Advisor, in writing, no later than **one (1) clear working day** prior to the meeting and must include the subject matter. The meeting Chairperson has the discretion to decline any application that does not meet the requirements of Standing Orders. A maximum of **thirty (30) minutes** is allocated to the period for public input with **five (5) minutes** speaking time for each speaker.

5.1 **Public Input - Akarana Marine Sports Trust - strategic planning for the central Auckland waterfront and wider marine networks**

**Te take mō te pūrongo**

**Purpose of the report**

1. Greer O'Donnell will speak to the committee on behalf of the Akarana Marine Sports Trust about strategic planning for the central Auckland waterfront and wider marine networks.

**Ngā tūtohunga**

**Recommendation/s**

That the Planning Committee:

a) receive the public input from Greer O'Donnell on behalf of the Akarana Marine Sports Trust about strategic planning for the central Auckland waterfront and wider marine networks, and thank them for attending.
6 Local Board Input

Standing Order 6.2 provides for Local Board Input. The Chairperson (or nominee of that Chairperson) is entitled to speak for up to five (5) minutes during this time. The Chairperson of the Local Board (or nominee of that Chairperson) shall wherever practical, give one (1) day’s notice of their wish to speak. The meeting Chairperson has the discretion to decline any application that does not meet the requirements of Standing Orders.

This right is in addition to the right under Standing Order 6.1 to speak to matters on the agenda.

At the close of the agenda no requests for local board input had been received.

7 Extraordinary Business

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“An item that is not on the agenda for a meeting may be dealt with at that meeting if-

(a) The local authority by resolution so decides; and
(b) The presiding member explains at the meeting, at a time when it is open to the public,-
   (i) The reason why the item is not on the agenda; and
   (ii) The reason why the discussion of the item cannot be delayed until a subsequent meeting."

Section 46A(7A) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“Where an item is not on the agenda for a meeting,-

(a) That item may be discussed at that meeting if-
   (i) That item is a minor matter relating to the general business of the local authority; and
   (ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but
(b) no resolution, decision or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion.”
Te take mō te pūrongo
Purpose of the report

1. This report requests approval to prepare a variation to the Auckland Unitary Plan (Operative in Part) Proposed Plan Change 5 – Whenuapai (Plan Change 5) and to delegate authority to a sub-group of the Planning Committee to approve the variation to be publicly notified for submissions. The variation will seek to change the proposed zoning of approximately 120 hectares of land in the part of Plan Change 5 that is within the 65 dB L_{dn} noise boundary, or between the 57 dB L_{dn} and 65 dB L_{dn} noise boundaries, based on the additional noise data provided by the New Zealand Defence Force (NZDF) the day before the hearing commenced. The noise data relates to noise effects from engine testing at Whenuapai Airbase (the Airbase).

Whakarāpopototanga matua
Executive summary

2. Plan Change 5 was publicly notified on 5 September 2017. The plan change comprises 360 hectares of land zoned Future Urban under the Auckland Unitary Plan (Operative in Part). A hearing was held in May 2018 and was adjourned to allow the commissioners to carry out a site visit and to seek further comment from council officers on a number of matters. One of the matters they sought comment on was the aircraft engine testing noise boundaries from Whenuapai Airbase proposed as part of Plan Change 5. Plan Change 5 proposed to restrict residential density in areas between the 57 dB L_{dn} and 65 dB L_{dn} noise boundaries and proposed to apply the Light Industry Zone to areas within the 65 dB Ldn noise boundary.

3. The day before the hearing commenced, the New Zealand Defence Force (NZDF) provided additional noise data to the council. Following adjournment of the hearing, council staff engaged with the NZDF and its acoustic consultant AECOM to establish more representative extents of the 57 dB L_{dn} and 65 dB L_{dn} noise boundaries based on the additional data. This modelling and analysis has established that the 57 dB L_{dn} and 65dB L_{dn} noise boundaries are different to the boundaries that were originally proposed in Plan Change 5. The additional data has identified that a number of properties will be subject to the 57 dB L_{dn} and 65 dB L_{dn} noise boundaries, or will be within the 65 dB L_{dn} noise boundary, and the zonings proposed for these properties in Plan Change 5 are no longer appropriate.

4. Aircraft engine testing is undertaken at the Airbase for maintenance, testing and training purposes. There are a number of factors relating to the noise generated by aircraft engine testing. These factors include: aircraft type, engine testing locations, engine testing duration and frequency. In addition, the NZDF has recently decided to replace the P3 Orions with Boeing P-8A Poseidon in 2023, thus reducing noise levels. Further, after Plan Change 5 was notified, Taxiway D which is located in a relatively central location within the airbase, where some engine testing activity took place, was decommissioned.

5. To establish more representative engine testing noise boundaries, eight scenarios were modelled based on the updated data and information provided by the NZDF. The scenarios that were modelled were based on the busiest week (i.e. the longest total duration of engine tests) that commenced on 27 September 2017, and the noisiest week (i.e. the loudest engine tests) that commenced on 28 August 2017. It is appropriate to rely on data from the noisiest week to establish noise boundaries for engine testing which is not controlled elsewhere in the Auckland Unitary Plan.
6. Four options have been identified in this report. The preferred option (Option B) is to initiate a variation to Plan Change 5 to amend the zoning of approximately 120 hectares of land based on the updated engine testing noise boundaries based on the noisiest week. The zoning is proposed to be based on the scenario when the P3 Orions are no longer in operation. However, controls would be required to be applied to the area within Plan Change 5 that is affected by the current engine testing scenario until the P3 Orions are replaced by the Boeing P-8A Poseidon. This option enables the most appropriate zoning and controls to be applied to land subject to the new noise boundaries, and will provide for an additional 14 hectares of Mixed Housing Urban Zoned land than proposed by Plan Change 5.

Ngā tūtohunga
Recommendation/s

That the Planning Committee:

a) approve the development of a variation to Proposed Plan Change 5 – Whenuapai to the Auckland Unitary Plan (Operative in Part) that proposes to rezone approximately 130 hectares of land in Whenuapai that is subject to the 57 dB $L_{dn}$ and 65 dB $L_{dn}$ noise boundaries, or will be within the 65 dB $L_{dn}$ noise boundary.

b) delegate to the Deputy Chair, Deputy Mayor, Ward Councillors and an Independent Māori Statutory Board member the approval of the proposed variation for public notification.

Horopaki
Context

7. The Plan Change 5 area comprises 360 hectares of land zoned Future Urban under the Auckland Unitary Plan (Operative in Part) (AUP (OP)) in the southern part of Whenuapai. The Whenuapai Airbase is not included in Plan Change 5. The plan change area is shown in Attachment A.

8. Plan Change 5 proposes to rezone approximately 113 hectares of land to Light Industry Zone and 247 hectares of land to a range of residential zones. The residential zoning is anticipated to enable development of approximately 6400 houses. There are currently numerous existing horticultural, rural lifestyle and rural production activities throughout the plan change area.

9. The Royal New Zealand Airforce (RNZAF) undertakes both air and ground operations at the Airbase. The effects of aircraft engine testing noise at the Airbase are not currently managed under the AUP (OP) or within the conditions of the Minister of Defence Designation 4310. The testing of engines is a regular part of operations at the Airbase. Aircraft engine testing at the Airbase is necessary for maintenance, testing and training purposes. The level of activity will depend on the need to undertake military training, search and rescue, or humanitarian requirements. The noise created by this testing occurs at both scheduled and unscheduled times of the day and night, and often extends beyond the boundaries of the Airbase.

10. Given the proximity of the Airbase to the Plan Change 5 area, a number of provisions are proposed in Plan Change 5 to address reverse sensitivity issues and to manage the effects of engine testing noise on future residents.
11. During the development of Plan Change 5 the aircraft engine testing noise provisions were informed by engine testing noise data and modelling provided by the NZDF. That data was depicted as 57 dB $L_{dn}$ and 65 dB $L_{dn}$ noise boundaries, and these boundaries were used to determine appropriate zoning and controls for land in Plan Change 5 located within those boundaries. These noise boundaries are shown in Attachment B. Where the noise was greater than 65 dB $L_{dn}$, the council proposed to zone that land Light Industry zone, as this zone does not provide for noise sensitive activities. Where the noise was between 57 dB $L_{dn}$ and 65 dB $L_{dn}$, the council proposed to zone that land Single House zone, thereby reducing number of residents exposed to adverse noise effects. Submissions were received on the zoning of land and noise related to engine testing.

Process to date

12. The Whenuapai Structure Plan was approved by the Auckland Development Committee on 15 September 2016. The structure plan area was for all land within Whenuapai. Staff were requested to prepare a plan change for the Whenuapai Future Urban zoned land (resolution number AUC/2016/117). A draft plan change for Stages 1A to 1E of the Whenuapai Structure Plan area was approved by the Planning Committee on 28 March 2017 for public comment (resolution number PLA/2017/38).

13. The Planning Committee approved the public notification of Plan Change 5 on 5 September 2017 (resolution number PLA/2017/115). The Plan Change was subsequently publicly notified on 21 September 2017, and 51 submissions and 22 further submissions were received.

14. A hearing for Plan Change 5 was held on 4, 7 and 10 May 2018. The hearing was then adjourned to allow the commissioners to undertake a site visit and to seek further comment from council officers on a number of matters raised in the hearing. Evidence on engine testing noise was presented and discussed at the hearing.

15. The day before the hearing commenced, the New Zealand Defence Force (NZDF) provided additional noise data to the council. The data was for the period between 16 August 2017 and 19 January 2018 with 163 engine testing events. Following adjournment of the hearing, council staff engaged with the NZDF and its acoustic consultant AECOM to establish more representative extents of the 57 dB $L_{dn}$ and 65 dB $L_{dn}$ noise boundaries based on the updated data. This has been peer reviewed by the council’s acoustic consultant Acousafe. Council staff have appreciated the willingness of the NZDF to assist with this analysis.

16. This modelling and analysis has established that the 57 dB $L_{dn}$ and 65 dB $L_{dn}$ noise boundaries are different to the boundaries that were originally proposed in Plan Change 5. All of this analysis was provided to the hearing panel and the submitters in December 2018. Council has received correspondence from some submitters about this and those letters are attached at Attachment G.

Tātaritanga me ngā tohutohu

Analysis and advice

17. The updated data was modelled by AECOM between September to December 2018, with input from the council’s acoustic consultant Acousafe. The new modelling was based on eight scenarios, all of which showed different engine testing noise boundaries to those that were notified as part of Plan Change 5. The results of this modelling and all analyses were provided to the hearing panel and all submitters in December 2018. The outputs of the modelling and implications on Plan Change 5 are discussed below.
18. The RNZAF has established many procedures over the last 75 years based on their operational and safety requirements, and these have changed as the nature of the operations that are undertaken have evolved. There are a number of factors that contribute to the analysis of the noise modelling and the subsequent planning response. The factors relating to the noise generated by engine testing are described as follows:

a) Aircraft type – P3 Orions, C130 Hercules, Boeing 757 and Super Seasprite helicopter operate out of the Airbase. Each aircraft has different operational, testing, training and maintenance requirements. The engine noise from the Seasprite helicopter is significantly lower than the noise from the fixed wing aircraft, and was consequently omitted in the modelling.

b) Engine testing locations – engine testing occurs on numerous sites around the airbase on taxiways and the thresholds (ends) of the runways. Testing locations are shown in Attachment C. For the purposes of determining appropriate engine testing noise boundaries, two sites are key. These are Taxiway Delta (D) and Taxiway Foxtrot (F). Taxiway D is located closer to the centre of the airbase while Taxiway F is closer to the southern airbase boundary. The direction of the wind also has an effect on the distance that the engine testing noise travels.

c) Engine testing duration and frequency – both scheduled and unscheduled engine testing occurs at the airbase. The times and durations of testing can vary significantly depending on operational requirements. Scheduled testing usually occurs during daytime and is often part of regular aircraft maintenance. Depending on operational requirements, testing may also occur at night, especially if an aircraft is required at short notice to attend to an emergency situation. Engine testing between 2200 (10pm) and 0700 (7am) requires the approval of the Chief of Staff Auckland.

d) The NZDF announced the replacement of the P3 Orions by Boeing P-8A Poseidon aircraft in July 2018. These aircraft are expected to be stationed at Ohakea Airbase from 2023 due to the longer runway length at Ohakea. This means that the P3 Orions will be decommissioned at some time in 2023, as long as the delivery of the P-8A’s occurs as expected. The P3 Orions generate the most noise at the Airbase. This means that only the C130 Hercules and the Boeing 757 are anticipated to operate out of the Airbase once the Boeing P-8A are in service. Engine testing noise is therefore likely to decrease in both volume and frequency in 2023.

19. Since Plan Change 5 was notified, Taxiway D has been decommissioned due to poor surface condition. The NZDF has indicated that it has no plans to repair and reinstate Taxiway D. However, at the request of council staff, the NZDF has included scenarios in the modelling to show engine testing noise created on Taxiway D. This is important because Taxiway D is more centrally located within the Airbase and further away from the Plan Change 5 boundary than Taxiway F. Modelling shows that undertaking engine testing on Taxiway D would significantly reduce the extent of noise effects outside of the Airbase.

20. Eight scenarios were modelled, based upon the updated data that was provided by the NZDF. A summary of these scenarios is provided in Table 1.
Table 1: Summary of engine testing scenarios modelled

<table>
<thead>
<tr>
<th>Scenario Description</th>
<th>Busiest week (week with the longest total duration of engine testing)</th>
<th>Noisiest week (worst scenario)</th>
</tr>
</thead>
<tbody>
<tr>
<td>C130 and B757 only (from 2023)</td>
<td>Scenario 1</td>
<td>Scenario 5</td>
</tr>
<tr>
<td>C130 and B757 only with testing at Taxiway F moved to Taxiway D (from 2023)</td>
<td>Scenario 2</td>
<td>Scenario 6</td>
</tr>
<tr>
<td>All aircraft including P3 Orions</td>
<td>Scenario 3</td>
<td>Scenario 7</td>
</tr>
<tr>
<td>All aircraft including P3 Orions with testing at Taxiway F moved to Taxiway D</td>
<td>Scenario 4</td>
<td>Scenario 8</td>
</tr>
</tbody>
</table>

21. The scenarios that were modelled were based on the busiest week (i.e. the longest total duration of engine tests) that commenced on 27 September 2017, and the noisiest week (i.e. the loudest engine tests) that commenced on 28 August 2017. While engine testing at the Airbase is busier on some weeks than others, it is the noisiest week that establishes the greatest extent of noise effects outside the Airbase boundary. It is appropriate to rely on data from the noisiest week to establish noise boundaries for engine testing which is not controlled elsewhere in the AUP (OP).

22. On this basis, and in the absence of any commitment from the NZDF to reinstate Taxiway D, the most appropriate scenario to base any planning decisions on until approximately 2023 is Scenario 7 (Attachment D). Scenario 7 shows the engine testing noise boundaries with all aircraft being tested at their current locations with the 57 dB L_{dn} and 65 dB L_{dn} engine testing noise boundaries being wider than those notified in Plan Change 5 and extending past State Highway 18. There are no submissions on Plan Change 5 that provide adequate scope to propose to amend the boundaries to the extent shown in Scenario 7. When the P3 Orions are no longer used at the Airbase from 2023 onwards, the engine testing noise boundaries in Scenario 5 can then be relied upon. Scenario 5 is shown in Attachment E. It shows smaller noise boundaries than the Plan Change 5 noise boundaries, enabling more residential land to be provided.

23. Council staff asked the NZDF to model what would happen if engine testing was moved from Taxiway F to Taxiway D. These are depicted as Scenarios 6 and 8 in Attachment F. Scenario 6 shows that once the P3 Orions are not in operation and with Taxiway F activity moved to Taxiway D, engine testing noise from the Airbase is modelled to be mostly within the Airbase boundary. This would allow more land in Plan Change 5 to be zoned for residential use. However, without any commitment from the NZDF to reinstate Taxiway D, these scenarios have not been considered further.

24. Having considered all the factors and the modelling outputs from the eight scenarios, the following options have been identified.

<table>
<thead>
<tr>
<th>Option</th>
<th>Description</th>
<th>Pros</th>
<th>Cons</th>
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<tbody>
<tr>
<td>A</td>
<td>Continue current Plan Change 5 process using the engine testing noise boundaries as notified.</td>
<td>The current plan change process could be completed quicker.</td>
<td>Council would be zoning land for uses that are not easily able to occur (particularly noise sensitive activities). If the land that is subject to noise effects from engine testing is zoned residential, future residents will be subject to adverse effects from noise.</td>
</tr>
<tr>
<td>B Preferred</td>
<td>Initiate a variation to Plan Change 5 to amend the zoning of approximately 130 hectares of land based on the updated engine testing noise boundaries. The variation will apply zoning based on the scenario when the P3 Orions are no longer in operation (Scenario 5). However, development in the plan change area affected by the current scenario (Scenario 7) will be restricted until there is confirmation from the NZDF that the P3 Orions are not in operation.</td>
<td>Enables appropriate zoning to be applied to land with appropriate controls to ensure that any adverse effects from engine testing noise can be adequately managed. Enables the zoning of an additional 14 hectares of Mixed Housing Urban Zone (approximately 370 houses) than proposed in Plan Change 5. By including Scenario 5 (post-2023), much more land can be zoned for medium to high density residential than if zoning was applied based only on Scenario 7 (current operations). Variation will “catch up” to Plan Change 5, meaning less delay than the delay created by withdrawing part of Plan Change 5. An integrated decision for all of Plan Change 5 will be able to be made by the Commissioners.</td>
<td>Delays the progress of Plan Change 5 by several months. Residential land subject to noise boundaries depicted in Scenario 7 cannot be developed until the P3 Orions are no longer in operation.</td>
</tr>
<tr>
<td>C</td>
<td>Withdraw part of Plan Change 5 subject to the new noise boundaries and initiate new plan change for the withdrawn area immediately (using the engine testing noise boundaries in Scenario 7).</td>
<td>Enables appropriate zoning to be applied to land. Remainder of Plan Change 5 can proceed to a decision in a short time frame.</td>
<td>Statutory process for new plan change starts from the beginning, meaning a longer process for the land area that is subject to the withdrawal.</td>
</tr>
<tr>
<td>D</td>
<td>Withdraw part of Plan Change 5 subject to the new noise boundaries and initiate new plan change for the withdrawn area once P3 Orions are</td>
<td>Enables appropriate zoning to be applied to land which is subject to the new engine testing noise boundaries. Remainder of Plan Change 5 can proceed to a decision in a short time frame.</td>
<td>Statutory process for new plan change starts from the beginning in approximately 2023, meaning a significantly longer process for the land area that is subject to the withdrawal.</td>
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</table>
25. Option B is recommended. It enables the most appropriate zoning to be applied to land subject to the new noise boundaries, along with appropriate controls to ensure that any adverse effects arising from engine testing noise are managed. It is also considered to be the most time efficient of the options available.

26. The variation to Plan Change 5 will enable a greater area of Mixed Housing Urban Zone to be applied to the plan change area based on a future scenario without the P3 Orions in operation at the Airbase. Due to the extent of engine testing noise effects from current operations, the proposed variation will likely include provisions that restrict development in the areas subject to the current noise boundaries (Scenario 7) until 2023 when the P3 Orions are no longer in operation at Whenuapai Airbase.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera
Council group impacts and views
27. Comment has not been sought from the council group as the recommendations do not affect any council assets. The additional time associated with a variation to Plan Change 5 will not add unacceptable delays to land acquisition processes or planning for infrastructure development.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe
Local impacts and local board views
28. The effects of noise on the future residents in Whenuapai has been an ongoing concern for both the Upper Harbour and Henderson Massey Local Boards. Ensuring that the effects of engine testing noise are adequately managed aligns with the views of both boards.

Tauākī whakaaweawe Māori
Māori impact statement
29. All nine iwi groups with interest in the area were contacted at the beginning of the structure plan process. Ngāti Whatua o Kaipara and Te Kawerau ā Maki have worked in partnership with council to develop cultural values assessments that help to inform the structure plan and the preparation of the Plan Change 5. The council has undertaken site visits with Ngāti Whatua o Kaipara and the iwi has met with the council’s Healthy Waters staff to discuss stormwater management in Whenuapai.

30. The Resource Legislation Amendment Act 2017 made changes to Māori participation within the RMA. Schedule 1 of the RMA was amended to insert clause 4A which requires councils to provide a copy of a draft proposed plan change prior to notification and have particular regard to any advice received from iwi before notifying the plan.

31. All iwi groups with an interest in the Whenuapai area will therefore need to be contacted and provided with the draft variation and asked for their comment. Responses from iwi to the draft variation to Plan Change 5 will be communicated to the group with delegated authority when they consider the completed draft variation for approval to publicly notify it.
Ngā ritenga ā-pūtea
Financial implications
32. The preparation of a variation to Plan Change 5 is provided for in the Plans and Places Departmental budgets, and so there are no financial implications for council. The recommendations do not give rise to any major financial risks.

Ngā raru tūpono me ngā whakamaurutanga
Risks and mitigations
33. Option B is the recommended option. There are risks associated with the uncertain timing of the P3 Orions being replaced. These risks will be mitigated by continuing the dialogue with NZDF staff, and including provisions in the variation to ensure any activities in the area are suitable for the noise environment at the time resource consents are approved.

Ngā koringa ā-muri
Next steps
34. A draft variation to Plan Change 5 will be discussed with iwi prior to a proposed variation being prepared for consideration by the group with delegated authority. If approved the proposed variation will proceed through the usual statutory process for variations, including submissions, further submissions, and a hearing. This will enable an integrated decision for the whole of Plan Change 5 to be made by the Hearing Commissioners by September 2019.

Ngā tāpirihanga
Attachments

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<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
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Ngā kaihaina
Signatories

<table>
<thead>
<tr>
<th>Author</th>
<th>Eryn Shields - Team Leader Planning - North West</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorisers</td>
<td>John Duguid - General Manager - Plans and Places</td>
</tr>
<tr>
<td></td>
<td>Jim Quinn - Chief of Strategy</td>
</tr>
</tbody>
</table>
Attachment C: Aircraft engine testing locations at Whenuapai Airbase
Attachment D - Scenario 7
PC5 - Whenuapai

1. I act for two submitters, Cabra Developments Limited and Neil Construction Limited.

2. The process has become rather drawn out, as a result of one submitter – the New Zealand Defence Force – seeking months of extra time to alter its original evidence which had exaggerated the noise effects of engine testing at Whenuapai Airbase.

3. It is a matter of concern that the other landowner submitters who are not taxpayer funded may be prejudiced by the withdrawal or partial withdrawal of the Plan Change, as foreshadowed in your recent communication. We have in place a skilled Panel, including an experienced Councillor who is well placed to bring policy considerations into the necessary decision-making.

4. The effect of the NZDF new evidence is to reduce, not to expand, the level of protection being sought by NZDF, meaning it is well within the scope of the Plan Change that has been given preliminary consideration through the section 32 process and which has been through a properly conducted public hearing process.

5. Once the revised evidence has been considered by the Hearings Commissioners, they will be in a position to make a proper decision. Whether or not appeals may follow is not the point. What is important is that the increased residential land supply intended by Council in promoting the plan change is not unnecessarily delayed by a withdrawal or partial withdrawal of PC5.

6. I note that the matter is to be considered by Council on 5 February 2019. Please copy to me as soon as you are able details of the staff recommendations that are to be put up to Councillors. I doubt that any of the submitters will support even a partial withdrawal of PC5 at this late stage, and see no reason for that course to be followed.
7. Thank you for your attention to this matter.

Yours faithfully,

Russell Bartlett

cc
Heather Ash
Simpson Grierson
Solicitors, Auckland
Email: Heather.Ash@simpsongrierson.com

cc
Stephen Quinn
Barrister
Auckland
Email: stephen.quinn@dlapiper.com

1. We refer to your memorandum dated 17 December 2018 to the Independent Hearing Commissioners (Commissioners) for Plan Change 5: Whenuaapai Plan Change (PC5):

   (a) updating them on the additional modelling work for noise from engine testing at Base Auckland undertaken by Mr Humpheson of AECOM on behalf of NZDF and peer reviewed by Mr Lloyd of Acousafe for Auckland Council (Council);

   (b) advising the Commissioners that Council officers have reviewed the modelling work and its implications for PC5. Council officers are considering a range of options including (but not limited to) withdrawing PC5 in full or in part, and publicly notifying a variation to PC5. Council officers will take this matter to the Council’s Planning Committee (Committee) on 5 February 2019 with a recommendation on how to proceed with PC5, for the Committee’s approval.

2. As outlined in AECOM’s response dated 22 November 2018 to the peer review by Acousafe, eight different scenarios have been modelled. Scenarios 1-4 are modelled based on data from the ‘busiest week’ of engine testing. Scenarios 5-8 have been modelled based on data from the ‘noisiest week’ of engine testing. The scenarios then model noise from engine testing for the ‘busiest week’ and the ‘noisiest week’ based on C130 and B757s only, including the P3s, and with engine testing moved from Taxiway Foxtrot to Taxiway Delta.

3. We understand that Council officers are considering recommending withdrawing PC5 in full or in part or notifying a variation to PC5 on the basis that the revised contours for noise from engine testing at Base Auckland modelled by AECOM in Scenario 7 (based on the “noisiest week” and including P3s), in places, considerably exceed the notified contours. Relying on Scenario 7 appears to be a very conservative approach.

4. Mr Humpheson (who prepared the AECOM modelling) has advised us that in his opinion Scenario 7 does not represent an appropriate worst case for noise from engine testing at Base Auckland because:

   (a) it is not appropriate to use data from the “noisiest week” because (although technically the worst case) noise from that week is statistically an outlier, and...
highly atypical. In his opinion, it is more appropriate to use data from the “busiest week” (i.e. Scenarios 1-4), as these are more representative of a typical worst case scenario; and

(b) Scenario 7 also includes noise from engine testing from P3s. The Crown, acting through the Ministry of Defence, has contracted to purchase four P-8s that will replace the current P3s and operate out of Ohakea from 2023, at which time NZDF intends to decommission the P3s. There will be no engine testing of P3s at Base Auckland after the transition from P3s to P8s. In Mr Humpheson’s opinion, basing the long term planning response on noise from P3s that will no longer be present after 2023, does not rely on the most appropriate noise modelling data.

5. As outlined above, in Mr Humpheson’s opinion it is more appropriate to use the noise contours from Scenarios 1-4, which are based on data from the “busiest week”. Within those, he considers the contours from Scenario 1 to be the most appropriate because:

(a) those contours represent the long term situation from 2023 onwards, once the P3s will have been decommissioned (Scenarios 3 and 4 include P3s); and

(b) in terms of engine testing locations, NZDF is unable at this time to commit to recommissioning Taxiway Delta (Scenario 2 – which is no P3s but engine testing shifted to Taxiway Delta).

6. In terms of the changes to the contours (and zoning) that would result from using Scenario 1 we note that:

(a) the 65dB contour significantly shrinks in size, compared to the notified contour, and is entirely within the 65dB contour as notified; and

(b) the 57dB contour shrinks in size and is inside the notified 57dB contour apart from a small “silvers” of land, that might be addressed through a variation. Mr Humpheson has prepared the attached maps to show the Scenario 1 contours. The zoomed up version shows the location of this “silvers”.

7. If the Council wishes (contrary to Mr Humpheson’s view, set out above) to include noise from engine testing for P3s, then Mr Humpheson considers the appropriate scenario is Scenario 3 (“busiest week” – rather than “noisiest week”, and no aircraft on Taxiway Delta). This results in very similar contours to those for Scenario 1 (outlined in paragraph 6 above), albeit with a slightly larger silver of land within the revised 57dB contour, that is outside of the 57dB contour as notified.

8. We understand that there are a number of submissions seeking that the contours be delayed, or amended to be more accurate. If so, there would be scope for the Commissioners to issue a decision confirming amended contours and zoning, based on the noise contours modelled in Scenario 1, subject to any variation that is required.

Yours faithfully

SIMPSON GRIERSON

Padraig McNamara/Sarah Mitchell
Partner/Senior Associate
Te take mō te pūrongo
Purpose of the report

1. To consider the council’s response to a private plan change request from Turnstone Capital Limited to rezone 99 hectares of land in the Warkworth North area from Future Urban to a mix of residential, business and open space zones in the Auckland Unitary Plan (Operative in Part).

Whakarāpopototanga matua
Executive summary

2. This report considers a private plan change request (the change request) received on 29 March 2018 from Turnstone Capital Limited to rezone 99 hectares of land at Warkworth known as Warkworth North. The request seeks to rezone Future Urban zoned land, within the Rural Urban Boundary at Warkworth. The request more specifically seeks to:


   b) introduce new precinct provisions over that part of the Warkworth North land between Falls Road and State Highway 1.

   c) extend the Significant Ecological Area overlay along the Mahurangi River.

   d) extend the Stormwater Management Area Flow Controls over the precinct area.

3. The private plan change request is intended to provide for approximately 1,000-1,200 dwellings, with associated open space, and 13 hectares of light industrial land and a new neighbourhood centre of 3,000m². The applicant has prepared a structure plan to support the private plan change request. The applicant’s structure plan covers 125 hectares, including the 99 hectares proposed to be rezoned.

4. The council is separately preparing a structure plan for the future urban development of all of the Warkworth Future Urban zoned area of 1,000 hectares. The council’s structure plan includes the entire area of land that is subject of this private plan change request and is due to be completed in May-June this year.

5. The decision the Planning Committee is required to make at this time is whether to accept, adopt or reject the request in whole or in part, or to treat it as a resource consent application. Consideration of the detailed merits of the change request is not relevant at this stage in the process.
6. The applicant has verbally requested that the council adopts the private plan change. Adopting the private plan change would enable the zoning and other provisions to be taken into account in the resource consent process as soon as the plan change is notified. This could potentially enable the delivery of new housing in the Warkworth area at a faster pace than if the plan change is accepted. As the council’s structure plan is still three to four months away from being completed, adopting the private plan change is not recommended. To do so would be to pre-empt the outcome of the last step in the council’s structure planning process.

7. As the request is for rezoning of land, the council cannot decide to deal with the request as if it were an application for resource consent. It is considered there are no grounds under clause 25(4)(c) to reject the private plan change request and it is therefore recommended that the private plan change request is accepted.

Ngā tūtohunga
Recommendation/s

That the Planning Committee:

a) accept the private plan change request by Turnstone Capital Limited for Warkworth North, included as Attachments A and B to the agenda report, pursuant to clause 25(2)(b) of Schedule 1 to the Resource Management Act for the following reasons:
   ii) Significant elements of the bulk infrastructure required for the Warkworth North area are well-advanced in terms of planning, funding, design and delivery.
   iii) The applicant has prepared a structure plan to inform the plan change in accordance with Appendix 1 Structure Plan Guidelines of the Auckland Unitary Plan
   iv) The request does not meet the criteria for rejection under clause 25(4) of the Schedule 1 of the RMA (having regard to relevant case law). It is not possible to deal with the request as a resource application as the request seeks to rezone land, and it is more appropriate to accept the request than adopt it given the need for further progress to be made with the council’s Warkworth Structure Plan and associated infrastructure planning/funding decisions.

b) delegate authority to the Manager North West and Islands Planning to undertake the required notification and other statutory processes associated with processing the private plan change request by Turnstone Capital Limited pursuant to Schedule 1 of the Resource Management Act 1991.

Horopaki
Context

Site and Surrounding Area

8. The land at Warkworth North, within the area subject to this request, is primarily used for farming activities. It is located north-west of Warkworth township within the Rural Urban Boundary. Warkworth is the largest rural town in the northern part of Auckland.
9. The northern boundary of the area is the existing State Highway 1 and the western boundary is the Puhoi to Warkworth motorway designation, currently under construction. The Mahurangi River forms the southern boundary with the Hudson Road industrial estate to the east and the Viv Davie Martin Drive countryside living area to the south-west. Access to the area is available from Hudson and Falls Roads and off State Highway 1.

10. Flood prone lowlands form the northern section of the Warkworth North land, adjacent to State Highway 1. These lowlands rise to a clearly defined central spine, reaching an elevation of 80m above sea level. These slopes are moderate to very steep. Geotechnically, Warkworth North and the surrounding Warkworth area has a mixture of geology types that are very challenging. There is clear evidence of deep-seated block slides on landslide prone rocks and soils.

11. Most of the area is covered in pasture of limited production value. There are three isolated pockets of indigenous vegetation, some of which include streams and wetlands. The area includes a number of unnamed intermittent streams which flow to the main tributary to the Mahurangi River. A Significant Ecological Area (SEA_T_2294 in the Auckland Unitary Plan) is located on the site at 223 Falls Road taking in riparian forest. An esplanade reserve partially extends along the Mahurangi River and is vested in council.

Tātaritanga me ngā tohutohu
Analysis and advice

Private plan change request

12. A private plan change request to the Auckland Unitary Plan (operative in Part) (Unitary Plan) was lodged on 29 March 2018 (see Attachments A and B). The request seeks to rezone 99 hectares of land in the Warkworth area. The land is located within the Rural Urban Boundary and would be rezoned from the Future Urban zone to Residential – Single House, Residential - Mixed Housing Suburban, Residential - Mixed Housing Urban, Business – Neighbourhood Centre, Business - Light Industry and Open Space - Informal Recreation zones in the Auckland Unitary Plan. (See Figure 1 below). The applicant has prepared a structure plan to support the private plan change request. This covers 125 hectares, including the 99 hectares to be rezoned. (See Appendix 4 of Attachment B)

13. The private plan change request proposes to provide for approximately 1,000-1,200 dwellings and 13 hectares of light industrial land and a new neighbourhood centre of 3,000m².

14. The Single House zone is characterised by single house neighbourhoods of one to two storeys. The Mixed Housing Suburban zone provides more flexibility in terms of housing options, and also has a two-storey height control. The Mixed Housing Urban zone is a medium density residential zone usually applied to land in close proximity to public transport networks and provides for three storey developments. The Neighbourhood Centre zone applies to single corner stores or small shopping strips located in residential neighbourhoods. The Light Industry zone anticipates industrial activities that do not generate objectionable odour, dust and noise, with a lower level of amenity than the centre zones. The Open Space - Informal Recreation zone applies to a wide range of parks used for a variety of outdoor informal recreation and community uses.

15. The applicant also proposes to introduce new precinct provisions with a sub-precinct over the Stubbs Farm Development Area. The purpose of the precinct is to provide for an integrated stormwater solution, protection of ecological values, provision of open space and future road connections and to guide development of the local centre. It only applies to land north of Falls Road and only to those areas which are part of the rezoning request. (See Appendix 1 of Attachment A).
16. It is also proposed to extend the Significant Ecological Area (SEA_T_2294) along the Mahurangi River, and to extend the Stormwater Management Area Flow Controls over the precinct area (See Appendix 1 of Attachment A).

17. It is important to note that the applicant’s structure plan area encompasses a larger area (125 hectares) than the area requested to be rezoned (99 hectares) and the precinct area (78.8 hectares). Council is currently leading a structure plan for a much wider area of 1,000 hectares at Warkworth, which includes both the applicant’s structure plan and plan change areas. Refer paragraphs 31-36 for more detailed information. The applicant owns the majority of – but not all – land in the plan change area. Figure 2 below shows the location of the various areas referenced in this report.
Figure 2: Location of Turnstone Capital Ltd structure plan and proposed rezoning plan change areas at Warkworth North and council’s draft Warkworth North Structure Plan area
18. The applicant has provided a comprehensive section 32 evaluation report (see Attachment A, including the proposed precinct provisions in Appendix 1 of that attachment) and a wide range of supporting technical reports (See Attachment B).

Current planning environment

Auckland Plan 2050

19. The Auckland Plan is the council’s spatial plan for Auckland. It contains a 30-year high level development strategy for the region which foresees a managed expansion into the region’s future urban areas.

20. Warkworth is identified as a satellite town with around 1,000 hectares earmarked for future residential and business development over the next 30 years. Refer Figure 2 above. This will potentially enable the population to reach five times the current population from 5,000 to 25,000 people.

21. Under the Auckland Plan the majority of the wider Warkworth North area is timed for development from 2022, meaning live zoning is in place and bulk infrastructure has been provided. Attachment C shows the sequencing of Future Urban areas for Warkworth. Structure planning is again recognised as the first step in urbanising Future Urban zones.

22. All of the Warkworth North land, north of Falls Road is earmarked for future business land while the land to the south of Falls Road is not identified for any specific future urban land use. More detailed geotechnical investigations by the applicant have indicated the steeper slopes are unlikely to be suitable for business development. In response to the ground conditions the applicant proposes a higher proportion of land for residential uses. Land to the south of Falls Road is also identified by the applicant for residential growth.

Auckland Unitary Plan

23. The Auckland Unitary Plan is the combined RMA planning document for Auckland. It contains objectives and policies that refer to the importance of integrating land use planning with infrastructure planning and delivery, reflecting the council’s integrated management function under s31 of the RMA. To this end, the Auckland Unitary Plan promotes the completion of structure plans as a precursor to plan changes to rezone land within the Future Urban zone. As noted above, Turnstone Capital has prepared a structure plan in accordance with the Auckland Unitary Plan.

Future Urban Land Supply Strategy 2017

24. The Future Urban Land Supply Strategy (the Strategy) implements the Auckland Plan and gives effect to the National Policy Statement on Urban Development Capacity by identifying a programme to sequence future urban land over 30 years. The strategy relates to greenfield land only and ensures there is 20 years of development capacity at all times and a seven year average of unconstrained and ready to go land supply. The strategy allows the council to consider the balance between the development of brownfield and greenfield land and ensure that the majority of Auckland’s growth is located within the existing urban area.

25. The Strategy anticipates the development capacities, the number of new centres and the timings for development ready growth in Warkworth, as set out in Table 1 below. Some 7,500 dwellings are proposed for an additional 20,000 people between 2022 and 2037. Only one new centre in Warkworth South is proposed, recognising the presence of existing local centres and the desirability of supporting the town centre. To date 69 hectares of land have been ‘live’ zoned in the wider Warkworth North area (north of the Showgrounds) and a large area of land is anticipated to become business land. No new business land is anticipated in Warkworth North East and only a local centre in Warkworth South. The Strategy has combined the total areas of anticipated business land in Northern Auckland, making it difficult to determine the totals for individual areas. However, the spatial extent of business land in the wider Warkworth North area will be determined through the Warkworth Structure Plan process.
Table 1 - Proposed Warkworth timing and anticipated residential capacities and new centres

<table>
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<th>Proposed timing – development ready</th>
<th>Area</th>
<th>Anticipated dwelling capacity</th>
<th>New centres</th>
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<tr>
<td>Actuals contracted or planned 2012-2107</td>
<td>Warkworth North</td>
<td>None</td>
<td>No centres</td>
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<tr>
<td>Decade One 1st half 2018-2022</td>
<td>Warkworth North</td>
<td>2,300</td>
<td>No centres</td>
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<tr>
<td>Decade Two 1st half 2028-2032</td>
<td>Warkworth South</td>
<td>3,700</td>
<td>Local centre</td>
</tr>
<tr>
<td>Decade Two 2nd half 2033-2037</td>
<td>Warkworth North East</td>
<td>1,600</td>
<td>No centres</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total 7,500</td>
<td>1</td>
</tr>
</tbody>
</table>

Other Plans

Warkworth Structure Plan

26. In August 2017 the council’s Planning Committee agreed to a programme of structure planning for Auckland, including Warkworth. The committee also agreed that ‘...the sequencing for the supply of development-ready greenfield land set out in the Future Urban Land Supply Strategy and the corresponding council-led structure planning programme is paramount in providing for development in the Future Urban zone.’

27. By setting a high bar for private plan changes and non-complying resource consent applications, the committee sought to recognise the critical importance of ensuring high quality environmental outcomes, aligning development with the efficient and effective provision of infrastructure, and focusing the council’s effort and resources in a coordinated way. This reflects one of the council’s functions under s31 of the RMA to achieve ‘integrated management of the effects on the use, development or protection of land and associated natural and physical resources of the district.’

28. The scale of growth envisaged for Warkworth and the choices to be made mean it is critical that the full 1,000 hectares of Future Urban zoned land is structure planned in an efficient, cost effective and sustainable way. It aims to produce a comprehensive and integrated plan for how the greenfield areas will be laid out and linked back to the existing town.

29. The Warkworth Structure Plan project is well-advanced, with a high level of community involvement and has completed the following phases:
   - December 2017 – March 2018: Background research
   - 2018 ongoing: Working with the Supporting Growth Alliance to identify future transport networks
   - April – August 2018: Two rounds of public and stakeholder consultation. Council reported back to the community on the ideas generated.

30. The current intention for the next key phases in the project are:
   - 25 February – 25 March 2019: Release draft structure plan for feedback
Planning Committee  
05 February 2019  

- April – May 2019: Review feedback and make any required amendments to the structure plan  
- May – June 2019: Adoption of Warkworth Structure Plan by the Planning Committee  
- July – August 2019: Plan change to implement the structure plan notified (for the areas timed to be ‘development ready’ in 2022 in the Strategy including the private plan change request area)  

31. Progress on the Warkworth Structure Plan has continued independently of the private plan change request (although it is noted that the applicant is a regular submitter on the structure plan project).  

Bulk infrastructure projects for Warkworth  
32. In order to develop the Warkworth North area, the applicant proposes to leverage off wider infrastructure improvements being progressed for Warkworth by New Zealand Transport Agency, Watercare, Auckland Transport and the council. The applicant advises of their intention to enter into an Infrastructure Funding Agreement with the relevant parties to arrange their financial contributions. However, no such agreements are yet in place. The infrastructure improvements proposed for Warkworth are discussed below.  

Wastewater and Water supply  
33. Watercare has commissioned a new wastewater facility to serve the combined Warkworth, Snells Beach and Algies Bay communities. This will enable sufficient capacity to provide for a population of around 30,000 and will be constructed and operational by the end of 2021. In terms of water supply a freshwater treatment plant has been commissioned to treat bore water by the end of 2018 that will provide for medium term growth. Watercare has advised that these works will cover the estimated demand for all of Warkworth including the applicant’s area.  

Transport  
34. On 1 November 2018 council notified a notice of requirement from Auckland Transport to designate a proposed road connecting Matakana Road and State Highway 1. This road is designed to provide for strong east-west and north-south connections, bypassing central Warkworth and improving access to new growth areas. Two lanes are scheduled to be completed by late 2021 with all four lanes completed sometime between 2036-2046. The Puhoi to Warkworth motorway being constructed to the immediate north-west of Warkworth North is also due for completion in late 2021. A park and ride facility is proposed by Auckland Transport to support public transport in this general area. The location, funding and timing for this facility are yet to be finalised.  

35. Included in the transport improvements for Warkworth proposed by the Supporting Growth Alliance is a series of new ‘western links’ to improve the access to the west of the existing State Highway 1. This link will pass through the applicant’s Warkworth North land. This link road will have implications for the layout and functioning of the development pattern at Warkworth North. Stage 1 of the western link road has recently been completed, connecting Mansel Drive to Falls Road, south of Warkworth North land. Community feedback on options for the western link road and other transport options was sought by the Alliance in August 2018. At the time of writing, no decision had been made.  

36. Auckland Transport advises that as the private plan change request is proceeding ahead of the preferred route selection there is currently no funding allocated for the construction of the western link in the Regional Land Transport Plan. A preliminary review of the applicant’s proposed precinct provisions by Auckland Transport indicates they are not sufficiently flexible enough to respond to the current degree of uncertainty regarding the location, timing, funding and form of the new link road and other local connections. If the private plan change is accepted, the council and Auckland Transport have the opportunity to address these matters via a submission.
Stormwater

37. The applicant proposes to provide all necessary stormwater infrastructure within the Warkworth North land area and to extend the Stormwater Management Area: Flow controls over the precinct. Healthy Waters are of the view that any development of Warkworth North should align with the wider outcomes sought in the council’s Warkworth structure plan and should occur at the same time. Alignment with the council's structure plan and detailed stormwater infrastructure matters can be addressed through a council submission on the private plan change.

Conclusion

38. Based on the above analysis, it is concluded that significant elements of the bulk infrastructure necessary to service the land is in the process of being delivered and are anticipated to be in place by late 2021. However, key elements of this bulk infrastructure, such as route selection and funding for infrastructure such as the Western Link Road and stormwater infrastructure, are uncertain. Nevertheless, these matters can be the subject of submissions by Auckland Council and Auckland Transport.

Statutory Analysis

Resource Management Act

39. Under the RMA, private plan change requests can be lodged at any time. This includes applications and requests to give ‘live’ urban zones to land zoned Future Urban in the Auckland Unitary Plan. Such requests can enable a market response to enabling development but also have the potential to undermine the goals set out in the Auckland Plan, the objectives and policies of the Auckland Unitary Plan, and the intent of the Future Urban Land Supply Strategy.

40. The process for the council to consider private plan change requests is set out in Part 2 of Schedule 1 to the RMA. A request can be made by any person under clause 21 of Schedule 1 to operative plans.

41. The applicant is required to include the information set out in clause 22, which states that:

- a request made under clause 21 shall be made to the appropriate local authority in writing and explain the purpose of, and reasons for, the proposed plan or change to a policy statement or plan and contain an evaluation under Section 32 of the RMA for any objectives, policies, rules, or other methods proposed; and

- where environmental effects are anticipated, the request shall describe those effects taking into account clauses 6 and 9 of Schedule 4, in such detail as corresponds with the scale and significance of the actual or potential environmental effects anticipated from the implementation of the change, policy, statement or plan.

42. Following requests from council for further information, additional information was received on 9 July, 17 October and 15 January 2018. The council staff who evaluated the request consider that the applicant has provided sufficient information to enable the request to be considered. Therefore, there are no grounds to reject the application as providing insufficient information under clause 23(6) of Schedule 1.

43. While there are a number of matters that need to be resolved, a fine-grained merits assessment of the request has not been considered in this report. Should the request be adopted or accepted by council, such matters would be assessed through the submission and hearing process or for non-RMA matters resolved in parallel to the plan change process.
44. Under clause 25 (refer Attachment D for the full wording), after receiving the request, receiving all required information and modifying the request (where relevant), the local authority is required to make a decision to either:

- Adopt the request, in whole or in part, as if it were a proposed plan made by the council, which must then be processed in accordance with the provisions of Part 1 of Schedule 1 (clause 25(2)(a)); or
- Accept the request, in whole or in part, which then triggers a requirement to notify the request, or part of the request, under clause 25 (clause 25(2)(b)); or
- Decide to deal with the request as if it were an application for a resource consent (clause 25(3)).
- Reject the request in whole or in part, in reliance on one of the limited grounds set out in clause 25(4).

Options available to the council

45. The next section of this report assesses the various options available to the council under clause 25 of Schedule 1 of the RMA.

Option 1 - Reject the private plan change request in whole or in part

46. The council may reject a private plan change request, in whole or in part, in reliance on one of the limited grounds set out in clause 25(4) of Schedule 1 of the RMA. If the private plan change request is rejected by the council, the applicant has the ability to appeal that decision to the Environment Court under clause 27 of Schedule 1. The grounds for rejection under clause 25(4) are as follows:

a) the request or part of the request is frivolous or vexatious; or
b) within the last two years, the substance of the request or part of the request:
i) has been considered and given effect to, or rejected by, the local authority or the Environment Court; or
ii) has been given effect to by regulations made under section 360A; or
c) the request or part of the request is not in accordance with sound resource management practice; or
d) the request or part of the request would make the policy statement or plan inconsistent with Part 5; or
e) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than two years.

Is the request frivolous or vexatious?

47. Frivolous means not having any serious purpose or value. Vexatious means denoting an action or the bringer of an action that is brought without sufficient grounds for winning, purely to cause annoyance.

48. The request includes a comprehensive section 32 evaluation and specialist reports. The investigations undertaken do support their structure plan and plan change process.

49. The location and timing of the development is generally consistent with council’s Future Urban Land Supply Strategy. Bulk infrastructure is being planned for the Warkworth area with wastewater and water supply schemes already under construction and intended to be delivered in late 2021/2022. Significant transport infrastructure is also anticipated in 2021/22, although some key elements such as the Western Link Road are not certain. However, this lack of certainty is not considered to render the application ‘frivolous or vexatious’.

50. It is therefore concluded that the council cannot reject the private plan change request on the basis that it is frivolous or vexatious.
Has the substance of the request been considered and given effect to or rejected by the council within the last two years?

51. These provisions largely seek to discourage repetitive private plan change requests that are substantially the same, with the associated costs to the council and the community. The Auckland Unitary Plan became operative in part on 15 November 2016 and applied a Future Urban zone over 1,000 hectares of land in the Warkworth area. The substance of the request has not been considered and given effect to or rejected by the council in the last two years. The land was also not subject to a Housing Accord and Special Housing Area Act application in the past nor has the zoning been considered by the Environment Court within the last two years.

52. It is therefore concluded that the council cannot reject the request on the basis that the relevant parts of the Auckland Unitary Plan have been operative for less than two years.

Has the substance of the request been given effect to by regulations made under section 360A?

53. The substance of the request or part of the request has not been given effect to by regulations made under section 360A of the RMA. These relate to coastal regulations and are not applicable to this request.

54. It is therefore concluded that the council cannot reject the request on the basis that the substance of the request has been given effect to by regulations made under section 360A.

Is the request in accordance with sound resource management practice?

55. The term “sound resource management practice” is an often-used planning term but is not defined in the RMA. Malory Corporation Limited v Rodney District Council (2009) 15 ELRNZ 307, [2010] NZRMA 1 where one of the issues on appeal was determining the correct interpretation of clause 25(4), considered:

“We conclude that the question of sound resource management practice goes well beyond questions of planning merit to include fundamental issues as to appropriate process, timing and the like. It can include non-planning matters such as engineering, cultural, and other issues.” (para 60)

56. In the subsequent High Court case, Malory Corporation Limited v Rodney District Council (CIV-2009-404-005572), ‘the High Court considered:

“I accept that there is nothing about the appellant’s proposal which offends against sound resource management practice. The issue is whether the timing of the appellants request offends” (para 97) [The context is this case was that the council had proposed a different outcome for the applicant’s land in what was essentially a structure plan process.]

“In general terms I think it is drawing a long bow to hold that a timing issue (assuming a request’s timing is not frivolous or vexatious) will result in an otherwise unobjectionable proposal offending. But, in the particular factual context of the appellant’s request and its proximity to the Structure Plan processes, I am not prepared to hold that, on that specific issue, the Environment Court was wrong. I consider that the proximity to which I have referred makes this case unique” (para 98)

57. Similar circumstances around timing apply here. If the private plan change request is accepted by council and publicly notified before the draft structure plan is adopted there are three risks for the community and the council. The first is simply that it will be very difficult for the community to gauge the substantive merits of the request in the absence of an adopted council structure plan. Secondly it will be confusing for the community having two overlapping but different statutory processes to follow under the RMA for the private plan change and under the Local Government Act 2001 for the draft Warkworth Structure Plan.
58. The third issue is that the outcome of the private plan change process (for 99 hectares) could dictate and compromise what the wider council structure plan is attempting to achieve for all of the Future Urban zone and the wider Warkworth area. If these matters cannot be addressed then the process would arguably be contrary to sound resource management practice.

59. In partial recognition of these concerns, the applicant is in agreement with an approach delaying notification of the private plan change request until after the close of submissions on the council’s draft Warkworth Structure Plan. A copy of this commitment dated 19 December 2018 is attached as Attachment E to this report.

60. This approach reduces the strength of the arguments relating to being contrary to sound resource management practice because the Warkworth Structure plan would be available (but not adopted) for the public to determine how well the two plans align with and addresses issued raised in the draft structure plan.

61. However, this is still not as sound an approach as waiting for the formal adoption of the Warkworth Structure Plan, likely to be in May or June 2019. Delaying notification of the private plan change until immediately after the Warkworth Structure Plan is adopted, would remove any issue of being contrary to resource management practice and would still be within the four month period specified in clause 26 of Schedule 1 within which council is required to publicly notify any accepted private plan change requests.

62. In essence, there are two options for notification of the plan change with little time between them, but a significant difference in how well ‘sound resource management practice’ is achieved. On balance, the second option of public notification after the Warkworth Structure Plan is adopted is the preferred option.

63. Based on the above reasoning, it is considered there are no grounds under clause 25(4)(c) to reject the private plan change request.

Would the request or part of the request make the policy statement or plan inconsistent with Part 5 of the RMA?

64. Part 5 sets out the role and purpose of planning documents created under the RMA, including that they must assist a local authority to give effect to the sustainable management purpose of the RMA.

65. The proposal to rezone Future Urban zoned land to Residential and Business zones in conjunction with the necessary structure planning and new precinct provisions would not make the Auckland Unitary Plan inconsistent with Part 5 of the RMA. As outlined in paragraphs 29-31 the development is slightly ahead of the Future Urban Land Supply Strategy overall timeframe but there is no significant issue with the proposed rezoning and the delivery of bulk infrastructure.

66. It is therefore concluded that the council cannot reject the private plan change request on the basis that the substance of the request would make the Auckland Unitary Plan inconsistent with Part 5 of the RMA.

Option 2 - Decide to deal with the request as if it were an application for a resource consent

67. The council can, in some circumstances, decide to deal with a private plan change request as if it were an application for resource consent. However, in this case, the request seeks to rezone land and introduce precinct provisions to manage subdivision, use and development. As stated in the Auckland Unitary Plan itself, the most appropriate process for achieving development within the Future Urban zone is through structure planning followed by a plan change. Rezoning cannot occur through a resource consent application.

68. It is therefore concluded that the council cannot decide to deal with the request as if it were an application for resource consent.
Option 3 - Adopt the request, or part of the request, as if it were a proposed plan made by the council itself

69. The applicant has verbally requested that the council adopts the private plan change. Adopting the private plan change would enable the zoning and other provisions to be taken into account in the resource consent process as soon as the plan change is notified. This could potentially enable the delivery of new housing in the Warkworth area at a faster pace than if the plan change is accepted. As the council’s structure plan is still three to four months away from being completed, adopting the private plan change is not recommended. To do so would be to pre-empt the outcome of the last step in the council’s structure planning process.

Option 4 - Accept the request, in whole or in part, and proceed to notify the request, or part of the request

70. The council could accept the private plan change request, in whole or in part, and proceed to notify the request, or part of the request under clause 26 of Schedule 1 of the RMA. The council would hold a hearing to consider submissions, and a decision would be made by the council in relation to the private plan change request in accordance with Schedule 1 of the RMA. The costs associated with the private plan change request would sit with the applicant.

71. This is the only remaining option and is supported on the basis that the request does not meet the criteria for rejection under clause 25(4) of the First Schedule of the RMA (having regard to relevant case law), and it is more appropriate to accept the request than adopt it or treat it as a resource consent application. In particular:

- The proposal does not undermine the Auckland Plan 2050 (2018) or the Future Urban Land Supply Strategy (2017) in terms of the timing of development.
- Significant elements of the bulk infrastructure required for the Warkworth North area are well-advanced in terms of planning, funding, design and delivery.
- Notification following further progress being made with the council’s Warkworth Structure Plan will ensure both the community and the council can see how the private plan change request could fit into the wider vision for Warkworth.
- The applicant has prepared a structure plan to inform the plan change in accordance with Appendix 1 Structure Plan Guidelines of the Auckland Unitary Plan

Conclusion

72. The Turnstone Capital Limited private plan change request seeks to rezone 99 hectares of Future Urban zoned land in Warkworth North to a mix of residential, business and open space zones. Work to support the private plan has been ongoing since 2017 and is supported by comprehensive technical reports.

73. The private plan change, if accepted and if successful, would become an important part of the future growth of Warkworth. Having carefully assessed the private plan change request against the relevant matters set out in the RMA and associated case law, it is recommended that the request be accepted and notified for submissions. If accepted, a substantive assessment would take place after submissions and further submissions were received. Discussions regarding the provision of bulk infrastructure could progress in parallel with this.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera

Council group impacts and views

74. The only relevant council controlled organisations are Watercare Services Ltd and Auckland Transport. Both have provided advice to council on this private plan change request.
75. Key departments within council have provided been consulted to confirm that the applicant has provided sufficient information under clause 23 of Schedule 1 of the RMA. These include:

- Healthy Waters
- Community and Social Policy
- Resource consents
- Auckland Design Office
- Engineering and Technical Services
- Auckland Plan Strategy and Research
- Environmental Services – Infrastructure and Environment

76. It is not appropriate for other departments of the council to provide advice on the merits of the application at this stage. Assuming the application is accepted or adopted, the views of departments will be sought as part of the substantive assessment of the private plan change request. It is highly likely that staff will recommend the council makes a submission on the private plan change to ensure alignment with the Warkworth structure plan once adopted.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe
Local impacts and local board views

77. The Rodney Local Board was briefed by staff from North West & Islands Planning on 22 November 2019. Feedback at the time of writing this report was that the Rodney Local Board does not support the private plan change request. At this time, they considered it could undermine the draft Warkworth Structure Plan and result in a future land use pattern which is not necessarily best placed or scaled to serve the long term future of Warkworth.

78. Since then the applicant has offered to align notification of the private plan change request with the close of submissions to council’s draft structure plan and has modified the proposed zoning pattern, with new information received on 15 January 2019. Key changes include replacing proposed business zones from General Business and Local Centre to Light Industrial and Neighbourhood Centre. The size of the centre has been reduced from 3 hectares to 3,000m².

79. The Local Board Chair, Deputy Chair and Infrastructure Committee Chair will be updated of these changes in late January 2019. An update of the position of the local board will be reported verbally to the Planning Committee on Tuesday 5 February.

Tauākī whakaaweawe Māori
Māori impact statement

80. On 17 April 2017 a number of amendments to the RMA came into force which places an increased focus on engagement and consultation with iwi authorities as part of various plan-making processes. This is particularly the case for plan change processes that are initiated or adopted by a Council, but not necessary for privately initiated processes. Although engagement with mana whenua and all relevant iwi authorities by a private plan change requester is encouraged before lodgement, it is not a mandatory requirement under Part 2 of Schedule 1. If the council accepts the private plan change request, it is not required to complete this step.

81. The applicant advises that consultation has been undertaken with 12 iwi groups (See Attachment B – Appendix 6 page 3) in conjunction with the development of the private plan change for Warkworth North. Two iwi groups, Te Kawerau ā Maki Settlement Trust and Ngāti Manuhiri Kaitiaki Charitable Trust have prepared Cultural Impact Assessments.
82. Consultation undertaken with Te Kawerau Iwi Settlement Trust to date has not identified any matters that are unable to be resolved. However, the Ngāti Manuhiri Settlement Trust has recently informed the council that their position has changed since they prepared their Cultural Value Assessment for the applicant in November 2017.

83. Where the applicant recognises and accommodates Ngāti Manuhiri’s values and aspirations, Ngāti Manuhiri will continue to support their Cultural Value Assessment. However, Ngāti Manuhiri advised council on 10 October 2018 that:

“With the interests of the whole of Warkworth (and the wider area) in mind - it’s overall form, connectivity, community, recreation and business/retail hubs, schools and natural environments, it is our preference that Auckland Councils Warkworth Structure Plan is adopted as a more holistic and inclusive strategy for the growth and development of Warkworth.”

84. Ngāti Manuhiri’s revised position reflects the importance of an integrated management approach to the planning and development future of Warkworth.

85. If accepted or adopted, all 19 mana whenua entities will be notified and have the opportunity to make a submission on the plan change.

**Ngā ritenga ā-pūtea**

Financial implications

86. If accepted for processing, costs will be recoverable from the applicant up until any appeals to the Environment Court.

**Ngā raru tūpono me ngā whakamaurutanga**

Risks and mitigations

87. While the timing of the proposed rezoning is generally consistent with the Auckland Plan and the council’s Future Urban Land Supply Strategy, the key risks associated with the recommendation to accept the private plan change are that:

- notification of the private plan change may confuse members of the Warkworth community about the role of the council’s structure planning process for Warkworth
- it may prompt other land owners/developers who wish to have land in the Future Urban zone rezoned ahead of the council completing its structure planning processes to make private plan change requests.

88. These risks can be mitigated by the council completing its structure plans for Warkworth, Silverdale, Drury-Opaheke and Pukekohe-Paerata by mid-2019.

**Ngā koringa ā-muri**

Next steps

89. If the council accepts the request, in whole or in part, it must then proceed to notify the request, or part of the request under clause 26 by June 2019, within four months of agreeing to accept the request. As previously discussed, it would be appropriate for the council to make a submission on the private plan change.

90. The council would need to hold a hearing to consider any submissions. The hearing should ideally take place at the same time, and with the same commissioners as the hearing of submissions on the council-initiated plan change for the Warkworth North area, which is currently expected to be notified shortly after the adoption of the Warkworth structure plan.
Ngā tāpirihanga
Attachments

Due to the size and complexity of Attachments A and B they have been published under separate cover at the following link:
http://infocouncil.aucklandcouncil.govt.nz/ > Planning Committee 5 February 2019 > attachments

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<td>B</td>
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<td>Memo B&amp;A 18 Dec 2018</td>
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Ngā kaihaina
Signatories

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<tr>
<th>Author</th>
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<tr>
<td>Author</td>
<td>Michele Perwick - Principal Planner</td>
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<tr>
<td>Authorisers</td>
<td>John Duguid - General Manager - Plans and Places</td>
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<td>Jim Quinn - Chief of Strategy</td>
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Clause 25 Part 2 First Schedule Resource Management Act

25 Local authority to consider request

(1) A local authority shall, within 30 working days of—

(a) receiving a request under clause 21; or

(b) receiving all required information or any report which was commissioned under clause 23; or

(c) modifying the request under clause 24—

whichever is the latest, decide under which of subclauses (2), (3), and (4), or a combination of subclauses (2) and (4), the request shall be dealt with.

(1A) The local authority must have particular regard to the evaluation report prepared for the proposed plan or change in accordance with clause 22(1)—

(a) when making a decision under subclause (1); and

(b) when dealing with the request under subclause (2), (3), or (4).

(2) The local authority may either—

(a) adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself and, if it does so,—

(i) the request must be notified in accordance with clause 5 or 5A within 4 months of the local authority adopting the request; and

(ii) the provisions of Part 1 or 4 must apply; and

(iii) the request has legal effect once publicly notified; or

(b) accept the request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26.

(2AA) However, if a direction is applied for under section 80C, the period between the date of that application and the date when the application is declined under clause 77(1) must not be included in the calculation of the 4-month period specified by subclause (2)(a)(i).

(2A) Subclause (2)(a)(iii) is subject to section 86B.

(3) The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of Part 6 shall apply accordingly.

(4)
The local authority may reject the request in whole or in part, but only on the grounds that—

(a) the request or part of the request is frivolous or vexatious; or

(b) within the last 2 years, the substance of the request or part of the request—

(i) has been considered and given effect to, or rejected by, the local authority or the Environment Court; or

(ii) has been given effect to by regulations made under section 360A; or

(iii) the request or part of the request is not in accordance with sound resource management practice; or

(iv) the request or part of the request would make the policy statement or plan inconsistent with Part 5; or

(v) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.

(5) The local authority shall notify the person who made the request, within 10 working days, of its decision under this clause, and the reasons for that decision, including the decision on notification.
MEMORANDUM

To: Auckland Council – Plans and Places – North / West and Islands
From: Barker and Associates – Burnette O’Connor
Date: 18 December 2018
Re: Technical Documentation to Support Optimal Land Uses – WW North Private Plan Change

As you aware the private plan change request was lodged with Auckland Council towards the end of March 2018. A first request for further information (RFI) was received from Auckland Council dated 30th April 2018. The applicant provided a response to the RFI and the Advisory Notes received from Council on 9th July 2018. A second RFI from Council was received on 30th July 2018 and a full response was provided by the applicant on 16th October 2018.

It was intended that the matter be heard at the Planning Committee meeting on 27th November 2018, however the matter was deferred from its meeting until the next scheduled meeting on 5th February 2019 to enable further discussion with Council to determine agreement on the proposed zoning pattern.

The purpose of this Memo is to summarise the technical documentation submitted in support of the Plan Change that is directive of the proposed land use / zoning.

The excerpts from the technical documents are summarised in the Table below demonstrate that the area of land adjacent to the Hudson Road Industrial area contains numerous permanent watercourses. The geotechnical assessments identify that the land is potentially unstable; and whilst potentially suitable for light industrial land use; the Tonkin and Taylor report referred to in the KGA reports, states that the land in this location is generally High Development Premium.

The economic assessment concluded that there is already a 30 to 40 year supply of Business – Light Industry land in Warkworth and therefore it is preferable to provide zoned land for complementary land uses and residential development to support the working population.

These factors combined with the slope of the land, the location adjacent to the permanent watercourses and the location of the Western Link Road collectively means that the land is not optimal for industrial land uses and is unlikely to be economically efficient to develop for this purpose.

The Neighbourhood Design Statement (NDS) also discusses the outcomes of a GIS mapping exercise undertaken on the subject land and the entire Future Urban zoned land of Warkworth. The NDS concludes that there are other Future Urban zoned land areas that would be more suitable for industrial development due to slope.

Given that there appear to be more optimal areas in Warkworth for Industrial development, and that there is already a 30 – 40 year supply with the existing zoned land area; this location was determined not to be the best or optimal location for additional industrial zoned land.
## Attachment E

### Item 9

**MEMORANDUM**

<table>
<thead>
<tr>
<th>Technical Document</th>
<th>Findings</th>
<th>Relevance to Proposed Zoning</th>
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<td>Economic Assessment – McDermott Consultants dated January 2018</td>
<td><strong>Page 1 – Findings</strong>&lt;br&gt;Overreliance on manufacturing and building is reflected in occupied and unoccupied zoned land. Section 4 recommends extension of the CBD Business Zone and introduction of a local centre within the Warkworth North MPC are appropriate responses to the need to provide for local diversification. It may be in support of balanced residential growth. Section 5 considers the impacts on other centres of the land use provisions of the PPC. It concludes that the Town Centre is likely to benefit from the additional household and personal demand for goods and services associated with the increase in population initiated in Warkworth North by the PPC. It also suggests that the provision of capacity for commercial services in the PPC area (primarily by way of a local centre) will take some development pressure off the Town Centre with benefits to the quality of the urban environment and offsetting development, traffic and parking constraints.&lt;br&gt;It is concluded that the employment provided in the Warkworth North PPC area will complement the nearby light industrial zone and will not adversely impact on business zones further to the south – Woodcocks-Monamel Drive and The Grange.</td>
<td><strong>Existing 30 – 40 year supply.</strong>&lt;br&gt;Need to balance business land with providing affordable housing development for the working population.&lt;br&gt;Economic costs of developing the land adjacent to the river tributary behind the Hudson Road Industrial area.</td>
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*OVER AND UNDER*

The viability of developing a large, additional area of light industry is prejudiced by the likelihood that demand for industrial sites in Warkworth over the next 50 to 40 years will be met by land already zoned. Zoning the area in the PPC for light industry will create a long-term oversupply, the resulting high holding costs and deferred development potential will impose significant economic costs.<br>At the same time, residential development will be inhibited on a site suited to housing that should prove attractive within a regional market widely acknowledged to be undersupplied.
MEMORANDUM

Provision in the PPC for between 800 and 1,100 dwellings, along with complementary employment in a local centre and expanded General Business Zone, is consistent with the objectives of the Unitary Plan. It should also be viewed in the context of the June 2017 Mayoral Housing Taskforce Report (Auckland Council), one of a list of documents detailing the urgency of meeting housing in Auckland and advocating a commitment to “building new housing, at a faster pace and on a larger scale, providing a wider choice of affordable homes, ranging from traditional standalone homes to terraced homes and mid-rise apartments, and ensuring a quality built environment”.

The FPC is consistent with two of the Taskforce’s key recommendations, i.e:

- “Unlock the availability of land with appropriate zoning and infrastructure, at the right price, to enable more development, faster”
- “Deliver efficient and certain planning, consenting, and risk management to reduce costs, enable innovation in construction and delivery, and create communities with high-quality built and urban form outcomes” (p.3).

Pursuing a balance:

Residential development should ideally take place in parallel with the provision of sufficient employment land to absorb much of the additional labour associated with new housing.

Given the already generous provision of industrial land in the vicinity, the PPC focuses on commercial and general business like those as they support residential growth, while making a major contribution to the residential capacity target outlined in the fulcrum report (Attachment F) of development ready for 2,300 dwellings by 2022. At the same time, business development will be constrained if the local workforce is not expanding.

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## Attachment E

### Item 9

#### B&A

**Urban & Environmental**

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#### MEMORANDUM

**Neighborhood**

- **Design**
  - Approved by
  - Pacific Environment, Rev. E
  - February 2018 and Revision F July 2018 and Revision G November 2018

**Whangarei – Warkworth**

- **5 Lilburn Street, Warkworth**
  - 021637513

Auckland Unitary Plan (Operative in Part) - Private Plan Change Request from Turnstone Capital Limited – Warkworth North
MEMORANDUM

Auckland Unitary Plan (Operative in Part) - Private Plan Change Request from Turnstone Capital Limited – Warkworth North

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Attachment E

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Some capacity in this area as not as steep but other factors such as ecological and land stability also come into play.

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SLOPE ANALYSIS: ENTIRE WARKWORTH AREA

Interpret-Geospatial Solutions has been commissioned to provide a slope analysis of the Warkworth Future Urban Zone, plus the existing live zoned land. The purpose of this is to provide an indication of land stock in the wider area under 12.5% slope. This land is more efficient to develop for regular flat to gently sloping development than land over 12.5% slope. This greater efficiency is due to lower site modification costs than steeper sloping land, and the ability to layout roads without being required to contour therefore being able to create more efficient block sizes that maximise the number of regular shaped blocks (some minimum) lots for business use.

Naturally three significant areas of land under 12.5% slope are located in the south western quadrant of Warkworth future urban zone with the proposed relocation of these properties. It has not been established by NZTA if a second interchange would be provided in this area in the future to provide alternative access points to cope with increased traffic flow from these urban future potential areas, such as constructed on SH1 at the Milldale area between Onewa and Silverdale these areas also feed into the Western Collector.
MEMORANDUM

[Content of the memorandum discussing the Urban and Environmental aspects related to the Auckland Unitary Plan (Operative in Part) - Private Plan Change Request from Turnstone Capital Limited - Warkworth North.]

Additional Discussion on Topographical Constraints

Urban development options will need to be influenced to incorporate proposals for mixed development in the land to enable urban scale buildings. Mixed development will need to incorporate proposals for mixed development in the land to enable urban scale buildings. Mixed development will need to incorporate proposals for mixed development in the land to enable urban scale buildings. Mixed development will need to incorporate proposals for mixed development in the land to enable urban scale buildings.
MEMORANDUM

B&A
Urban & Environmental

Planning Committee 05 February 2019

Auckland Unitary Plan (Operative in Part) - Private Plan Change Request from Turnstone Capital Limited

Attachment E
Item 9

KGA Geotechnical Report, 14 February 2018 and updated report 5 July 2018

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Area adjacent to Mahurangi River tributary behind the existing Hudson Road Industrial development is identified as High...
MEMORANDUM

Figure 1. Annotated general geology of subject area, not to scale (GNS Science, 2013).

See Map showing Areas – Attachment B

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6.2 Area B – Stubbs Farm Estate and Hudson Road Industrial Area

The geomorphology of the northern portion of the Stubbs Farm Estate is dominated by two distinct large scale crescent shaped headscarp features intersected by a generally north-south trending ridgeline.

The eastern facing scarp is the broader and more defined of the two. It appears to extend from near the northern end of the stream at the eastern boundary, pass through the southern portion of the neighbouring property immediately to the north and back into the subject property following the ridgeline south, through a woodland area and to the rear of the dwelling at the centre of the property at 12 Sanderson Road, from which it returns in an easterly trend back toward the stream. The headscarp is characterised by a moderate to steeply sloping ground surface, which becomes gently
MEMORANDUM

The ground surface within the colluvial lobe is characterised by a hummocky ground surface intersected by a number of ephemeral and permanent watercourses. Pockets of reed grasses indicative of high groundwater levels were noted in the lobe area. Watercourses are noted running at the base of the northern and southern flanks of the backslope to the stream at the eastern boundary. Puddling of water is noted at the base of the scarp feature in some historical aerial photographs. The slip feature has likely resulted from high groundwater levels with possible contribution from toe erosion from the stream at the eastern boundary. The slide has the characteristics of a flow type mechanism with a large bowl shaped source area and hummocky internal profile. A lobate convex front is often associated with this type of slide but may be missing due to erosion at the toe from the stream.

The western facing scarp feature is smaller in length than the eastern facing scarp and is confined to the northwestern portion of the property at 12 Sanderson Road. The ground surface profile is generally modestly sloping from the ridgeline down to a bush area where a number of relatively small watercourses converge. The sloping ground surface is slightly hummocky with sporadic clusters of reed grasses.
MEMORANDUM

To the south of the eastern facing scarp feature the ground surface falls from the ridge line at moderate to steep grades to the east and southeast. Shallow soil creep processes were noted on the steeper slopes. The building platform for the dwelling at 12 Sanderson Road has been formed mid-face on the southeast facing slope, with earthworks likely to have involved excavation into the slope and some amount of filling on the downslope edge. The exposed soils noted within the sloping ground below the platform comprised very stiff plinthic red silts. Stormwater ponds have been formed at the base of the southeast facing slopes. Immediately adjacent to the southwest of the platform is the head of a prominent steep sided gully feature which flows to the southeast where it converges with the main stream. The southern portion of the Stubbs Farm Estate is less hilly, with smoother, moderate to steep sloping ground noted by several gully features flowing down in a general southeasterly direction to the main stream.

The development of the industrial properties adjacent to Hudson Road has involved formation of near-level platform areas, beyond which steeper slopes are present where the ground falls away into the stream located to the west of the properties.

The ground profile at the southeast portion of the Stubbs Farm Estate falls at moderate grades from Falls Road to the north and north east. Several minor gullies and flow paths pass down through this area. Soil creep was noted on the steeper sloping ground adjacent to Falls Road at the western end of this portion.

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1.3 Area B - Stubbs Farm Estate and Hudson Road Industrial Area

Evidence of previous instability and potentially high groundwater levels is noted for the Stubbs Farm Estate area as commented on in Section 6. There is also significant recent slumping within the surficial soil zone. The overland flow paths and watercourses correspond to these slumped zones.
**Attachment E**

**Item 9**

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The existing industrial area subject to Hudson Road is likely to be undertaken by sample strength and soil testing to determine if the natural conditions are suitable for the proposed industrial use. The site is underlain by a number of areas with poor drainage and will require a similar foundation solution as a minimum.

Based on the above, the site is to be considered for the proposed industrial use subject to the conditions set out in the Site Plan.

Subject to the identified geotechnical constraints, Area B can generally be categorised as High Consolidation and subject to management of groundwater and appropriate earthworks design including retention structures and layout of access roads and building platforms, the remainder of Area B could be suitable for industrial development in terms of geotechnical constraints. The plan out that the site has a high potential for flood risk and may require some form of flood management and erosion control.

Page 15

Chester Consultants Ltd
Development Report, March 2018
### Biosearches

**Supplementary Report, Freshwater Compensation, October 2018**

**Page 22**

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### Area adjacent to Mahurangi River tributary and behind the existing Hudson Road Industrial area

- Where the main permanent streams area and there is also a flood plain extent.

---

### Harrison Grierson ITA, June 2018

**See Attachment D – Watercourse Classification**

**Location of the Western Link Road in this vicinity limits the extent of land available to make meaningful use of the land for industrial purposes especially once the**
MEMORANDUM

This has been summarised in the Figure 10 below.

The Western Link will also be a Limited access road so creating another road system to service an industrial area in this location would be challenging and would further reduce the available land area for development. Alternatively access would have to be gained from the existing industrial area and cross the river and this would put additional traffic on Hudson Road.

FIGURE 10: TOPOGRAPHIC FEATURE FOR THE SUBJECT SITE
Attachment E

Item 9

Auckland Unitary Plan (Operative in Part) - Private Plan Change Request from Turnstone Capital Limited – Warkworth North
Auckland Unitary Plan (Operative in Part) - Private Plan Change Request from Orakei Point Trustee Limited to rezone land at Orakei Point, Orakei Road, Orakei

File No.: CP2018/24043

Te take mō te pūrongo
Purpose of the report
1. To consider a private plan change request from Orakei Point Trustee Limited to rezone land at Orakei Point from Open Space-Informal Recreation to Business-Mixed Use.

Whakarāpopototanga matua
Executive summary
2. This report considers a private plan change request (the change request) received on 20 November 2018 from Orakei Point Trustee Limited to rezone 413m² of privately-owned land at 236 Orakei Road, Orakei, from Open Space-Informal Recreation to Business-Mixed Use.

3. Under clause 25 of Part 2 of Schedule 1 to the Resource Management Act 1991 (RMA), the council is required to make a decision that either:
   a) adopts the request as if it were a proposed plan made by the Council, which must then be processed in accordance with the provisions of Part 1 of Schedule 1 (clause 25(2)(a)); or
   b) accepts the private plan change request, in whole or in part, which then triggers a requirement to notify the request, or part of the request, under clause 25 (clause 25(2)(b)); or
   c) rejects the private plan change request in whole or in part, in reliance on one of the limited grounds set out in clause 25(4); or
   d) decides to deal with the request as if it were an application for a resource consent (clause 25(3)).

4. It is recommended that the private plan change request is accepted under clause 25(2)(b) and notified for submissions.

Ngā tūtohunga
Recommendation/s
That the Planning Committee:

a) accept the private plan change request by Orakei Point Trustee Limited for rezoning of land at 236 Orakei Road, Orakei (included as Attachment A to the agenda report) for the following reasons:
   i) having regard to relevant case law the request does not meet the limited grounds for rejection under clause 25(4) of the Resource Management Act; and
   ii) it is more appropriate to accept the request than adopt it or treat it as a resource consent application.

b) delegate authority to the Manager Central and South Planning to undertake the required notification and other statutory processes associated with processing the private plan change request.
Horopaki

Context

5. Orakei Point precinct applies to approximately 5.4ha of land at Orakei Road adjoining the coastal marine area. The precinct is bisected by the North Island Main Trunk Railway (NIMT). The Auckland Unitary Plan enables a transit orientated development (TOD) around Orakei Station. The operative precinct provides for the construction of a plaza over the NIMT and substantial retail, commercial and residential development above.

6. The majority of the land in Orakei Point is zoned Mixed Use but with a strip of Open Space-Informal Recreation around the perimeter of the precinct and in particular a serrated strip along the south-western edge. The land was originally zoned Open Space to provide public access to what was intended to be the Hobson Bay walkway/cycleway and to provide landscape treatment along this part of the foreshore.

7. Circumstances have changed since the precinct was originally developed, and the council’s Parks and Recreation Policy staff no longer support acquiring this land for access to the Hobson Bay walkway. The preferred Hobson Bay walkway/cycleway route is along Orakei Road and Ngapipi Road. Figure 1 below depicts the current zoning pattern at Orakei Point.

**Figure 1 – existing zoning at Orakei Point precinct**

Private Plan Change Request

8. Orakei Point Trustee Limited (OPTL), which effectively owns and controls the land south of the NIMT, has obtained a resource consent to construct a 7-9 level building containing 32 apartments on the south-western end of the precinct as stage one of a larger development proposal (LUC60318588 & DIS60318620).
9. OBTL lodged a private plan change request on 20 November 2018 (see Attachment A) which seeks to rezone a 413m² parcel of land at 236 Orakei Road from Open Space-Informal Recreation to Business-Mixed use. Subject to a subsequent resource consent process, the proposed rezoning would enable the movement of the approved apartment building 15.75m westward.

10. The location of the approved development (black dashed outline) and the location to which OBTL proposes to relocate the development (purple outline with light grey shading) via a subsequent resource consent (should this plan change request be approved) are shown in Figure 2 below.

**Figure 2 – Approved and proposed location of development**
Figure 3 below depicts the relevant part of the Orakei Point precinct, the operative zoning, and the land sought to be rezoned from Open Space to Mixed Use.

Land sought to be rezoned from open space to mixed use

11. OBTL has provided the following documentation in support of the request (see Attachment A):
   - Private plan change report with assessment of environmental effects
   - Section 32 evaluation
   - Landscape/Visual assessment
   - Zoning and location maps
   - Certificates of Title.

12. A copy of the decision on approved resource consent BUN60318586 (LUC60318588 and DIS60318620) is also attached at Attachment A.
Tātaritanga me ngā tohutohu
Analysis and advice

Resource Management Act 1991

13. The process for considering private plan change requests is set out in Part 2 of Schedule 1 to the RMA. A request can be made to the appropriate local authority by any person under clause 21 of Schedule 1. After a request has been lodged, a local authority can request further information under clause 23, and modify a request under clause 24, but only with the applicant’s agreement.

14. Under clause 23(6), if an applicant refuses to provide any requested further or additional information, a local authority that considers it has insufficient information to enable it to consider or approve the request, may reject the request or decide not to approve the plan change requested.

15. Under clause 25, after receiving the request, receiving all required information and modifying the request (where relevant), the local authority is required to make a decision that either:

   a) adopts the request as if it were a proposed plan made by the Council, which must then be processed in accordance with the provisions of Part 1 of Schedule 1 (clause 25(2)(a)); or

   b) accepts the private plan change request, in whole or in part, which then triggers a requirement to notify the request, or part of the request, under clause 25 (clause 25(2)(b)); or

   c) rejects the private plan change request in whole or in part, in reliance on one of the limited grounds set out in clause 25(4); or

   d) decides to deal with the request as if it were an application for a resource consent (clause 25(3)).

   e) Part 2 of Schedule 1 to the RMA is set out in full in Attachment G to this report.

Options available to the council

16. The next sections of this report assess the various options available to the council under clause 25. It is considered that the applicant has provided sufficient information to enable the request to be considered, and therefore do not consider the grounds for rejection in clause 23(6) to be applicable.

Option 1 - Reject the private plan change request, in whole or in part (clause 25(4))

17. The council has the power to reject a private plan change request, in whole or in part, in reliance on one of the limited grounds set out in clause 25(4). If the private plan change request is rejected by the council, the applicant has the ability to appeal that decision to the Environment Court under clause 27 of Schedule 1.

18. The grounds for rejection under clause 25(4) are as follows:

   a) the request or part of the request is frivolous or vexatious; or

   b) within the last two years, the substance of the request or part of the request:

      i. has been considered and given effect to, or rejected by, the local authority or the Environment Court; or

      ii. has been given effect to by regulations made under section 360A; or

   c) the request or part of the request is not in accordance with sound resource management practice; or
d) the request or part of the request would make the policy statement or plan inconsistent with Part 5; or

e) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than two years.

Clause 25(a) - If the request is frivolous or vexatious

19. The private plan change request includes a comprehensive section 32 evaluation and a planning report containing a detailed assessment of environmental effects covering landscape assessment, transport and infrastructure. The proposal is for a rezoning that is consistent with the adjacent zoning pattern.

20. It is therefore recommended that the council **not reject** the request under clause 25(a).

Clause 25(b)(i) - If the substance of the request has been considered and given effect to or rejected by the council within the last two years.

21. These provisions largely seek to discourage repetitive private plan change requests that are substantially the same, with the associated costs to the council and the community. Orakei Point precinct was subject to submissions and hearing during the development of the Auckland Unitary Plan, however it is more than two years since the council made its decisions in response to the recommendations made by the Auckland Unitary Plan Independent Hearings Panel.

22. It therefore recommended that the council **not reject** the request under clause 25(b)(i).

Clause 25(b)(ii) – If the substance of the request has been given effect to by regulations made under section 360A.

23. Section 360A of the RMA relates to regulations amending regional coastal plans pertaining to aquaculture activities. The substance of this private plan change request or part of the request, being rezoning of land at Orakei Point does not relate to section 360A of the RMA.

24. It is therefore recommended that the council **does not reject** the request under clause 25(b)(ii).

Clause 25(c) - If the request is not in accordance with sound resource management practice.

25. The term “sound resource management practice” is not defined in the RMA. The High Court in *Malory Corporation Limited v Rodney District Council* (CIV-2009-404-005572), where the issue on appeal was determining the correct interpretation of clause 25(4), considered this term in light of clause 25(4)(c) of Schedule 1 and stated:

“… the words “sound resource management practice” should, if they are to be given any coherent meaning, be tied to the Act’s purpose and principles. I agree too with the Court’s observation that the words should be limited to only a coarse scale merits assessment, and that a private plan change which does not accord with the Act’s purposes and principles will not cross the threshold for acceptance or adoption.”

26. The applicant has considered the zoning options for the site and concluded that the proposed rezoning will facilitate a better environmental outcome by providing a greater separation distance between the apartment building and the NIMT while ensuring that environmental effects of future development proposals are avoided, minimised or mitigated. The private plan change request includes technical reports which support the proposed rezoning.

27. Consultation undertaken with mana whenua to date has not identified any matters that are unable to be resolved.

28. The private plan change request is therefore considered to be in accordance with sound resource management practice and its is recommended that the council **not reject** the private plan change under clause 25(c).
**Clause 25(d) - If the request or part of the request would make the policy statement or plan inconsistent with Part 5 of the RMA.**

29. Part 5 sets out the role and purpose of planning documents created under the RMA, including that they must assist a local authority to give effect to the sustainable management purpose of the RMA. The private plan change request will not make the Auckland Unitary Plan inconsistent with Part 5 of the RMA.

30. It is therefore recommended that the council **not reject** the private plan change request on the basis that the substance of the request would make the Auckland Unitary Plan inconsistent with Part 5 of the RMA.

**Clause 25(e) - If the plan provisions to which the request relates have been operative for less than two years**

31. The provisions of the Auckland Unitary Plan relevant to this request were made operative on 15 November 2016. The plan change request was lodged on the 20 November 2018. The provisions have therefore been operative for more than two years and the council cannot reject the private plan change request on this basis.

32. It is therefore recommended that the council **not reject** the private plan change request under clause 25(e).

**Option 2 - Decide to deal with the request as if it were an application for a resource consent**

33. The council can, in some circumstances, decide to deal with a private plan change request as if it were an application for resource consent. However, in this case, the private plan change request seeks to rezone a portion of land to facilitate the movement of an approved apartment rather than apply for a non-complying resource consent. It is considered that the most appropriate process for facilitating a consideration of this change is through a plan change process.

34. It is therefore recommended that the council **not** decide to deal with the request as if it were an application for resource consent.

**Option 3 - Adopt the request, or part of the request, as if it were a proposed plan made by the council itself**

35. The council is able to decide to adopt the request and process it as though it were a council-initiated proposed plan change. A decision to adopt triggers the process set out in Part 1 of Schedule 1, which would then require the council to consult as required in clauses 3 to 3C of Part 1.

36. Following consultation, the council would then need to notify the proposed plan change for submissions and conduct a hearing into submissions, if required. If a request is adopted, all costs associated with the plan change would rest with the council. It is relevant to note that the applicant has not requested that the council adopts the private plan change.

37. Given that the applicant has not requested that the council adopts the request, that there would be no public benefit associated with the plan change request, and that the council would need to account for all costs associated with the adopted request, it is recommended that the council **not adopt** the private plan change request.

**Option 4 - Accept the private plan change request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26**

38. If the council accepts the request, in whole or in part, it must then proceed to notify the request, or part of the request under clause 26. After the submission period has closed, the council would need to hold a hearing to consider any submissions, and a decision would then be made by the council in relation to the request in accordance with Schedule 1 of the RMA. All costs associated with the request (including notification and any hearing) would rest with the applicant.
39. This is the only remaining option and is supported on the basis that the request does not meet the criteria for rejection under clause 25(4) of Schedule 1 to the RMA, having regard to relevant case law, and it is more appropriate to accept the request than adopt it or treat it as a resource consent application.

40. It is therefore recommended that the council accepts the private plan change request.

Conclusion

41. The private plan change request by OPTL seeks to rezone 413m² of land at 236 Orakei Road, Orakei from Open Space-Informal Recreation to Business-Mixed use. OPTL has lodged technical reports in support of the plan change request. The plan change request, if accepted and if successful, and subject to a subsequent resource consent process, would facilitate the movement of an approved apartment 15.75m westward.

42. Having carefully assessed the request against the relevant matters set out in the RMA and associated case law, it is recommended that council accepts the plan change request and notifies it for submissions. If the council accepts the plan change request, a further assessment by council staff would take place prior to and during the course of the subsequent hearing.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera
Council group impacts and views

Wastewater and Water supply

43. There are no water or wastewater issues associated with the proposal. As such, Watercare staff have no specific feedback on the proposal.

Stormwater

44. Healthy Waters states that the change in zoning will in theory allow for an increased total maximum impervious area across the site. The open space zone has a maximum impervious area of 10% (H7.11.7) whereas the Business mixed use zone has no maximum impervious area (excepting within the riparian yard which is not relevant here) allowing development up to 100% impervious area. The Precinct rules do not add or remove any controls in relation to impervious area.

45. The effects on water quality and quantity and the mitigation of these specific to this development will need to be addressed through the resource consent process.

Transport

46. Auckland Transport staff are concerned that development of the Orakei Point precinct will progress on an ad-hoc basis (i.e. assessed on a building-by-building basis and contrary to the outcomes sought in the Orakei Point Precinct), and that this will not result in a coordinated and integrated land use and transport response for both sides of the precinct.

47. These concerns are considered to be more relevant to an assessment at the resource consent stage rather than at the initial stage of considering this specific private plan change request.

Parks and Recreation Policy

48. The Parks and Recreation Policy unit’s position is the same as in 2016. The subject site is not a priority open space acquisition as it would not contribute or add value to the existing open space network. In addition, they do not have any fundamental concerns/issues with the proposal that would justify the private plan change request being rejected.
Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe
Local impacts and local board views

49. After the lodgement of the private plan change request by OPTL on 20 November 2018, Plans and Places staff briefed the Orakei Local Board on 7 December 2018 formally seeking their views on the private plan change. On 14 December 2018, comments were received from Orakei Local Board:

“There is a majority view to reject this plan change proposal. The proposal rezones a small piece of land for residential rather than open space and has potential to limit public access options adjacent to the area.

The Urban Design Panel (UDP) were supportive of the communal open space (the location of the proposed zone change) – in the original Tattico report and this proposal appears to negate that. We note there is no reference to the UDP or consultation in the zone change document.

The proposal raises more uncertainty than obviating that to accept the proposal would make good sense. Some of that uncertainty includes reference in the Tattico report that Kiwi Rail would ‘desire’ a wider separation to the main trunk railway. Desire does not mean essential. And if it were essential – why was it not mentioned in the original Tattico report (Oct 2017).

We note also from the Council memo to OLB that Kiwi Rail have yet to confirm on the setback. It is difficult for OLB to make an informed decision or recommendation – if key stakeholder input has yet to be received.”

50. The comments from the Orakei Local Board are an assessment of the detailed merits of the request rather than a response to the matters set out in clause 25 of Schedule 1 to the RMA. While there are a number of issues that would need to be addressed if the request is accepted, these are matters properly considered through the planning assessment rather than as part of this decision to accept, reject or adopt the request under clause 25.

51. If the request is accepted, staff from the Plans and Places department will contact the Orakei Local Board again prior to the hearing to ensure that the Local Board’s views are clearly presented to the independent hearing commissioners.

Tauākī whakaaweawe Māori
Māori impact statement

52. On 17 April 2017, a number of amendments to the RMA came into force which place an increased focus on engagement and consultation with iwi authorities as part of various plan-making processes. This is particularly the case for plan change processes that are initiated or adopted by a council. In relation to private plan change requests, although engagement with mana whenua and relevant iwi authorities is encouraged before lodgement under clause 21, it is not clear whether it is a mandatory requirement under Part 2 of Schedule 1. If the council accepts a private plan change request for notification, it is not required to complete any additional pre-notification steps.

53. The applicant advises that consultation has been undertaken with Ngati Whatua o Orakei. At the time of writing this report no written feedback from Ngati Whatua o Orakei has been provided by the applicant. If the council accepts the plan change for notification, all mana whenua entities will have the opportunity to make submissions on the private plan change and be heard by the independent hearing commissioners.

54. Aside from potential impacts on mana whenua the private plan change is not considered to have any specific impacts on Māori.
Ngā ritenga ā-pūtea

Financial implications

55. If accepted, the council’s costs associated with processing the private plan change request would be met by the applicant.

Ngā raru tūpono me ngā whakamaurutanga

Risks and mitigations

56. The only risk associated with the recommendations made in this report are a judicial review by a third party. This risk is considered to be very low and mitigated by the analysis provided in this report.

Koringa ā-muri

Next steps

57. If the private plan change is accepted for notification, the implementation of this decision will follow the process set out in clause 26 of Schedule 1 of the RMA. This requires that the private plan change is notified within four months of being accepted, unless this time frame is waived in accordance with section 37 of the RMA.

Ngā tāpirihanga

Attachments

Due to the size and complexity of Attachment A it has been published under separate cover at the following link: http://infocouncil.aucklandcouncil.govt.nz/ > Planning Committee 5 February 2019 > attachments

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Ngā kaihaina

Signatories

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<th>Author</th>
<th>Bruce Young - Principal Planner</th>
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<tr>
<td>Authorisers</td>
<td>John Duguid - General Manager - Plans and Places</td>
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<td>Jim Quinn - Chief of Strategy</td>
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21 December 2016

Mr Kerry J Knight
Equinox Capital Limited
PO Box 106376
AUCKLAND 1143

Dear Kerry

Re: Orakei Bay Village development – Open space acquisition

Thank you for your correspondence dated 13 December 2016, regarding open space acquisition. As detailed in your letter there has been a long development history for the site of the proposed Orakei Bay Village development.

I am also aware that you are currently engaged with council in a resource consent application process for the development. As such I will not address any regulatory or planning matters being actively considered through this process.

My staff have indicated previously that the purchase of land around the southern coastal edge of Orakei Point for open space is not considered a high priority for the reasons noted in your letter.

I can confirm that council has no governance approval or intent to enter into negotiations with you (in a buyer/seller relationship) to purchase land as part of your Orakei Bay Village development using open space acquisition budget.

Yours sincerely

K. Maki
General Manager, Community and Social Policy
Auckland Council
Orakei Bay Village

Peninsula Building

The Peninsula building gained Resource Consent approval on 12th July 2018 (refer to LUC60318588 and DI560318620RC). The granted consent showed the building adjacent the boundary to Kiwi Rail and on the western notational setback derived by PC260. The Applicant proposes to move the building toward the western site boundary 15.750M.

When viewing an object (in this case a building) from a relatively long distance, the movement in the angle of view can be determined through simple mathematics. Taking viewpoint 1 as an example:
the approved subject building is approx. 443.0m distant from the viewer. The proposal to move the building forward 15.75m changes the angle of view by a mere 2 degrees at this distance. See illustration.

![Diagram showing change in viewing angle](attachment:D/Item 10/fig1)

When considering the normal field of vision is around 120deg the small 2deg difference will be scarcely noticeable.

We have compiled a series of photo montages illustrating the Peninsula Building in the approved building position and the proposed building position. They have been taken from 4 areas to illustrate the possible visual effects from various viewpoints, that we have assessed, as the more affected by the proposed forward movement of the building. The viewpoints also illustrate that the incremental shift in the consented building does not remove any particular views that could be identified as desirable to the viewer.

We will address each in the following summaries:
Attachment D

Item 10

location plan
Location 1.
This viewpoint has been taken from the balcony of a home under construction at 29A Awarua Crescent. This is representative of the homes along this street that have an outlook over Hobson Bay and the site to the Southwest. We identify these homes as being the most affected as they are the few homes that have a direct view over the subject site. These homes along this section of Awarua Crescent are between 420m and 500m (the closest of the viewpoints shown) from the site and as illustrated with the montage there is little discernible difference between the consented location and that of the proposed.
Location 2.
This viewpoint has been taken with a drone at the intersection of Manawa Road and Lingarth Street. The drone is approx. 6.0m above the pavement to illustrate what may be seen from the balconies of surrounding homes. The building is seen some 794.0m from the viewpoint. The homes around these areas have broken views to the subject site and whilst some may be able to see the shoreline (tide levels) along the railway causeway, they do not relate to the foreshore of Hobson Bay. As illustrated with the montage there is little discernible difference between the consented location and that of the proposed.
Location 3.
This viewpoint has been taken with a drone at the intersection of Manawa Road and Victoria Avenue. The drone is approx. 8.0m above the pavement to illustrate what may be viewed from the balconies of surrounding homes. The building is seen almost 1km from this viewpoint. The homes around these areas also have broken views to the subject site and do not relate to the foreshore of Hobson Bay or subject site and the montage shows an indiscernible difference between the consented location and that of the proposed.

[Images of consented and proposed positions]
Location 4.
This viewpoint is taken from just east of the Hobson Bay walkway where it exits onto Shore Road and is more illustrative of what a walker or passer-by may experience. This view shows the building in its environment with the mangroves and shallow end of Hobson Bay in the foreground. It illustrates the most intrusive visual nature of the building in its consented and proposed position. Whilst we call it intrusive the difference is minimal in the wider picture of the entire environment and landscape.
We believe that the montages from the 4 different locations represent a fair and reasonable assessment of the differences that will be experienced from the neighbouring residences. Any properties located further to the North or West would experience less discernible movement in the building given the distance and viewing angle from the respective properties. Properties located behind or South of the site toward the southern end of the Orakei Basin would likewise experience little difference for the same reasons.

In summation we suggest that by moving the building 15.750m in a north westerly direction proposes an effect that can be described as minor or even less than minor.
7.0 BACKGROUND

7.1 In 2009 Redwood Group obtained planning consent under the Mixed Use zone for an intensive residential development at 228-236 Orakei Road (the southern portion of Orakei Bay).

7.2 The then Auckland City Council had concerns about the lost opportunity at Orakei Bay for a transit oriented development.

7.3 Discussions by the Council were entered with the predecessor to OPT/GBVL over the opportunity for an integrated masterplan and comprehensive development of Orakei Bay. This involved land purchase, land exchange, building over the rail line, and a comprehensive masterplan and District Plan zone package. General agreement was reached between Redwood and the Council.

7.4 There were two fundamental workstreams. One was land assembly. The second was the District Plan provisions.

7.5 OPT effectively purchased the Kings Plant Barn site and entered into perpetual lease arrangements over the Ngati Whatua land. It also entered negotiations to purchase the air rights above the rail line and the Council ‘park and ride’.

7.6 In January 2010, the Auckland City Council notified PC260. This was for a particular form of masterplan development at Orakei Bay. In essence the plan change enabled 84,000m² of development. This comprised approximately 700 apartments and up to 10,000m² of retail and 10,000m² of office.

7.7 A special Mixed Use zone was brought down with particular provisions tailored to Orakei Bay.

7.8 PC260 was essentially approved by the Council subject to modifications.

7.9 The Council decision recognised that the masterplan relied on purchase of the air space above the rail corridor and that this air right had not been secured. Consequently, the plan change put in place a mechanism where, if the land could not be secured within 60 days of the plan becoming operative, the provisions of PC260 would fall away and the zoning would revert to the underlying Mixed Use zone.

7.10 PC260 was appealed to the Environment Court.

7.11 In the Environment Court proceedings PC260 was confirmed in a modified form including a reconfiguration of the masterplan.

7.12 PC260 relied on purchase of the air space rights above the rail line.
A review of the project by Auckland Transport and KiwiRail identified that they did not want to see development above the rail line due to the ongoing maintenance cost. This had a material effect on the masterplan. Orakei Point would now need to be developed in a comprehensive manner, but with a degree of independent development both south and north of the rail line with suitable connections to give public access to the trains.

Consequently, the opportunity for OPT/OBVL to deliver the integrated masterplan across both the north and south of Orakei Bay was lost.

Notwithstanding these land purchase issues, the Council and OPT/OBVL fully agree the importance and benefits of TOD development at Orakei.

For this reason the Proposed Unitary Plan deleted the requirement for OBVL to achieve ownership of the Council land and air rights above the rail corridor as a prerequisite to comprehensive development of Orakei Point.

The requirement for comprehensive planning remained, and the reference masterplan embodied within PC260 was still rolled over because of timing associated with the Unitary Plan.

The Independent Hearings Panel on the Unitary Plan acknowledged that the masterplan for Orakei Bay embodied within the Unitary Plan was no longer relevant because of the inability to secure air rights and build above the rail line. However, because of the timing of the Unitary Plan, the Panel recommended that the Council essentially rollover the existing PC260 provisions.

The Council have provided some flexibility in the provisions for dealing with consents that meet the objectives and policies of the Precinct, but were developed to a different masterplan. This application follows that approach.

This application is advanced on the basis that building over the rail line will not happen and essentially, the Council will develop its land to the north of the rail line, and OPT/OBVL will develop the land it manages south of the rail line.

The masterplan referred to in section 8 below is advanced on the basis of the southern portion of the Orakei Bay only, but done in a way consistent with and recognising the likely form of development that the Council will masterplan in the future for its land north of the rail line.

Consequently, this application is a restricted discretionary activity because it varies from some elements of the masterplan. However issues of contamination make this consent a discretionary activity.
7.23 Through the Unitary Plan hearing process, there was a recognition by all parties that the opportunity for CFT/OBVL to purchase the air rights above the rail corridor has gone. Consequently, in some forms, there needs to be a different masterplan for Orakei Bay. The key debate is to ensure that any new masterplan achieves the fundamental principles of the Orakei Point Precinct.

7.24 Notwithstanding that OBVL has indicated it cannot deliver the specifics of the masterplan because of the decisions of KiwiRail, Auckland Transport and Auckland Council that they do not want substantial buildings over the rail line; nevertheless should the Council/KiwiRail/Auckland Transport change its mind in the future, and decide they want to reinstate and develop the public good aspects of the masterplan, particularly the station plaza over the rail line, then nothing in this application compromises that proposal. This is particularly addressed in paragraphs 13.9-13.14 of this application.
Masterplan

13.9 The second issue is the masterplan and whether this development in some way compromises either the existing or future masterplan.

13.10 The key element of the existing masterplan affecting the subject site is the open space along the coastal edge. This application protects and provides for that open space. In terms of open space considerations, it is consistent with the existing masterplan.

13.11 OBVL has made it clear that because KiwiRail, Auckland Transport and Auckland Council no longer support the principle of major buildings over the rail corridor for ongoing operation, maintenance, CPTED, and safety reasons; OBVL is no longer able to deliver the masterplan shown within the Precinct Plan. Consequently OBVL has put forward a proposed masterplan for its land south of the rail corridor which, in the opinion of the consultant team forming part of this application, meets the principles of the objectives and policies of the zone and deliver a high quality TOD and planning outcomes for Orakei Point.

13.12 However, it is accepted that Auckland Council in association with Auckland Transport and KiwiRail could actually deliver the key elements of the existing masterplan should they wish to do so. The key public good elements are:

- The open space network around the peninsula. This application delivers that portion of the open space network shown on the 236 Orakei Road site.

- The plaza above the rail station giving access to the station. This land is accessed from KiwiRail land and Auckland Council land. The plaza itself straddles KiwiRail land and Auckland Council land. The subject site does not connect to or impact the station plaza other than the entranceway. OBVL has made it clear in this application that it will cooperate with any future proposal by the Council to create a plaza above the station. It will reconfigure the accessway as part of any broader approach from the Council that still gives access to the OBVL land.

- The waterfront plaza north of the rail land. This is on Auckland Council owned land.

- The road widening along Orakei Road. This application does not affect that road widening because, apart from the entranceway, does not front Orakei Road. OBVL has set aside land in terms of its management of the property at 228 Orakei Road to facilitate this road widening in the future.
Sleeved apartments along the waterfront edge. This application retains this waterfront sleeving thus ensuring the two levels of parking within the building are not visible from the water or residential land across Hobson Bay.

Creating a connection from Orakei Road to the station through the 228 property. OBVL has committed as part of this development to make this pedestrian and cycling connection available to the Council by way of easements and formed paths when (if) the Council connects the boardwalk across to the existing boardwalk connecting Shore Road to Orakei Road. The original masterplan showed a D road in this location. This was to bring buses into the plaza above the train station. Auckland Transport has currently indicated they do not want buses in this location. Nevertheless, in the future should the Council change its mind, there is nothing in this proposal that prevents or negates that access. Most of the D road alignment is on land owned by Auckland Council. The other portion is on 228 Orakei Road. There is no change to the topography of this land, ownership or development as part of this application. Should the Council reverse its decision in the future and decide it does want to implement the D road then it has every opportunity to do so.

Diagram 17 shows the approximate location of the existing application superimposed on the existing masterplan. That masterplan always envisaged sleeved apartments along this coast with the open space in front of the apartments. The same relative level is achieved, i.e. accessways in the masterplan saw the connection to the open space level at about RL 3 or 4. The plaza in the existing masterplan in the Precinct provisions has substantial basement parking but this was further back from the coast so as to prevent carparks and inactive edges along this south-western coastline.
13.14 While OBVL cannot deliver this masterplan and OBVL understands Auckland Council does not wish to deliver the masterplan, nevertheless at some stage in the future when the formal masterplan approach for Orakei Point is determined, whether or not the one suggested by OBVL is favoured or the existing masterplan is confirmed; this peninsula building is essentially consistent with both scenarios. It will enable quality development as the first part of forming the Orakei TOD. The critical difference with this application is that the open space zoned land along the foreshore, which is a key consideration of the existing masterplan, is provided in full.

Rail

13.15 The third consideration is the impact on the rail network. The analysis set out in this report emphasises the significant benefit to the rail network by further reinforcing the TOD at Orakei. However, there are other considerations that need to be managed. The critical one is issues of reverse sensitivity relating to noise and vibration. As set out in the effects analysis, significant work has gone into this aspect of the development to ensure that it fully complies with the noise and vibration controls within the precinct. These noise and vibration controls are the most severe applying throughout Auckland and, as we understand it, nationally. Reverse sensitivity is fully addressed.
The issue is then the setback from the rail line and in particular the electric lines associated with the electric suburban trains. The legal requirement of the regulations is a 2m setback from electrified lines of the KV rating of the Auckland suburban network. KiwiRail's preference is for a 5m setback.

The development is 5m from the main power supply and 2.1m at its closest point from the earth wire. The regulations require the earth wire to be treated as live.

Unlike the primary power supply which must sit above the track itself, the earth wire is capable of being relocated or insulated. In a number of locations in tight sensitive areas, the earth wire is run from centrally located poles. In this case KiwiRail has elected to place the poles on the site boundary. Furthermore the earth wire can be insulated in critical areas without impacting its functionality.

A number of minor design improvements have been made to the building to address issues raised by KiwiRail in consultation. This has included fixed glazing on the relevant part of the closest apartment and particular treatment of the balustrade to prevent material falling off it or people sitting on the balustrade. While legal requirements are being met and practical issues addressed, KiwiRail's retained preference is to achieve the 5m setback.

KiwiRail advanced a proposal for a 5m setback along the rail corridor to the Independent Hearing Commissioners as part of the Proposed Auckland Unitary Plan. Those Commissioners recommended against the 5m setback and instead felt that in these zones, legal compliance with the regulations was sufficient. The Council adopted the Independent Hearings Panel recommendations and thus there is no additional 5m setback. This development complies with the Unitary Plan rules and national regulations associated with setbacks from electrified rail lines. It would be unreasonable to notify or limited notify this application on the basis that an operator aspires to standards higher than the AUP requirements and normal standards, particularly when that debate has just been through a legal process and the AUP standards set. This development complies with those standards.
Auckland Unitary Plan (Operative in Part) - Private Plan Change Request from Orakei Point Trustee Limited to rezone land at Orakei Point, Orakei Road, Orakei
Auckland Unitary Plan (Operative in Part) - Private Plan Change Request from Orakei Point Trustee
Limited to rezone land at Orakei Point, Orakei Road, Orakei
Decision on application for resource consent 
under the Resource Management Act 1991

Discretionary activity

Application numbers: LUC60318588 & DIS60318620
Applicant: OP Trustee Limited ("OPT")
Site address: 236 Orakei Road, Remuera
Legal description: Pt Lot 3 DP 112856 (CT NA63C/143)
Proposal:

Resource consent to construct a new apartment building comprising 32 residential dwellings, 
associated earthworks, landscaping and car parking.

Resource consent is required for the following reasons:

Land use consent (s9)

Auckland Unitary Plan (Operative in Part)

In terms of the provisions of the Auckland Unitary Plan (Operative in Part) resource consent is required 
for the following reasons:

Unitary Plan – Mixed Use Zone

(a) A restricted discretionary activity consent is required for a new building in the Mixed Use zone 
under A45 of Activity Table H13.4.1.

Unitary Plan – Orakei Point Precinct

(b) A restricted discretionary activity consent is required under I328.6.11 as the proposed building 
does not comply with the number of storeys above podium level (as there is no podium at all) and 
as the Building Height is between RL 25.1 to 29.5 and 36.55 (parapet height) rather than RL 29.5 
and RL 33, resulting in an infringement to maximum height. Please refer to sheet RC15B to 
RC22B for details of the height infringement.

(c) A restricted discretionary activity consent is required under I328.6.12 as the floor to ceiling 
height on the ground floor is 3.3m rather than 4m.

(d) A restricted discretionary activity consent is required as the proposed building does not provide 
the pedestrian link shown on Precinct Plan 3.

(e) A restricted discretionary activity consent is required under I328.6.25 as some apartments do 
not meet the outlook space requirement. These apartments overlook the rail line to Hobson Bay.
(f) A restricted discretionary activity consent is required under 13.28.6.29 as the staging requirements for infrastructure and public facilities has not been met.

Unitary Plan – Auckland Wide Rules

(g) A restricted discretionary activity consent is required under A9 of Activity Table E11.4.1 for earthworks greater than 2,500m² within a sediment control protection area within the open space and business zones.

(h) A restricted discretionary activity consent is required under A2 of E27.4.1 Activity Table as the access does not comply with the standards for access (gradient).

(i) A discretionary activity consent is required for soil disturbance. This is because lead and nickel levels exceeded the permitted activity standard.

Natural Environmental Standard (Contamination)

(j) A discretionary activity consent is required under the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health.

Overall, this proposal requires assessment as a discretionary activity.

Under sections 104, 104B, 105 & 107, I recommend that the application is GRANTED.

12. Reasons

The reasons for this recommendation are:

1. The granting of this resource consent is considered to be generally consistent with the expected environmental outcomes and strategic direction for the Orakei Precinct Plan and the Mixed Use zone as expressed through the relevant Objectives and Policies of the Auckland Unitary Plan (Operative in Part) which will provide for the establishment of Transit Oriented Development in this location.

2. In accordance with an assessment under s104(1)(a) of the RMA the actual and potential effects from the proposal will be acceptable as:

   ° Following an extensive assessment of the actual and potential visual amenity and character effects, it is considered that the proposal will be acceptable. The proposal will provide for additional housing within a planned Mixed Use area that delivers a high quality architectural response while at the same time acknowledging the realities of enabling a commercially viable development. The applicant has offered a range of conditions to mitigate the effects of the proposal;

   ° An extensive review of the traffic effects of this proposal has been undertaken on behalf of the Council and Auckland Transport. That review has confirmed that the proposal is acceptable, subject to conditions;
It has been confirmed that subject to conditions, there is sufficient capacity within the infrastructure networks to accommodate the development, including wastewater, stormwater, water supply and network services;

- Conditions of consent will ensure that any adverse effects on water quality are avoided;
- Suitable conditions of consent will manage any contamination effects arising from the proposal;
- The proposal will not exacerbate any flooding issues and any overland flows will be suitably managed;
- Any noise and vibration effects arising from the proposal will be suitably managed and are in keeping with expectations of the I328 Orakei Point Precinct standards;
- In terms of positive effects, the proposal will provide additional housing, restore the coastal edge and create employment opportunities and enable people and communities to provide for their social wellbeing and their economic needs;

3. In accordance with an assessment under s104(1)(b) of the RMA the proposal is generally consistent with the relevant statutory documents. In particular, the proposal will meet the relevant objectives, policies and assessment criteria of the Auckland Regional Policy Statement, the Auckland Council Auckland Unitary Plan (Operative in Part). The proposal is considered to achieve the key objectives and policies of the Orakei Point Precinct which seeks to achieve an integrated, comprehensive planned Transit Oriented Development that provides for a diverse range of activities and employment, and acts as a strong community focal point.

4. In accordance with an assessment under s104(1)(c) of the RMA, the following other matters are considered appropriate:

- The site will be subject to monitoring to ensure works are carried out in accordance with the approved plans and conditions;
- The Auckland Urban Design Panel has reviewed the proposal;
- The application will include a suite of conditions as offered by the applicant or suggested by various specialist reviewing the application, that will serve to avoid or mitigate the adverse effects of the proposal;
- Development contributions will be imposed on the proposed that will serve to address the effects of the growth on the wider catchment;

5. The foregoing assessment has concluded that the proposal will result in effects on the environment that are minor. As such, the proposal satisfies the first gateway test of s104D(1), and can be determined by Council under s104B of the Act. Furthermore, it is noted the proposal is generally consistent the relevant objectives and policies of the PAUP and meets the second gateway test of s104D(2).
Under section 108 of the RMA, I recommend the following conditions:

**Conditions - Applies to Landuse and Discharge Consents**

The following conditions apply to all resource consents.

1. The activity shall be carried out in general accordance with the plans and all information submitted with the application, detailed below, and all referenced by the Council as consent number LUC60318588 & DIS60318620 being:

   - Application Form, and Assessment of Environmental Effects prepared by Tattico, dated 15 April 2018, including the following:

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## Attachment F

### Item 10

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#### Landscape Plans

- Sheet 45 - Landscape plan: 09/17
- Sheet 46 - Coastal edge treatment: 09/17
- Sheet TA02 - Coastal edge tree survey: 09/17
- Sheet 52 - Planting plan: 09/17
- Sheet 53 - Fencing plan: 09/17

#### Previous Section 92 Information

- Acoustics – 235 Orakei Road – Acoustic Advice for Building & Resource Consent: NDY
- Email Orakei Point Transportation Review: Tettico
- Survey of electrified rail line/earthwork plan: Thurlow
- Extract from John Thurston: 09/17
- Email from Victoria Rastelli: 09/17
- Response to Kwikrail letter: Tettico
- Updated Landscape - Planting Plan: Undated
- Updated Plan showing KwikRail amendments: Hulena
- Response to Local Board Queries: Hulena
- Response to Queries from Mt Hayward: Tettico
- TDC - Response to Flow Specialist Transport Input/Update on New Design Layouts: TDC
- Sheet 14006A2/B-Fig2 New Ground Level: TDC
- Emails Orakei Point - Accessway: Tettico
- Letter - Orakei Point apartments: Tettico
- Emails FW: Landscape assessment: Tettico
Monitoring Charges

2. The consent holder shall pay the Council a consent compliance monitoring charge of $2,000 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs that have been incurred to ensure compliance with the conditions attached to this consent. (This charge is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent).

3. The $2,000 (inclusive of GST) charge shall be paid as part of the resource consent fee and the consent holder will be advised of the further monitoring charge or charges as they fall due. Such further charges are to be paid within one month of the date of invoice.

Advice note:

The initial monitoring charge is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs, inspections, in excess of those covered by the base fee paid, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge or charges as they fall due. Such further charges are to be paid within one month of the date of invoice. Only after all conditions of the resource consent have been met, will the council issue a letter confirming compliance on request of the consent holder.

Term of Consent

4. Under section 125 of the Resource Management Act 1991, this consent lapses 5 years after the date it is granted unless:

- The consent is given effect to; or
- The Council extends the period after which the consent lapses.

Specific Conditions - Landuse Consent (LUC60318588)

Design Conditions

Architectural details

5. Prior to commencement of any works (prior to the approval of Building Consent for the building other than demolition, earthworks, foundations and structural works), a finalised set of architectural detail drawings and materials specifications shall be submitted to Council for written certification by Council’s Team Leader Monitoring (Central). The information shall include the following:

a) details of the building’s façade treatment / architectural features;

b) materials schedule and specification;

c) sample palette of materials, surface finishes, and colour schemes (including colour swatches); and

d) external / rooftop services / plants, and visual / aural screening elements.
The finalised set of drawings shall ensure that the building’s proposed architectural treatment and finished appearance is consistent with the plans and information referenced at condition 1. All works shall then be carried out with the details certified by Council, and thereafter retained and maintained, to the satisfaction of Council’s Team Leader – Central Monitoring.

**Advice note:** As part of the condition monitoring process, Council’s monitoring inspectors will liaise with members of the Council’s Auckland Design Office to ensure that the submitted details are consistent with the approved plans and information.

**Lighting**

6. Prior to commencement of any works (prior to the approval of Building Consent for the building other than demolition, earthworks, foundations and structural works), the consent holder shall provide a Lighting Plan to Council for written certification by Council’s Team Leader – Central Monitoring. This plan shall include proposed locations, lux levels and types of lighting (i.e. manufacturer’s specifications once a lighting style has been determined).

The purpose of this plan is to demonstrate that adequate lighting will be provided, particularly at the entrances to the building; and any publicly accessible areas within and around the site for the visibility and safety of residents, occupants and visitors to the premises and passers-by outside the daylight hours. The lighting shall be designed to prevent any glare or overspill to the neighbouring properties in compliance with the relevant bylaw provisions.

The finalised design details certified by Council shall be established prior to the development hereby consented being first occupied, and thereafter retained and maintained, to the satisfaction of Council’s Team Leader Monitoring (Central).

**Advice note:** As part of the condition monitoring process, Council’s monitoring inspectors will liaise with members of the Council’s Auckland Design Office to ensure that the submitted details are consistent with the approved plans and information.

**Landscaping**

7. Prior to commencement of any works, a finalised set of **Hard and Soft Landscape Plans and a Landscape Management Plan** shall be submitted to Council for written certification by the Team Leader – Central Monitoring. The finalised plans shall be consistent with the landscape design intent / objectives identified in the resource consent plans and information referenced at condition 1 and shall include:

a) landscape plan and specifications as recommended by Wildlands (December 2016 report) including Specimen Metrosideros excelsa trees within the coastal edge (not cultivars). No exotic palms are to be planted and limited numbers of Nikau palms;

b) details of all proposed weed management and ongoing monitoring;

c) planting schedule (including planter boxes and green roof), detailing the specific planting species, the number of plants provided, locations, heights/Pb sizes;

d) all restoration works should be guided by a comprehensive Ecological Management Plan (EMP).
e) pavement plan and specifications, detailing materiality and colour throughout the development site;

f) Design of pedestrian paths and routes shall be reviewed to ensure that the objectives of integrating the development into the coastal environment and/or reflecting the natural and landscape values of the coastal environment are maintained, as well as meeting CPTED principles.

g) planter box plan and specifications detailing location and materiality throughout the development site;

h) irrigation details;

i) annotated sections with key dimensions to illustrate that adequate widths and depths are provided for planter boxes, tree pits, and the podium planting beds;

j) an ongoing management/maintenance programme, addressing in particular: details of maintenance methodology and frequency; and allowance for replacement of plants, including specimen trees in case plants are severely damaged / die over the first five years of the planting being established. The ongoing landscape maintenance and weed management requirements shall be incorporated into the body corporate rules for the building; and

k) as a precautionary measure: vandalism eradication policies.

Advice note: As part of the condition monitoring process, Council’s monitoring inspectors will liaise with members of the Council’s Auckland Design Office to ensure that the submitted details are consistent with the conditions and approved plans and information.

The purpose of the condition is to update the October 2017 planting plan and ensure that the proposed landscape reflects the overall aim to provide a high quality environment that protects the natural and coastal character of the peninsula, including:

- Establishment of green roofs to mitigate the loss of open space and maintain amenity values; proposed indicative roof garden plant species are:
  
  Acaena microphylla (Scarlet Piripin)
  Coprosma arora (sand coprosma)
  Coprosma 'Tako'
  Disphyma australe (Native ice plant, Horokaka)
  Festuca coxii (Chatham Is. Blue Grass)
  Hebe pinguifolia
  Libertia peregrinans (NZ Iris)
  Lobelia angulata (Panaikaneke)
  Muehlenbeckia axillaris (Creeping pohuehue)
  Muehlenbeckia complexa (Pohuehue)
  Pimelea prostrata (NZ Daphne)
  Selieria radicans (Remuremu)

- Predominantly passive greenspace with limited buildings and structures

8. All existing trees identified on the Coastal Trees Survey shall be retained and incorporated into the plan together with the proposed new Specimen trees; except that trees may be replanted in the same general location so as to manage land decontamination issues and site levels. Any trees proposed for removal shall be justified and subject to approval by the Team Leader Monitoring. Note that level changes for structures/paths shall not be considered adequate justification for the full removal of a tree.
Fencing/Security

9. Prior to commencement of any works, finalised design details of security fencing and gate design, including locations, heights, materials, shall be submitted to Council for written certification by Council’s Team Leader Monitoring (Central). The finalised design details shall be consistent with the plans and information referenced at condition 1. The finalised design details certified by Council shall be established prior to the development hereby consented being first occupied, and thereafter retained and maintained, to the satisfaction of Council’s Team Leader Monitoring (Central).

Advice note:

As part of the condition monitoring process, Council’s monitoring inspectors will liaise with members of the Council’s Auckland Design Office to ensure that the submitted details are consistent with the approved plans and information.

Pre-Commencement

Erosion and Sediment Control Management Plan

10. Prior to the commencement of earthworks activity on the subject site, a finalised Erosion and Sediment Control Plan (ESCP) shall be prepared in general accordance with the application documents referred to under condition 1, and in accordance with GD05 and shall include, but is not limited to:

a) Specific erosion and sediment control works for the earthworks (location, dimensions, capacity) in accordance with GD05;
b) Methodologies for dewatering the site’s excavations;
c) supporting calculations and design drawings;
d) details of construction methods;
e) monitoring and maintenance requirements;
f) catchment boundaries and contour information;
g) details regarding the discharge locations; and,
h) details relating to the management of exposed areas (e.g. grassing, mulching).

This finalised ESCP shall be submitted to the Team Leader – Central Monitoring on monitoring@aucklandcouncil.govt.nz. No earthworks activity on the subject site shall commence until confirmation from council is provided that the ESCP is satisfactory.

11. Prior to the commencement of earthworks at the site, a Chemical Treatment Management Plan (CTMP) shall be submitted for the written approval of the Team Leader – Central Monitoring. The plan shall include as a minimum:

a) Specific design details of the chemical treatment system based on a rainfall activated methodology for the site’s Decanting Earth Bund or a flow based methodology for any dewatering device used;
b) Monitoring, maintenance (including post storm) and contingency programme (including a record sheet);
c) Details of optimum dosage (including assumptions);
d) Results of intial chemical treatment trial;
e) A spill contingency plan; and
f) Details of the person or bodies that will hold responsibility for long term operation and maintenance of the chemical treatment system and the organisational structure which will support this system.

12. Notwithstanding condition 11, no discharge from the subject site to the receiving environment until a clarity of 100mm has been reached. For the avoidance of doubt, the 100mm clarity will be taken from the surface of any impounded water surface.

Engineering

13. The consent holder shall provide a statement from an engineer to Auckland Council Team Leader Compliance and Monitoring – Central stating that the pumped wastewater rate to the public wastewater network from the on-site private wastewater pump station does not exceed a peak rate of 7.7 litre/second. This shall be provided prior to occupancy.

14. A copy of an updated private drainage “asbuilt” plan signed by a registered certifying drainlayer shall be provided to Auckland Council Team Leader Compliance and Monitoring – Central at the completion of the building works. The “Asbuilt” plan shall show that private stormwater drains to outfalls to the harbour.

15. The consent holder shall be advised that where mains pressure is unsuitable for consumption requirements than alternative private plumbing requirements such as pumps and storage tanks, may be required at the applicants own cost. Details shall be provided with the building consent application.

Transportation Design

16. The consent holder shall install a pedestrian and cycling refuge consistent with that required adjacent to shared use paths, at the access with Orakei Road, in a location to be agreed with Auckland Transport and in general accordance with Figure 5 of the Traffic Design Group response to further information requests, dated 30 November 2017. The central refuge is to be supported by all necessary shared path crossings located on either side of the access. All costs associated with the implementation of the refuge, shared path crossings and tie-in works shall be met by the consent holder. Prior to commencement of any works (prior to the approval of Building Consent for the building other than demolition, earthworks, foundations and structural works), the consent holder shall submit a final design for the certification of Team Leader Compliance Monitoring, Central.

17. The consent holder shall ensure there is a pedestrian connection available from the Peninsula building to any future shared path constructed on or immediately adjacent to the site by the Council or its CCO’s as part of the Hobson Bay shared path/cycleway/walkway network. A plan showing the design, and location and termination point of this path shall be submitted for the certification of Team Leader Compliance Monitoring, Central prior to its construction. If the shared path has not been designed by the time of the construction of the Peninsula building a termination point of the pedestrian connection shall be agreed with Council.

18. The consent holder shall ensure that access to the building at 234B Orakei Road shall be kept clear at all times.
19. The consent holder shall provide a plan identifying a minimum of 35 cycle parks internal to the development in a secure location. Should the secure cycle storage facility be shared with the storage of other equipment, sufficient space shall also be made available for the other equipment, such as stand up paddle boards. This plan shall be provided with the Engineering Plan Approval (EPA). The cycle parking and associated facilities shall be provided prior to the commencement of the activity.

20. No more than 70 parking spaces shall be provided within The Peninsula building.

21. The consent holder shall submit a plan for certification to the Team Leader Compliance Monitoring, Central identifying the location of at least 2 visitor cycle parking spaces in a location convenient to visitors to the apartment (in close proximity to the plaza and with a high level of surveillance). The cycle parking and associated facilities shall be provided prior to the occupation of residential units.

22. The two mobility spaces and loading bay shall be located as shown on Sheet RC03. These two mobility spaces and loading bay shall be retained in this location in perpetuity unless they need to be relocated to enable further redevelopment of the site. If they are to be relocated, the new location shall not be more than 50m from the Peninsula building.

Contaminated Land

23. The Team Leader Compliance Monitoring, Central, shall be informed in writing, at least ten (10) working days prior to the start date of the works authorised by this consent.

24. The procedures in the Remedial Action Plan (RAP), Orakei Bay Village Site Development, 228, 234, 234A, 234B and 236 Orakei Road, Remuera (Cofley, 7 June 2017) shall be implemented during the further investigation, remediation and development earthworks on the site. The RAP shall be updated with the results of additional sampling to be undertaken prior to earthworks, and the corresponding implications for soil management and/or remediation. Any revisions to the RAP shall be provided to the Team Leader Compliance Monitoring, Central for review and approval prior to earthworks.

25. During earthworks all necessary action shall be taken to prevent dust generation and sufficient water shall be available to dampen exposed soil, and/or other dust suppressing measures shall be available to avoid dust formation. The consent holder shall ensure that dust management generally complies with the Good Practice Guide for Assessing and Managing the Environmental Effects of Dust Emissions, MIE (2001).

26. In the event of the accidental discovery of contamination which has not been previously identified, including asbestos material, underground tanks, buried drums and non-aqueous phase liquids, the consent holder shall immediately cease the works in the area of the discovery, notify the Team Leader Compliance Monitoring, Central, and engage a Suitably Qualified and Experienced Professional (SQEP) to assess the situation (including possible sampling and testing) and decide in conjunction with a council compliance officer on the best option for managing the material.

27. Soil shall only be re-used on site if it complies with the high density residential Soil Contaminant Standard in the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.
28. Any material excavated during the earthworks which is not re-used on site, shall be disposed of at an appropriate facility, licensed to accept the levels of contamination identified. The consent holder shall ensure that the contamination level of any imported soil complies with cleanfill criteria as outlined in the Ministry for the Environment Guide for Managing Cleanfills (2002).

29. Documentation that the remedial and development earthworks have been carried out according to the Remedial Action Plan (RAP), Orakei Bay Village Site Development, 228, 234, 234A, 234B and 236 Orakei Road, Remuera (Coffey, 7 June 2017) and conditions of consent shall be prepared by a Suitably Qualified and Experienced Professional (SQEP) in the form of a Site Validation Report (SVR) and provided to the Team Leader Compliance Monitoring, Central for review and approval within 3 months of completion of the works, and prior to further site development. The SVR will include the following items as a minimum:

- A summary of all works undertaken, with a photographic log and confirmation on whether the works complied with the RAP;
- Site plans showing areas of cut and fill;
- Site plans showing the location of any remaining soil contamination;
- Details and results of all testing undertaken and interpretation of the results in the context of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health;
- The volume of soil disposed off-site and evidence of landfill disposal; and Reports of any complaints, health and safety incidents related to contamination, and/or contingency events during the remediation.

Advice notes:
If you are demolishing any building that may have asbestos containing materials (ACM) in it:

- You have obligations under the relevant regulations for the management and removal of asbestos, including the need to engage a Competent Asbestos Surveyor to confirm the presence or absence of any ACM.
- Work may have to be carried out under the control of person holding a WorkSafe NZ Certificate of Competence (CoC) for restricted works.
- If any ACM is found, removal or demolition will have to meet the Health and Safety at Work (Asbestos) Regulations 2016.
- Information on asbestos containing materials and your obligations can be found at www.worksafe.govt.nz.

If ACM is found on site following the demolition or removal of the existing buildings you may be required to remediate the site and carry out validation sampling. Dependent on the amount of soil disturbance a further consent application may be required.

30. Prior to commencement of earthworks activity, a final Site Management Plan (SMP) shall be prepared to the approval of the Team Leader Compliance Monitoring, Central. The SMP shall include the following points:

a) A suitably qualified and experienced contaminated land specialist shall be engaged to monitor the earth works.

b) All earth works shall be managed to avoid potential cross contamination of the materials to occur, in particular movement of contaminated soil around the site and/or deposition of contaminated soil on other parts of the site shall be avoided.
c) If evidence of new contamination, including the presence of asbestos containing material is discovered during the earth works the consent holder shall immediately cease work and provide a site contamination report to the satisfaction of the Team Leader Compliance Monitoring, Central.

d) The mixing of top soils and underlying natural soils shall be avoided.

e) Where soils are identified for off-site disposal, they shall be loaded directly for removal and all materials shall be covered during transportation.

f) Soil take away in the course of the activity shall be disposed of to an authorised facility/landfill site.


g) No contaminated material from the site shall be used as fill material.

h) Imported fill materials shall be tested in compliance with clean fill criteria as outlined in the Ministry for the Environment Guide for Managing Clean fills (2002), and evidence thereof provided to the Team Leader – Central Monitoring

i) The consent holder shall at all times control any dust form the site in accordance with the Good Practice Guide for Assessing and Managing the Environmental Effects of Dust Emissions, Ministry for the Environment (2001).

j) Stockpiling shall be avoided if possible. If required, stockpiles shall be placed within the excavation foot print and fully covered with polythene or equivalent impermeable material and anchored at the edges.

k) Good housekeeping of the works site shall be maintained to avoid the spread of potentially contaminated material outside the construction site boundary, including tracking and spilling on roadways.

l) Erosion and sediment controls shall be put in place to ensure that the generation of potentially contaminated sediment and storm water is minimised and managed, according to a site specific erosion and sediment control plan.

m) Following completion of earth works, the consent holder shall provide to the satisfaction of the Team Leader – Central Monitoring, a site validation report, which shall include but not limited to the following:

   i. Soil test results for any imported soils
   ii. Total Volume of excavated soil disposed off-site
   iii. Waste transfer notes of soils disposed to a licensed facility/landfill

n) All necessary Work-Safe NZ approvals and requirements relating to health and safety of workers should be obtained from Work-Safe NZ and kept on site all the time.

31. Any perched groundwater, or surface water encountered within the excavation area requiring removal shall be considered potentially contaminated, and shall either:

   a. be disposed of by a licenced liquid waste contractor; or
   b. pumped to sewer, providing the relevant permits are obtained; or
   c. discharged to the stormwater system or surface waters provided testing demonstrates compliance with the Australian and New Zealand Environment Conservation Council (ANZECC) Guidelines for Fresh and Marine Water Quality (2000) for the protection of 80 percent of marine water species, with the exception of benzene where the 95 percent level shall apply.
32. Upon the completion of the proposed excavation/remediation works, site validation testing shall be undertaken in the areas identified for remediation in accordance with the Remedial Action Plan (RAP), Oraeke Bay Village Site Development, 228, 234, 234A, 234B and 236 Oraeke Road, Remuera (Coffey, 7 June 2017). It shall include testing of the soil and groundwater remaining within the excavation area for lead, nickel and any other contaminant of concern identified during the additional soil sampling required by condition 29. The site validation testing shall be undertaken in accordance with the Ministry for the Environment’s Contaminated Land Management Guidelines, No.5: Site Investigation and Analysis of Soils, revised 2011.

33. Within three months of the completion of the soil disturbance and remediation activities on site, a Site Validation Report (SVR) shall be provided to the Team Leader Central Monitoring, Compliance, Auckland Council. The SVR shall be prepared by a suitably qualified and experienced contaminated land practitioner in accordance with the Contaminated Land Management Guidelines No. 1: Reporting on contaminated sites in New Zealand, revised 2011.

34. The Site Validation Report required shall contain sufficient detail to address the following matters:
   i. a summary of the works undertaken, including a statement confirming whether the excavation of the site has been completed in accordance with the application reports listed in Condition 1.
   ii. the location and dimensions of the excavations carried out, including a relevant site plan.
   iii. a summary of any testing undertaken, including tabulated analytical results, and interpretation of the results in the context of the contaminated land rules of the Auckland Unitary Plan (Operative in Part).
   iv. copies of the disposal docket for the material removed from the site.
   v. evidence that all imported fill material complies with the definition of ‘cleanfill material’, as per the definition set out in the Auckland Unitary Plan (Operative in Part).

Construction Noise Management Plan

35. At least 10 days prior to construction works commencing, the consent holder shall prepare and submit, to the satisfaction of the Team Leader Compliance Monitoring, Central, a Construction Noise Management Plan (CNMP). The CNMP shall include details of all proposed screening and mitigation measures to ensure compliance with the relevant consent conditions and noise limits in Rule E25.6.27. The CNMP shall be prepared with reference to Annex E of NZS 6803:1999 Acoustics – Construction Noise and shall also address the following matters:

   i. The construction noise limits for the project;
   ii. Specifications and locations for acoustically effective barriers on site;
   iii. Procedures for response to neighbour’s concerns and dealing with any complaints;
   iv. Procedures for noise and monitoring during works close to neighbouring buildings;
   v. Details of further noise mitigation measures to be used (which may vary depending on the final construction methods and plant being used);
   vi. A process for facilitating the timing of high noise and/or vibration works to coincide with the least sensitive times for proximate receivers;
vii. Details for ensuring the machinery operators are aware of the potential for noise and vibration effects on neighbours and procedures for the minimisation of noise and vibration as far as practicable.

36. The consent holder shall advise the occupants (businesses and residences) of all neighbouring sites within 100 m of the site, in writing, 10 days prior to the commencement of earthworks on site. The written advice shall set out a brief overview of the construction works, the expected duration of the project, the mitigation to be implemented, availability of monitoring where concerns about noise or vibration are raised, the working hours, and a contact phone number for any concerns regarding noise and vibration.

37. Noise monitoring shall be undertaken when any piling rig/crane mounted auger is first used on site (or beforehand if practicable) to confirm that the noise emissions of the equipment does not exceed the reference sound level of Leq 79 dBA at 10 metres or if it does how else noise levels can mitigated to comply with the noise limits under Rule E25.3.27 Construction Noise of the Auckland Unitary Plan – Operative in Part. All construction noise shall be measured and assessed in accordance with the Standard NZS 6803:1999 Acoustics – Construction Noise.

38. Prior to the issuing of Building Consent, the consent holder shall provide a detailed design report prepared by a suitably qualified and experienced acoustic expert demonstrating that the bedrooms and habitable rooms have been designed so that they can comply with the acoustic requirements under the Auckland Operative Plan – Operative in Part, Orakei Point Precinct Rule I328.6.19 (1) based on train noise as detailed under part (2)(a) of the same rule and noise emissions from other properties within the Orakei Point Precinct under Table I328.6.20.1.; whichever is the greater. Note: a like-for-like conversion between measurement metrics is to be applied for LA10/L10 to LAeq/Leq i.e. LA10 60 dB = LAeq 60 dB.

39. Where a habitable room is constructed and the internal noise limits in condition 38 can only be complied with when doors or windows to those rooms are closed, those rooms must as a minimum:

1. Be mechanically ventilated and/or cooled to achieve an internal temperature no greater than 25°C based on external design conditions of dry bulb 25.1°C and wet bulb 20.1°C. Mechanical cooling must be provided for all habitable rooms with at least one mechanical cooling system servicing every level of a dwelling that contains a habitable room or

2. Provide a high volume of outdoor air supply to all habitable rooms with an outdoor air supply rate of no less than:
   i. 6 air changes per hour for rooms with less than 30% of the facade area glazed;
   ii. 15 air changes per hour for rooms with greater than 30% of the facade area glaciated;
   iii. 3 air changes per hour for rooms with facades only facing south (between 120 degrees and 240 degrees) or where the glazing in the façade is not subject to any direct sunlight.

3. All habitable rooms shall be provided with relief for equivalent volumes of spill air;
   i. Mechanical ventilation and/or cooling systems must be individually controllable across the range;
ii. The mechanical ventilation and/or cooling systems must generate a noise level no greater than L_{Aeq} 35 dB when measured 1m from the diffuser at the minimum air flows required to achieve the design temperatures and air flows in (1) and/or (2) above.

40. Prior to the occupation of the residential dwellings the consent holder shall submit a report, prepared by a suitably qualified acoustics specialist, to the satisfaction of Team Leader Compliance Monitoring, Central, demonstrating that the units have been constructed to comply with conditions 38 and 39.

41. Prior to the issuing of Building Consent for the building, the consent holder shall provide a detailed design report prepared by a suitably qualified and experienced acoustic expert demonstrating that the winter gardens have been designed so that they can comply with the acoustic requirements of Oraeki Point Precinct Rule I328.6.19 (5) under the Auckland Unitary Plan – Operative in Part whilst concurrently maintaining a maximum internal temperature no greater than 25°C based on external design conditions of dry bulb 25.1°C and wet bulb 20.1°C in accordance with the requirements of condition 39.

**Note:** The design shall assume that the windows of the winter gardens are closed at all times, that the provision of ventilation and air conditioning to the winter gardens shall not compromise the noise limits for habitable rooms and that the ventilation and air conditioning system(s) provide sufficient fresh air for occupants of the winter gardens.

42. The consent holder shall engage a suitably qualified and experienced person to undertake vibration measurements on the completed pile caps (at the completion of piling works) to determine the vibration levels arising from at least 20 freight train passbys on the NIMT. The results of the measurements shall be used to inform the design of the building to ensure that the vibration limits in Rule I328.6.26 of the AUP-OP are achieved. Compliance with these limits shall take into account the potential for vibration levels to increase as a result of foreseeable variations in and degradation of the condition of the rail track between track maintenance events. The results of the vibration measurements and consultation with Kiwirail to determine the current and future condition of the track and the concomitant factor of safety in the building design shall be provided to the satisfaction of the Team Leader Compliance Monitoring, Central prior to Building Consent being issued.

**Construction Traffic Management Plan**

43. Prior to commencement of construction, a Construction Traffic Management Plan (CTMP) shall be prepared and submitted to Team Leader Compliance Monitoring, Central. The CTMP shall contain specific details relating to the construction and management of the approved works, including:

a) Contact details of the appointed contractor or project manager (phone number, e-mail, postal address).

b) A general outline of the construction programme for each stage of development.

c) Measures to be adopted to maintain areas of the site that are visible from public spaces and private property in a tidy condition in terms of rubbish disposal, storage and unloading of materials, etc.
d) Plans showing areas where stockpiles, equipment (including contractor parking) will occur so that there is no obstruction of public spaces (e.g. roads).

e) Plans showing the location of any site offices, staff facilities and staff car parking required during the construction period.

f) An overview of measures that will be adopted to prevent unauthorised public access during the construction period.

g) Procedures for controlling sediment run-off, dust, and the removal/introduction of soil, debris, and materials. (See Condition 51).

h) Dust mitigation/suppression measures to ensure that there is no airborne or deposited dust beyond the subject site as a result of the earthworks activity that is noxious, offensive or objectionable.

i) Procedures for ensuring that the owners and/or occupants in the immediate vicinity of the construction area are given prior notice of the commencement of construction activities and are informed about the expected duration of works and potential effects of the works (e.g. noise and temporary traffic associated with construction activities, timings of temporary partial and full closures of the access way). Access to adjacent properties and business shall be safely maintained throughout the construction period during retail and business hours.

j) Temporary protection measures that will be installed to ensure that there shall be no damage to public roads, footpaths, berms, kerbs, drains, reserves or other public assets as a result of the earthworks and construction activities.

The approved CTMP shall be implemented to the satisfaction of Team Leader Compliance Monitoring, Central.

Pre-Construction Meeting

44. Prior to the commencement of the earthworks activity, the consent holder shall hold a pre-start meeting that:

- is located on the subject site;
- is scheduled not less than five days before the anticipated commencement of earthworks;
- includes Auckland Council Monitoring Advisor(s); and,
- includes representation from the contractors who will undertake the works.

The meeting shall discuss the erosion and sediment control measures, the earthworks methodology and shall ensure all relevant parties are aware of and familiar with the necessary conditions of this consent.

The following information shall be made available at the pre-start meeting:

- Timeframes for key stages of the works authorised under this consent;
- Resource consent conditions;
- Erosion and Sediment Control Plan (required by condition 10);
- Chemical Treatment Management Plan (required by condition 11);
- Site Management Plan (Required by condition 30);
- Construction Noise Management Plan (required by condition 35)
- Construction Traffic Management Plan (required by condition 43);
Advice Note: To arrange the pre-start meeting required by Condition 44 please contact the Team Leader Compliance Monitoring, Central to arrange this meeting on monitoring@aucklandcouncil.govt.nz or 09 301 0101. The conditions of consent should be discussed at this meeting. All additional information required by the Council should be provided 2 days prior to the meeting.

Development in Progress Conditions

Erosion and Sediment Control

45. Prior to earthworks commencing, a certificate signed by a suitably qualified person shall be submitted to the Team Leader Compliance Monitoring, Central, to certify that the erosion and sediment controls have been constructed in accordance with the approved Erosion and Sediment Control Plan (condition 10) and GD05.

46. Certified controls shall include the stabilised construction entrance, clean water diversion bunds, and decanting earth bunds. The certification for these measures shall be supplied immediately upon completion of their construction. Information supplied if applicable, shall include:

a) Contributing catchment area;
b) Volume of structure (dimensions of structure);
c) Position of inlets/outlets;
d) Stabilisation of the structure, and,
e) Retention volume of the structure (measured to the invert of the emergency spillway).
f) Stabilisation of the structure.

47. All decanting earth bunds utilised during earthworks shall be designed to ensure that they:

a) Have at a minimum one percent storage capacity, being at least one cubic metre of impoundment volume for every 100m² of contributing catchment;
b) Have a level invert and two layers of geotextile covering and pinned securely to the emergency spillway to prevent erosion;
c) Use floating decant devices that discharge at a rate of 3 litres per second, per hectare of contributing catchment;

Advice Note: The decanting earth bunds required by condition (48) should be constructed in accordance with Auckland Regional Council, Technical Publication No. 90, Erosion & Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region.

48. The operational effectiveness and efficiency of all erosion and sediment control measures specifically required as a condition of resource consent or by the Erosion and Sediment Control Plan referred to in Condition 10 shall be maintained throughout the duration of earthworks activity, or until the site is permanently stabilised against erosion.

49. There shall be no deposition of earth, mud, dirt or other debris on any road or footpath resulting from earthworks activity on the subject site. In the event that such deposition does occur, it shall immediately be removed. In no instance shall roads or footpaths be washed down with water without appropriate erosion and sediment control measures in place to prevent contamination of the stormwater drainage system, watercourses or receiving waters.
Advice Note: In order to prevent sediment laden water entering waterways from the road, the following methods may be adopted to prevent or address discharges should they occur:

- provision of a stabilised entry and exit(s) point for vehicles
- provision of wheel wash facilities
- ceasing of vehicle movement until materials are removed
- cleaning of road surfaces using street-sweepers
- silt and sediment traps
- catchpits

In no circumstances should the washing of deposited materials into drains be advised or otherwise condoned.

It is recommended that you discuss any potential measures with the Council's monitoring officer who may be able to provide further guidance on the most appropriate approach to take. Please contact the Team Leader Compliance Monitoring, Central for more details.

50. The site shall be progressively stabilised against erosion at all stages of the earthwork activity, and shall be sequenced to minimise the discharge of contaminants to groundwater or surface water in accordance with Erosion and Sediment Control Plan.

Advice Note: In accordance with condition (30) earthworks shall be progressively stabilised against erosion during all stages of the earthwork activity. Interim stabilisation measures may include:

- the use of waterproof covers, geotextiles, or mulching
- top-soiling and grassing of otherwise bare areas of earth

It is recommended that you discuss any potential measures with the Council’s monitoring officer who may be able to provide further guidance on the most appropriate approach to take. Please contact the Team Leader Compliance Monitoring, Central or email monitoring@aucklandcouncil.govt.nz for more details. Alternatively, please refer to Auckland Regional Council, Technical Publication No. 90, Erosion & Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region.

51. No bulk earthworks on the subject site shall be undertaken between 30 April and 1 October in any year, without the submission of a ‘Request for winter works’ to the Team Leader Compliance Monitoring, Central. All requests must be renewed annually, and must be submitted at least 10 days prior to 30 April each year. No works shall occur until written approval has been received from the Team Leader Compliance Monitoring, Central. All winter works will be assessed monthly to ensure that adverse effects are not occurring in the receiving environment.

Advice Note: Any ‘Request for winter works’ submitted in accordance with condition (28) will be assessed against criteria in line with the information required to assess a comprehensive application. Principally that will focus on the level of risk, the propensity to manage that risk with contingency planning and a ‘track record’ of good compliance with consent requirements. Each ‘Request for winter works’ submitted, should include the following:

- Description of works proposed to be undertaken between 30 April and 1 October and the duration of those works.
• Details of proposed measures to prevent sediment discharge from these specific works, particularly during periods of heavy rainfall.
• Details of area(s) already stabilised.
• Revised erosion and sediment control plan detailing stabilisation to date and time line/staging boundaries showing proposed progression of stabilisation.
• Contact details for contractor who will undertake stabilisation of the site including date(s) expected on site.
• Alternatives/contingencies proposed if the contractor referred to above becomes unavailable.
• Details of site responsibilities, specifically who is responsible for erosion and sediment controls and stabilisation processes over the specified period.

52. The sediment and erosion controls at the site of the works shall be inspected on a regular basis and within 24 hours of each rainstorm event that is likely to impair the function or performance of the erosion and sediment controls. A record shall be maintained of the date, time and any maintenance undertaken in association with this condition which shall be forward to the Team Leader Compliance Monitoring, Central.

Dust Control

53. There shall be no airborne or deposited dust beyond the subject site as a result of the earthworks/construction activity, that in the opinion of the Senior Compliance Advisor, DPO, is noxious, offensive or objectionable.

Construction (Geotechnical) Standards

54. Prior to the commencement of any earthworks, the Team Leader Compliance Monitoring, Central, shall be provided with written certification from a suitably qualified professional that all permanent earth bunds, retaining walls, excavations and building foundations have been designed in accordance with the recommendations of the following report Coffey – The peninsula residential apartment building at Orakei Village, 236 Orakei Road, Ramuara - GENZAUCK18524AC – Dated 5 December 2016.

A registered engineer shall be responsible for the supervision of all construction to ensure that all works are carried out in accordance with approved plans and report under condition 1 of the consent. Site monitoring and inspections may be delegated to a suitably qualified engineering professional.

The engineer or his representative shall carry out sufficient and regular inspections and shall provide to the Council certification that the works have been carried out in accordance with the standards as required by this consent, and in accordance with the conditions of approved Engineering Plans and good engineering practice.

This may be in the form of a Producer Statement – PS4 Construction Review or Engineer Statement outlining the level and details of Construction Monitoring undertaken (as defined by IPENZ).

55. All earthworks and excavations shall be managed to ensure that they do not lead to any uncontrolled instability or collapse either affecting the site or adversely affecting any neighbouring properties. If a collapse or instability does occur, it shall immediately be rectified.
Construction (Lighting) Standards

56. During construction any temporary artificial lighting shall meet the Unitary Plan lighting standards.

Contaminated Land

57. All site works shall be undertaken in accordance with the approved Site Management Plan (refer condition 30).

Construction Noise

58. The approved CNMP (refer condition 35) shall be implemented throughout the construction phase of the Project.

59. All noise generating activities associated with the implementation of this resource consent on, or in the vicinity of, the subject site (which can include (but is not limited to) any demolition, earthworks and construction activities, and ancillary activities (such as deliveries, loading and unloading goods, transferring tools, etc)) shall not exceed the noise limits stipulated within NZS 6803:1999 Acoustics - Construction Noise (or any subsequent revision), and may only be carried out:
   1. between the hours of 7:30 am and 8:00 pm, Monday to Friday, and
   2. 8:30 am and 2:00 pm Saturday; and
   3. must not be carried out on any Sunday or public holiday (and any following Monday on which that public holiday is observed).

60. Piling activities associated with the implementation of this resource consent shall only be carried out between the hours of 7:30 am and 6.00pm, Monday to Friday and Saturday 8.30am to 2.00pm.

61. The applicant shall adopt the best practicable option to address appropriate acoustic mitigation during the construction period. This shall include the erection of temporary acoustic walls as required in advance of construction.

62. If works on the site create vibrations, that may exceed the noise limits stipulated within NZS 6803:1999 Acoustics - Construction Noise (or any subsequent revision), the consent holder shall engage a suitably qualified expert to undertake monitoring of the works and provide confirmation that peak particle velocities measured on any foundation or uppermost full storey of any building not located on the subject site, do not exceed the limits set out in Table 1 of German Standard DIN 4150 Part 3:1986 “Structural Vibration in Buildings – Effects on Structures.”

63. The consent holder shall engage a suitably qualified acoustic engineer (at the consent holder’s expense) to monitor the vibration levels to determine compliance or otherwise with the provisions of DIN 4150-3:1999 “Structural vibration – Effects of vibration on Structures”.

64. Noise monitoring shall be performed when the first piling works are undertaken on the site. The results of these measurements shall be used to establish what, if any, mitigation is required for subsequent piling. If impact piling is to take place, vibration monitoring shall also be performed.
Construction Traffic

65. The approved Construction Traffic Management Plan (refer condition 43) shall be implemented throughout the construction phase of the Project.

66. Prior to the commencement of earthworks activity warning the public of vehicle movements shall be erected. This shall include methods to protect pedestrians. These measures shall remain in place for the duration of the construction activity.

Ecological

67. A suitably qualified and experienced ecologist/herpetologist acceptable to the Team Leader Compliance Monitoring, Central, shall be onsite to supervise all and any habitat removal in order to search for and rescue any native lizards found and relocate them to a suitable alternative location on the site.

68. Upon completion of works, all findings resulting from the search and rescue during habitat removal (condition 67) shall be recorded by a suitably qualified and experienced ecologist/herpetologist approved by the council on an Amphibian/Reptile Distribution Scheme (ARDS) Card (or similar form that provides the same information) and sent the Team Leader Monitoring (Central).

Advice note: All native lizards are totally protected under the Wildlife Act 1953. It is an offence to deliberately disturb or destroy native lizards and their habitat.

Accidental Discovery Protocol

69. If, at any time during site works, potential kōrī (human remains), archaeology or artefacts are discovered, then the following discovery protocol is to be followed:

   a. All earthworks will cease in the immediate vicinity (at least 10m from the site of the discovery) while a suitably qualified archaeologist is consulted to establish the type of remains.

   b. If the material is identified by the archaeologist as human, archaeology or artefact, earthworks must not be resumed in the affected area (as defined by the archaeologist). The consent holder must immediately advise the Team Leader Compliance Monitoring Central, Heritage New Zealand Pouhere Taonga and Police (if human remains are found) and arrange a site inspection with these parties.

   c. If the discovery contains kōrī, archaeology or artefacts of Maori origin, representatives from the relevant Mana Whenua group are to be provided information on the nature and location of the discovery.

   d. The consent holder shall not recommence works until approved by the Team Leader Compliance Monitoring Central.

Post-construction and ongoing conditions

Stormwater

70. Prior to occupation, the consent holder shall provide an Operation and Maintenance Manual for any private storm-water device to Team Leader Compliance Monitoring, Central.
71. A copy of an updated private drainage "Asbuilt" plan signed by a registered certifying drainlayer shall be provided to Team Leader Compliance Monitoring, Central at the completion of the building works. The "Asbuilt" plan shall show that private stormwater drains to outfalls to the harbour.

Earthworks

72. Upon completion or abandonment of earthworks on the subject site all areas of bare earth shall be permanently stabilised against erosion to the satisfaction of Team Leader Compliance Monitoring, Central.

**Advice Note:** Should the earthworks be completed or abandoned, bare areas of earth shall be permanently stabilised against erosion. Measures may include:

- the use of mulching
- top-soiling and grassing of otherwise bare areas of earth
- aggregate or vegetative cover that has obtained a density of more than 80% of a normal pasture award

Transportation

73. Prior to the occupation of residential units, a Traffic Management Plan (TMP) shall be prepared and submitted to the Council (Team Leader Compliance Monitoring, Central). The TMP shall contain specific details relating to the management of transport matters on site, including:

a. Details on refuse collection times, highlighting the need for refuse trucks to reverse manoeuvre on the ground floor and the safety impacts of this to users of the ground floor during collection times.

b. Details of the bike storage facility, highlighting the need for the facility to remain secure and for the use of residents only.

c. Details of the loading bay, including procedures on how the loading bay is to be used for periods greater than 5 minutes

d. Operational arrangement of the basement access. Entering vehicles will have right of way. Exiting vehicles shall wait when signalled in the designated waiting area. The speed limit internal to the building shall be 5 km/hr.

e. All motorists entering and leaving the apartment parking areas are to ensure the safety of all Precinct users, in particular about the Precinct car park and internal car park; and

f. A review methodology.

74. As part of the operation of the basement car park, signage and a warning system shall be provided to the satisfaction of the Council (Resource Consents Monitoring Leader) that ensure the safety of all users of the basement parking area. The basement car park shall include the following safety measures:

a. 5 km/hr speed limit signs

b. Signs warning motorists to look out for pedestrians

c. A warning light to inform exiting vehicles that a vehicle is entering the basement

d. Road markings for exiting vehicles to safely wait and allow an entering vehicle to pass

e. A convex mirror and lighting to improve visibility for vehicles entering and leaving the basement car park
All activities associated with the use of the apartments shall be in accordance with the approved NMP.

**Landscaping**

75. All hard and soft landscaping shall be implemented, as detailed on the approved **Hard and Soft Landscape Plans** and the approved **Landscape Management Plan** required by condition 7 above, in the first planting season immediately following the completion of works. The landscaping shall be maintained thereafter in accordance with the maintenance programme approved under condition 7 above to the satisfaction of Team Leader Compliance Monitoring, Central.

76. The consent holder shall ensure that planter boxes or private garden terrace plantings shown on the approved plans are maintained as detailed in the approved Hard and Soft Landscape Plans and in accordance with the approved Landscape Management Plan.

77. The consent holder shall ensure that the 32 apartments within the building shall only be used for residential purposes and not for retail, office or other business purposes, or other non-residential activity (other than a permitted home occupation).

78. The consent holder shall enter into a section 108 Resource Management Act 1991 covenant in favour of Auckland Council for the application site. The consent holder shall contact the council’s Team Leader Compliance Monitoring, Central to initiate the preparation of the covenant. A copy of the updated Computer Register (certificate of title) showing that the covenant has been registered shall be provided to the Team Leader Compliance Monitoring, Central prior to commencement of the activity.

The covenant shall:

(a) Require ongoing compliance with:

(i) the residential activity condition 77; and,

(b) be drafted by the council’s nominated Solicitor at the consent holder’s cost; and

(c) be registered against the Computer Register(s) (certificate(s) of title) to the affected land by the consent holder at their cost; and

(d) require the consent holder to:

(i) be responsible for all legal fees, disbursements and other expenses incurred by the council in connection with the covenant, and procure its solicitor to give an undertaking to the council for payment of the same; and

(ii) indemnify the council for costs, fees, disbursements and other expenses incurred by the council as a direct or indirect result of the council being a party to this covenant.

**Easement in gross for public access**

79. An easement in gross instrument in favour of Auckland Council for public access shall be prepared by Applicant’s solicitor in consultation with Auckland Council’s Legal Team, and shall be registered against the Certificate of Title for 228 and 236 Orakei Road (or any successor in title) at the cost of the consent holder. The easement instrument shall include but not be limited to:
a) The easement shall ensure that safe public access is provided from the southern coastal walkway through 228 and 236 Orakei Road to the Rail Main Line train station and Orakei Road.

b) The consent holder shall also obtain an agreement from the owner of 228 Orakei Road to enable the Council to connect any future boardwalk across Hobson Bay from the ‘Shore Road to Orakei Road’ boardwalk and to connect into the western end of 228 Orakei Road and further connect through to the rail station.

c) This agreement shall ensure that any such future work will provide a safe, legible walkway. This walkway can also connect to the residential and retail activity on Orakei Point.

d) The owner of 228 and 236 Orakei Road can determine the final alignment of the walkway within the site, provided it is a dedicated path, external to any buildings (but maybe under a verandah cover), in a logical reasonably direct alignment, and provides a safe connection overlooked by active uses for CPTED reasons. The path maybe through or alongside a carpark provided the path is clearly demarcated from vehicle areas.

e) The owner(s) of the lot is responsible for the maintenance of this easement.

f) The easement shall be registered against the title prior to occupation of the building.

No Complaints Covenant (Noise)

80. Prior to the occupation of the building, the consent holder shall register a restrictive encumbrance on the title to the property or a binding agreement of encumbrance, in favour of New Zealand Railways Corporation and Ports of Auckland Limited, by the landowner (and binding successors in title) not to complain as to the effects generated by the lawful operation of the North Island Main Trunk railway, all to the satisfaction of Council’s solicitor.

Review Condition

81. The Council may review the conditions of this consent pursuant to sections 128 of the Resource Management Act 1991 for any of the following reasons. The actual and reasonable costs of any review undertaken will be charged to the consent holder in accordance with s36(1) of the Resource Management Act.

Reasons for review:

1) To deal with any adverse effect on the environment which may arise from the exercise of this consent, which it is appropriate to deal with at that time, or which became evident after the date of issue. This may include effects on the safety and efficiency of the transport network from regular informal loading along the frontage of Orakei Road associated with the activity and to review pedestrian safety for users of the shared drive.

2) To require the adoption of the best practicable option to remove or reduce any effects on the environment relating stormwater and vegetation management.

3) To modify any monitoring programme, or to require additional monitoring if there is evidence that current monitoring requirements are inappropriate or inadequate.
Specific Conditions - Discharge Consent (DIS60318620)

82. At least ten (10) days prior to earthworks and remediation commencing on site, further sampling as described in the document titled Orakei Bay Village Site Development, 228, 234, 234A, 234B and 236 Orakei Road, Remuera, Remedial Action Plan, dated 7 June 2017, prepared by Coffey Services (NZ) Ltd shall be undertaken.

83. At least ten (10) days prior to remediation earthworks commencing on site, the results of the additional soil investigation required by Condition 82. shall be provided to the Team Leader Compliance Monitoring, Central for review.

84. At least ten (10) days prior to earthworks and remediation commencing on site, either an updated Remedial Action Plan or confirmation of the adequacy of the Remedial Action Plan shall be provided to the Team Leader Compliance Monitoring, Central for review.

85. All disturbance and remediation works shall be overseen by a suitably qualified and experienced contaminated land practitioner, who shall ensure that all management options and contingency measures outlined in the document titled Orakei Bay Village Site Development, 228, 234, 234A, 234B and 236 Orakei Road, Remuera, Remedial Action Plan, dated 7 June 2017, prepared by Coffey Services (NZ) Ltd or any updated version as required by Condition 84 and all relevant consent conditions are adhered to.

86. All sampling and testing of contamination on the site, shall be overseen by a suitably qualified and experienced contaminated land practitioner. All sampling shall be undertaken in accordance with Contaminated Land Management Guidelines, No.5 - Site Investigation and Analysis of Soils, Ministry for the Environment, revised 2011.

Advice Note:
All testing and analysis should be undertaken in a laboratory with suitable experience and ability to carry out the analysis. For more details on how to confirm the suitability of the laboratory please refer to Part 4: Laboratory Analysis, of Contaminated Land Management Guidelines No.5.

87. The Team Leader Compliance Monitoring, Central, shall be informed in writing about the commencement of the works at least two (2) working days prior to commencement.

Advice Note:
Please contact the Team Leader Compliance Monitoring, Central at monitoring@aucklandcouncil.govt.nz to advise of the start of works. The following details should also be provided:
• name and telephone number of the project manager and the site owner;
• site address to which the consents relate;
• activity to which the consents relate; and
• expected duration of the works.
88. All excavation in the work areas shall be managed to minimise any discharge of debris, soil, silt, sediment or sediment-laden water from beyond subject site to either land, stormwater drainage systems, watercourses or receiving waters. Erosion and sediment controls shall be installed along the boundaries of the disturbance areas in accordance with the Auckland Regional Council Technical Publication No. 99 Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region. The excavation areas shall be dampened during the day to suppress the generation of dust during the works. Filter cloths or cover mats shall be installed over the stormwater cesspits in the vicinity of the excavation areas.

Advice Note:
Discharge from the site includes the disposal of water (e.g. perched groundwater or collected surface water) from the remediation area.

89. The soils and/or fill material identified for off-site disposal shall primarily be loaded directly into trucks and shall be covered during transportation off site. If required, temporary stockpiles shall be located within an area protected by erosion and sediment controls, and be covered with tarpaulins anchored at the edges outside working hours and during periods of heavy rain. All soil removed from the land disturbance area shall be deposited at a disposal site that holds a consent to accept the relevant level of contamination.

Where it can be demonstrated that the soil has been fully characterised and found to meet definition of ‘Cleanfill material’, set out in the Auckland Unitary Plan (Operative in Part), the removal to a consented disposal site is not required. In such circumstances, the Team Leader Compliance Monitoring, Central shall be advised prior its removal from the subject site.

90. Any perched groundwater, or surface water encountered within the excavation area requiring removal shall be considered potentially contaminated, and shall either:

a. be disposed of by a licensed liquid waste contractor, or
b. pumped to sewer, providing the relevant permits are obtained; or
c. discharged to the stormwater system or surface waters provided testing demonstrates compliance with the Australian and New Zealand Environment Conservation Council (ANZECC) Guidelines for Fresh and Marine Water Quality (2000) for the protection of 80 percent of marine water species, with the exception of benzene where the 95 percent level shall apply.

91. All imported fill shall:

a. Comply with the definition of ‘Cleanfill material’, as per definition set out in the Auckland Unitary Plan (Operative in Part); and
b. Be solid material of an inert nature; and
c. Not contain hazardous substances or contaminants above natural background levels of the receiving site.

Advice Note:
Background levels for the Auckland Region can be found in the Auckland Regional Council technical publication TP153, Background concentrations of inorganic elements in soils from the Auckland Region, (2001).
Under the AUP (OP) Definitions, cleanfill cannot contain more than 5% by volume of inert manufactured materials (e.g. concrete, brick, and tiles).

92. Upon the completion of the proposed excavation/remediation works, site validation testing shall be undertaken in the areas identified for remediation. It shall include testing of the soil and groundwater remaining within the excavation area for lead, nickel and any other contaminant of concern identified during the additional soil sampling required by condition 84. The site validation testing shall be undertaken in accordance with the Ministry for the Environment’s Contaminated Land Management Guidelines, No. 5: Site Investigation and Analysis of Soils, revised 2011.

93. Within three months of the completion of the soil disturbance and remediation activities on site, a Site Validation Report (SVR) shall be provided to the Team Leader Central Monitoring, Compliance, Auckland Council. The SVR shall be prepared by a suitably qualified and experienced contaminated land practitioner in accordance with the Contaminated Land Management Guidelines No. 1: Reporting on contaminated sites in New Zealand, revised 2011.

The Site Validation Report required shall contain sufficient detail to address the following matters:

i. a summary of the works undertaken, including a statement confirming whether the excavation of the site has been completed in accordance with the application reports listed in Condition 1.

ii. the location and dimensions of the excavations carried out, including a relevant site plan.

iii. a summary of any testing undertaken, including tabulated analytical results, and interpretation of the results in the context of the contaminated land rules of the Auckland Unitary Plan (Operative in Part).

iv. copies of the disposal docket for the material removed from the site.

v. evidence that all imported fill material complies with the definition of ‘cleanfill material’, as per the definition set out in the Auckland Unitary Plan (Operative in Part). vi. records of any unexpected contamination encountered during the works, if applicable.

vi. details regarding any complaints and/or breaches of the procedures set out in the Remedial Action Plan, and the conditions of this consent.

94. Where contaminants are identified that have not been anticipated by the application, works in the area containing the unexpected contamination shall cease and be notified to the Team Leader Compliance Monitoring, Central. Works shall not recommence until confirmation has been received from the Team Leader Central Monitoring that disturbance of the unexpected contamination is within the scope of this consent. Any unexpected contamination and contingency measures shall be documented in the Site Validation Report required by Condition 83.

Advice Note:

In accordance with Condition (93) any unexpected contamination, may include contaminated soil, perched water or groundwater. The consent holder is advised that where unexpected contamination is significantly different in extent and concentration from that anticipated in the original site investigations, handling the contamination may be outside the scope of this consent. Advice should be sought from the Team Leader Central Monitoring as to whether carrying out any further work in the area of the unexpected contamination is within scope of this consent.
Advice Notes (applies to all consents)

1. The consent holder shall obtain all other necessary consents and permits, including those under the Building Act 2004, and the Historic Places Act 1993. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007), regulations, relevant bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004. Please note that the approval of this resource consent, including consent conditions specified above, may affect a previously issued building consent for the same project, in which case a new building consent may be required.

2. A copy of this consent should be held on site at all times during the establishment and construction phase of the activity. The consent holder is requested to notify Council, in writing, of their intention to begin works, a minimum of seven days prior to commencement. Such notification should be sent to the Team Leader Central Monitoring and include the following details:
   - name and telephone number of the project manager and the site owner;
   - site address to which the consent relates;
   - activity to which the consent relates; and
   - expected duration of works.

3. The granting of this resource consent does not in any way allow the applicant to enter and construct drainage within neighbouring properties, without first obtaining the agreement of all owners and occupiers of said land to undertake the proposed works. Any negotiation or agreement is the full responsibility of the applicant, and is a private agreement that does not involve Council. Should any disputes arise between the private parties, these are civil matters which can be taken to independent mediation or disputes tribunal for resolution. It is recommended that the private agreement be legally documented to avoid disputes arising. To obtain sign-off for the resource consent, the services described by the conditions above are required to be in place to the satisfaction of Council.

4. Compliance with the consent conditions will be monitored by Council. This will typically include site visits to verify compliance (or non-compliance) and documentation (site notes and photographs) of the activity established under the Resource Consent. In order to recover actual and reasonable costs, inspections, in excess of those covered by the base fee paid, shall be charged at the relevant hourly rate applicable at the time. Only after all conditions of the Resource Consent have been met, will Council issue a letter on request of the consent holder.

5. Development contributions levied under the Local Government Act 2002 are payable in relation to this application. The consent holder will be advised of the development contributions payable separately from this resource consent decision. Further information about development contributions may be found on the Auckland Council website at www.aucklandcouncil.govt.nz.

6. All new applications for new water and wastewater connections shall be lodged through connections@water.co.nz in conjunction with the building consent. Watercare Services Limited have advised that at the time of application for a water and/or wastewater connection (or application for demand increase), completed in conjunction with a building consent, a water and wastewater Infrastructure Growth Charge per additional equivalent unit shall apply. Details of the charge are available on the website, www.watercare.co.nz.
7. Any amendments made to any of the existing or proposed public lines on site will require the submission of an engineering plan approval to Council for approval in writing.

8. This development involves new connections to Watercare’s water and wastewater networks. The consent holder will be responsible for contacting Watercare regarding the connection, construction and acceptance testing. See Watercare’s website (www.watercare.co.nz) for more information.

9. If any archaeological features are uncovered on the site, works should cease and the Team Leader Central Monitoring and Heritage New Zealand Pouhere Taonga (09 307 9020) should be notified immediately. The Heritage New Zealand Pouhere Taonga Act 2014 provides for the identification, protection, preservation and conservation of the historic and cultural heritage of New Zealand. It is an offence under this Act to destroy, damage or modify any archaeological site without an authority from Heritage New Zealand Pouhere Taonga. An archaeological site is defined as a place associated with pre-1900 human activity where there may be evidence relating to history of New Zealand. Archaeological features may include old whaling stations, ship wrecks, shell middens, hangi or ovens, pit depressions, defensive ditches, artefacts, or koiti tangata (human skeletal remains), etc. For guidance and advice on managing the discovery of archaeological features, contact the Team Leader Cultural Heritage Implementation on 09 301 0101.

10. Myrtle Rust (Austrospuccinia psidii) has been found in New Zealand and it is now necessary to take all practicable measures to prevent the establishment and spread of myrtle rust. Under the Biosecurity Act it has legal status as a Notifiable and Unwanted Organism. Myrtle Rust affects the Myrtaceae family; including pohutukawa. NZ Plant Producers Inc (see http://www.nzppi.co.nz/news/4-881/myrtle-rust-update) have comprehensive, authoritative advice on protocols and precautions for growing, transporting and planting Myrtaceae species. Please ensure that your nursery supplier, transporter, site planting and management follows this advice.

Delegated decision maker:

Name: Quentin Budd
Title: Principal Project Lead, Premium, Resource Consents

Date: 12th July 2018
Clause 25, Schedule 2, Resource Management Act 1991

25 Local authority to consider request

(1) A local authority shall, within 30 working days of—
   (a) receiving a request under clause 21; or
   (b) receiving all required information or any report which was commissioned under clause 23; or
   (c) modifying the request under clause 24—
       whichever is the latest, decide under which of subclauses (2), (3), and (4), or a combination of subclauses (2) and (4), the request shall be dealt with.

(1A) The local authority must have particular regard to the evaluation report prepared for the proposed plan or change in accordance with clause 22(1)—
   (a) when making a decision under subclause (1); and
   (b) when dealing with the request under subclause (2), (3), or (4).

(2) The local authority may either—
   (a) adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself and, if it does so,—
       (i) the request must be notified in accordance with clause 5 or 5A within 4 months of the local authority adopting the request; and
       (ii) the provisions of Part 1 or 4 must apply; and
       (iii) the request has legal effect once publicly notified; or
   (b) accept the request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26.

(2AA) However, if a direction is applied for under section 80C, the period between the date of that application and the date when the application is declined under clause 77(1) must not be included in the calculation of the 4-month period specified by subclause (2)(a)(i).

(2A) Subclause (2)(a)(iii) is subject to section 86B.

(3) The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of Part 6 shall apply accordingly.

(4) The local authority may reject the request in whole or in part, but only on the grounds that—
   (a) the request or part of the request is frivolous or vexatious; or
   (b) within the last 2 years, the substance of the request or part of the request—
       (i) has been considered and given effect to, or rejected by, the local authority or the Environment Court; or
       (ii) has been given effect to by regulations made under section 360A; or
(c) the request or part of the request is not in accordance with sound resource management practice; or

(d) the request or part of the request would make the policy statement or plan inconsistent with Part 5; or

(e) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.

(5) The local authority shall notify the person who made the request, within 10 working days, of its decision under this clause, and the reasons for that decision, including the decision on notification.
Auckland Unitary Plan (Operative in Part) - Private Plan Change Request from Fletcher Residential Limited to rezone land at 90-104 Felton Mathew Avenue, St Johns

File No.: CP2018/24117

Te take mō te pūrongo
Purpose of the report
1. To consider a private plan change request from Fletcher Residential Limited to rezone 90 Felton Mathew Avenue, St Johns from Business - Light Industry zone to Residential - Mixed Housing Suburban zone in the Auckland Unitary Plan (Operative in part).

Whakarāpopototanga matua
Executive summary
2. This report considers a private plan change request (the request) lodged on 13 November 2018 from Fletcher Residential Limited (Fletcher). The request seeks to rezone 4,380m² of land at 90 Felton Mathew Avenue, formerly a part of 90-104 Felton Mathew Avenue from Business - Light Industry zone to Residential - Mixed Housing Suburban zone.

3. Under clause 25 of Part 2 of Schedule 1 to the Resource Management Act 1991 (RMA), the council is required to make a decision that either:
   a) adopts the request as if it were a proposed plan made by the Council, which must then be processed in accordance with the provisions of Part 1 of Schedule 1 (clause 25(2)(a)); or
   b) accepts the private plan change request, in whole or in part, which then triggers a requirement to notify the request, or part of the request, under clause 25 (clause 25(2)(b)); or
   c) rejects the private plan change request in whole or in part, in reliance on one of the limited grounds set out in clause 25(4); or
   d) decides to deal with the request as if it were an application for a resource consent (clause 25(3)).

4. It is recommended that the private plan change request is accepted under clause 25(2)(b) and notified for submissions.

Ngā tūtohunga
Recommendation/s
That the Planning Committee:

a) accept the private plan change request by Fletcher Residential Limited for rezoning of 90 Felton Mathew Avenue, St Johns (comprising 4,380m²), included as Attachment A to the agenda report pursuant to clause 25(2)(b) of Part 2 of Schedule 1 to the RMA for the following reasons:
   i) having regard to relevant case law and that the request does not meet the limited grounds for rejection under clause 25(4);
   ii) none of the limited grounds for rejection apply to the request; and
   iii) it is more appropriate to accept the request than 'adopt' it or treat it as a resource consent application.
b) delegate authority to the Manager Central and South Planning to undertake the required notification and other statutory processes associated with processing the private plan change request by Fletcher Residential Limited for rezoning of 90 Felton Mathew Avenue, St Johns pursuant to Schedule 1 to the RMA.

Horopaki Context

Site and Surrounding Area

5. The site subject to the request is currently vacant. It has been largely cleared of trees and is fenced off from neighbouring sites. The site has an approximate 5m difference in elevation from its highest point along Felton Mathew Avenue sloping towards the south-east extent of the site (refer Figure 1).

6. A gated entrance to Gerard Roofs (the primary brand for the Fletcher Building Roof tile group) located on the south-eastern boundary, provides access from Felton Mathew Avenue to an uncovered area with containers and car parking. A transformer that faces Felton Mathew Avenue is located outside of this entrance.

7. The site forms the northern extent of the existing industrial area within St Johns which begins from the subject site south toward Morrin Road. The industrial area is separated from the railway line by the Eastern Transport designation. A shared path for cyclists and pedestrians (Merton Road to St Johns Road) runs along the north-eastern boundary of the designation. Currently, there is no access to the shared path from the site.

8. The site is bounded by the wider residential neighbourhood of St Johns to the west and north. Residential development within the area can be characterised as low-density, suburban residential development that is typically single storey.

9. Beyond the railway line to the east is the Glen Innes Town Centre and the residential suburb of Glen Innes.

Figure 1: Locality Plan - 90 Felton Mathew Avenue and surroundings
Private Plan Change Request

10. The request was lodged on 13 November 2018 (refer Attachment A) and seeks to rezone 90 Felton Mathew Avenue (comprising 4,380m²) from Business - Light Industry zone to Residential - Mixed Housing Suburban zone.

11. Fletcher has provided the following documentation in support of the request:
    • Private plan change report with assessment of environmental effects
    • Section 32 analysis
    • Urban design assessment
    • Flood assessment
    • Infrastructure report
    • Transport assessment
    • Acoustic assessment
    • Industrial property market analysis
    • Iwi engagement letter
    • Consultation and engagement summary
    • Approved subdivision plans
    • Notification assessment

12. The request seeks residential development on the subject site located on the periphery of an existing light industrial area, that has not been used for industrial uses. It will enable residential development of a density that is consistent with the low density, suburban residential development of St Johns to the north and west of the site that has become surplus to Fletcher's requirements.

13. The existing zoning of land at 90 Felton Mathew Avenue is shown in Figure 2, and the proposed zoning under the request is shown in Figure 3 below.
Figure 2: Existing zoning of 90 Felton Mathew Avenue under the Auckland Unitary Plan (Operative in part)
Figure 3: Proposed zoning of 90 Felton Mathew Avenue under the Private Plan Change request

Tātaritanga me ngā tohutohu
Analysis and advice

Resource Management Act

14. The process for considering private plan change requests is set out in Part 2 of Schedule 1 to the RMA. A request can be made to the appropriate local authority by any person under clause 21 of Schedule 1. After a request has been lodged, a local authority can request further information under clause 23, and modify a request under clause 24, but only with the applicant’s agreement. If an applicant refuses to provide any requested further or additional information, a local authority that considers it has insufficient information to enable it to consider or approve the request, may reject the request or decide not to approve the plan change requested under clause 23(6).
15. Under clause 25, after receiving the request, receiving all required information and modifying the request (where relevant), the local authority is required to make a decision to either:
   - adopt the request as if it were a proposed plan made by the council, which must then be processed in accordance with the provisions of Part 1 of Schedule 1 (clause 25(2)(a)); or
   - accept the private plan change request, in whole or in part, which then triggers a requirement to notify the request, or part of the request, under clause 25 (clause 25(2)(b)); or
   - reject the private plan change request in whole or in part, in reliance on one of the limited grounds set out in clause 25(4); or
   - decide to deal with the request as if it were an application for a resource consent (clause 25(3)).

16. See Attachment B for the full wording of the clauses that make up Part 2 of Schedule 1 to the RMA.

Options available to the council

17. Council staff consider that the applicant has provided sufficient information to enable the request to be considered, and so do not consider the ground of rejection in clause 23(6) to be available. The next sections of this report assess the various options available to the council under clause 25.

18. The grounds for rejection under clause 25(4) are as follows:
   a) the request or part of the request is frivolous or vexatious; or
   b) within the last two years, the substance of the request or part of the request:
      i) has been considered and given effect to, or rejected by, the local authority or the Environment Court; or
      ii) has been given effect to by regulations made under section 360A; or
   c) the request or part of the request is not in accordance with sound resource management practice; or
   d) the request or part of the request would make the policy statement or plan inconsistent with Part 5; or
   e) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than two years.

Option 1 – Reject the request

Is the request frivolous or vexatious?

19. The private plan change request includes a comprehensive section 32 evaluation and a planning report containing a detailed assessment of environmental effects covering a wide range of issues including acoustics, industrial land supply, urban design, transport, and infrastructure. The proposal is for a rezoning that is consistent with the residential properties located to the north and west of the subject site and is not intended to create difficulties for any other party.

20. It is therefore recommended that the council cannot reject the private plan change request on the basis that it is frivolous or vexatious.
Has the substance of the request been considered and given effect to or rejected by the council within the last two years?

21. These provisions largely seek to discourage repetitive private plan change requests that are substantially the same, with the associated costs to the council and the community. The requested rezoning was not subject to submissions or hearing during the development of the Auckland Unitary Plan. Therefore, the substance of this private plan change request has not been considered within the last two years.

22. It is therefore recommended that the council not reject the request on the basis of this ground of rejection.

Has the substance of the request been given effect to by regulations made under section 360A?

23. Section 360A of the RMA relates to regulations amending regional coastal plans pertaining to aquaculture activities. The substance of this private plan change request or part of the request, being the rezoning of land at 90 Felton Mathew Avenue does not relate to section 360A of the RMA.

24. It is therefore recommended that the council not reject the request on the basis of this ground of rejection.

Is the request in accordance with sound resource management practice?

25. The term “sound resource management practice” is an often used planning term but is not defined in the RMA. The High Court in Malory Corporation Limited v Rodney District Council (CIV-2009-404-005572), where the issue on appeal was determining the correct interpretation of clause 25(4), considered this term in light of clause 25(4)(c) of Schedule 1 and stated:

“... the words “sound resource management practice” should, if they are to be given any coherent meaning, be tied to the Act’s purpose and principles. I agree too with the Court’s observation that the words should be limited to only a coarse scale merits assessment, and that a private plan change which does not accord with the Act’s purposes and principles will not cross the threshold for acceptance or adoption.”

26. The private plan change request includes a number of technical reports, which support the proposed rezoning. Watercare Services has advised that in principle there do not appear to be any water or wastewater constraints that would prevent the rezoning of the site. The council’s transport specialist considers that that traffic generated from the future development of the site can be accommodated by the existing road network.

27. The applicant has considered the zoning options for the site and concluded that the proposed rezoning will result in a residential development which makes a positive contribution to the existing residential character and amenity of the area, while adverse effects of future development proposals can be managed through the provisions of the Auckland Unitary Plan (Operative in part).

28. The applicant also considers that the proposed residential development of the site will not adversely affect the on-going operation and functioning of the adjoining Gerard Roofs site at 104 Felton Mathew Avenue.

29. Having reviewed the applicant’s planning and specialist reports and taken the purpose and principles of RMA into account, the private plan change request is considered to be in accordance with sound resource management practice. It is therefore recommended that the council not reject the private plan change on the basis that it is contrary to sound resource management practice.
Would the request or part of the request make the policy statement or plan inconsistent with Part 5 of the RMA?

30. Part 5 sets out the role and purpose of planning documents created under the RMA, including that they must assist a local authority to give effect to the sustainable management purpose of the RMA. The private plan change request will not make the Auckland Unitary Plan inconsistent with Part 5 of the RMA.

31. It is therefore recommended that the council not reject the private plan change request on the basis that the substance of the request would make the Auckland Unitary Plan inconsistent with Part 5 of the RMA.

Has the district plan to which the request relates been operative for less than two years?

32. The district plan provisions of the Auckland Unitary Plan relevant to this request were made operative on 15 November 2016. The provisions have therefore been operative for more than two years. The proposed rezoning was not subject to the Auckland Unitary Plan hearing process. As the proposal only relates to a zone change, provisions in the Auckland Unitary Plan that were made operative in part on 15 November 2016 will not be affected.

33. It is therefore recommended that the council not reject the private plan change request on the basis that the relevant parts of the Auckland Unitary Plan have been operative for more than two years.

Option 2 - Decide to deal with the request as if it were an application for a resource consent

34. The council can, in some circumstances, decide to deal with a private plan change request as if it were an application for resource consent. However, in this case, the private plan change request seeks to rezone the subject site from Business - Light Industry zone to Residential - Mixed Housing Suburban zone. It is considered that the most appropriate process for achieving rezoning for residential development of the site is through a plan change process.

35. It is therefore recommended that the council not decide to deal with the request as if it were an application for resource consent.

Option 3 - Adopt the request, or part of the request, as if it were a proposed plan made by the council itself

36. The council is able to decide to adopt the request and process it as though it were a council-initiated plan change. If a request is adopted, all costs associated with the plan change would rest with the council. It is relevant to note that the applicant has not requested that the council adopts the private plan change.

37. Given that the applicant has not requested that the council adopts the request and that the council would need to account for all costs associated with the adopted request, staff do not recommend that the council decide to adopt the private plan change request.

Option 4 - Accept the private plan change request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26

38. If the council accepts the request, in whole or in part, it must then proceed to notify the request, or part of the request under clause 26. After the submission period has closed, the council would need to hold a hearing to consider any submissions, and a decision would then be made by the council in relation to the request in accordance with Schedule 1 of the RMA. All costs associated with the request (including notification and any hearing) would rest with the applicant.
39. This is the only remaining option and is supported on the basis that the request does not meet the criteria for rejection under clause 25(4) of Schedule 1 to the RMA, having regard to relevant case law, and it is more appropriate to accept the request than adopt it or treat it as a resource consent application.

40. It is therefore recommended that the council accepts the private plan change request.

**Conclusion**

41. The private plan change request by Fletcher seeks to rezone 4,380m² of land at 90 Felton Mathew Avenue from Business - Light Industry zone to Residential - Mixed Housing Suburban zone. The plan change is supported by comprehensive technical reports.

42. Having carefully assessed the request against the relevant matters set out in the RMA and associated case law, it is recommended that council decide to accept the request and notify it for submissions.

**Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera**

**Council group impacts and views**

43. Watercare Services has advised that in principle there do not appear to be any water or wastewater constraints that would prevent the rezoning of the site. However, it advises that Watercare Services will need to undertake a capacity assessment for water and wastewater at the resource consent stage, and the cost of any infrastructure upgrades that are required, would need to be met by the applicant.

44. At the time of preparing this report, comments have not been received from Auckland Transport. Staff will follow up with Auckland Transport and update the Planning Committee at the meeting.

**Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe**

**Local impacts and local board views**

45. The views of the Ōrākei Local Board were sought on the private plan change request. The local board advised on 17 December 2018, that it was not opposed to the proposal. It noted that a mixed housing suburban development will have fewer adverse impacts on adjacent residential properties than light industrial activities. Additionally, the Board noted that the proposal is consistent with the objectives of the Auckland Unitary Plan, in providing more residential development close to public transport.

46. The local board advocates that the developer set aside and construct at its cost, a public accessway from Felton Mathew Avenue to the Glen Innes to Tamaki Drive Shared Path to meet the requests of local residents in Howard Hunter Avenue for better access to the shared path.

47. The applicant has advised that pedestrian access is not part of the plan change request, but if the site is rezoned, pedestrian access to the shared path can be discussed at the resource consent stage.

**Tauākī whakaaweawe Māori**

**Māori impact statement**

48. On 17 April 2017, a number of amendments to the RMA came into force which place an increased focus on engagement and consultation with iwi authorities as part of various plan-making processes. This is particularly the case for plan change processes that are initiated or adopted by the Council. In relation to private plan change requests, although engagement with mana whenua and relevant iwi authorities is encouraged before lodgement under clause 21, it is not clear whether it is a mandatory requirement under Part 2 of Schedule 1. If the council accepts a private plan change request for notification, it is not required to complete any additional pre-notification steps.
49. The applicant advised that it has engaged with 15 iwi groups, with letters being sent providing opportunity for queries to be addressed, before the plan change request was lodged with the Council. Ngāti Tamaoho, Ngāti Te Ata, and Te Ākitai Waiohua accepted the opportunity to meet with the applicant.

50. The applicant has advised that iwi representatives were appreciative of the forewarning of the intentions of the plan change, could see value in the plan change request and would wait to be approached by the Council following lodgement of the plan change.

51. If the council accepts the plan change for notification, the iwi groups engaged by the applicant will have the opportunity to make submissions on the private plan change on issues that are important to them.

52. Aside from potential impacts on Mana Whenua the private plan change is not considered to have any impacts on Māori.

Ngā ritenga ā-pūtea

Financial implications

53. If accepted, the council’s costs associated with processing the private plan change request would be met by the applicant.

Ngā raru tūpono me ngā whakamaurutanga

Risks and mitigations

54. The only risk associated with the recommendations made in this report is a judicial review by a third party. This risk is considered to be very low and mitigated by the analysis provided in this report.

Koringa ā-muri

Next steps

55. If the private plan change is accepted for notification, the implementation of this decision will follow the process set out in clause 26 of Schedule 1 of the RMA. This requires that the private plan change is notified within four months of being accepted, unless this time frame is waived in accordance with section 37 of the RMA.

Ngā tāpirihanga

Attachments

Due to the size and complexity of Attachment A it has been published under separate cover at the following link: [http://infocouncil.aucklandcouncil.govt.nz/ > Planning Committee 5 February 2019 > attachments]

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<td>Private Plan Change Request Report (62 pages) (Under Separate Cover)</td>
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<td>B</td>
<td>Extract from Clause 25 RMA</td>
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Ngā kaihaina

Signatories

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<th>Author</th>
<th>David Wong - Principal Planner</th>
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<tr>
<td>Authorisers</td>
<td>John Duguid - General Manager - Plans and Places</td>
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<td>Jim Quinn - Chief of Strategy</td>
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</tbody>
</table>
Attachment B

Extract from Clause 25 Resource Management Act 1991 (RMA)

25 Local authority to consider request

(1) A local authority shall, within 30 working days of—
   (a) receiving a request under clause 21; or
   (b) receiving all required information or any report which was commissioned under clause 23; or
   (c) modifying the request under clause 24—

whichever is the latest, decide under which of subclauses (2), (3), and (4), or a combination of subclauses (2) and (4), the request shall be dealt with.

(1A) The local authority must have particular regard to the evaluation report prepared for the proposed plan or change in accordance with clause 22(1)—
   (a) when making a decision under subclause (1); and
   (b) when dealing with the request under subclause (2), (3), or (4).

(2) The local authority may either—
   (a) adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself and, if it does so,—
      (i) the request must be notified in accordance with clause 5 or 5A within 4 months of the local authority adopting the request; and
      (ii) the provisions of Part 1 or 4 must apply; and
      (iii) the request has legal effect once publicly notified; or
   (b) accept the request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26.

(2AA) However, if a direction is applied for under section 80C, the period between the date of that application and the date when the application is declined under clause 77(1) must not be included in the calculation of the 4-month period specified by subclause (2)(a)(i).

(2A) Subclause (2)(a)(ii) is subject to section 86B.

(3) The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of Part 6 shall apply accordingly.
(4) The local authority may reject the request in whole or in part, but only on the grounds that—

(a) the request or part of the request is frivolous or vexatious; or

(b) within the last 2 years, the substance of the request or part of the request—

(i) has been considered and given effect to, or rejected by, the local authority or the Environment Court; or

(ii) has been given effect to by regulations made under section 360A; or

(c) the request or part of the request is not in accordance with sound resource management practice; or

(d) the request or part of the request would make the policy statement or plan inconsistent with Part 5; or

(e) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.

(5) The local authority shall notify the person who made the request, within 10 working days, of its decision under this clause, and the reasons for that decision, including the decision on notification.


Schedule 1 clause 25(1A): inserted, on 3 December 2013, for all purposes, by section 86 of the Resource Management Amendment Act 2013 (2013 No 63).


Schedule 1 clause 25(2)(b): replaced, on 1 October 2011, by section 60 of the Resource Management Amendment Act (No 2) 2011 (2011 No 70).

Auckland Unitary Plan (Operative in Part) - Update on appeals and making additional parts of the Plan operative.

File No.: CP2019/00069

Te take mō te pūrongo
Purpose of the report

1. To update the committee on the outcome of two appeals against the council’s decisions on the Proposed Auckland Unitary Plan, and two subsequent appeals:
   i) ENV-2016-AKL-0000238 – Housing New Zealand Corporation
   ii) CIV-2016-404-2343 – Royal Forest and Bird Protection Society of New Zealand Limited
   iii) ENV-2018-AKL-000150 – Brookby Quarries Limited

2. To obtain resolutions to allow staff to undertake the statutory processes to publicly notify the additional parts of the Auckland Unitary Plan (operative in part) that are no longer subject to appeals.

3. To note that two regional coastal plan map items, and regional coastal plan provisions of the Proposed Auckland Unitary Plan relating to genetically modified organisms, that are no longer subject to appeal, must be referred to the Minister of Conservation for approval before they are publicly notified as operative, and to request staff to take further steps necessary to make those provisions operative if approval is given by the Minister.

Whakarāpopototanga matua
Executive summary

ENV-2016-AKL-0000238 – Housing New Zealand Corporation

4. The council’s decision version of the Auckland Unitary Plan (Operative in Part), chapter B5.3.1 Special character objectives was appealed by Housing New Zealand Corporation (ENV-2016-AKL-0000238). Housing New Zealand appealed the council’s decision to include an additional objective (Objective B5.3.1(1)) in the regional policy statement relating to the historic heritage values of special character areas. The Environment Court did not uphold the additional objective the council had added. The district plan rules relating to special character areas remain unchanged.

5. In its decisions, the Environment Court confirmed that while the special character areas may have some heritage values, the purpose of the special character areas is to manage the character and amenity values within these areas. The Environment Court issued the third and final decision on 30 October 2018, Housing New Zealand Corporation v Auckland Council [2018] NZEnvC213. Read together with the earlier decisions, the Court directed amendments to: RPS Objective B5.3.1(1), Issue B5.1, Policy B5.3.2, and the explanation and principal reasons for adoption.

CIV-2016-404-2343 – Royal Forest and Bird Protection Society of New Zealand Limited

6. The High Court decision on Royal Forest and Bird Protection Society of New Zealand Limited appeal (CIV-2016-404-2343) gave rise to two new Environment Court appeals - Brookby Quarries Limited (ENV-2018-AKL-000150) and Fulton Hogan Limited (ENV-2018-AKL-000149).

ENV-2018-AKL-000149 – Fulton Hogan Limited

7. The Fulton Hogan Limited appeal has now been resolved in full by way of consent order.
ENV-2018-AKL-000150 – Brookby Quarries Limited

8. The Brookby Quarries Limited appeal has been set down for hearing in the Environment Court in the week beginning 25 March 2019.

9. Section 152 of the Local Government (Auckland Transitional Provisions) Act 2010 (LGATPA) provides for those parts of the Auckland Unitary Plan that are no longer subject to appeal, either as a result of being withdrawn or determined, to have been approved by the council. Section 160 of the LGATPA requires the council to publicly notify the date on which these parts of the plan become operative.

10. Section 152(3) provides for a slightly different approach with respect to the regional coastal plan. Section 152(3) provides for those parts of the regional coastal plan that are no longer subject to appeal to have been deemed as adopted by the council, but requires that the proposed plan or parts thereof must be sent to the Minister of Conservation for her approval under clause 18(3) of Schedule 1 of the Resource Management Act before it can become operative. Under clause 19(1) of Schedule 1 to the Resource Management Act, the Minister can require amendments to be made to provisions prior to giving approval.

Ngā tūtohunga

Recommendation/s

That the Planning Committee:

a) note that the following appeals in respect of the council’s decisions on the Proposed Auckland Unitary Plan are now fully resolved:
   i) ENV-2016-AKL-0000238 – Housing New Zealand Corporation

b) request staff publicly notify the following parts of the Auckland Unitary Plan as operative in accordance with clause 20(1) of Schedule 1 of the Resource Management Act:
   i) B5.3.1 Objectives, chapter B5.1 Issues, B5.3.2 Policies, and B5.4 Explanation and principal reasons for adoption
   ii) mapping of Significant Ecological Areas Overlay as shown in Appendices A and B in Judgement of Whata J, (Royal Forest and Bird Protection Society of New Zealand Incorporated v Auckland Council [2018] NZHC 1069 [18 May 2018]), and in Appendix A of Judgement (no 2) of Whata J (Royal Forest and Bird Protection Society of New Zealand Incorporated v Auckland Council [2018] NZHC 1344 [8 June 2018]); with the exception of SEA-M2-26a and SEA-M2-3262 – which cannot be made operative until the Minister of Conservation has formally approved them as part of the regional coastal plan part of the Auckland Unitary Plan.
   iii) mapping of the extent of Significant Ecological Area Overlay SEA_T_558 at Clevedon Quarry.

c) note that staff must now send the mapping of Significant Ecological Areas SEA-M2-26a and SEA-M2-3262 – Overlay and Schedule 4 Significant Ecological Areas to the Minister of Conservation for approval, and if approval is given by the Minister of Conservation, request staff publicly notify those parts of the regional coastal plan as operative in accordance with clause 20(1) of Schedule 1 of the Resource Management Act.

d) note that staff must also send the provisions of the regional coastal plan relating to genetically modified organisms to the Minister of Conservation for approval, and if approval is given by the Minister of Conservation, request staff publicly notify those parts of the regional coastal plan as operative in accordance with clause 20(1) of Schedule 1 of the Resource Management Act.
Horopaki

Context

Special character
11. The Environment Court issued its third and final decision on 30 October 2018 - *Housing New Zealand Corporation v Auckland Council* [2018] NZEnvC213. This decision confirmed that only one objective relating to maintaining and enhancing character and amenity values within special character areas would remain. Consequential amendments were also made to B5.1(3) Issues, B5.3.2 Policies and B5.4 Explanation and principal reasons for adoption. This decision was not appealed.

Significant ecological areas
12. Council’s decision with respect to the Significant Ecological Areas (SEA) Overlay provisions was appealed in the High Court by the Royal Forest and Bird Society of New Zealand Incorporated (CIV-2016-404-2343). The High Court issued its judgment on the first point of law in that appeal on 18 May 2018 (*Royal Forest and Bird Protection Society of New Zealand v Auckland Council* [2018]NZHC 1069) and a second supplementary judgment on that point on 8 June 2018 (*Royal Forest and Bird Protection Society of New Zealand v Auckland Council* [2018] NZHC 1344).

13. The council (by virtue of the High Court Judgment) is deemed to have rejected the recommendation of the Independent Hearings Panel, and instead imposed an alternative solution, giving rise to a right of appeal to the Environment Court under section 156(1)(b) of the LGATPA.

14. Fulton Hogan Limited and Brookby Quarries Limited filed appeals in the Environment Court against the ‘alternative solution’ reinstated in the Auckland Unitary Plan (operative in part).

15. The Fulton Hogan appeal sought the removal of the southern area of the SEA Overlay SEA_T_5588 at Clevedon Quarry. Ecological experts were in agreement over the extent of area to remain within the SEA overlay at Clevedon Quarry. An Environment Court order issued 31 October 2018 settled the appeal.

16. Brookby Quarries appealed the provisions reinstated in the Auckland Unitary Plan for vegetation alteration or removal in a SEA within a Quarry zone, and sought changes to the objectives, policies, matters of discretion and assessment criteria. The Brookby appeal was not resolved by mediation with the parties, and a hearing date is set for has been scheduled for the week of 25 March 2019 at the Environment Court.

Genetically modified organisms
17. The determination of this appeal was previously addressed at the 7 August 2018 Planning Committee meeting. However, the agenda report did not specifically refer to the need to refer the regional coastal plan provisions relating to genetically modified organisms to the Minister of Conservation for approval prior to public notification. Therefore, this report notes that these provisions will be sent to the Minister of Conservation for approval.

Tātaritanga me ngā tohutohu

Analysis and advice
18. This report deals with procedural matters – notifying additional parts of the Auckland Unitary Plan now operative; and referring part of the regional coastal plan to the Minister of Conservation for final approval.

19. No analysis or additional advice is required in relation to the SEA Overlay or the provisions for genetically modified organisms.
20. **Attachment A** contains a list of remaining appeals. There are Environment Court appeals, six High Court appeals, two judicial review proceedings and two Court of Appeal appeals remaining.

21. The following advice relates to the implications of the Environment Court amendments to the Special Character provisions in the regional policy statement (chapter B5).

22. The amendments to the Auckland Unitary Plan (operative in part) in response to the Environment Court decisions are only to the regional policy statement (chapter B5). As such there are no changes to the district plan rules for the Special Character Areas Overlay – Residential and Business. This includes the special character statements for each area – the values identified in these remains the same (chapter L Schedule 15).¹ This means there is no effect on the resource consenting process, either in the rules that apply to a site or assessment of the resource consent application.

23. The amendments will strengthen the overlay district plan objectives and policies (chapter D18) because it clarifies the policy framework they seek to give effect to as they recognise that historic heritage values underpin the identified character and amenity values of special character areas. Previously this was not as explicit in the regional policy statement.

24. In the future, if the council is considering adding new special character areas to the Auckland Unitary Plan, then it will need to be clear about the values it wants to manage and choose the appropriate method accordingly. If the primary focus of the new area is to maintain and enhance the character and amenity values of the area then the Special Character Areas Overlay will be the method to use. However if the primary focus is to protect historic heritage values then the Historic Heritage Overlay is the appropriate method.

### Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera

**Council group impacts and views**

25. The final step in making additional parts of the Auckland Unitary Plan operative is a procedural step and therefore does not have any impact on the council group.

26. If new special character areas are considered in the future, any impacts on and views of the council group will be considered then.

### Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe

**Local impacts and local board views**

27. Local Boards have been involved in the development of the Auckland Unitary Plan since mid-2012. Their views were not sought for this report as it addresses factual and procedural matters.

28. If new special character areas are considered in the future, local impacts and local board views will be considered then.

### Tauākī whakaaweawe Māori

**Māori impact statement**

29. The final step in making additional parts of the Auckland Unitary Plan operative is a procedural step and therefore does not have any impact on Māori. Impacts on Māori have been considered throughout the process of developing the Auckland Unitary Plan and the resolution of appeals.

30. If new special character areas are considered in the future, any impacts on Māori will be considered then.

---

¹ All special character areas, except Howick Village, have a special character statement.
Financial implications
31. The cost of making the Auckland Unitary Plan operative is covered by the Plans and Places department’s operational budget.

Risks and mitigations
32. There are no risks associated with the recommendations made in this report.

Next steps
33. Following the Planning Committee’s consideration, staff will:
   a) publish a public notice advising of the date on which further parts of the Auckland Unitary Plan will be made operative
   b) refer two regional coastal plan Significant Ecological Area sites and the genetically modified organisms provisions to the Minister of Conservation for approval
   c) amend the relevant parts of Auckland Unitary Plan (operative in part) as required.

Attachments

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<td>List of remaining Auckland Unitary Plan appeals</td>
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<tr>
<td>Authorisers</td>
<td>John Duguid - General Manager - Plans and Places</td>
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<td>Jim Quinn - Chief of Strategy</td>
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### Attachment A: List of outstanding appeals to the Auckland Unitary Plan 21 January 2019

#### Environment Court appeals

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<tr>
<th>ENV no</th>
<th>Appellant/Applicant</th>
<th>Decision/Consent Order/Withdrawn</th>
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</table>
| 1 ENV-2016-AKL-000189 | Cabra Rural Developments Rahopoa Farms SH16 Ltd Forest Habitats Ltd Rauhori Forest Ltd Monowai Properties Ltd Karapiro Investments Ltd | **Environment Court Decision**
|                 |                     | **NB.** Environment Court decision appealed by Auckland Council |
|                 |                     | High Court Appeal: CIV-2018-404-001294 |
| 2 ENV-2016-AKL-000196 | Weili Yang, Zhi Li & Jing Niu | **Environment Court decision**
|                 |                     | **NB.** Environment Court decision appealed by Okura Holdings Limited – 27 June 2018 |
|                 |                     | High Court Appeal: CIV-2018-404-001236 |
| 3 ENV-2016-AKL-000206 | Cato Bolam Consultants Ltd | **Environment Court Decision**
|                 |                     | **NB.** Environment Court decision appealed by Auckland Council |
|                 |                     | High Court Appeal: CIV-2018-404-001294 |
| 4 ENV-2016-AKL-000207 | Mason, David; Better Living Landscapes Ltd; Parallax Surveyors Ltd; Fluker Surveyors Ltd; Sayers in Trust Ltd | **Environment Court Decision**
|                 |                     | **NB.** Environment Court decision appealed by Auckland Council |
|                 |                     | High Court Appeal: CIV-2018-404-001294 |
| 5 ENV-2016-AKL-000211 | Okura Holdings Limited | **Environment Court decision**
<p>|                 |                     | <strong>NB.</strong> Environment Court decision appealed to High Court 27 June 2018 |</p>
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<tr>
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<tbody>
<tr>
<td></td>
<td></td>
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<td>NB. Environment Court decision appealed by Auckland Council.</td>
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<td>7</td>
<td>ENV-2016-AKL-000213</td>
<td>North Eastern Investments Limited and Heritage Land Ltd</td>
<td>UNRESOLVED</td>
<td>NB. This appeal is currently on hold pending the determination of the related High Court proceedings.</td>
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### High Court appeals

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<tr>
<td>15</td>
<td>CIV-2016-404-2333</td>
<td>Franco Belgiorno-Nettis</td>
<td>High Court decision [2017]NZHC 2367 decision dismissing High Court appeal</td>
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<td>NB. High Court decision has been appealed to Court of Appeal</td>
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<td>16</td>
<td>CIV-2016-404-2324</td>
<td>North Eastern Investments Ltd and Heritage Land Ltd</td>
<td>High Court decision North Eastern Investments Limited v Auckland Council [2018]NZHC918, 2 May 2018</td>
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<td>NB. High Court decision has been appealed to CA</td>
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<td>NB. Court of Appeal Decision made: CA287/2018 [2018] NZCA 629</td>
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<td>18</td>
<td>CIV-2018-404-000923</td>
<td>Self Family Trust</td>
<td>High Court appeal against Environment Court decision: Self Family Trust v Auckland Council [2018]NZEnvC49</td>
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<td>19</td>
<td>CIV-2018-404-001236</td>
<td>Okura Holdings Limited</td>
<td>High Court appeal against Environment Court decision Zhi Li, Jing Niu and Weili Yang and Okura Holdings Limited v Auckland Council [2018]NZEnvC87</td>
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<td>20</td>
<td>CIV-2018-404-001294</td>
<td>Auckland Council</td>
<td>High Court appeal against Environment Court decision Cabra Rural Developments Limited &amp; Ors v Auckland Council [2018]NZEnvC90</td>
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### Judicial Review proceedings

| 21 | CIV-2016-404-2325 | North Eastern Investments Limited and Heritage Land Limited | **High Court decision**  
2018 NZHC916  
Application for judicial review declined, 2 May 2018  
**NB.** High Court decision appealed to Court of Appeal.  
**NB.** Court of Appeal Decision made: CA287/2018  
[2018] NZCA 629 (21 December 2018) |
|----|------------------|------------------------------------------------------------|------------------------------------------------------------|
| 22 | CIV-2016-404-2335 | Franco Belgiorno-Nettis | **High Court decision**  
[2017] NZHC 2387 – applicants application for judicial review dismissed, 29 September 2017  
**NB.** High Court decision appealed to Court of Appeal. Appeal CA645/2017 has been adjourned pending the outcome of the application for leave to appeal in CA184/2018 (in accordance with the direction from Asher J following the Joint Memorandum of Counsel dated 23 March 2018). |

### Court of Appeal appeals

| 23 | CA645/2017  
(appellate)  
CA184/2018 – leave request | Franco Belgiorno-Nettis | **NB.** Appeal CA645/2017 has been adjourned pending the outcome of the application for leave to appeal in CA184/2018 (in accordance with the direction from Asher J following the Joint Memorandum of Counsel dated 23 March 2018). |
|----|------------------|------------------------------------------------------------|------------------------------------------------------------|
| 24 | CA287/2018 | North Eastern Investments Limited and Heritage Land Limited v Auckland Council and Housing New Zealand Corporation | **NB.** Court of Appeal Decision made: CA287/2018  
[2018] NZCA 629 (21 December 2018). This Decision referred the matter back to the Auckland Unitary Plan Independent Hearings Panel. |
Auckland Unitary Plan (Operative in Part) - Request to make Operative Plan Change 8 - Kings College

File No.: CP2019/00114

Te take mō te pūrongo
Purpose of the report
1. To make operative Plan Change 8 to the Auckland Unitary Plan (Operative in Part).

Whakarāpopototanga matua
Executive summary
2. Plan Change 8 rezones land adjoining Māngere Road from Special Purpose – School to Terrace Housing and Apartment Buildings and land adjacent to Hospital Road from Terrace Housing and Apartment Buildings and Single House zones to Special Purpose – School (refer Attachment A).

3. The plan change is a private plan change requested by King's College which was notified to a limited number of parties on 7 December 2017. Four submissions were received and were considered by Independent Commissioners. The council released the decision on 18 October 2018. No appeals were received, and the plan change can now be made operative.

Ngā tūtohunga
Recommendation/s
That the Planning Committee:

a) note that Plan Change 8 to the Auckland Unitary Plan (Operative in Part) is deemed to have been approved by the Council under Clause 17(1) of Schedule 1 of the Resource Management Act.

b) authorise staff to complete the necessary statutory processes to publicly notify the date on which Plan Change 8 to the Auckland Unitary Plan (Operative in Part) operative.

Horopaki
Context
4. Plan Change 8 rezones land adjoining Māngere Road from Special Purpose – School to Terrace Housing and Apartment Buildings and land adjacent to Hospital Road from Terrace Housing and Apartment Buildings and Single House zones to Special Purpose – School (refer Attachment A).

5. The plan change is a private plan change requested by King's College which was notified to a limited number of parties on 7 December 2017. Four submissions were received and were considered by Independent Hearings Plan Commissioners. The council released the decision on 18 October 2018. No appeals were received and the plan change can now be made operative.
Tātaritanga me ngā tohutohu

Analysis and advice
6. No further analysis or advice is required.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera

Council group impacts and views
7. Making the plan change operative has no identified impacts on other parts of the council group. The views of council-controlled organisations were not required for the preparation of this report’s advice.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe

Local impacts and local board views
8. The Māngere-Ōtāhuhu and Ōtara-Papatoetoe Local Boards were briefed on the plan change after it was lodged with the council. In response, the Ōtara-Papatoetoe Local Board confirmed that they had no objections to the private plan change, while the Māngere-Ōtāhuhu Local Board expressed their support for the private plan change.

Tauākī whakaaweawe Māori

Māori impact statement
9. Prior to the plan change being limited notified, and pursuant to clauses 3 and 4A of Schedule 1 to the Resource Management Act 1991, King’s College consulted with the following mana whenua groups which were identified as having an interest in land subject to the plan change:
   - Te Runanga o Ngāti Whataua
   - Ngāti Whataua o Orakei
   - Ngāi Tai ki Tāmaki
   - Te Kawerau a Maki
   - Waikato-Tainui
   - Ngaaiti Whanaunga
   - Ngāti Tamaterā
   - Ngāti Tamaoho
   - Te Akitai Waiohua
   - Te Ahiwaru Waiohua
   - Ngāti Te Ata Waiohua
   - Ngāti Paoa
   - Ngāti Maru

10. Feedback was received from Ngāti Whanaunga Incorporated Society and Ngāti Te Ata Waiohua requesting their engagement when future development proposals are received for land subject to the plan change. Ngāti Whanaunga also provided a cultural assessment in support of the plan change which was included with the documents lodged by King’s College.

11. The mana whenua groups with an interest in land subject to the plan change were directly notified of the request when it was limited notified on 7 December 2017. No submissions were received to the plan change from mana whenua.

Ngā ritenga ā-pūtea

Financial implications
12. There are no financial implications associated with making the plan change operative.
Ngā raru tūpono me ngā whakamaurutanga
Risks and mitigations
13. There are no risks associated with making the plan change operative.

Ngā koringa ā-muri
Next steps
14. The final step in making the plan change operative is to publicly notify the date on which it will become operative, and to update the Auckland Unitary Plan.

Ngā tāpirihanga
Attachments

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<th>No.</th>
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<tbody>
<tr>
<td>A</td>
<td>Plan showing zoning to be made operative</td>
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Ngā kaihaina
Signatories

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<tr>
<th>Author</th>
<th>Nicholas Lau - Planner</th>
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<tr>
<td>Authorisers</td>
<td>John Duguid - General Manager - Plans and Places</td>
</tr>
<tr>
<td></td>
<td>Jim Quinn - Chief of Strategy</td>
</tr>
</tbody>
</table>
Land to be rezoned depicted by broken red line.
Te take mō te pūrongo

Purpose of the report

1. To receive a summary and provide a public record of memos or briefing papers that have been distributed to committee members.

Whakarāpopototanga matua

Executive summary

2. This is a regular information-only report which aims to provide greater visibility of information circulated to committee members via memo/briefing or other means, where no decisions are required.

3. The following information items are attached:
   - Planning Committee workshop schedule February 2019 (Attachment A)
   - Auckland Monthly Housing Update January 2019 (Attachment B)

4. The following memos are attached:
   - 4 December 2018 – Government announcements on the proposed resource management reforms and a new Housing and Urban Development Authority (Attachment C)
   - 17 December 2018 – Urban design terminology (Attachment D)

5. The following letters are attached:
   - 3 December 2018 – National accessibility legislation (Attachment E)
   - 14 December 2018 – Auckland Council elected member engagement with city centre to Māngere Light Rail Project (Attachment F)

Ngā tūtohunga

Recommendation/s

That the Planning Committee:

a) receive the Summary of Planning Committee information memos and briefings – 5 February 2019.
Ngā tāpirihanga
Attachments
The attachments for this report have been published under separate cover at the following link: http://infocouncil.aucklandcouncil.govt.nz/ > Planning Committee 5 February 2019 > extra attachments

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<tr>
<td>A</td>
<td>Planning Committee workshop schedule February 2019 (Under Separate Cover)</td>
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<tr>
<td>B</td>
<td>Auckland Monthly Housing Update January 2019 (Under Separate Cover)</td>
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<tr>
<td>C</td>
<td>Memo on Government announcements on the proposed resource management reforms and a new Housing and Urban Development Authority (Under Separate Cover)</td>
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<td>D</td>
<td>Memo on Urban Design Terminology (Under Separate Cover)</td>
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<tr>
<td>E</td>
<td>3 December 2018 Letter to relevant ministers about National accessibility legislation (Under Separate Cover)</td>
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<tr>
<td>F</td>
<td>14 December Letter to the Minister for Transport regarding Auckland Council elected member engagement with the City Centre to Mangere Light Rail Project (Under Separate Cover)</td>
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<tr>
<th>Author</th>
<th>Kalinda Gopal - Senior Governance Advisor</th>
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<td>Jim Quinn - Chief of Strategy</td>
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